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1963

Prepared by
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ACKNOWLEDGMENT

We acknowledge with appreciation the cooperation given by Mr. David V. Kerns, Director of the Legislative Reference Bureau, with the Statutory Revision and Bill Drafting Department of the Attorney General's office in exchange of indexes, summaries, and revision of sections and chapters, which have improved the field of continuous law reform.

We also acknowledge the fine service rendered by the following Special Assistants to the Attorney General before and during the 1963 Session of the Legislature in preparing either daily bill summaries for the Reference Bureau or drafting bills, resolutions and other statutory materials in the Statutory Revision and Bill Drafting Department.

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PREFACE

The official Florida Statutes printed in three volumes and published every two years following the regular session of the legislature, is the most efficient system known to keep all of the general laws in an up-to-date convenient form for speedy reference. This system was promoted by prominent members of The Florida Bar first in 1939 when the existing Florida statutory law was revised and adopted as the official statutory law of Florida, and again in 1949 when the system was reestablished. A conference with a committee of attorneys, representing The Florida Bar in 1948, convinced me that the legal profession in Florida and governmental agencies in particular, needed an improved method for quick access to Florida statutory law. A qualified director for the Statutory Revision Department was immediately appointed when I became Attorney General in 1949. The excellent response received from government officials and attorneys throughout the state upon the reactivation of the continuous revision system reflects a keen interest in the active use of this important legal tool.

The recommendation of the Florida Bar Committee on Revision that we print the statutes in three volumes has met with universal approval; therefore this policy will be continued. Numerous requests have influenced us to include the United States Constitution, the Florida Constitution, and other miscellaneous matter in Volume III along with the general index. This should be more convenient for reference purposes.

The efficient drafting of bills in statutory form by specially trained personnel in our office for members of the Legislature, and improved methods of editing coupled with experience on the part of a selected editorial staff, has already resulted, not only in expediting the preparation of material for publication, but has exerted considerable influence on improving the wording and the mechanical process of statutes.

The practicing attorneys, governmental departments, and the judiciary have contributed many helpful suggestions for continuous improvement in the index so necessary in finding the law. We appreciate the many letters received concerning the use of "The Official Florida Statutes" and the numerous comments since we are constantly seeking ways and means for making this publication more useful for those who use it.

I commend the personnel of the Statutory Revision Department for the excellence of their work, and the members of The Florida Bar and the Legislature for promoting and supporting Florida's efficient continuous revision plan for keeping our statutory law up-to-date.

RICHARD W. ERVIN
Attorney General

An explanation of the subject matter, purpose, plan, and the organization of

THE OFFICIAL FLORIDA STATUTES 1963

BIENNIAL PUBLICATION

The official Florida Statutes, in three volumes, are printed every two years in a completely new revision to keep the statutory law up-to-date.

The biennial plan of printing statutes is a plan which has been in successful use in some states for over fifty years. It is a preventive and a cure for the overgrowth of statutes. Since many of our statutes are short lived, the dead sections are removed and buried each two years. This procedure makes room for new statutes. The amendments and new laws of each succeeding legislature are meshed in with the standing statutes. Subject matter is gradually consolidated and often revised into single chapters, reducing the volume of reading matter.

The biennial edition of the statutes also affords members of the legislature a complete compilation of all the active general law enacted from 1885 through 1963 in a form convenient for study and improvement. Legislators can better acquaint themselves with what the law is and can amend or reject changes with understanding. A section or chapter method of revision with intelligent legislative judgment usually results in a gradual improvement of existing law.

The legislature has authorized the inclusion in this edition of the state-wide laws enacted at any special or regular session since 1961. These new laws have been edited but not changed. New decimal section numbers are assigned when the general law is converted into statutory form. History notes are added to record the legislative chapter and section of the law, which becomes a part of the general statutory law of the state.

The legislature at each session officially adopts all previously published session laws in statutory form. The 1963 laws included in statutory form are prima facie evidence of the existence of such laws until officially adopted by a subsequent legislative act in 1965.

FORMER REVISIONS AND COMPILATION

The laws of general application of the territory of Florida and of the State of Florida have either been compiled unofficially or revised under authority of law and adopted as official statutes in the following publications to wit: Duval's Compilation of Territorial Laws, 1840 (compilation); Thompson's Digest, 1847 (compilation); Bush's Digest, 1872 (compilation); McClellan's Digest, 1881 (compilation); Revised Statutes (R. S.) 1892 (revision enacted as a law); General Statutes (G. S.) 1906 (revision enacted as a law); Revised General Statutes (R. G. S.) 1920 (revision enacted as a law); Compiled General Laws (C. G. L.) 1927 (compilation unofficial); Official Revised Florida Statutes (F. S.) 1941 (revision enacted as a law); the Florida Statutes of 1949 (F. S. '49) (consolidation of '41 statutes and supplements); Florida Statutes of 1951, 1953, 1955, 1957, 1959 and 1961.

CONTENTS OF STATUTES

The Statutes of 1963 adopted by chapter 63-2, contain all the active Florida statutory law enacted since 1885, completely up-to-date through the regular session of 1963. It is the complete official edition of Florida statutory law. (Section 16.19 F.S.).

All amendments of the Florida Statutes together with new legislation enacted by the 1963 legislature, have been compiled and included in this edition (Section 16.44(6)(d), F.S.). The history notes following each section detail the source of the law from date of enactment to date of the present publication; including the section and chapter number as enacted.

ADOPTION OF STATUTES AND GENERAL LAW

All laws in this edition passed prior to 1963 have been officially adopted as statutory law in their present form. The effect of legislative adoption is to cure

any technical defect with reference to title, form, etc. (McConville v. Ft. Pierce Bank and Trust Co., 101 Fla. 727, 135 So. 392; Christopher v. Mugen, 61 Fla. 513, 55 So. 273; 63 Fla. 1, 58 So. 486, 89 Fla. 119, 103 So. 414, error dismissed 46 S. Ct. 23, 269 U.S. 594, 70 L.Ed. 430).

LOGICAL ARRANGEMENT OF TITLES AND CHAPTERS

The object of any arrangement of statutes is to facilitate the finding of the law. Two methods of arrangement are in general use in the United States namely: The "logical," grouping of related subjects together, as found in most digests, and the "alphabetical," as used in Corpus Juris and American Jurisprudence. A few states use a combination of both methods. A majority however prefer the "logical" arrangement which we have adopted and use in the Florida Statutes.

We have found it advisable to divide several chapters into parts (Part I, Part II, etc.) based on logical organization or related subject matter.

ALPHABETICAL CHAPTER INDEX

An alphabetical chapter index will be found in the fore of Volumes I and II. This index gives direct reference to all chapters. Chapters are alphabetically listed together with the chapter number.

NUMERICAL INDEX TO TITLES AND CHAPTERS

The "Analysis of Florida Statutes by Titles and Chapters" in all three volumes will afford a quick reference to the chapters grouped under the "logical organization" system. Familiarity with this index will save much time.

It lists by chapters groups of related subjects in a general subject field, in numerical order. Should a chapter be repealed, transferred, or expired by law, the chapter number is followed by the word (repealed), (transferred) or (expired). When vacancies occur in the numerical order, the unused numbers have been reserved for future use. A reference to this index will quickly inform one whether a chapter is still active.

Chapters have retained their original numbers except where transferred or revised.

NUMBERING SYSTEM

The decimal numbering system of identifying sections in each chapter is used in Florida.

All chapters are grouped by general subject matter and each is given a number. This chapter number appears in each section to the left of a decimal point. The section number appears to the right of the decimal point. Thus section 12 of chapter 16 would be section 16.12 in the chapter.

In adding a new section preceding section 1 (16.01) of chapter 16 it would become:

(New) Section 16.001
(Old) Section 16.01

In adding a new section between two already existing sections it would appear as:

(Old)	Section 16.01		(Old)	Section 16.12
(New)	**Section 16.011**	**Or**	**(New)**	**Section 16.121**
(Old)	Section 16.02		(Old)	Section 16.13

The system provides for vast expansion with addition of new sections as needed without necessity for a complete renumbering of existing sections or reorganization of titles and chapters.

INDEX TO SECTION SUBJECTS AT BEGINNING OF EACH CHAPTER

At the beginning of each chapter you will find a Numerical Index to section subjects within the chapter. Should skips appear in section numbers, the section has been repealed or deleted by law or transferred.

When sections have been deleted the section number together with history notes, giving the chapter number of the general session law authorizing the deletion, is transferred to the "Table of Repealed and Inactive Sections" in Volume III. Our policy is to assign new section numbers to new matter rather than reassign used section numbers. History notes will give full information on any deviation from this policy.

HISTORY NOTES AND CROSS REFERENCES

History notes have been carefully compiled, checked for accuracy with original session laws, and brought completely up-to-date. Beginning with the 1957 edition of the Statutes history notes will cite the researcher to the particular paragraphs or subsections affected by each amendment. The lawyer will find them dependable and convenient to use.

Immediately following history notes, related or qualifying laws are frequently noted in the form of cross references.

GENERAL INDEX

An index has never been prepared which has been entirely satisfactory to all members of the bench and bar. It is doubtful whether that Utopia will ever be reached.

No index can contain every possible entry. An index of such size would be incapable of practical use. On the other hand, to index the law only in those places where the user of statutes should logically look would not be sufficient because many persons are not logical in searching an index. We have attempted to reach a happy medium between the logical and the practical approach by selecting catch-words and titles that are commonly used. Cross references have been reduced to a minimum and a direct reference given to the chapter or section whenever possible in every cross reference.

We have revised the index so that it will be workable for the greatest number of persons. The checking plan which we follow insures that no section has been omitted. Every section has been properly indexed under several heads.

We have attempted to use a noun as a catch-word wherever possible instead of an adjective, preposition, a conjunction or an adverb.

The subject matter with which one is concerned will generally give a key to the spot in the index from which to begin the search.

The index is based on a logical arrangement of the statutes. The user will meet with greater success by looking in a place where it should logically be rather than relying upon alphabetical uncertainties of the index.

All indexes at best are inconvenient and time consuming. Continued improvement can and will be made through suggestions and cooperation of the bench and bar with your Statutory Revision Department.

TABLE OF STATUTORY CHANGES MADE BY THE 1963 LEGISLATURE

A table of statutory section changes made by the 1963 regular session of the legislature will be found on the inside fly leaf of Volume I printed on yellow paper. This table will give, (1) the number of the section when any change has been made in a section or subsection, (2) the type of change made whether amended, repealed, new or transferred, and (3) the number of the session law authorizing the change. This table provides a convenient method of quickly finding out whether the law has been changed in any section or chapter.

(If the section is not listed in this table the law was not changed.)

TRACING TABLE

A table, tracing the classification of general laws into the Florida Statutes, will be found in Volume III. This table indicates where a particular section of a law has been assigned in the statutes. The word "omitted" shown in place of a statute section number, indicates that the act is a local or special act or a general act of local application and is not in the statutes. To find an omitted chapter, consult the volumes of the General or Special Session Laws.

TABLE OF REPEALED AND INACTIVE SECTIONS

Preceding the General Index is a table showing repealed and inactive sections.

When a statutory law is repealed or transferred through revision to a new location in the statutes the former section number becomes inactive. All inactive section numbers have been removed from chapters in the statutes and placed in this table, along with history notes to repealed sections. Normally when a section becomes inactive the former assigned number is seldom used again. As new statutory material is added new section numbers are assigned. When a chapter is revised, consolidated or transferred and sections are reassigned a new location, generally the sections get new numbers.

The table provides a consolidated, ready source of statutory reference to all inactive sections along with useful data relating to the disposition of material formerly included therein.

TABLES OF COURTS

A new tabulation of state, district and county courts revised in 1959 and arranged according to jurisdiction beginning with the supreme court down to the small claims courts will be found in Volume III. It will give information concerning, the **date of term of court, and type of courts** in each county.

This tabulation is also arranged alphabetically by counties. A reference thereto will save time in determining the courts existing throughout Florida in each of the sixty-seven counties.

CENSUS AND MORTALITY TABLE

The 1960 Federal Census and the most recent mortality table will be found in Volume III.

FLORIDA CONSTITUTION

The Constitution of Florida in Volume III with index has been brought up-to-date through November 1963 amendments. The index has been meshed in with the General Index in order that a person searching for a subject may find references to both the constitution and the statutes in one index. The combined General Index has proven to be time saving and a convenient reference to statutory and constitutional provisions relating to the same general subject matter.

CONSTITUTION OF THE UNITED STATES

Upon the request of numerous lawyers and agencies, the Constitution of the United States with index is printed in Volume III.

COURT RULES, INTEGRATION RULES AND CODE OF ETHICS

The court rules, integration rules and code of ethics have been omitted from this edition. They have been printed both by the Supreme Court through West Publishing Company, and by the Florida Bar for distribution to attorneys, and this omission will eliminate a very substantial and unnecessary cost of duplication.

STATUTORY REVISION

Statutory revision technique works primarily with form rather than substance. The Statutory Revision Department of the Attorney General's Office often suggests a revision of chapters where improvements are desirable, but no change in an existing statute is made without legislative approval. The initiation of actual revision of substantive law should be sponsored by attorneys, judges, legislators, or administrators through specialized committees whose members are in close touch with the practice or enforcement of present law. The revisors always assist when called upon, and are interested in all projects and suggestions which eliminate unnecessary statutes, repetition of words and technical defects in the statutes.

Continuous revision places responsibility for ferreting out conflicts, duplications, and eliminating verbosity, circumlocution, obsolete sections, ambiguities, and many other technical faults generally found in session laws. Revision includes constant and continuous work toward the reclassification and consolidation of subject matter. It aims toward changing the wording of a law so

that essential clearness and harmony will exist in order that logical arrangement and compactness of the statutes may be obtained. Continuous revision aims toward simplicity in statement and understanding of meaning by the use of, and arrangement of, words and phrases. It helps avoid rhetorical flourishes and ornamentations as existed under the common law, and aims toward setting forth in clear cut and understandable language the present up-to-date law.

The revisor's office is a clearing house where lawyers, judges, legislators, and administrators may help make better statutory law. Persons calling attention to errors, omissions, conflicts and other defects found in the law, can materially help this department to improve our Florida Statutes.

Much valuable time can be saved in original research by reference to the improved General Index in the official Florida Statutes for subject matter reference and then reading the latest up-to-date complete statutory law on the subject in the volumes of the **"Florida Statutes."**

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PUBLIC HEALTH

CHAPTER 380

PUBLIC HEALTH, GENERALLY

380.01 Survey of state hospital facilities; development commission.—

(1) The Florida development commission is hereby designated as the sole agency of the state to carry out the purposes of the federal hospital survey and construction act as amended.

(2) (a) The governor is authorized to appoint a state advisory council which shall consist of seven members who are residents of Florida. Such council shall include representatives of nongovernment organizations or groups, and of state agencies, concerned with the operation, construction, or utilization of hospitals, including representatives of the consumers of hospital services selected from among persons familiar with the need for such services in urban or rural areas, to consult with the Florida development commission in carrying out the purposes of the federal hospital survey and construction act with amendments.

(b) The members of the advisory council shall be appointed for a term of four years or until their successors are appointed and qualified, except that the first appointments made after passage of this law shall be for terms as follows: two members shall be appointed for a term of one year; two members shall be appointed for a term of two years; two members shall be appointed for a term of three years, and one member shall be appointed for a term of four years.

(3) The governor is authorized to provide for carrying out such purposes in accordance with the standards prescribed by the surgeon general.

History.—§1, ch. 22851, 1945; §1, ch. 59-401.
cf.—ch. 288 Florida Development Commission.
Note.—See preamble of 1945 act.

CHAPTER 381

STATE BOARD OF HEALTH

381.011 Board, appointment, etc.—The state board of health, referred to in this chapter as the board, shall be composed of five members appointed by the governor; two of whom shall be doctors of medicine, licensed to practice in Florida; one of whom shall be a dentist licensed to practice in Florida; one of whom shall be a pharmacist licensed to practice in Florida; and one shall be a discreet citizen of Florida (or a licensed practitioner, other than a doctor of medicine of one of the healing arts for the treatment of human ills). Each member before assuming his official duties shall take an official oath. Term of office shall be four years from date of appointment or until a successor is appointed and qualified, except unexpired terms, in which case the appointment shall be to the end of the unexpired term only. The board at each annual meeting shall elect its president who shall call and preside at all meetings.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §§381.01, 381.02, 381.04.

381.021 Board headquarters.—The headquarters of the board shall be in Jacksonville.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.03.

381.031 Duties and powers of the board.—(1) It shall be the duty of the board to:

(a) Advise the state health officer in the performance of his duties and to formulate general policies affecting the public health of the state;

(b) Supervise generally the enforcement of laws, rules and regulations relating to sanitation, control of communicable diseases among humans and from animals to humans, quarantine and the general health of the state;

(c) Cooperate with and accept assistance from the surgeon general of the United States public health service and other appropriate federal officials in the enforcement of quarantine regulations, and in the prevention and suppression of communicable diseases;

(d) Declare, enforce, modify, and abolish quarantine as the circumstances indicate;

(e) Provide for a thorough investigation and study of the frequency of occurrence, causes and modes of propagation and means of prevention, control and cure of diseases among humans, and from animals to humans, especially communicable diseases, epidemic and otherwise;

(f) Provide for the dissemination of information to the public relative to the prevention and control of communicable diseases among humans and from animals to humans and the promotion and protection of the physical and

mental health of the people of the state by means of printed matter, radio, lectures, exhibits and other media;

(g) Adopt, promulgate, repeal and amend rules and regulations consistent with law regulating:

1. Control of communicable diseases;

2. Prevention and control of public health nuisances;

3. Sanitary practices relating to drinking water made accessible to the public; watersheds used for public water supplies; disposal of excreta, sewage or other wastes; the disposal of garbage and refuse; plumbing; rodent control; pollution of lakes, streams and other waters; drainage and filling in connection with the control of arthropods of public health importance; production, handling, processing, and sale of food products and drinks including milk, dairies and milk plants; canning plants, shellfish dealing and handling establishments, restaurants and all other places serving food and drink to the public; toilets and washrooms in all public places and places of employment; factories; trailer, tourist, recreation and other camps offering accommodations to the public; swimming pools and bathing places; state, county, municipal and private institutions serving the public; jointly with the state board of education, public and privately owned schools; vehicles offering transportation to the public; all places used for the incarceration of prisoners and inmates of state institutions for the mentally ill; and any other condition, place or establishment necessary for the control of communicable diseases or the protection and safety (light and ventilation) of the public health.

4. Control of arthropods of public health importance.

5. Prescribe qualifications of operators of milk plants, water purification plants, sewage treatment plants and swimming pools;

6. Segregation, quarantine and control of all animals and birds having, or suspected of having, diseases communicable to man;

7. The pollution of the air where created on private property, in public places, by industrial waste disposal or sewage disposal or in any place or manner whatsoever.

8. Nursing homes;

9. Practice of midwifery;

10. Bedding inspection;

11. Disposal of dead bodies;

12. Execution of any other purpose or intent of the laws enacted for the protection of the public health of Florida.

Regulations adopted under subparagraphs 2., 3., 4., 5., 7., and 10., of this subsection shall be called and known as the sanitary code of Florida.

(2) The board may maintain a mental health division or bureau which shall advise and assist local departments of health and education in the establishment of mental health services, particularly in connection with maternal and child health conferences and in the schools of the state, and may conduct such other activities as may be required in the development of mental health services as related to the public health.

(3) The board may issue, adopt, amend and repeal separate orders and rules consistent with law to meet any emergency not provided by the general rules and regulations for the purpose of suppressing nuisances dangerous to public health, communicable diseases and other dangers to the public and private health of the state.

(4) The board may commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:

(a) To enforce its rules and regulations.

(b) 1. To make application for injunction to the proper circuit court and the judge of said court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or both restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter, such injunction to issue without bond; provided, however, no temporary injunction without bond shall be issued except after a hearing of which the respondent or respondents has or have been given not less than seven days prior notice, and no temporary injunction without bond, which shall limit or prevent operations of an industrial, manufacturing or processing plant shall be issued, unless at the hearing, it shall be made to appear by clear, certain and convincing evidence that irreparable injury will result to the public from the failure to issue the same.

2. In event of the issue of a temporary injunction or restraining order hereunder without bond, then this state, in event said injunction or restraining order was improperly, erroneously or improvidently granted, shall be liable in damages and to the same extent as if said injunction or restraining order had been issued upon application of a private litigant instead of a public litigant, and the state hereby waives its sovereign immunity and consents to be sued in any such case.

3. In addition to the authority granted by this law, the board may commence and maintain all proper and necessary actions and proceedings to enjoin and abate nuisances dangerous to the health of persons, fish and livestock.

(c) To compel the performance of any act specifically required of any person, officer or board by any law of this state relating to public health.

(d) To protect and preserve the public health.

(e) It may defend all actions and proceedings involving its powers and duties.

(5) It is the intent of this section that the board shall be a policy-making body and that the above duties, policies, rules and regulations of the board shall be carried out by and through the executive secretary and state health officer.

History.—Comp. §2, ch. 29834, 1955, provisions of section partially contained in former §§381.15-381.17, 381.35, 381.36, 381.44, 381.49-381.52, 381.55; (4)(b) by §§1-3, ch. 57-787.

381.041 State health officer.—The governor shall appoint a state health officer who shall be a graduate physician of a recognized and reputable medical college and who shall hold a certificate from the state board of medical examiners that he is qualified to practice medicine in Florida. Said state health officer shall be an expert in administrative public health work, in hygiene and sanitary science and in the diagnosis of communicable diseases. He shall hold said office for a term of four years, from effective date of appointment, and any vacancy shall be filled by appointment for the unexpired term. He shall take an official oath before entering upon his duties and shall give bond in an amount to be approved by the state comptroller. His salary shall be as provided by the legislature in the general appropriations act and when traveling on state business he shall receive traveling expenses as provided by law.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §§381.04, 381.09, 381.10.
cf.—§112.061 Travel expenses of state officers and employees.

381.051 Acting state health officer.—

(1) Whenever the state health officer is absent from his office for any period of time not to exceed thirty days on official business, vacation or due to illness and deems it necessary for the proper functioning of his office, he shall designate a member of the medical staff of the board as acting state health officer.

(2) When the state health officer is absent from his office for a period of time exceeding thirty days on official business, vacation or due to illness the board shall designate a member of the medical staff of the board to perform the duties of the office until the return of the state health officer or the office is declared vacant and a successor is appointed by the governor.

History.—Comp. §2, ch. 29834, 1955.

381.061 Duties of state health officer.—The state health officer shall be the executive secretary and chief administrative officer of the board, responsible for carrying out the directives of and policies adopted by the board. It shall be his duty to:

(1) Act as state registrar of vital statistics;

(2) Attend and maintain the minutes of all meetings of the board, which minutes shall contain the decisions, policies, rules and regulations adopted, and all other official actions of the board and shall constitute his authority for administering the policies and directives of the board;

(3) Administer and enforce laws, enforce rules and regulations relating to sanitation, control of communicable diseases in humans and from animals to humans, and the general health of the people of Florida;

(4) Supervise and cooperate with municipal and county officials and employees in enforcing the state health laws, rules and regulations promulgated by the board and consistent with local health regulations and ordinances;

(5) Cooperate with and assist federal health officers in the enforcement of public health laws and regulations;

(6) Declare, enforce, modify and abolish quarantine as the circumstances may indicate;

(7) Cooperate with other appropriate state, county, municipal, and private boards, departments or organizations for the improvement and preservation of the public health;

(8) Subject to the approval of the board and within available appropriations appoint bureau and division heads; and to appoint other agents or employees of the board subject to available appropriations;

(9) Prepare annually for the approval of the board and presentation to the budget commission a budget of expenditures anticipated to be made by the board during the succeeding year.

(10) Prepare and submit to the board for consideration proposed sanitary and public health rules and regulations and legislation.

(11) Observe diligently the sanitary and public health conditions throughout the state and take necessary precautions to protect it in its sanitary and public health relations with other states and countries.

(12) Perform any other duties prescribed by the law or directed by the board.

History.—Comp. §2, ch. 29834, 1955, provisions of this section partially contained in former §§381.05, 381.17, 381.19.

381.062 Eminent domain.—Whenever the state board of health shall find it necessary to acquire private property for the use of said board and to be occupied by said board, the said board is empowered to exercise the power of eminent domain and to proceed to condemn said property in the manner provided by chapter 73.

History.—Comp. §1, ch. 57-232.

381.071 Regulations and ordinances superseded.—The provisions of the rules and regulations adopted and promulgated by the board under the provisions of this chapter shall, as to matters of public health, supersede all regulations enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities; provided, no provision of this chapter shall be construed as altering or superseding any of the provisions set forth in chapters 502 and 503, or any rule or regulation adopted under the authority of said chapters.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.53.

381.081 Presumptions.—The authority, action and proceedings of the board and the state health officer and other agents of the board in enforcing the rules and regulations adopted by the board under the provisions of this chapter shall be regarded as judicial in nature and treated as prima facie just and legal.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.54.

381.091 Construction, rules and regulations.—Nothing contained in the rules and regula-

tions adopted by the board under the provisions of this chapter shall be construed as limiting any duty or power of the board provided by the statute laws of Florida.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.57.

381.101 Municipal regulations and ordinances.—Any municipality may enact, in manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules and regulations adopted by the board.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.53, 381.56.

381.111 Power to enforce.—Any member of the board or any officer or agent of the board designated for the purpose may enforce any of the provisions of this chapter or any rule and regulation promulgated by the board under the provisions of this chapter. If necessary he may appear before any magistrate empowered to issue warrants in criminal cases and request the issuance of a warrant and said magistrate shall issue a warrant directed to any sheriff, deputy, constable or police officer to assist in any way to carry out the purpose and intent of this chapter.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.19.

381.121 Enforcement; city and county officers to assist.—It shall be the duty of every state and county attorney, sheriff, constable, police officer and other appropriate city and county officials upon request to assist the state health officer or any other agent of the board in the enforcement of the state health laws and the rules and regulations promulgated by the board under the provisions of this chapter.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.17.

381.131 Board meetings.—Meetings of the board shall be held each year on the second Tuesday of February and other meetings may be called by the president of the board or the governor.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §§381.06-381.08.

381.141 Compensation, board members.—When attending official meetings board members shall receive twenty-five dollars per day and traveling expenses as provided by law.

History.—Comp. §2, ch. 29834, 1955, provisions for compensation of board members formerly contained in §381.09.
cf.—§112.061 Travel expenses of state officials and employees.

381.151 Per diem; traveling expenses; agents and other employees.—Agents and employees of the board when traveling on state business shall be allowed per diem and traveling expenses as provided by law.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §§381.09, 381.62.
cf.—§112.061 Travel expenses of state officials and employees.

381.171 Purchase, lease and sale of real property.—

(1) The board may purchase, lease or otherwise acquire land and buildings and take a deed thereto in the name of the state, for the use and benefit of the board, subject to available appropriations therefor, when the acquisition is necessary to the efficient accomplishment of the purposes of this chapter.

(2) The board may sell, lease or convey in the name of the state for the use and benefit of the board, any land and buildings owned by the state for the use and benefit of the board which lands and buildings are no longer necessary for carrying out the purposes of this chapter.

(3) Title is confirmed in the board to any real estate which has heretofore been conveyed or attempted to be conveyed to the board.

History.—Comp. §2, ch. 29834, 1955, provisions of sub §(3) of this section formerly contained in §381.71.

381.181 Expenditures. — All expenditures shall be certified by the state health officer and disbursement made by the state comptroller by warrant on the state treasurer except as otherwise provided in this chapter.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.11, 381-13.

381.191 Revolving fund.—Subject to approval of the state budget commission there shall be established under the supervision of the state comptroller from moneys appropriated for board expense a revolving fund in the amount of two thousand five hundred dollars to be used to defray current incidental expenses. Reimbursement shall be made only upon submission of written vouchers certified by the state health officer and presented to the state comptroller, audited and approved by him.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.14.
cf.—§18.101 Revolving funds authorized.

381.201 Application for and acceptance of gifts or grants.—The board may apply for and accept any funds, grants, gifts or services made available to it by any agency or department of the federal government or any other agency or private individual in aid of any present or future health program undertaken, maintained or proposed. All moneys received under the provision of this section shall be deposited in the state treasury and shall be disbursed in the same manner as other funds of the board.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.161.

381.211 Disposition of equipment and material; transfers to county health departments.—

(1) The board may exchange, sell or otherwise dispose of any obsolete, worn-out or unsuitable material or equipment which it owns when it deems such disposition to be to the financial benefit of the state. The proceeds from such disposition shall be submitted for deposit in the state treasury accompanied by an itemized report of disposition made.

(2) When the board purchases equipment and materials in furtherance of its public health programs from state or federal or state and federal funds for primary use and location in a county health department of this state, it is authorized to transfer title to such equipment and materials to the board of county commissioners of the county where said county

health department is located. All property so transferred shall be accounted for as provided in chapter 274.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.42; §2, ch. 61-46.
cf.—§18.101 Deposit of public money by boards not located in Tallahassee.
§116.01 Payment of public funds into treasury.

381.221 Annual report.—The state health officer shall file with the governor an annual report of the activities and expenditures of the board and recommendations for improving the sanitation of the state and the health of its people, and this annual report shall be published like other reports of state officers.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.11.

381.231 Report of communicable diseases to board.—

(1) Any attending practitioner, licensed in Florida to practice medicine, osteopathic medicine, chiropractic, naturopathy or veterinary medicine, who diagnoses or suspects the existence of a disease communicable among humans or from animals to humans shall immediately report the fact to the board.

(2) Periodically the board shall issue a list of diseases determined by it to be communicable within the meaning of this chapter and shall furnish a copy of said list to the practitioners listed in subsection (1).

(3) Reports required by this section shall be made on forms furnished by the board.

(4) Information submitted in reports required by this section is confidential and shall be made public only when necessary to public health. No report so submitted shall be considered a violation of the confidential relationship between practitioner and patient.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.301.

381.241 Quarantine regulations; commerce or travel.—No health regulation which restricts travel or trade within the state shall be promulgated or enforced in this state except by authority of the board.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.31.

381.251 Pollution control; underground water, lakes, etc.—The board and its agents shall have general control and supervision over underground water, lakes, rivers, streams, canals, ditches and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.43.

381.252 Arthropod control laboratory; Indian River county.—

(1) The state board of health shall construct, equip and maintain a separate building in Indian River county to test resistance in mosquitoes and other arthropods and carry out experimental work with chemicals, insecticides and other substances.

(2) For the purpose set out in subsection (1), the sum of forty thousand dollars is appropriated to the state board of health out of the general revenue fund. Any funds available from the federal government shall also be used according to law in the construction, equipping and operation of said building.

History.—Comp. §§1, 2, ch. 57-234.

381.253 Stream sanitation control and research facility.—

(1) The Florida state board of health is hereby authorized to construct at a suitable location in central Florida a stream sanitation control and research facility to include chemical, biological and entomological laboratories and offices adequate to house the existing blind mosquito research project, and a stream pollution control staff to serve central Florida.

(2) A sum of seventy-five thousand dollars or such part thereof as may be required is appropriated from the general revenue fund to the state board of health for the purpose of paying the cost of site acquisition, building construction, furnishings and equipment required to carry out the provisions of this section.

History.—Comp. §§1, 2, ch. 57-732.

381.261 Supervision; water supply and sewage disposal.—The board and its agents shall have general supervision and control over all systems of water supply, sewerage, refuse and sewage treatment in the state insofar as their adequacy, sanitary and physical conditions affect the public health.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.43.

381.271 Approval of water.—No county, municipality, person, persons, firm, corporation, company, public or private institution or community of more than twenty-five inhabitants shall install a system of water supply, sewerage, refuse or sewage disposal, or materially alter or extend any existing system until complete plans and specifications for the installation, alterations or extensions, together with such other information as the board may require have been submitted and approved by the board. The board may further make and enforce such specific rules and regulations regarding the submission of plans for approval and record as it deems reasonable and proper to carry out the provisions of this section.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.44.

381.281 Water supply and disposal system; advisory duty.—The board shall consult with and advise any county or municipal authority or any other person as to the source of water supply, methods of water purification, and disposal of drainage, sewage or refuse. It shall also advise and consult with any manufacturer or other person conducting a business or intending to conduct a business whose sewage, waste or waste products may tend to pollute the waters of this state. The board may conduct experiments relating to purification of water and treatment of sewage, waste or refuse.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.45.

381.291 Corrective orders; water and disposal systems.—When the board or its agents, through investigation, find that any system of water supply, sewerage, refuse or sewage disposal constitutes a nuisance or menace to the public health, it may issue an order requiring the owner to correct the improper condition.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.46.

381.311 Regulations for municipal and county sanitation.—The board shall supervise and regulate municipal and county sanitation and shall exercise general supervision over the work of local health authorities. Local health officials and other appropriate local officials concurrently with the board shall enforce the provisions of the state sanitary code and other public health rules and regulations and of such local ordinances and sanitary regulations as may be consistent with it.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.56.

381.321 Laboratories.—The board may establish and maintain in suitable and convenient places in the state laboratories for microbiological and chemical analyses and any other purposes it determines necessary for the protection of the public health.

History.—Comp. §2, ch. 29834, 1955.

381.331 Analyses; human, animal bodies.—The state health officer shall have an analysis made of any part of the contents of the human body submitted by any Florida physician, state attorney, solicitor of criminal court or sheriff; or of any part of the contents of the body of any animal submitted by any agent of the state livestock board, any licensed Florida veterinarian or sheriff to determine whether they may contain any foreign matter or poisonous drugs and shall furnish a certificate as to the results of the analysis to the person requesting the analysis.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §§381.60, 381.61.

381.341 Insulin; purchase, distribution.—The board shall purchase and distribute insulin through its agents or other appropriate agent of the state or federal government in any county or municipality in the state to any bona fide resident of Florida suffering from diabetes or kindred disease requiring insulin in its treatment who makes application for and furnishes proof of his financial inability to purchase in accordance with the rules and regulations promulgated by the board concerning the distribution of insulin.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §§381.63, 381.64.

381.351 State health officer to assume control in certain cases.—Whenever the state health officer investigates any suspicious case or cases of disease and determines the disease is contagious or infectious and a menace to public health, he and his agents shall assume charge and management, and all necessary and legitimate expenses attendant upon the case or cases of disease after charge and management has been assumed by the state health officer and his agents may be paid out of funds appropriated to the board under provisions of the general appropriations act on vouchers approved as provided by this chapter.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.29.

381.361 Clinics; treatment of cancer.—The board shall formulate a plan for the care and treatment of persons suffering from cancer and establish and designate standard requirements for the organization, equipment and conduct of cancer units or departments in hospitals and clinics in Florida. The designations of cancer units shall follow a survey of the needs and facilities for treatment of cancer in the various localities throughout the state.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.68.

381.371 Cancer, educational program.—The board shall formulate and put into effect a continuing educational program for the prevention of cancer and its early diagnosis, and disseminate information concerning its proper treatment to hospitals, cancer patients and the public.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.69.

381.381 Cancer patients; financial aid.—The board shall make rules and regulations specifying to what extent and on what terms and conditions cancer patients of the state may receive financial aid for the diagnosis and treatment of cancer in any hospital or clinic selected. The board may furnish financial aid to citizens of Florida afflicted with cancer to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and make arrangements with hospitals, laboratories or clinics to afford proper care and treatment for cancer patients in Florida.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §381.70.

381.401 Certain practitioners required to register with board; procedure; disposition of fees.—

(1) Every person licensed to practice medicine pursuant to chapter 458, osteopathic medicine pursuant to chapter 459, chiropractic pursuant to chapter 460, chiropody pursuant to chapter 461, naturopathy pursuant to chapter 462, and physical therapy pursuant to chapter 486, shall, on or before January 1 of each year, apply to the board of health for a certificate of registration upon a form furnished by said board, and shall pay at such time a fee of one dollar. Such fee shall be deposited in the general revenue fund. The first application of registration under this law shall be within sixty days after the issuance of the license, and shall be in writing and under oath that the information therein is true and correct. The applicant shall furnish the said board, on a form to be furnished by the board, his full name, post office

and resident address, the date and number of his license, college or school from which he graduated, and the date of such graduation and such application shall be duly executed and verified, before an officer authorized to take acknowledgments, and filed with the said board. Registration subsequent to the first registration need not be upon sworn application. The state board of health, on or before October 1 of each year after the first registration, shall mail or cause to be mailed to each licensed practitioner, a blank form of application for registration, addressed to the last known post office address of such practitioner. The form of such application shall be the same for all practitioners and shall require the same information from each practitioner thereof. The state board of health shall issue upon application therefor, a certificate of registration under the seal of the state for the year ensuing and ending December 31. Each licensed practitioner shall conspicuously display his proper registration certificate in his office at all times. The board shall supply each county health department with the names of persons registered for the ensuing year whose post office and/or resident address is in their county.

(2) Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $100.00, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

History.—§§1-3, ch. 29852, 1955; §1, ch. 61-129.

381.411 Penalties.—

(1) Any person who violates any of the provisions of this chapter, any quarantine or any rule or regulation promulgated by the board under the provisions of this chapter is guilty of a misdemeanor and subject to be punished by imprisonment not exceeding six months or by fine not exceeding $1,000.00.

(2) Any person who interferes with, hinders or opposes any agent, officer, or member of the board in the discharge of his duties is guilty of a misdemeanor and subject to be punished by imprisonment not exceeding six months or by fine not exceeding $1,000.00.

(3) Any person who maliciously disseminates any false rumor or report concerning the existence of any infectious or contagious disease is guilty of a misdemeanor and subject to be punished by imprisonment not exceeding six months or by fine not exceeding $1,000.00.

(4) Any person who makes fraudulent application for and obtains insulin under the provisions of this chapter is guilty of a misdemeanor and subject to punishment as provided by law.

History.—Comp. §2, ch. 29834, 1955, provisions of this section formerly contained in §§381.18, 381.20, 381.21, 381.47, 381.58, 381.59, 381.66.

381.422 Definitions; migrant labor camps.— The following words and phrases shall mean:

(1) "Migrant labor camp."—One or more buildings or structures, tents, trailers, or vehicles, together with the land appertaining thereto, established, operated or used as living quarters for fifteen or more seasonal, temporary or migrant workers whether or not rent is paid or reserved in connection with the use or occupancy of such premises, provided however, this definition shall not apply to forestry or tobacco farm operation.

(2) "Board."—The state board of health.

History.—§1, ch. 59-476.

381.432 License required for establishment, maintenance or operation of migrant labor camp.—No person shall establish, maintain or operate any migrant labor camp in this state without first obtaining a license therefor from the board and unless such license is posted and kept posted in the camp to which it applies at all times during maintenance or operation of the camp.

History.—§2, ch. 59-476.

381.442 Application for license.—Application for a license to establish, operate or maintain a migrant labor camp shall be made to the board in writing and on a form and under regulations prescribed by the board. The application shall state the location of the existing or proposed migrant labor camp, the approximate number of persons to be accommodated, the probable duration of use and any other information the board may require.

History.—§3, ch. 59-476.

381.452 Issuance of license.—If the state health officer is satisfied, after causing an inspection to be made, that the camp meets the minimum standards of construction, sanitation, equipment and operation required by regulations issued under §381.472, he shall issue in the name of the board the necessary license in writing on a form to be prescribed by the board. The license, unless sooner revoked, shall expire on June 30 next after the date of issuance unless renewed, and it shall not be transferable. All applications for renewal shall be filed with the state health officer thirty days prior to its expiration on form blanks furnished by the board.

History.—§4, ch. 59-476.

381.462 Revocation of license.—The state health officer may revoke a license authorizing the operation of a migrant labor camp if he finds the holder has failed to comply with any provision of this law or of any regulation or order issued hereunder.

History.—§5, ch. 59-476.

381.472 Authority to issue regulations.—The board shall make, promulgate and repeal such rules and regulations as it may determine to be necessary to protect the health and safety of persons living in migrant labor camps, prescribing standards for living quarters at such camps, including provisions relating to construction of camps, sanitary conditions, light, air, safety, protection from fire hazards, equipment, maintenance and operation of the camp

and such other matters as it may determine to be appropriate or necessary for the protection of the life and health of occupants. Regulations adopted hereunder shall be a part of the sanitary code of Florida created by §381.031(1) (g) 12. and may be enforced in the manner provided in §381.031(4), and violations thereof shall be subject to the penalties provided in §381.411.

History.—§6, ch. 59-476.

381.482 **Right of entry.**—The board and/or its inspectors may enter and inspect migrant labor camps at reasonable hours and investigate such facts, conditions, and practices or matters, as may be necessary or appropriate to determine whether any person has violated any provisions of this law or rules and regulations of the board pertaining hereto are being violated. The board may from time to time at its discretion publish the reports of such inspections in its monthly bulletin.

History.—§7, ch. 59-476.

CHAPTER 382

BUREAU OF VITAL STATISTICS

382.01 Registration of vital statistics.— The state board of health shall have charge of the registration of vital statistics; shall furnish forms and blanks for obtaining and preserving such records and shall procure the faithful registration of the same in each primary registration district as constituted in §382.03 and in the central bureau of vital statistics at the office of the state board of health. The said board shall be charged with the uniform and thorough enforcement of the law throughout the state and shall from time to time recommend any additional legislation that may be necessary for this purpose.

History.—§1, ch. 6892, 1915; RGS 2068; CGL 3268. Am. §1, ch. 25372, 1949.

382.02 Central bureau; clerical assistance; compensation. — The central bureau of vital statistics, which is authorized to be established by said board, shall be under the immediate direction of the state health officer, who shall be, by virtue of his office, state registrar of vital statistics. The state board of health shall provide for such clerical and other assistants as may be necessary for the purposes of this chapter, and shall fix the compensation of persons thus employed, and shall provide for the bureau of vital statistics suitable offices, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this chapter.

History.—§2, ch. 6892, 1915; RGS 2069; CGL 3269.

382.03 Registration districts established.— For the purposes of this chapter the state shall be divided into registration districts as follows: Each city and each incorporated town shall constitute a primary registration district; and for that portion of each county outside of

the cities and incorporated towns therein the state registrar shall define and designate the boundaries of a sufficient number of rural registration districts, which districts he may change, divide or combine from time to time as may be necessary to insure the convenience and completeness of registration.

History.—§3, ch. 6892, 1915; RGS 2070; CGL 3270.

382.04 Appointment of local registrars; terms of office; vacancies; penalty.—The state registrar shall appoint a local registrar of vital statistics for each registration district in the state. The term of office of each local registrar so appointed shall be four years, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other causes; provided, that in incorporated towns or cities where health officers or other officials are, in the judgment of the state registrar, conducting effective registration of births and deaths under local ordinances, such officials may be appointed as registrars in and for such incorporated towns or cities, and shall be subject to the instructions of the state registrar, and to all of the provisions of this chapter. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by the state registrar. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the state registrar.

Any local registrar who, in the judgment of the state registrar, fails or neglects to discharge efficiently the duties of his office as set forth in this chapter, or to make prompt and complete returns of births and deaths as required thereby, shall be forthwith removed by the state registrar, and such other penalties may be imposed as are provided under §382.39.

History.—§4, ch. 6892, 1915; RGS 2071; CGL 3271.

382.05 Deputy registrars; sub-registrars.—Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, who shall act in his stead in case of his absence or disability; and such deputy shall in writing accept such appointment, and be subject to all instructions governing local registrars. And when it appears necessary for the convenience of the people in any district, the state registrar may appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates, to issue burial, removal, or other permits in and for such portions of the district as may be designated; and each sub-registrar shall note, on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month; provided, that such sub-registrar shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this chapter or the instructions of the state registrar, and shall be subject to the same penalties for neglect of duty as the local registrar.

History.—§4, ch. 6892, 1915; RGS 2072; CGL 3272.

382.06 Burial or removal permit required.—The body of any person whose death occurs in this state, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as hereinafter provided; provided, that when a dead body is transported from outside the state into a registration district in Florida for burial, the transit or removal permit issued in accordance with the law and health regulations of the place where the death occurred, shall be given the same force and effect as a local burial or removal permit and no other permit shall be required. No local registrar shall receive any fee for the issuance of burial or removal permits under this chapter other than the compensation provided in §382.34.

History.—§5, ch. 6892, 1915; RGS 2073; CGL 3273.
Am. §2, ch. 25372, 1949.

382.07 "Stillborn" child to be registered.—A fetus showing no evidence of life after complete birth (no action of heart, breathing, or movement of voluntary muscle), if the twentieth week of gestation has been reached, should be registered as a stillbirth. A stillbirth certificate in the form prescribed by the national agency in charge of vital statistics shall be filed with the local registrar in the same manner as a certificate of death. The medical certificate of the cause of stillbirth shall be signed by the attending physician, if any, and shall state the cause of the stillbirth, if known, whether a premature delivery and the period of gestation, if known, and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates for stillborn children; but such cases and stillbirths occurring without medical attendance of a physician shall be treated as deaths without medical attendance as provided for in §382.10.

History.—§6, ch. 6892, 1915; RGS 2074; CGL 3274.
Am. §3, ch. 25372, 1949.

382.08 Death certificate.—The certificate of death shall contain all of the information required by the standard certificate as recommended by the national agency in charge of vital statistics, all of the items of which are declared necessary for the legal, social, and sanitary purposes subserved by registration records. The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts. The statement of facts relating to the disposition of

the body shall be signed by the undertaker or person acting as such.

History.—§7, ch. 6892, 1915; RGS 2075; CGL 3275. Am. §4, ch. 25372, 1949.

382.09 Medical certificate. — The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred; and he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause), and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing only such terms, as defined by the state registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death which may be the result of either disease or violence shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. And for deaths in hospitals, institutions, or of non-residents, transients, or recent residents, the physician shall supply the information required under this head, if he is able to do so, and may state where, in his opinion, the disease was contracted.

History.—§7, ch. 6892, 1915; RGS 2076; CGL 3276.

382.10 Where death occurs without medical attendance.—In case of any death occurring without medical attendance, the undertaker, or other person to whose knowledge the death may come, shall notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification; provided, that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided, further, that if the undertaker, or person acting as such, or the registrar, has reason to believe that the death may have been due to unlawful act or neglect, the registrar shall then refer the case to the coroner or other proper officer for his investigation and certification; and the coroner or other proper officer whose duty it is to hold an inquest on the body of any deceased person, shall make the certificate of death required for a burial permit, and state in his certificate the name of the disease causing death, or if from external causes, (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the state registrar in order properly to classify the death.

History.—§8, ch. 6892, 1915; RGS 2077; CGL 3277.

382.11 Duty of undertaker.—The undertaker or person acting as undertaker, shall file the certificate of death or stillbirth with the local registrar of the district in which the death or stillbirth occurred and obtain a burial, removal, or other permit prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death or stillbirth and other particulars necessary to complete the record, as specified in §§382.08-382.10; and he shall then state the facts required relative to the date and place of burial, other disposition, or removal, over his signature and with his address, and present the complete certificate to the local registrar in order to obtain a permit for burial, removal, or other disposition of the body. The undertaker shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal and transit permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where, if within the state, the removal permit shall be delivered to the person in charge of the place of burial.

History.—§9, ch. 6892, 1915; RGS 2078; CGL 3278; am. §7, ch. 22858, 1945; §5, ch. 25372, 1949.

382.12 Casket dealers to make monthly reports.—Every person selling a casket shall keep a record showing the name of the purchaser, purchaser's post office address, name of deceased, date of death, place of death, and color or race of deceased, which record shall be open to inspection of the state registrar at all times. On the first day of each month the person selling caskets shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose; provided, however, that no person selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body.

Every person selling a casket at retail, and not having charge of the disposition of the body, shall inclose within the casket a notice furnished by the state registrar calling attention to the requirements of the law, and a blank certificate of death.

History.—§9, ch. 6892, 1915; RGS 2079; CGL 3279.

382.13 Form of burial or removal permit.—If the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over

his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or dispose otherwise of the body, upon the form prescribed by the state registrar.

History.—§10, ch. 6892, 1915; RGS 2080; CGL 3280.

382.14 Interment prohibited without burial permit; records of bodies interred.—No person in charge of any premises on which interments, or other dispositions are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, other disposition, or removal permit as herein provided. Any such person shall endorse upon the permit the date of interment, or other disposition, over his signature, and shall return all permits so endorsed to the local registrar of his district within ten days from the date of interment or other disposition. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge in each case stating the name and color or race of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection; provided, that the undertaker or person acting as such, when burying a body in a cemetery or burial grounds having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located. Permits filed with the local registrar under the provisions of this section may be destroyed by the official custodian after the expiration of three years from the date of such filing.

History.—§11, ch. 6892, 1915; RGS 2081; CGL 3281.
Am. §6, ch. 25372, 1949.

382.15 All births to be registered.—The birth of each and every child born in this state shall be registered as hereinafter provided.

History.—§12, ch. 6892, 1915; RGS 2082; CGL 3282.

382.16 Certificate of birth.—Within ten days after the date of each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, as provided in §382.17.

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife or person acting as midwife, in attendance upon the birth, the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within ten days after the date of such birth, shall report to the local registrar the fact of such birth. In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information on the certificate of birth, the local registrar shall secure from the person so reporting, or from any other person having knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and the person reporting the birth or who may be interrogated in relation thereto shall answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make the complete record of the birth as contemplated, and the informant as to any statement made in accordance herewith shall verify such statement by his signature.

History.—§13, ch. 6892, 1915; RGS 2083; CGL 3283.

382.17 Birth certificates; form; information to be recorded.—

(1) The original certificate of birth shall contain all of the information required by the standard certificate as recommended by the national agency in charge of vital statistics, all of the items of which are declared necessary for the legal, social and sanitary purposes subserved by registration records, provided, however, that all information concerning legitimacy status and medical details shall be recorded on a separate section of the original birth certificate, which portion of said birth certificate after having been processed for statistical and health purposes shall not be open to inspection by nor shall certified copies of the same be issued to any person other than the registrant, if of legal age, or upon the order of any court of competent jurisdiction.

(2) A birth certificate shall be filed for every child of unknown parentage and shall show all known or approximate facts relating to the birth. To assist in later identification, information concerning the place and circumstances under which the said child was found shall be filed on the portion of the original birth certificate relating to legitimacy status and medical details. In the event said child is identified to the satisfaction of the registrar, at any subsequent time a new birth certificate shall be prepared which will bear the same number as the original certificate and the original certificate shall, thereupon, be sealed and filed and shall not be opened to inspection nor shall certified copies of the same be issued to any person other than the registrant, if of legal age, or upon the order of any court of competent jurisdiction.

(3) All original, new or amendatory certificates of birth shall be identical in form, color, size, wording and arrangement of items, except delayed certificates of birth which shall be on such form as the state registrar may provide. No distinction shall be made between the birth certificate of a legitimate, illegitimate, adopted or unknown parentage child.

History.—§14, ch. 6892, 1915; RGS 2084; CGL 3284.
Am. §7, ch. 25372, 1949.

382.18 Certificate of birth to show given name of child.—

(1) When any certificate of birth of a living

child is presented without the statement of the given name, then the local registrar shall make out and deliver to either parent of the child a special blank for supplemental report of the given name of the child which will be filled out as directed and returned to the local registrar as soon as the child shall have been named.

(2) The mother of a child born out of wedlock should enter on the birth certificate the surname by which she desires the child to be known. The registrar, upon presentation of proof that said child has acquired another name through usage, court order or otherwise, shall correct the original birth certificate as hereinafter provided for to show the name by which said child is known.

History.—§15, ch. 6892, 1915; RGS 2085; CGL 3285. Am. §8, ch. 25372, 1949.

382.19 Filing of certificates of birth, death, or stillbirth in cases where none was filed at time of birth, death or stillbirth.—If at any time after the birth, death or stillbirth of any person within the state, a copy of the official record or portion thereof of said birth, death, or stillbirth be necessary and, after search by the state registrar or his representative, it should appear that no such certificate of birth, death or stillbirth was made or filed, the physician, midwife or undertaker responsible for the report, or father, mother, older brother, or sister, or other person knowing the facts, may file with the central bureau of vital statistics, such certificate of birth, death or stillbirth, together with such sworn statements and affidavits as the state registrar may require.

History.—§2, ch. 13864, 1929; CGL 1936 Supp. 3301(2). Am. §9, ch. 25372, 1949.

382.20 State registrar may withhold filing of birth, death, or stillbirth certificates until proof is filed; certificates prima facie evidence.—The state registrar may require such affidavits to be presented and such proof to be filed as he may deem advisable or necessary to establish the truth of the facts endeavored to be made or recorded by the certificate and may withhold filing of the birth, death, or stillbirth certificate involved until his requirements are complied with. Certificates filed and accepted under this section and §382.19 shall be admissible in evidence as prima facie evidence of the facts recited therein with like force and effect as other vital statistics records are received or admitted in evidence. The state registrar may make and enforce appropriate rules and regulations to carry out this section and to prevent fraud and deception being committed under same.

History.—§3, ch. 13864, 1929; CGL 1936 Supp. 3301(3). Am. §10, ch. 25372, 1949.

382.21 New or amended certificates of birth; duty of clerks of court, and state registrar.—The clerk of the court in which any proceeding for legitimation, adoption or annulment of an adoption shall be filed, shall within thirty days after the final disposition thereof forward to the state registrar of vital statistics a report of said proceedings upon a form to be furnished by the state registrar, which form shall contain sufficient information to identify the original birth certificate of the child and to enable an amendatory or new birth certificate to be prepared.

(1) ADOPTION.—Upon receipt of the report of an adoption from a clerk of the court, as heretofore provided for, or upon receipt of a certified copy of a final decree of adoption, together with all necessary information, from any registrant or adoptive parent of a registrant, the state registrar shall make and file a new birth certificate, which certificate shall bear the same file number as the original birth certificate. All names and statistical particulars entered on the new certificate shall refer to the adoptive parents but nothing in said certificate shall refer to or designate said parents as being adoptive. The question of legitimacy shall be answered in the affirmative. All other items not affected by adoption shall be copied as on the original certificate, including the date of filing.

(2) LEGITIMATION.—Upon receipt of the report of a legitimation from a clerk of the court, as heretofore provided for, or upon receipt of a certified copy of a final decree or judgment of legitimation, together with all necessary information from a registrant or the parent or parents of a registrant, or upon receipt of evidence of the marriage of the parents of a person subsequent to the birth of said person, the state registrar shall make and file a new birth certificate, which certificate shall bear the same file number as the original birth certificate. The names and statistical particulars shall be entered as of the date of birth but as though the parents were married at that time. The question of legitimacy shall be answered in the affirmative.

(3) ANNULMENT OF ADOPTION.—Upon receipt of the report of an annulment of an adoption from the clerk of the court, as heretofore provided for, or upon receipt of a certified copy of a final decree, or judgment of the annulment of adoption, the state registrar shall, if a new certificate of birth was made and filed, based upon an adoption order, remove such new certificate and restore the original certificate to its original place in the files and the certificate so removed shall then be destroyed by the registrar.

(4) DUTY OF STATE REGISTRAR UPON RECEIPT OF REPORTS ON CHILDREN NOT BORN IN THIS STATE.—Upon receipt of a report of an adoption, legitimation or annulment of an adoption from a clerk of the court, as hereinbefore provided for, in which report it affirmatively appears that the person involved was born in a state other than the state of Florida, it shall be the duty of the state registrar to forward a copy of such report to the state registrar or comparable official of the state in which said person was born.

(5) CORRECTION OF BIRTH RECORDS.—A person whose birth is recorded in this state may request the state registrar to correct any misstatement or errors occurring in said birth record, upon presentation of proof satisfactory to the state registrar.

History.—§1, ch. 19063, 1939; CGL 1940 Supp. 3301(4); §1, ch. 22016, 1943; §11, ch. 25372, 1949.

382.22 Substitution of new certificate of birth for original.—When a new certificate of birth is made, the state registrar shall substitute the new certificate of birth for that on file in the state bureau of vital statistics of the state board of health, and shall place the original certificate of birth and all papers pertaining thereto under seal, not to be broken or opened except by decree, judgment or order of a court of competent jurisdiction; or at the instance and request of the person whose birth is the subject of the said certificate of birth; provided, however, that before any such person shall be entitled to have the seal broken and the record opened without order of court, he or she shall first identify himself or herself to the satisfaction of the state registrar. Thereafter, when a certified copy of the certificate of birth of such person or portion thereof is issued, it shall be a copy of the new certificate of birth or portion thereof, except when an order, judgment or decree of a court of competent jurisdiction shall require the issuance of a copy or certified copy or the original certificate of birth, or except when such copy of the original certificate shall be requested by the person whose birth is the subject of the said certificate, such person having first furnished satisfactory evidence of identity as is hereinabove provided.

History.—§2, ch. 19063, 1939; CGL 1940 Supp. 3301 (5). Am. §12, ch. 25372, 1949.

382.23 Bureau of vital statistics to receive marriage licenses.—Upon the return of each marriage license to the issuing county judge, as provided and issued under chapter 741, the issuing county judge shall forthwith record the same, and shall, on or before the fifth day of each month, transmit all the original licenses with endorsements thereon, received by him during the preceding calendar month, to the bureau of vital statistics; provided that as to any marriage licenses issued and not returned to the issuing county judge or any marriage licenses returned to the issuing county judge and not recorded by him so as to be transmitted to the bureau of vital statistics, as in this section provided, such issuing county judge shall report the same to the said bureau at the time of transmitting the recorded licenses on the forms to be prescribed and furnished by said bureau; provided further, that if no marriage licenses are issued or returned to the issuing county judge to be transmitted or reported to said bureau, as by this section provided, said issuing county judge shall report such fact to said bureau upon forms prescribed and furnished by it.

History.—§2, ch. 11869, 1927; CGL 3295, 5852.

382.24 County judges to transmit marriage license fees monthly.—On or before the fifth day of each month each of the several county judges of the state shall transmit to the bureau of vital statistics seventy-five cents of each one dollar collected by him under the provisions of §741.02, during the preceding calendar months, retaining the remaining twenty-five cents, of each one dollar so collected, as his compensation.

History.—§3, ch. 11869, 1927; CGL 3296.

382.25 Clerks of circuit courts to furnish bureau of vital statistics with record of divorces granted; fees.—On or before the fifth day of each month, the several clerks of the circuit courts of the state, shall transmit to the bureau of vital statistics, on forms prescribed and furnished by it, a record of each and every decree of divorce granted by said courts during the preceding calendar month, giving names of parties and such other data as required by such forms; twenty-five cents, the cost of such reports, to be taxed as a part of the cost in the cause in which the decree is granted, the same to be collected by said clerk as such.

History.—§4, ch. 11869, 1927; CGL 3297.

382.26 Bureau of vital statistics to compile and preserve records of marriages and divorces.—The records of marriages and divorces obtained under the provisions of §§382.23 and 382.25 shall be compiled, kept and preserved as are other vital statistics under the provisions of this chapter.

History.—§5, ch. 11869, 1927; CGL 3298.

382.28 Bureau to prescribe and furnish marriage license forms.—All forms used in the issuance of marriage licenses in this state shall be prescribed and furnished by the bureau of vital statistics.

History.—§7, ch. 11869, 1927; CGL 3300.

382.29 Bureau to keep accurate accounts and transmit funds monthly to state treasurer.—A true and correct account of all sums transmitted to the bureau of vital statistics by the several county judges of the state, under the provisions of §382.24, shall be kept by said bureau and said bureau shall each month transmit such funds so received by it to the state treasurer; the state treasurer shall place such funds so transmitted to him to the credit of the general revenue funds and sufficient monies shall be appropriated by the biennial appropriations act for the efficient administration of this chapter.

History.—§8, ch. 11869, 1927; CGL 3301. §14, ch. 25372, 1949; am. §64, ch. 26869, 1951.

382.30 Physicians, midwives, sextons, retail casket dealers and undertakers must register; local registrars to make annual reports.—Every physician, midwife, sexton, retail casket dealer, and undertaker shall, without delay, register his or her name, address and occupation and color or race, with the local registrar of the district in which he or she resides or may hereafter establish a residence, and shall thereupon be supplied by the local registrar with a copy of this chapter, together with such instructions as may be prepared by the state registrar relative to its enforcement. Within thirty days after the close of each calendar year each local registrar shall make a return to the state registrar of all physicians, midwives, sextons, retail casket dealers, or undertakers who have registered in his district during the whole or any

part of the preceding calendar year; provided, that no fee or other compensation shall be charged by local registrars to physicians, midwives, sextons, retail casket dealers, or undertakers for registering their names under this section or making returns thereof to the state registrar.

History.—§16, ch. 6892, 1915; RGS 2086; CGL 3286; am. §7, ch. 22858, 1945.

382.31 Hospitals and almshouses required to keep records.—All superintendents or managers, or other persons in charge of hospitals, almshouses, lying in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates of their institutions, which are required in the forms of the certificates provided for by this chapter, as directed by the state registrar; and in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted, or if injured the nature and cause thereof. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

History.—§17, ch. 6892, 1915; RGS 2087; CGL 3287; am. §7, ch. 22000, 1943.

382.32 State registrar to supply forms; duties.—The state registrar shall prepare, print and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this chapter; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are required to supply, upon a form provided by the state registrar or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth, upon demand of the state registrar, in person, by mail or through the local registrar. The state registrar shall further arrange, bind and permanently preserve the certificates in a systematic manner. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread.

History.—§18, ch. 6892, 1915; RGS 2088; CGL 3288. Am. §15, ch. 25372, 1949.

382.321 State board of health to destroy certain index cards.—The state board of health is hereby authorized to destroy the card index it is required to prepare and maintain by §382.32, after the information thereon has been permanently recorded in bound index books and verified.

History.—§1, ch. 22624, 1945.

382.33 Duties of local registrar.—Each local registrar shall supply blank forms to such persons as require them. Each local registrar shall carefully examine each certificate of birth, death, or stillbirth when presented for record, in order to ascertain whether or not it has been made out in accordance with the provisions of this chapter and the instructions of the state registrar; and if any certificate of death or stillbirth is incomplete or unsatisfactory shall call attention to the defect in the return, and to withhold the burial, removal or other permit until such defects are corrected. All certificates, either of birth, death, or stillbirth, shall be typewritten or written legibly in permanent black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death or stillbirth is properly executed and complete, he shall then issue a burial, removal or other permit to the undertaker or the person acting as such; provided, that in case the death occurred from some disease which is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the state board of health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, and require him or her to supply the missing items of information if they can be obtained. He shall sign his name as registrar in attestation of the date of filing in his office. He shall also make and preserve a local record of each birth, each death, and each stillbirth certificate registered by him, in such manner as directed by the state registrar. And he shall, on the fifth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or deaths or no stillbirths occurred in any month he shall, on the fifth day of the following month, report that fact to the state registrar, on a card provided for such purpose.

History.—§19, ch. 6892, 1915; RGS 2089; CGL 3289. Am. §16, ch. 25372, 1949.

382.34 Fees of local registrar.—Each local registrar shall be paid the sum of twenty-five cents for each birth certificate, each death certificate, and each stillbirth certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the state registrar as required by this

chapter. And in case no births, no deaths, or no stillbirths were registered during the month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this chapter. All amounts payable to a local registrar under the provisions of this section shall be from the biennial appropriation upon certification of the state registrar.

History.—§20, ch. 6892, 1915; RGS 2090; CGL 3290. §17, ch. 25372, 1949; am. §65, ch. 26869, 1951.

382.35 Disclosure of information, certified copies of birth certificates, birth cards, weight of copies as evidence, searches of records; fees; disposition of fees.—

(1) All birth records of this state shall be considered confidential documents and shall be open to inspection only as hereinbefore or hereinafter provided for.

(2) Disclosure of illegitimacy of birth or of information from which it can be ascertained may be made only upon order of a court of competent jurisdiction where such information is necessary for the determination of personal or property rights and then only for such purposes or upon the application of the registrant, if of legal age.

(3) Certified copies of the original birth certificate or any new or amendatory certificate, exclusive of that portion containing medical details and legitimacy status, shall be issued only by the state registrar and only to the registrant, if of legal age, his or her parent or guardian or other legal representative, health and social agencies upon approval of the state registrar, any agency of the state or the United States for official purposes or upon order of any court of competent jurisdiction.

(4) The state registrar shall, upon request, furnish to any applicant, a short form certificate of birth or birth card in such form as the state registrar may designate which shall contain only the name, color, sex, date of birth, place of birth, date of filing of the original certificate and certificate number which shall be certified to by the state registrar. All such short form certificates of birth or birth cards including those for persons born out of wedlock or of unknown parentage or for legitimated or adopted persons shall be identical in form, color, size, wording and arrangement of items.

(5) The state registrar shall upon request of any person having a proper interest therein supply a certified copy of all or part of any marriage, divorce or death recorded under the provisions of this chapter.

(6) Any copy of any record registered under the provisions of this act or any part thereof when properly certified by the state registrar shall be prima facie evidence in all courts and cases of the facts therein stated.

(7) The state registrar shall be entitled to fees as follows:

(a) One dollar for each calendar year of records searched for a record of birth, stillbirth, death, marriage, divorce, or other vital record, up to a maximum of twenty-five dollars.

(b) Five dollars for filing a delayed certification of birth, death, or stillbirth.

(c) Five dollars for processing and filing a correction on a death record or a correction on a birth record; provided there shall be no fee for processing and filing a correction on a birth record of a child less than six months of age.

(d) Five dollars for processing and filing a new birth certificate for reason of adoption or for reason of legitimation.

(e) One dollar for each certification of a vital record in excess of one certification of a vital record for which a fee for search is paid or for which a filing fee is paid.

(8) All fees prescribed herein shall be paid by the applicant. The Florida state board of health may waive any or all of the fees required in this section. The state registrar shall keep a true and correct account of all fees required under this section and turn the same over to the state treasurer to the credit of the general revenue fund.

History.—§21, ch. 6892, 1915; RGS 2091; CGL 3291; §18, ch. 25372, 1949; (8) §66, ch. 26869, 1951; (7) §1, ch. 63-151.

382.36 Local registrars charged with enforcing law.—Each local registrar is charged with the strict and thorough enforcement of the provisions of this chapter in his registration district, under the supervision and direction of the state registrar; and he shall make an immediate report to the state registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

History.—§23, ch. 6892, 1915; RGS 2092; CGL 3292.

382.37 State registrar charged with executing law.—The state registrar is charged with the thorough and efficient execution of the provisions of this chapter in every part of the state, and is granted supervisory power over local registrars, deputy registrars, and sub-registrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violations of any of the provisions of this chapter to the state attorney, county solicitor or county attorney or other prosecuting officer having charge of the prosecution of misdemeanors in the registration district in which such violation shall occur, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the said prosecuting officer shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law; and upon request of the state registrar, the attorney general shall assist in the enforcement of the provisions of this chapter.

History.—§23, ch. 6892, 1915; RGS 2093; CGL 3293.

382.38 State board of health rules.—The state board of health may adopt, promulgate and enforce rules and regulations requiring the notification of all cases of sickness necessary for the preservation and protection of the public health, and for the collection of statistics of marriages and divorces.

History.—§24. ch. 6892, 1915; RGS 2094; CGL 3294.

382.39 Penalties.—

(1) Any person who willfully makes or alters any certificate or record or certification therefrom provided for in this chapter, except in accordance with the provisions of this chapter, or who shall willfully furnish false or fraudulent information affecting any certificate or record required by this chapter, shall be subject to a fine of not more than one thousand dollars, or imprisonment for not to exceed six months, or both such fine and imprisonment.

(2) Any person who knowingly transports or accepts for transport, inters, or otherwise disposes of a dead body without an accompanying permit issued in accordance with the provisions of this chapter, shall be subject to a fine of not more than five hundred dollars.

(3) Except where a different penalty is provided for in this section, any person who violates any of the provisions of this chapter, or the rules and regulations of the Florida state board of health, or who neglects or refuses to perform any of the duties imposed upon him thereunder, shall be subject to a fine of not more than five hundred dollars.

History.—§22, ch. 6892, 1915; RGS 5550; CGL 7733. Am. §19, ch. 25372, 1949.

382.40 Delayed birth certificates; jurisdiction of county judge; procedure and issuance.—Any resident of or person born in the state, may file a duly verified petition in the county judge's court, in the county of his or her residence, or in the county of his or her place of birth, setting forth the date, place and parentage of his or her birth and petitioning the county judge to issue an order certifying the date, place and parentage of the birth of the petitioner. Also, a petition may be filed by any such resident or person born in Florida for the purpose of determining either, or any, the date, the place, or the parentage of the birth of the petitioner. Upon filing said petition, the county judge shall have a hearing and may conduct the same as other special proceedings before him. The hearing may, in his discretion, be set for a time certain, within a resonable time after the petition is filed. When the petition comes on for hearing before the county judge, such evidence may be presented as may be required by the court to establish the fact of such birth, the date, the place and the parentage of the birth of the petitioner, or any of such facts, but no certificate may be granted on the uncorroborated testimony of the petitioner. If the evidence offered shall satisfy the court of the date, place and parentage of the birth of the petitioner, or any of such facts, the court shall thereupon enter an order, and certificate accordingly, which said order shall be entered upon forms furnished the county judge's court of the several counties by the bureau of vital statistics, state board of health. Said order shall be made and signed in triplicate. One copy of such order shall be filed in the county judge's court, in a permanent looseleaf book kept for that purpose and marked "delayed birth certificates," and no further recording shall be required by the court. Where the birth of the petitioner is shown to have occurred in Florida, one copy shall be delivered to the petitioner, and one copy shall be mailed by the county judge, within ten days after the date of order, to bureau of vital statistics, state board of health, Jacksonville. In all other instances two copies of such order shall be delivered to the petitioner. Said bureau is authorized and directed to furnish such forms and file such order.

History.—§1, ch. 21931, 1943; am. §1, ch. 22887, 1945.

382.41 Petition, contents.—Such petition may be in form and substance as follows:

In the County Judge's Court.....County, Florida

Petitioner respectfully says that: His (or/her) full name is (stating full name). His (or/her) residence is (stating place of residence). He (or she) was born on (stating date of birth) at (stating place of birth); that petitioner's father's name was (or is) (stating name of father, if known), color or race of father (stating color or race of father), birthplace of father (stating birthplace, if known, of father), maiden name of mother (stating maiden name, if known, of mother), color or race of mother (stating color or race of mother), birthplace of mother (stating birthplace, if known, of mother); and petitioner prays that an order be entered, certifying and ordering such facts.

History.—§2, ch. 21931, 1943.

382.42 Petition, execution.—Such petition shall be signed and sworn to by the petitioner, or his or her parent or guardian, or by someone who knows such facts, and shall state each fact as definitely in such petition as is known to petitioner. If either or any of such fact or facts is unknown to petitioner, the petitioner shall so state.

History.—§3, ch. 21931, 1943.

382.43 Form of certificate.—The birth certificate shall be an order of the county judge adjudicating all or any facts stated in the petition, for which sufficient evidence is produced, and such order may be in substance as follows:

In the County Judge's Court

.....County, Florida.

DELAYED BIRTH CERTIFICATE

This is to certify that:

It has been made to appear to me that (stating full name of person), was born (stating month, day and year) at (stating place of birth); that his (or her) father's name was (or is) (stating name of father), color or race (stating color or race of father), and his place of birth was (stating father's place of birth); that his (or her) mother's maiden name was (or is) (stating maiden name of mother of petitioner),

color or race (stating color or race of mother), and her place of birth was (stating birthplace of mother).

Given under my hand and seal, at_____ Florida, this_____day of_____19____.

_____

County Judge of_____ County, Florida.

History.—§4, ch 21931, 1943.

382.44 Judgment a public record.—Said order and the record thereof is hereby made a judgment of a court of record, and, when filed as herein required, shall be a public record and shall be accepted as such by the courts and other agencies and persons of this state in the same manner as other orders of the county judge and public records and shall be prima facie evidence of the fact or facts therein adjudicated.

History.—§5, ch. 21931, 1943.

382.45 Appeals.—Any resident of such county where the proceeding is had, or any person interested, may appeal from such order or certificate to the appropriate district court of appeal in the manner and within the time required by the Florida appellate rules, or to the supreme court if authorized by §4, Art. V of the state constitution.

History.—§6, ch. 21931, 1943; §24, ch. 63-559.
cf.—§732.16, Appeals under probate laws.

382.46 Costs.—The county judge, for his complete services in establishing a delayed birth certificate and order under this law, shall receive the sum of five dollars.

History.—§7, ch. 21931, 1943; §2, ch. 63-151.

382.47 Certified copies.—The bureau of vital statistics and the county judge are each authorized to make and furnish additional certified copies of such order upon payment of the sum of one dollar therefor.

History.—§8, ch. 21931, 1943; §3, ch. 63-151.

382.48 Remedy cumulative.—The method of obtaining delayed birth certificates under §§382.40-382.47 shall be cumulative and in addition to any other method now or hereafter provided by law for obtaining delayed birth certificate, but no person may establish more than one birth certificate.

History.—§10, ch. 21931, 1943.

382.49 Correction of birth certificates.—

(1) The bureau of vital statistics of the state, by and through the state registrar is hereby authorized, empowered and directed to correct any error of a general nature pertaining to date of birth, sex of child or other information necessary to the issuance of birth certificate and to correct any error of a clerical nature, such as mistakes in spelling of names of child, names of towns or cities in which child was born or doctor or midwife or other person attending the birth of said child.

(2) The affidavit of either parent of said child shall be sufficient evidence for the correction of any error mentioned in subsection (1) of this section.

(3) The state registrar shall make no rule superseding this section.

History.—§§1, 2, 3, ch. 24114. 1947.

382.50 Microfilming and destroying obsolete correspondence and records.—

(1) The state registrar may destroy general correspondence files over two years old and also any other records not specifically provided for herein.

(2) The state registrar is authorized to photograph, microphotograph or reproduce on film, in such a manner that each page will be exposed in exact conformity with the original, all burial or removal permits, death certificates, birth certificates, marriage licenses and other records and documents as he may, in his discretion, select, and the said state registrar is hereby authorized to destroy any of said documents after they have been photographed and filed and after audit of his office has been completed for the period embracing the dates of said instruments.

(3) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—§1, ch. 59-221.

CHAPTER 383

MATERNITY AND INFANCY HYGIENE

383.01 Acceptance of provisions of Sheppard-Towner act.—The state accepts the provisions of what is known as the Sheppard-Towner act, an act of congress approved November 23, 1921, for the promotion of the welfare and hygiene of maternity and infancy and for other purposes. The good faith of the state is pledged to make available for the several purposes of said act, funds sufficient at least to equal the sums allotted from time to time to this state from the appropriation made by the said act and to meet all conditions necessary to entitle the state to the benefits of the said act.

History.—§1, ch. 9186, 1923; CGL 3987.

383.02 Custodian and disburser of funds.—The state board of health is designated custodian of all funds allotted to this state from the appropriation made by the Sheppard-Towner act and the state board of health may receive and provide for the proper custody and disbursement of said funds in accordance with said act.

History.—§2, ch. 9186, 1923; CGL 3988.

383.03 Cooperation with federal authorities; appropriation.—The state board of health, through its child welfare and child hygiene division, shall cooperate as provided in and by the Sheppard-Towner act of congress with the federal authorities in the administration of the provisions of said act, and shall do all things necessary to entitle the state to receive the benefits thereof and especially shall cooperate with the federal government in carrying out the provisions of the act for the promotion of the welfare and hygiene of maternity and infancy. The state board of health, through its child welfare and child hygiene division may expend of the funds raised by taxation for the maintenance of the state board of health, the sum of sixteen thousand dollars per year, or so much thereof as may be necessary to equal and match the amount of money allotted to the state by the federal government under the provisions of the said Sheppard-Towner act, approved November 23, 1921.

History.—§3, ch. 9186, 1923; CGL 3989.

383.04 Prophylactic required for eyes of infants.—Every physician, midwife, or other person in attendance at the birth of a child in the state is required to instill or have instilled into the eyes of the baby within one hour after birth, a one per cent fresh solution of silver-nitrate (with date of manufacture marked on container), two drops of the solution to be dropped into each eye after the eyelids have been opened; or some equally effective prophylactic approved by the state board of health, for the prevention of blindness from ophthalmia neonatorum. A record of such administration or instillation shall be reported on the birth certificate, showing the time with respect to the birth and the kind of prophylactic administered; provided, that this section shall not apply to cases where the parents shall file with the physician, midwife, or other person in attendance at the birth of a child written objections on account of religious beliefs contrary to the use of drugs. In such case the physician, midwife, or other person in attendance shall record in writing on the birth certificate of such child that such measures were or were not employed and attach thereto such written objection.

History.—§1, ch. 20690, 1941.

383.05 State board of health to prepare prophylactic for free distribution.—The state board of health shall cause to be prepared and put into proper containers a one per cent fresh solution of nitrate of silver or some equally effective prophylactic approved by the state board of health, to be distributed free, with instructions for use, to local health officers, to enable each health officer to distribute a sufficient quantity to each physician and midwife within his territorial jurisdiction; and it is hereby made the duty of local health officers to make such distribution to indigents, white and colored. In areas where no health officer is employed, the state board of health shall furnish such prophylactic preparations and instructions free to each physician, midwife, or other person in attendance at the birth of a child. Any solution or prophylactic furnished by the state board of health shall bear the date of manufacture.

History.—§2, ch. 20690, 1941.

383.06 Report of inflamed, etc., eyes treated.—Any person who shall nurse or attend any infant shall report any inflammation or unnatural discharge in the eyes of said child that shall develop within two weeks after birth, to the local health officer or licensed physician, which report shall be made within six hours.

History.—§3, ch. 20690, 1941.

383.07 Penalty for violation.—Any person who fails to comply with the provisions of §§383.04-383.06 shall be punishable by a fine of not more than one hundred dollars.

History.—§4, ch. 20690, 1941.

383.08 Serological tests of pregnant women; duty of physician.—Every physician attending a pregnant woman for conditions relating to her pregnancy during the period of gestation or at delivery shall take, or cause to be taken, a sample of venous blood of such woman at the time of the first professional visit or within ten days thereafter. In these cases where a pregnant woman is not seen prior to the time of delivery, blood should be collected by the person making the delivery, such blood to be sent to a recognized laboratory for a serological test for syphilis. Every other person permitted by law to attend pregnant women but not permitted by law to take blood samples shall cause a sample of venous blood of such pregnant women to be taken by a physician duly licensed. Such sample of blood shall be submitted by the physician to an approved laboratory for a standard serological test for syphilis.

History.—§1, ch. 22644, 1945.

383.09 Tests.—For the purpose of this law, a standard serological test shall be a test for syphilis approved by the Florida state board of health, and an approved laboratory shall be the state board of health laboratory, any of its branches, or other laboratory in the state which is approved by the Florida state board of health; provided, however, that the serological test or tests shall be such as will exclude the possibility that the disease as shown by said test or tests is some other disease than syphilis.

History.—§2, ch. 22644, 1945.

383.10 Reporting births.—In reporting every birth and stillbirth, physicians and others required by law to make such reports shall state on the back of the certificate that a serological test for syphilis has been made upon a sample of blood taken from the woman who bore the child and the approximate date of such test; and if such test has not been made, the reason for not making the test. In no case shall the birth certificate state the result of the test.

History.—§3, ch. 22644, 1945.

383.11 Reports.—The laboratory report on the serological test shall be made on a form to be provided by the Florida state board of health. In submitting the sample of blood for the test, the physician shall designate that this is a pregnancy test; and the laboratory report shall state that this was a pregnant test.

History.—§4, ch. 22644, 1945.

383.12 Costs and charges.—All serological tests required by this law on blood samples submitted to the laboratory of the Florida state board of health or to any of its authorized branches shall be made without charge.

History.—§5, ch. 22644, 1945.

383.13 Use of information by board.—The state board of health shall be authorized to use the information derived from pregnancy serological tests for such follow-up procedures as are required by law or deemed necessary by said board for the protection of the public health.

History.—§6, ch. 22644, 1945.

CHAPTER 384

VENEREAL DISEASES

384.01 Diseases designated as venereal diseases.—Syphilis, gonorrhea and chancroid are designated as venereal diseases and are declared to be contagious, infectious, communicable and dangerous to the public health. It is unlawful for any one infected with either of these diseases to expose another to infection.

History.—§1, ch. 7829, 1919; CGL 3947.

384.02 Sexual intercourse with person afflicted with venereal disease illegal.—It is unlawful for any female afflicted with any venereal disease, knowing of such condition, to have sexual intercourse with any male person, or for any male person afflicted with any venereal disease, knowing of such condition, to have sexual intercourse with any female.

History.—§2, ch. 7829, 1919; CGL 3948.

384.03 Penalty for violation.—Any person who shall violate any of the provisions of §384.01 or §384.02, shall be guilty of a misdemeanor and on conviction shall be punished as for a misdemeanor.

History.—§3, ch. 7829, 1919; CGL 7735.
cf.—§775.07, Punishment for misdemeanor.

384.04 Physical examination. — Any person suspected of being afflicted with any infectious venereal disease shall be subject to physical examination and inspection by any representative of the state board of health, and for failure or refusal to allow such inspection or examination, they shall be guilty of a misdemeanor and shall be punished as for a misdemeanor; provided, the suspected person shall not be apprehended, inspected or examined against his will, except upon the sworn testimony of the person or persons accusing; and upon the presentation of the warrant duly authorized by the justice of the peace, or some court officer charged with the execution of this law.

History.—§4, ch. 7829, 1919; CGL 3949.
cf.—§775.07, Punishment for misdemeanor.

384.05 Penalty for violation of state board of health rules.—Any person willfully violating any rule or regulation promulgated by the state board of health under the authority of this chapter, shall be deemed guilty of a misdemeanor and may be punished as for a misdemeanor.

History.—§5, ch. 7829, 1919; CGL 7736.
cf.—§775.07, Punishment for misdemeanor.

384.06 Physicians, etc., to report venereal disease cases to state board of health.—Any physician or other person who makes a diagnosis in, or treats a case of, venereal disease, or any superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall make a report of such case to the state board of health or to the local health officer representing the state board of health, and subsequently, if such infected person ceases to take treatment for such venereal disease from the original reporting source prior to his or her becoming cured or rendered noninfectious, as determined according to competent medical authority, such fact shall likewise be reported to the state board of health or said local health officer, according to such form and manner and at such times as the state board of health shall direct by rule or regulation adopted by it.

History.—§6, ch. 7829, 1919; CGL 3950; am. §1, ch. 21657, 1943.
cf.—§§796.04-796.07, Laws prohibiting prostitution.

384.07 State, county and municipal health officers may examine suspects and require treatment.—State, county and municipal health officers, or their authorized deputies, within their respective jurisdictions, shall, when in their judgment it is necessary to protect the public health, make examination of persons being or suspected of being infected with a venereal disease, require persons infected with a venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense, and isolate persons infected with a venereal disease; provided, the suspected person shall not be apprehended, inspected or examined against his will, except upon the sworn testimony of the person or persons ac-

cusing; and upon the presentation of the warrant duly authorized by the justice of the peace or some court officer charged with the execution of this law.

History.—§7, ch. 7829, 1919; RGS 2168; CGL 3951.

384.08 Prisoners to be examined and treated by board of health.—All persons who shall be confined or imprisoned in any state, county or city prison of this state, may be examined and treated for venereal diseases by the health authorities or their deputies. The state, county and municipal boards of health may take over such portions of any state, county or city prison as may be necessary for a board of health hospital, wherein all persons who shall have been confined or imprisoned and who are suffering with a venereal disease at the time of the expiration of their terms of imprisonment, shall be isolated and treated at public expense until cured, or, in lieu of such isolation, such person may, in the discretion of the board of health, be required to report to a licensed physician or submit to treatment at public expense as provided in §384.07.

History.—§8, ch. 7829, 1919; CGL 3952.

384.09 State board of health to make rules necessary for carrying out of this chapter.—The state board of health shall make such rules and regulations as shall in its judgment be necessary for the carrying out of the purposes of this chapter, including rules and regulations providing for such labor on the part of the isolated persons as may be necessary to provide in whole or in part for their subsistence and to safeguard their general health, and such other rules and regulations concerning venereal diseases as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter.

History.—§9, ch. 7829, 1919; CGL 3953.

384.10 Reports of venereal disease cases to be filed in state board of health office not subject to public inspection.—All reports of cases of venereal disease shall be filed in a safe or some place of safekeeping in the office of the state board of health, and shall not be subject to public inspection. No clerk or officer of the state board of health shall give out any personal information as to such reported cases, except upon the demand of the judge of a court empowered to deal with the operation of this law; nor shall the reports of cases of venereal disease be made to the state board of health, or any city or county board of health, except in a sealed, stamped envelope, which shall be furnished the physicians of the state without cost to them by the state board of health; provided, however, that all such reports shall be available to said state board of health and may be used by it for the purpose of requiring persons so reported as being infected with venereal disease to take treatment therefor as required by law.

History.—§10, ch. 7829, 1919; CGL 3954; am. §1, ch. 21658, 1943.

384.11 Towns, cities or counties may donate.—Any town, city or county, may make donations to the state board of health to assist in the enforcement of this chapter.

History.—§11, ch. 7829, 1919; CGL 3955.

384.12 Certain persons having venereal disease to report to state board of health.—After May 1, 1943, all persons in the State of Florida who have been rejected for military service in the armed forces of the United States, or placed in a deferred classification by their local draft board of selective service, who are infected with a venereal disease, shall immediately report to the nearest venereal disease clinic operated by the state board of health and furnish satisfactory proof to the health officer in charge of such clinic that such person is taking, and will continue to take, treatment for such venereal disease from a reputable physician until cured, or submit to treatment at public expense under the supervision and direction of such venereal disease clinic.

History.—§1, ch. 21659, 1943.

384.13 Venereal disease; evidence, penalty for violations.—Notice from any local draft board of selective service to a venereal disease clinic operated by the state board of health, that the person named therein is infected with a venereal disease, shall constitute prima facie evidence in the courts of this state that such person is infected with a venereal disease, and his refusal to report to the venereal disease clinic, as provided in §384.12 after receipt of notice to report from said venereal disease clinic, shall constitute a violation of this section, and such person shall be deemed guilty of a misdemeanor, and upon conviction thereof he shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

History.—§2, ch. 21659, 1943.

384.14 Venereal diseases; quarantine; power and authority of health officers.—State, county and municipal health officers, or their authorized deputies, when in their judgment it is necessary to protect the public health, may commit persons within their respective jurisdictions, infected with venereal disease, for quarantine and compulsory treatment in any hospital within the state operated for that purpose by the state board of health for quarantine and treatment.

History.—§1, ch. 21948, 1943.

384.15 Transfer of certain persons to health officer.—The several sheriffs and chiefs of police of the various counties and municipalities in the state are hereby authorized and directed to transfer to the custody of any state, county or municipal health officer or their authorized deputies within their respective jurisdictions, any person in the custody of said sheriffs or chiefs of police charged with or convicted of any misdemeanor and who is infected with any venereal disease, for the purposes of quarantine and treatment in any hospital in the

state operated for that purpose by the state board of health; provided, however, that when such person has been rendered noninfectious such person shall, if still under sentence or prosecution, be redelivered to the sheriff or chief of police of the county or city entitled to the custody of such person, at the expense of the state board of health, to answer to the charges or sentence therein pending against such person; and provided, further, if such person should break quarantine and escape from such hospital, such person shall be apprehended at the expense of the state board of health and returned to the county or municipality entitled to the custody of such person, to be quarantined in the county or city jail and to answer to the charge or sentence there pending against such person.

History.—§2, ch. 21948, 1943.

384.16 Quarantine and treatment; procedure.—Any person infected with a venereal disease and delivered to any state, county or municipal health officer for quarantine and treatment, as provided in this section, may be transported, for quarantine and treatment, from the county or municipality where such person is received by said health officer, to any hospital in the state operated for that purpose by the state board of health, and said health officer may cause such person to be transported by the sheriff or chief of police or duly authorized deputy sheriff or police officer, or by a duly authorized officer of the Florida highway patrol, and the expense incident to such transportation, in all cases except where transportation is by the Florida highway patrol, shall be paid by the county or municipality involved.

History.—§3, ch. 21948, 1943.

384.17 Isolation of infected persons.—In the event persons infected with venereal disease for any reason cannot be received at any hospital operated by the state board of health for quarantine and treatment of persons infected with venereal disease, and such persons, in the opinion of the health officer, should be isolated and quarantined for the protection of the public health, then and in such event the health officer may cause such persons to be isolated, quarantined and treated in the jail of the county or city where such person resides, at the expense of the county or city involved.

History.—§4, ch. 21948, 1943.

384.18 Sheriffs' fees, etc.—The sheriffs of the several counties of the state shall receive the same fees and mileage for service rendered under this law as are prescribed for like service in criminal cases, such fees and mileage to be paid out of the fine and forfeiture fund of the county involved.

History.—§5, ch. 21948, 1943.

384.19 Receipt for delivery of infected persons.—In all cases where a sheriff or chief of police transfers custody of any person to a health officer under this law, such health officer shall give to such sheriff or chief of police a receipt showing the name of the person or persons so delivered, together with the date and place where said delivery was made.

History.—§6, ch. 21948, 1943.

CHAPTER 385

SANITARY INSPECTION OF HOTELS AND BOARDING HOUSES

385.01 Examination of buildings, etc.—The state board of health shall cause, as often as may be necessary, upon information or complaint of any person, or at the request of any town or city council, or health officer, an examination to be made of any building or buildings, and the premises connected therewith, used for board and lodging of visitors or other persons, containing ten or more rooms, such examination to be made by or under the supervision of the state board of health, or by persons under its appointment, as soon as possible after such application or complaint shall have been made.

History.—§1, ch. 4696, 1899; GS 1149; RGS 2120; CGL 3349.

cf.—Ch. 509, The hotel and restaurant commission.

385.02 Purpose of examination; fee for inspection if unsanitary condition found.—It shall be the purpose in making such examination, to ascertain the source and sufficiency of the water supply, the quality of the water, the methods of removal of waste water, slops, excreta, house refuse, garbage, and all other putrescible matter of any kind, the ventilation available, and all other conditions relating to the health, sanitary conditions and safety of said buildings and premises. For each inspection so made the owner or managing occupant of the premises so inspected shall pay the state board of health the sum of two dollars, if premises are found to be in unsanitary condition, which amount shall be deposited by said board to the credit of the general revenue fund.

History.—§2, ch. 4696, 1899; GS 1150; RGS 2121; CGL 3350; §67, ch. 26869, 1951.

385.03 State health officer to issue certificates.—Upon the completion of such inspection, the state board of health shall authorize the state health officer to issue a certificate, reciting the details of the sanitary and other conditions of the examined premises, in accordance with the facts ascertained by such examination, and said certificate shall forthwith be posted by the owner or managing occupant of such premises in a safe and conspicuous place, where it may be easily seen and read by all persons, guests or other occupants of said premises; and if the said certificate shall become defaced or destroyed, said managing occupant shall immediately procure a copy of the same, which shall be placed in a like conspicuous position, for which copy the state board of health shall not be entitled to receive any fee.

History.—§3, ch. 4696, 1899; GS 1151; RGS 2122; CGL 3351.

385.04 Unsanitary conditions must be remedied.—Whenever, upon an examination of any premises the inspection of which is required by this chapter, it shall be found by the state board of health that the premises and building so inspected are in an unsanitary condition, such as to constitute a menace to the health and safety of the occupants thereof, the state board of health shall cause to be posted upon some conspicuous place on said premises, a written or printed notice, requiring the owner or managing occupant of said premises, or both, to make such changes or to perform or refrain from the performance of such acts as may be necessary to place said premises in a sanitary and safe condition for the occupants thereof, within a reasonable time to be fixed by said notice.

History.—§5, ch. 4696, 1899; GS 1152; RGS 2123; CGL 3352.

385.05 Penalty for failure to remedy unsanitary conditions.—If the owner or managing occupant, or both, who shall be required by notice from the state board of health to remedy unsanitary conditions, shall fail to comply therewith within the time mentioned, he shall be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding thirty days.

History.—§5, ch. 4696, 1899; GS 3693; RGS 5638; CGL 7831.

CHAPTER 386

NUISANCES INJURIOUS TO HEALTH

386.01 Sanitary nuisance.—A sanitary nuisance is the commission of any act, by an individual, municipality, organization or corporation, or the keeping, maintaining, propagation, existence or permission of anything, by an individual, municipality, organization or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused.

History.—§1, ch. 4346, 1895; GS 1153; RGS 2157; CGL 3386.

386.02 Duty of state health officer. — The state health officer, upon request of the proper authorities, or of any three responsible resident citizens, or whenever it may seem necessary to the president of the state board of health, or to the state health officer himself, shall investigate the sanitary condition of any city, town or place in the state; and if, upon examination, the state health officer shall ascertain the existence of any sanitary nuisance as herein defined, he shall serve notice upon the proper party or parties to remove or abate the said nuisance or, if necessary, proceed to remove or abate the said nuisance in the manner provided in §823.01.

History.—§11, ch. 4346, 1895; GS 1154; RGS 2158; CGL 3387.

386.03 Notice to remove nuisances; authority of state health officer and local health authorities.—

(1) The state health officer, upon determining the existence of anything or things herein declared to be nuisances by law, shall notify the person or persons committing, creating, keeping or maintaining the same, to remove or cause to be removed, the same within twenty-four hours, or such other reasonable time as may be determined by the state board of health, after such notice be duly given.

(2) If the sanitary nuisance condition is not removed by such person or persons within the time prescribed in said notice, the state health officer, his agents or deputies or local health authorities, may within the county where the nuisance exists, remove, cause to remove, or prevent the continuing sanitary nuisance condition in the following manner:

(a) Undertake required correctional procedures, including the removal of same if necessary; the cost or expense of such removal or correctional procedures shall be paid by the person or persons committing, creating, keeping or maintaining such nuisances; and if the said cost and expense thus accruing shall not be paid within ten days after such removal, the same shall be collected from the person or persons committing, creating, keeping or maintaining such nuisances, by suit at law; but this paragraph shall not authorize the state health officer to alter, change, demolish or remove any machinery, equipment or facility designed or used for the processing or disposing of liquid or smoke effluent of a manufacturing plant.

(b) Institute criminal proceedings in county or municipal courts, in whose jurisdiction the condition exists, against all persons failing to comply with notices to correct sanitary nuisance conditions as provided in this chapter; or,

(c) Institute legal proceedings authorized by the state board of health as set forth in §381.031(4).

History.—§12, ch. 4346, 1895; GS 1155; RGS 2159; CGL 3388; §1, ch. 63-64.

386.041 Nuisances injurious to health.—

(1) The following conditions existing, permitted, maintained, kept, or caused by any individual, municipal organization or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

(a) Untreated or improperly treated human waste, garbage, offal, dead animals or dangerous waste materials from manufacturing processes harmful to human or animal life and air pollutants, gases and noisome odors which are harmful to human or animal life.

(b) Improperly built or maintained septic tanks, water closets or privies.

(c) The keeping of diseased animals dangerous to human health.

(d) Unclean or filthy places where animals are slaughtered.

(e) The creation, maintenance or causing of any condition capable of breeding flies, mosquitoes or other arthropods capable of transmitting diseases, directly or indirectly to humans.

(f) Any other condition determined to be a sanitary nuisance as defined in §386.01.

(2) The state health officer, his agents and deputies, or local health authorities are authorized to investigate any condition or alleged nuisance in any city, town or place within the state, and if such condition is determined to constitute a sanitary nuisance they may take such action to abate the said nuisance condition in accordance with the provisions of this chapter.

History.—§2, ch. 63-64.

386.051 Nuisances injurious to health, penalty.—Any person found guilty of creating, keeping or maintaining a nuisance injurious to health shall be guilty of a misdemeanor.

History.—§2, ch. 63-64.

CHAPTER 387

POLLUTION OF WATERS

387.01 "Underground waters of the state" defined. — The term "underground waters of the state," when used in this chapter, shall include all underground streams and springs and underground waters within the borders of the state, whether flowing in underground channels or passing through the pores of the rocks.

History.—§1, ch. 6443, 1913; RGS 2160; CGL 3389.

387.02 Permit required for draining surface water or sewage into underground waters of state. — No municipal corporation, private corporation, person or persons within the state shall use any cavity, sink, driven or drilled well now in existence, or sink any new well within the corporate limits, or within five miles of the corporate limits, of any incorporated city or town, or within any unincorporated city, town or village, or within five miles thereof, for the purpose of draining any surface water or discharging any sewage into the underground waters of the state, without first obtaining a written permit from the state board of health.

History.—§2, ch. 6443, 1913; RGS 2161; CGL 3390.

387.03 Permits revocable and subject to change; notice by publication; filed with clerk. —Every permit for the discharge of sewage or surface water, shall be revocable or subject to modification or change by the state board of health, on due notice, after an investigation and hearing, and an opportunity for all interests and persons interested therein to be heard thereon; said notice or notices being served on the person or persons owning, maintaining or using the well, cavity or sink, and by publication for two weeks in a newspaper published in the county in which said well, cavity or sink is located. The length of time after the receipt of the notice within which it shall be discontinued may be stated in the permit. All such permits, before becoming operative, shall be filed in the office of the clerk of the circuit court of the county in which such permit has been granted.

History.—§3, ch. 6443, 1913; RGS 2162; CGL 3391.

387.04 Sewage defined.—For the purpose of this chapter, sewage shall be defined as any substance that contains any of the waste products, excrement or other discharge from the bodies of human beings or animals.

History.—§4, ch. 6443, 1913; RGS 2163; CGL 3392.

387.05 Sewage or surface drainage into underground waters of state to be discontinued within ten days after order by state board of health.—Every individual, municipal corporation, private corporation or company shall discontinue the discharge within the corporate limits or within five miles of the corporate limits of any incorporated city or town, or within any unincorporated city, town or village or within five miles thereof, of sewage or surface drainage into any of the underground waters of the state within ten days after having been so ordered by the state board of health.

History.—§5, ch. 6443, 1913; RGS 2164; CGL 3393.

387.06 Penalty for violation of provisions of this chapter.—Any municipal corporation, private corporation, person or persons that shall discharge sewage or surface drainage, or permit the same to flow into the underground waters of the state, contrary to the provisions of this chapter, shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine of twenty-five dollars for each offense or by imprisonment not exceeding one month. The doing of the prohibited act for each day shall constitute a separate offense.

History.—§6, ch. 6443, 1913; RGS 5525; CGL 7691.
cf.—§775.06 Alternative punishment.

387.07 Penalty for interference with water supply.—Whoever willfully or maliciously defiles, corrupts or makes impure any spring or other source of water reservoir, or destroys or injures any pipe, conductor of water or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§4, sub-ch. 9, ch. 1637, 1868; RS 2665; GS 3603; RGS 5523; CGL 7689.
cf.—§775.06 Alternative punishment.

387.08 Penalty for deposit of deleterious substance in lakes, rivers, streams, ditches, etc.—Any person, firm, company, corporation or association in this state, or the managing agent of any person, firm, company, corporation or association in this state, or any duly

elected, appointed or lawfully created state officer of this state, or any duly elected appointed or lawfully created officer of any county, city, town, municipality, or municipal government in this state, who shall deposit, or who shall permit or allow any person or persons in their employ or under their control, management or direction to deposit in any of the waters of the lakes, rivers, streams and ditches in this state, any rubbish, filth, or poisonous or deleterious substance or substances, liable to affect the health of persons, fish, or live stock, or place or deposit any such deleterious substance or substances in any place where the same may be washed or infiltrated into any of the waters herein named, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not more than five hundred dollars; provided, further, that the carrying into effect of the provisions of this section shall be under the supervision of the state board of health.

History.—§1, ch. 5954, 1909; RGS 5524; CGL 7690.

387.09 Septic tanks; construction requirements. — Where soil and site conditions are suitable for the use of septic tank systems, metal septic tanks constructed in conformance with the requirements set by the federal housing administration may be used; provided that no metal septic tanks shall be used where cinders are used as backfill material or where the ground water contains sufficient salt to be corrosive.

History.—§1, ch. 28309, 1953.

387.10 Proceedings for injunction.—

(1) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the state health officer or other appropriate officer of the state board of health is authorized to make application for injunction to a circuit judge, and such circuit judge shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction or both restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter, such injunction to be issued without bond provided, however, no temporary injunction without bond shall be issued except after a hearing of which the respondent or respondents has or have been given not less than seven days prior notice, and no temporary injunction without bond, which shall limit or prevent operations of an industrial, manufacturing or processing plant shall be issued, unless at the hearing, it shall be made to appear by clear, certain and convincing evidence that irreparable injury will result to the public from the failure to issue the same.

(2) In event of the issue of a temporary injunction or restraining order hereunder without bond, then the state, in event said injunction or restraining order was improperly, erroneously or improvidently granted, shall be liable in damages and to the same extent as if said injunction or restraining order had been issued upon application of a private litigant instead of a public litigant, and the state hereby waives its sovereign immunity and consents to be sued in any such case.

History.—§§1, 2, ch. 57-216.

CHAPTER 388

MOSQUITO CONTROL

388.011 Definitions.—As used in this act:

(1) County means a political subdivison of the state administered by a board of county commissioners.

(2) District means any mosquito control district established in this state by law for the express purpose of controlling arthropods within boundaries of said districts.

(3) Board of commissioners means the governing body of any mosquito control district, and may include boards of county commissioners when context so indicates.

(4) State board means the state board of health.

(5) Arthropod means arthropods of public health importance, including all mosquitoes, midges, sandflies, dogflies, yellow flies and house flies.

History.—§2, ch. 59-195; §1, ch. 63-236.

Note.—Similar provisions in former §381.421.

388.021 Creation of mosquito control districts.—The abatement or suppression of mosquitoes and other arthropods, whether disease-bearing or merely pestiferous, within any or all counties of Florida, is advisable and necessary for the maintenance and betterment of the comfort, health, welfare and prosperity of the people thereof; and is found and declared to be for public purposes. All depressions, lagoons, marshes, ponds or lakes wherein mosquitoes incubate or hatch are declared to be public nuisances, as harmful or inimical to the comfort, health, welfare and prosperity of the inhabitants and may be abated as hereinafter provided. Therefore any city, town, or county, or any portion or portions thereof, whether such portion or portions include incorporated territory or portions of two or more counties in the state, may be created into a special taxing district for the control of mosquitoes and other arthropods under the provisions of this chapter.

History.—§2, ch. 59-195.

Note.—Similar provisions in former §§388.01, 389.01, 390.02.

388.031 Freeholders' petition for creation of district.—In order to create a district as authorized by this chapter, a petition signed by not less than fifteen per cent of the resident freeholders of said territory who are registered electors, shall be filed with the board of county commissioners of the county in which said district is to be located. Said petition shall describe the territory to be included in said proposed district, the name of said district, and shall represent that the eradication or control of mosquitoes and other arthropods in said territory is necessary for the preservation of the public health, comfort and welfare of the inhabitants thereof, and that it is feasible and practicable to eradicate or control mosquitoes

and other arthropods in said territory, and shall request the board of county commissioners of said county to call and provide for an election to determine whether such district shall be created and also for the purpose of electing a board of commissioners for said district.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.02, 389.02, 390.03.

388.041 Duty of county commissioners concerning petition.—At the same meeting or any subsequent meeting not later than thirty days after the receipt of said petition, the board of county commissioners shall investigate the facts and find and determine whether such petition has been duly signed by the requisite number of registered electors who are freeholders residing within said territory, and whether the improvements to be made by said district are for the benefit of the public health, comfort and welfare of the inhabitants thereof, and whether it is feasible and practicable to eradicate or control mosquitoes and other arthropods in said territory, and shall order an election to be held in said territory to determine whether or not such territory shall be constituted into a district for the control of mosquitoes and other arthropods, and to elect a board of commissioners for said district. The finding and determination by the board of county commissioners that the said petition has been duly signed by the requisite number of registered electors who are freeholders residing within said territory, and that the improvements proposed to be made are for the public health, comfort and welfare, and that the petition is in all respects strictly in accordance with the requirements of law, shall be regarded for all purposes as conclusive.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §390.04.

388.051 Election.—The board of county commissioners shall fix the date for said election and shall have a notice of such election published once each week during four successive weeks in a newspaper of general circulation published in each county incorporated within the boundaries of the proposed district. Said notice shall describe the territory proposed to be included in said district. The inspectors and clerks for said election shall be appointed by and the ballots to be voted shall be prepared and furnished by the board of county commissioners. The board of county commissioners shall designate the polling place or places at which such election shall be held. The inspectors and clerks shall make returns to the board of county commissioners and said board shall canvass said election returns and declare the result thereof at a meeting to be held as soon as practicable after said election. Upon the expiration of twenty days after the declaration of the result of such election by the board of county commissioners, such declaration of result shall be regarded for all purposes as conclusive.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§389.05, 390.05.

388.061 Election limited to freeholders.—At said election only registered electors residing within said district who are freeholders therein shall be qualified to vote.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §390.09.

388.071 Result of election.—If the board of county commissioners shall find and determine that the result of said election is adverse to the proposition of creating the proposed district for the control of mosquitoes and other arthropods under this chapter, no other election for the same purposes shall be held within one year thereafter; but if a majority of the votes cast at such special election shall be in favor of creating such district, then said board of county commissioners shall enter an order constituting the territory in which said special election was held, a district for the control of mosquitoes and other arthropods, designating said district by its name, and shall declare and publish the boundaries of said district once each week for two successive weeks in a newspaper of general circulation published in each county incorporated within the boundaries of the district.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §390.06.

388.081 Ballot to contain names of candidates for commissioners.—The board of county commissioners shall cause to be printed on the ballots for said election the names of any qualified persons as candidates for the office of members of the board of commissioners of said district upon petition having been filed with the board of county commissioners signed by not less than twenty-five qualified electors for said election, which petition shall be filed with said board of county commissioners not less than ten days before said election. Blank lines, however, shall be placed on said ballot so that names of persons voted for may be written thereon.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §390.07.

388.091 Form of ballot.—The ballot to be used at said election shall be in substantially the following form:

OFFICIAL BALLOT
_____ MOSQUITO CONTROL DISTRICT
_____ COUNTY, FLORIDA
SPECIAL ELECTION (Insert date)

1. Shall _____ Mosquito Control District, _____ County, Florida, be created?
_____ Yes.
_____ No.

2. Shall a separate or special board of commissioners conduct the work?
_____ Yes.
_____ No.

3. Make a cross mark (X) before the names of the candidates of your choice.

FOR COMMISSIONERS OF MOSQUITO CONTROL DISTRICT: VOTE FOR THREE	WRITE-IN VOTES

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.04, 390.08.

388.101 District board of commissioners; term of office.—

(1) District boards of commissioners shall consist of the three persons receiving the highest number of votes cast at such special election and shall be declared the commissioners under this chapter until their successors have been duly elected and qualified. Beginning with the next general election following the creation of the district, and in the general election each four years thereafter, the said commissioners shall be elected by the electors of the district, and the three persons receiving the highest number of votes cast in the general election shall serve four years and shall take office at the same time as do other county officers on the first Tuesday after the first Monday in January next after their election and serve on the same cycle as do other constitutional county officers.

(2) The board of county commissioners shall call and provide for said election. Members of the district board of commissioners shall be resident registered electors who are freeholders in said district.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §§388.08, 390.12.

388.111 Same; vacancies.—In the event of a vacancy due to any cause in any board of commissioners, the same shall be filled by appointment by the governor for the unexpired term.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §388.11.

388.121 Same; organization.—As soon as practicable after such commissioners have been elected and have qualified, they shall meet and organize by the election from among their number of a chairman, a secretary and a treasurer. Two members of the board shall constitute a quorum. The vote of two members shall be necessary to transact business.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.10, 390.13.

388.131 Same; surety bond.—Each commissioner, before he assumes office, shall be required to give the governor a good and sufficient surety bond in the sum of two thousand dollars, the cost thereof being borne by the district, conditioned on the faithful performance of the duties of his office, said bond to be approved and filed in the same manner as is that of the board of county commissioners. The failure of any person to make and file this bond within ten days after his election shall create a vacancy on said board.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §388.09.

388.141 Same; compensation.—Members of the board of commissioners shall each be paid five dollars a day for each day's service; provided the per diem compensation shall not exceed the sum of three hundred dollars for each commissioner during any one year, and that the per diem herein provided for shall apply for services rendered for inspection of work or other services for the district under this chapter. Said members shall be reimbursed for traveling expenses incurred in the performance of their duties as provided in §112.061.

History.—§2, ch. 59-195; §13, ch. 63-400.
Note.—Similar provisions in former §390.14.

388.151 Same; meetings.—All boards of commissioners shall hold regular monthly meetings, and special meetings as needed, in the courthouse or in the offices of the district. The time and place of said regular meetings shall be on file in the office of the bureau of entomology of the state board of health.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.14, 390.161.

388.161 Same; powers and duties.—The board of commissioners may do any and all things necessary for the control and elimination of all species of mosquitoes and other arthropods of public health importance and the board of commissioners is specifically authorized to provide for the construction and maintenance of canals, ditches, drains, dikes, fills, and other necessary works and to install and maintain pumps, excavators, and other machinery and equipment, to use oil, larvicide paris green or any other chemicals approved by the state board of health but only in such quantities as may be necessary to control mosquito breeding and not be detrimental to fish life.

The board of commissioners shall have all the powers of a body corporate, including the power to sue and be sued as a corporation in said name in any court; to contract, to adopt and use a common seal and alter same at pleasure, to purchase, hold, lease, and convey such real estate and personal property as said board may deem proper to carry out the purpose of this chapter; to acquire by gift real estate, personal property and moneys and to employ a field director and such trained personnel, legal, clerical or otherwise, and laborers as may be required. The board of commissioners shall promulgate such rules and regulations not inconsistent with the provisions of this chapter or with other legislation which in its judgment may be necessary for the proper enforcement of this chapter provided such rules and regulations are approved by the state board of health.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.15, 389.06, 389.09, 390.11, 390.16, 390.17.

388.162 Same; direction of the program.—The program shall be administered for the board of commissioners by a qualified person. The state board shall establish minimum qualifications for employment of a director in ac-

cordance with the responsibilities attached to the position.

History.—§2, ch. 63-236.

388.171 Same; may contract for work or employ direct.—The board of commissioners may have any and all work performed by contract with or without advertisement, or without contract, by machinery, equipment and labor employed directly by the board of commissioners.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.21, 390.23.

388.181 Same; perform work necessary.—The respective districts of the state are hereby fully authorized to do and perform all things necessary to carry out the intent and purposes of this law.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§381.571, 389.09.

388.191 Same; eminent domain.—The board of commissioners may hold, control and acquire by gift or purchase for the use of the district, any real or personal property, and may condemn any land or easements needed for the purposes of said district. Said board may exercise the right of eminent domain and institute and maintain condemnation proceedings as provided in chapter 73.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.15, 389.09, 390.17.

388.201 District budgets, hearing.—

(1) The fiscal year of districts operating under the provisions of this chapter shall be the twelve month period extending from October 1 of one year through September 30 of the following year. The governing board of the district shall before June 30 complete the preparation of a detailed work plan budget covering its proposed operations and requirements for arthropod control measures during the ensuing fiscal year, and for the purpose of determining eligibility for state aid, shall submit copies as may be required to the state board for review and approval. The detailed work plan budget shall set forth, classified by account number, title and program items, and by fund from which to be paid, the proposed expenditures of the district for construction, for acquisition of land, and other purposes, for the operation and maintenance of the district's works, the conduct of the district generally, to which may be added an amount to be held as a reserve.

(2) The detailed work plan budget shall also show the estimated amount which will appear at the beginning of the fiscal year as obligated upon commitments made but uncompleted. There shall be shown the estimated unobligated or net balance which will be on hand at the beginning of the fiscal year, and the estimated amount to be raised by district taxes and from any and all other sources for meeting the district's requirements.

(3) On a date to be fixed by the board of commissioners, said board shall publish a notice of its intention to adopt the budget or as the same may be amended for the district for the ensuing fiscal year. The notice shall set forth the total amount of funds budgeted under each title classification of the budget, subtotals by fund under each title classification, and grand totals. The notice shall advise all owners of property subject to the district taxes that on a date, time, and place specified in the notice, opportunity will be afforded to such owners, their attorney or agent, to appear before the board, examine the work plan and detailed work plan budget if desired, and to show their objections to adoption of the proposed budget. The notice shall be published for two consecutive weeks, at not less than seven day intervals, in a newspaper published in the county or counties having land in the district. The last insertion shall appear not less than one nor more than two weeks prior to the date set by the board for the hearing on the budget. If there be no such newspaper in the county, then the notice shall be posted as provided by §49.02.

(4) The hearing shall be by and before the governing board of the district on a date to be fixed by said board not earlier than one week and not later than two weeks after the date of the last publication of notice of intention to adopt the budget, and may be continued from day to day until terminated by the board. Promptly thereafter, the governing board shall give consideration to objections filed against adoption of the budget and in its discretion, may amend, modify or change the tentative detailed work plan budget, and shall by September 15 following, adopt and execute on a form furnished by the state board a certified budget for the district, which shall be the operating and fiscal guide for the district. Certified copies of this budget shall be submitted by September 15 to the state board for approval.

(5) County commissioners' mosquito and arthropod control budgets shall be made and adopted as prescribed by subsections (1) and (2); summary figures shall be incorporated into the county budgets as prescribed by the comptroller.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §390.162.

388.211 Change in district boundaries.—The board of commissioners of any district may, for and on behalf of said district or the owners of real estate within or without said district, file a petition with the board of county commissioners in each county having land within said district, requesting it to call an election of the qualified electors of the territory proposed to be annexed to, or eliminated from, the boundaries of the district, and also of the qualified electors within the district, to determine whether or not the boundary lines of the district shall be changed to include, or exclude, certain lands as described in the petition.

When such a petition is filed, the board of county commissioners shall call an election as provided for in this chapter for the creation of districts. If the majority of votes cast in each election favors the change in boundary, the board of county commissioners shall amend

its order creating the district to conform with the change in boundary.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §390.163.

388.221 Tax levy.—The board of commissioners of such district may levy upon all of the real and personal taxable property in said district a special tax not exceeding ten mills on the dollar during each year as maintenance tax to be used solely for the purposes authorized and prescribed by this chapter. Said levy shall be made each year not later than July 1 of each year by resolution of said board or a majority thereof, duly entered upon its minutes. Certified copies of such resolution executed in the name of said board by its chairman and secretary and under its corporate seal shall be made and delivered to the board of county commissioners of the county in which such district is located, and to the state comptroller not later than July 1 of such year. The board of county commissioners shall order the assessor of said county to assess and the collector of said county to collect the amount of taxes so assessed and levied by said board of commissioners of said district upon all of the taxable real and personal property in said district at the rate of taxation adopted by said board for said year and included in said resolution, and said levy shall be included in the warrants of the tax assessor and attached to the assessment roll of taxes for said county each year. The tax collector shall collect such taxes so levied by said board in the same manner as other taxes are collected and shall pay the same within the time and in the manner prescribed by law to the treasurer of said board. The comptroller shall assess and levy on all the railroad lines and railroad property and telegraph and telephone lines and telegraph and telephone property situated in said district in the amount of each such levy as in case of other state and county taxes, and collect said taxes thereon in the same manner as he is required by law to assess and collect taxes for state and county purposes, and remit the same to the treasurer of said board. All such taxes shall be held by said treasurer for the credit of said board and paid out by him as ordered by said board.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §§388.17, 388.18, 390.18.

388.231 Restrictions on use, loan or rental of equipment; charges.—

(1) Equipment purchased for use in control of mosquitoes and other arthropods and paid for with funds budgeted for arthropod control shall not be used for any private purpose. No county or district shall lend or rent equipment so purchased to any other department within the county, or to another county, district or any public agency or political subdivision of the state without the prior written approval of the state board; nor shall it be so lent or rented without making a use or rental charge for the use thereof. The state board is authorized to establish a fair use or rental charge on equipment so purchased and may require the maintenance of reasonable and proper records in connection with the loan or rental of such equipment.

(2) Any district, county, municipality or public agency using said equipment on a use or rental basis shall send a warrant made payable to the county or district, or to such control fund of the county owning the equipment, for the full payment of such use or rent at the end of each month. All funds received by a county or district from the renting of its equipment shall be deposited promptly by the county or district in their state fund account. Upon failure of any county or district to secure prior written approval from the state board before lending or renting its equipment, or upon the failure of the county or district to collect rents due for the use of its equipment at rates established by the state board, and to deposit said rents promptly under state funds, the state board may immediately remove the equipment and utilize it for arthropod control purposes in any other area of the state.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.521.

388.241 Board of county commissioners vested with powers and duties of board of commissioners in certain counties.—In those counties voting against the formation of a separate or special board of commissioners, all the rights, powers and duties of a board of commissioners as conferred in this chapter shall be vested in the board of county commissioners of said county.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §388.05.

388.251 Delegation of authority to county health department.—The board of county commissioners may authorize the county health department to administer and direct arthropod control in the county provided by this chapter, upon the following conditions:

(1) The county health department shall keep the books and make all reports required by this chapter.

(2) All purchases, whether by bid or otherwise, shall be made in accordance with the procedure followed by the board of county commissioners in making other purchases.

(3) The county health department shall submit to the board of county commissioners, with supporting vouchers and invoices, monthly itemized statements of expenses incurred in carrying out the control program in the county.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §381.541.

388.261 State aid to districts; limitation on type of control; amount.—

(1) Every county or district budgeting local funds, derived either by special tax levy or funds appropriated or otherwise made available for the control of mosquitoes and other arthropods under a plan submitted by the county or district and upon approval by the state board, shall be eligible to receive state funds,

supplies, services and equipment on a dollar for dollar matching basis up to but not exceeding fifteen thousand dollars for any one county for any one year. These funds may be expended for any and all types of control measures approved by the state board.

(2) In addition, every county or district budgeting local funds to be used exclusively for the control of mosquitoes and other arthropods under a plan submitted by the county or district and approved by the state board, shall be eligible to receive state funds and supplies, services and equipment for permanent control measures up to but not exceeding seventy-five per cent of the amount of local funds budgeted for such control. Should state funds appropriated by the legislature be insufficient to grant each county or district seventy-five per cent of the amount budgeted in local funds, the state board shall prorate said state funds based on the amount of matchable local funds budgeted for expenditure by each county or district.

(3) Every county shall be limited to receive a total of one hundred fifty thousand dollars of state funds, exclusive of state funds brought forward, during any one year.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.431.

388.271 Prerequisites to participation.—

(1) Each county or district eligible to participate hereunder may begin participation on October 1 of any year by filing with the state board not later than July 1 a work plan and detailed work plan budget providing for the control of mosquitoes or other arthropods. Following approval of the plan and budget by the state board, two copies of the county's or district's certified budget based on the approved work plan and detailed work plan budget shall be submitted to the state board not later than September 15 following. State funds, supplies and services shall be made available to such county or district by and through the state board immediately upon release of funds by the budget commission.

(2) All purchases of supplies, materials and equipment by counties or districts shall be made in accordance with the laws governing purchases by boards of county commissioners, except that districts with special laws relative to competitive bidding shall make purchases in accordance therewith.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.451.

388.281 Use of state matching funds.—

(1) All funds, supplies and services released to counties and districts hereunder shall be used in accordance with the detailed work plan and certified budget approved by both the state board and the county or district. The plan and budget may be amended at any time upon prior approval of the state board.

(2) All funds, supplies and services released on the seventy-five per cent matching basis shall be used exclusively for permanent eliminative measures, unless otherwise approved by the state board. These measures include sanitary landfills, drainage, diking, filling of mosquito and other arthropod breeding areas, and the purchase, maintenance and operation of all types of equipment including trucks, dredges, draglines, bulldozers or any other type of machinery and materials utilized in ditching, ditch lining, ditch construction, diking, filling, hiring personnel, rental of equipment and payment for contract work awarded to the lowest responsible bidder.

(3) Should a control problem exist in a county or district where it would not be economically sound or feasible to carry on permanent control work, a county or district may be authorized by the state board to use seventy-five per cent matching funds for temporary control measures.

(4) In any county or district where the arthropod problem has been eliminated, or reduced to such an extent that it does not constitute a health, comfort, or economic problem as determined by the state board, the maximum amount of state funds available under this chapter shall be reduced to the amount necessary to meet actual need.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.471.

388.291 Eliminative control measures; supervision by state board.—

(1) Any county or district may perform permanent eliminative control measures in conformity with good engineering practices in any area, provided the state board cooperating with the county or district has approved the operating or construction plan, and it has been determined that the area or areas to be controlled would produce mosquitoes or other arthropods in significant numbers to constitute a health or comfort problem.

(2) The county or district shall manage the detailed business affairs and supervise said work, and the state board shall advise the districts as to the best and most effective measures to be used in bringing about better temporary control and the permanent elimination of breeding conditions. The state board may at its discretion discontinue any state aid provided hereunder in the event it finds the jointly agreed upon program is not being followed, or is not efficiently and effectively administered.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.531.

388.301 Payment of state funds; supplies and services.—State funds shall be payable quarterly, in accordance with the rules and regulations of the state board, upon requisition by the state board to the comptroller. The state board is authorized to furnish insecticides, chemicals, materials, equipment, vehicles and personnel in lieu of state funds where mass purchasing may save funds for the state, or where it would be more practical and economical to utilize equipment, supplies, and services between two or more counties or districts.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.441.

388.311 Carry over of state funds and local funds.—State and local funds budgeted for the

control of mosquitoes and other arthropods shall be carried over at the end of the county or district's fiscal year, and rebudgeted for such control measures the following fiscal year.

History.—§2, ch. 59-195.
Note.—Similar provisions in former §381.481.

388.321 Equipment to become property of the county or district.—All equipment purchased under this chapter with state funds made available directly to the county or district shall become the property of the county or district unless otherwise provided, and may be traded in on other equipment, or sold, when no longer needed by the county or district.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.491.

388.322 Record and inventory of certain property.—A record and inventory of certain property owned by the district shall be maintained in accordance with §274.02.

History.—§2, ch. 63-236.

388.323 Disposal of surplus property.—Surplus property shall be disposed of according to the provisions set forth in §274.05 with the following exceptions:

(1) Serviceable equipment no longer needed by a county or district shall first be offered to any or all other counties or districts engaged in arthropod control at a price established by the board of commissioners owning the equipment. If no acceptable offer is received within a reasonable time, the equipment shall be offered to such other governmental units as defined in §274.05.

(2) The alternative procedure for disposal of surplus property, as prescribed in §274.06, shall be followed if it has been determined no other county, district, or governmental unit has need for the equipment.

(3) All proceeds from the sale of any real or tangible personal property owned by the county or district shall be deposited in the county's or district's state fund account unless otherwise specifically designated by the state board.

History.—§2, ch. 63-236.

388.331 Audit.—All counties and districts carrying out programs for the control of mosquitoes and other arthropods involving the expenditure of state funds shall set up and maintain books and records under a method approved by the state auditing department and be subject to audit by same.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §§381.501, 388.22, 390.15.

388.341 Reports of expenditures and accomplishments.—Each county and district participating under the provisions of this chapter shall within thirty days after the end of each month submit to the state board a monthly report for the preceding month of expenditures from all funds for arthropod control, and such reports of activities and accomplishments as may be required by the state board.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.461.

388.351 Transfer of equipment, personnel and supplies during an emergency.—The state board, upon notifying a county or district and obtaining its approval, is authorized to transfer equipment, materials and personnel from one district to another in the event of an emergency brought about by an arthropod-borne epidemic or other disaster requiring emergency control.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.511.

388.361 Rules and regulations. — The state board is hereby authorized and empowered to adopt rules and regulations necessary and appropriate to enable it to perform the work and responsibilities hereunder.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §381.561.

388.381 Cooperation by counties and districts.—Any county or district carrying on an arthropod control program may cooperate with another county, district or municipality in carrying out a program for the control of mosquitoes and other arthropods, by agreement as to the program and reimbursement thereof, when approved by the state board.

History.—§2, ch. 59-195; §1, ch. 63-236.

388.391 Control measures in municipalities and portions of counties located outside boundaries of districts.—Any district whose operation is limited to a portion of the county in which it is located may perform any control measures authorized by this chapter in any municipality located in the same county or in any portions of the same county, where there is no established district, when requested to do so by the municipality or county, pursuant to §388.381.

History.—§2, ch. 59-195; §1, ch. 63-236.

388.401 Penalty for damage to property or operations.—Whoever shall wilfully damage any of the property of any county or district created under this or other chapters, or any works constructed, maintained or controlled by such county or district, or who shall obstruct or cause to be obstructed any of the operations of such county or district, or who shall knowingly or wilfully violate any provisions of this chapter or any rule or regulation promulgated by any board of commissioners of any county or district shall upon conviction thereof be punished as provided in the general law for punishment of misdemeanors.

History.—§2, ch. 59-195; §1, ch. 63-236.
Note.—Similar provisions in former §§388.26, 389.11, 390.24.

388.411 Public lands, arthropod control.—(1) It is declared to be in the best interests of the state that all public lands owned by the state, or any county, district, city, or other political unit, shall be subject to mosquito, sand fly, and other arthropod controls of the state board of health not inconsistent with the provisions of subsection (4) in order to provide as nearly as possible a system of uniform and complete control.

(2) Any lands in the state hereafter granted by the state to a state or federal agency, county,

district, or other political unit, shall contain a reservation or condition providing that arthropod control operations shall be conducted thereon, if deemed necessary, by the state board of health except where the governor shall deem that the same is unnecessary.

(3) As to lands now held by the United States, or any federal agency in the state, the state board of health is authorized to enter negotiations for the purpose of working out agreements permitting the state board of health, or any local anti-mosquito, sand fly, arthropod control unit cooperating with the state board of health, to carry on arthropod control operations on any of said lands.

(4) When any lands or water areas subject to this act lie within an area where the state board of health determines that mosquitoes, sand flies or other arthropods of public health importance which may cause sickness or discomfort to the surrounding human population, may be bred, said areas shall be subject to control operations. The involved agencies shall mutually agree on the control procedure or plan and the methods employed shall be the minimum necessary and economically feasible and imposing the least hazard to the fish and wildlife being protected or managed in said areas. Such agreement shall be between the state or federal agencies managing the areas, the state board of health, and the local mosquito control agency in whose jurisdiction these lands or waters may lie.

History.—§§1-4, ch. 61-382.

388.42 Laboratory west of St. Marks river; testing insecticides for arthropods control.—

(1) The state board of health is hereby authorized to construct, maintain and operate a laboratory at a suitable location on the gulf coast, west of the St. Marks river, for the purpose of testing insecticide resistance in dogflies, yellow flies and other arthropods, and to carry out other experimental work with chemicals, insecticides, and other substances and procedures, for testing effective methods for the control of such flies and other arthropods.

(2) Any funds which may become available from the federal government, from the board of county commissioners of the county in which the laboratory is to be established, or from any other sources, may be used according to law in constructing, equipping and operating of said buildings.

History.—§§1, 2, ch. 63-443.

CHAPTER 391

FLORIDA CRIPPLED CHILDREN'S COMMISSION

391.01 Definition of "a crippled child."—For the purpose of this chapter "a crippled child" is defined as any person of normal mentality under the age of twenty-one years whose physical functions or movements are impaired by accident, disease or congenital deformity, regardless of whether or not such impaired physical functions or movements are due to an orthopedic condition; it shall include children suffering from any disease or condition which is likely to result in a crippling condition. Nothing in this chapter shall be construed to limit the duties, functions and services of the Florida crippled children's commission to orthopedic cases.

History.—§1, ch. 13620, 1929; CGL 1936 Supp. 3640(1); §1, ch. 19430, 1939; §1, ch. 24366, 1947.

391.02 Florida crippled children's commission created.—There is hereby created the Florida crippled children's commission which shall consist of five citizens of the state who shall be appointed by the governor and who shall maintain a central office at the capital of the state, and whose terms of office shall be for four years and until their successors are appointed and qualified, except that of the first commission appointed under this chapter, two members shall be appointed for the term of two years and three members thereof shall be appointed for the term of four years, and thereafter every such appointment shall be for the term of four years, except in cases of an appointment to fill a vacancy in which case the appointment shall be for the unexpired term. The governor may remove any member of such commission for cause and shall fill all vacancies which may at any time occur therein.

History.—§2, ch. 13620, 1929; CGL 1936 Supp. 3640(2); §2, ch. 19430, 1939.

391.03 Members of commission; appointment, qualifications, chairman, and expenses.—The governor shall select and appoint to the Florida crippled children's commission, five citizens of Florida, provided, that not more than one appointee shall be selected from any one congressional district, and that such appointee shall be able and willing to devote the time and energies necessary to the meetings and any other work necessary to be done by said commission, and further, such appointee shall not be a holder of any elective office, nor shall he be a stockholder of any institution benefiting from the activities of the commission excepting, however, if such member is a stockholder in any institution that is created and operated for non profit then this inhibition as to the member's qualification shall not apply.

If any member of the commission during his tenure of office on such commission shall become a candidate for any public office, such person shall resign from the said commission, and if such person fails to resign from said commission the governor shall remove such person.

No member of this commission shall hold any other elective office during his or her tenure of office on said Florida crippled children's commission.

Said commission, immediately after appointment, shall assemble at such place within the state as may be agreed upon by the members and organize by selecting one of their members as chairman. The chairman shall be elected for a term of one year; however, he may succeed himself. The members of said commission shall be reimbursed for traveling expenses as provided in §112.061.

History.—§3, ch. 13620, 1929; CGL 1936 Supp. 3640(3); §3, ch. 19430, 1939; §19, ch. 63-400.

391.04 Powers and duties of the commission.—

(1) The Florida crippled children's commission shall be a body corporate and shall have a corporate seal to be selected by it at its first meeting. Said commission shall employ an executive secretary, subject to the approval of the governor, who shall have a proper knowledge of community organization work and an understanding of the fundamental principles of public health and social work and who shall have had at least one year's actual experience or training in an accredited public health or social work organization, and shall not be a paid director, associate or employee of any facility rendering any service under said commission. Said commission may remove the executive secretary at will, and employ all necessary clerks, servants and employees not otherwise provided herein; formulate and adopt general policies and adopt an annual budget and plan; meet at regular intervals to review and approve the acts and expenditures of the executive secretary on its behalf, such times and intervals to be agreed upon by the commission. Emergency meetings of the commission shall be called by the chairman when necessary and advisable. In case of the disability, failure or refusal of the chairman to call an emergency meeting, such meeting may be called by a majority of the commission and the notice of the time and place of such meeting signed by a majority of

the members shall be attached to and made a part of the permanent minutes of such emergency meeting. The executive secretary appointed by the commission shall have the following powers and duties:

(a) To direct activities of the personnel under the commission.

(b) To approve all applications for admission to hospitals or convalescent homes except in cases of emergency.

(c) Subject to authorization of the commission, to approve or disapprove all bills of expenditures and send to the comptroller, monthly, for payment.

(d) To maintain his office at the central office.

(e) To maintain, keep and preserve such records and files in the central office as the commission shall direct.

(f) Upon authorization of the commission to enter into contracts with hospitals, operating centers, convalescent homes, brace manufacturers and other manufacturers or supply houses.

(2) Said commission may contract or be contracted with, sue and be sued, plead and be impleaded in all courts of law and equity, and receive donations and bequests. Said commission shall have and possess all the powers of a body corporate for all the purposes created by or that may exist under the provisions of this chapter.

History.—§10, ch. 13620, 1929; CGL 1936 Supp. 3640(10); §4, ch. 19430, 1939.

391.05 Approved orthopedic centers. — As soon as practicable after the appointment and organization of the Florida crippled children's commission, from time to time, and thereafter, such commission shall select and designate hospitals, clinics, convalescent homes, or other medical centers from those approved either by the American college of surgeons, American hospital association or the state board of health as orthopedic centers, the same to be located in various sections of the state, so as to serve most economically and efficiently the crippled children who may need care and treatment; the number and location of such orthopedic centers to be within the discretion of the said commission. Said commission may pay reasonable costs to such orthopedic centers for the surgical or medical care or treatment of crippled children placed therein by said commission.

History.—§4, ch. 13620, 1929; CGL 1936 Supp. 3640(4).

391.06 Employment of surgeons, etc.—The commission may employ from time to time such orthopedic surgeons as it may deem necessary for the proper treatment or care of crippled children, provided no orthopedic surgeon shall be employed unless his professional standing and ability as such has been certified to by the Florida state health officer, and said commission may employ from time to time physicians, nurses or such other help as it may deem necessary and proper to carry out its functions.

History.—§5, ch. 13620, 1929; CGL 1936 Supp. 3640(5).

391.07 Indigent and semi-indigent cases.—The commission may provide for the surgical and medical care or treatment of indigent and semi-indigent crippled children, provided however, that the commission shall, prior to providing such care or treatment, cause to be made a medical, social and economic investigation by qualified personnel, to determine the financial ability of the parents or persons standing in loco parentis to provide the necessary medical care or treatment of said crippled child. If, after investigation, the commission is satisfied that the parents or person standing in loco parentis are financially unable, in whole or in part, to pay for the care or treatment, then such crippled children may be cared for and treated by the commission under such rules and regulations as may be prescribed by said commission.

History.—§6, ch. 13620, 1929; CGL 1936 Supp. 3640(6). Am. §1, ch. 57-21.

391.08 Surveys, diagnostic clinics and future legislation.—The commission may assist all interested local agencies in making surveys concerning crippled children and may organize and supervise public diagnostic clinics under the direction of approved orthopedic surgeons and shall cooperate with the state department of education in the development of a future legislative program relating specifically to the education of crippled children.

History.—§7, ch. 13620, 1929; CGL 1936 Supp. 3640(7).

391.09 Appropriation.—There shall be included in the biennial general appropriations act from the general revenue fund sufficient monies for the purpose of carrying out the provisions of this chapter.

History.—§8, ch. 13620, 1929; CGL 1936 Supp. 3640(8). Am. §68, ch. 26869, 1951.

391.10 Funds.—The treasurer of the state shall pay out all money and funds provided for in this chapter, upon proper warrant issued by the comptroller of the state, drawn upon vouchers approved by the commission, and the commission shall make annual report to the governor, showing in detail amounts received and the expenditures, when paid and to whom. All donations or other receipts of money by the commission shall be paid into the state treasury and the same is re-appropriated for the purposes of this chapter.

History.—§9, ch. 13620, 1929; CGL 1936 Supp. 3640(9).

CHAPTER 392

TUBERCULOSIS HOSPITALS

392.01 State tuberculosis board.—There is created a state tuberculosis board which shall consist of five citizens of the state who shall be appointed by the governor, and their terms of office shall be for four years and until their successors are appointed and qualified, provided however, that nothing herein shall be construed to affect the term of the present members of the board. The governor may remove any member of such board for cause and shall fill all vacancies that may at any time occur therein, in which case the appointment shall be for the unexpired term.

The board shall elect a chairman as often as that office shall become vacant. The members of said board shall be reimbursed for traveling expenses as provided in §112.061.

History.—§§2, 3, ch. 12284, 1927; CGL 3309, 3310; §1, ch. 28136, 1953; §19, ch. 63-400.

392.02 State tuberculosis board to be a body corporate.—The state tuberculosis board shall be a body corporate and shall have a corporate seal to be selected by it at its first meeting; shall select a secretary and remove him at will; have and employ all necessary clerks, servants and employees; shall have power to contract and be contracted with; sue and be sued; plead and be impleaded in all courts of law and equity; to receive donations and bequests; to make purchases of lands and tenements, and to contract for the sale and disposal of the same, but the title to all such donations, bequests and property, however acquired, shall be vested in the state tuberculosis board, and shall only be transferred and conveyed by it, and it shall have and possess all the powers of a body corporate for all the purposes created by or that may exist under the provisions of this chapter, or any act or acts amendatory thereof.

History.—§9, ch. 12284, 1927; CGL 3316; am. §7, ch. 24337, 1947.

392.03 State tuberculosis hospital.—There shall be established within the state a hospital to be designated and known as "state tuberculosis hospital" for tubercular patients.

History.—§1, ch. 12284, 1927; CGL 3308.

392.04 State tuberculosis board may establish district hospitals; financing.—The state tuberculosis board may divide the state into not more than five districts, and establish, conduct, maintain and operate in each of said districts a tuberculosis hospital for the treatment of persons suffering from said disease, and for that purpose obtain loans from the federal government, or any agency thereof, or from any other available source, and provide for the securing and repayment of said loans in any manner.

History.—§1, ch. 17469, 1935; CGL 1936 Supp. 3316(1); am. §1, ch. 22763, 1945.

392.05 Boards of county commissioners may contract with state tuberculosis board for use of beds in district hospitals by indigent tuberculars.—The boards of county commissioners of the several counties of the state may rent, lease or otherwise contract with the state tuberculosis board for the use of beds in such district hospitals by tuberculous persons from their respective counties who are financially unable to pay for such treatment, under such rules and regulations as may be prescribed by the state tuberculosis board.

History.—§2, ch. 17469, 1935; CGL 1936 Supp. 3316(2).

392.06 State tuberculosis board to operate and prescribe rules for state tuberculosis hospital.—The state tuberculosis hospital shall be operated by and under the direction and control of the state tuberculosis board under such rules and regulations as it may from time to time prescribe therefor.

History.—§5, ch. 12284, 1927; CGL 3312.

392.061 Prohibition of intoxicants.—It shall be unlawful for any person, firm or corporation, regardless of whether a patient, visitor or otherwise, to bring or possess any intoxicating liquor or beverage on the grounds or in any building of a state tuberculosis hospital, without the written permission and approval of the medical director of the hospital concerned. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by §775.07.

History.—Comp. §2, ch. 29868, 1955.

392.07 Admission of patients; funds contributed by counties.—

(1) Any tuberculous person who has been an actual bona fide and continuous resident of Florida for one year may be admitted to the hospitals by the state tuberculosis board under rules and regulations prescribed by the board; provided, the county sending such patient shall have assumed responsibility for, and made satisfactory financial arrangements with, the state tuberculosis board for the payment by such county of one dollar and twenty-five cents per diem hospital charges for each such patient. If a person admitted to any of said hospitals is able to pay all or any part of his or her per diem hospital charges, the county sending such patient shall collect the one dollar and twenty-five cents per diem required to be paid by the county, and the county shall retain the one dollar and twenty-five cents per diem to reimburse itself for the per diem charge it has paid or is obligated to pay for such patient. If the patient is able to pay more than one dollar and twenty-five cents on his or her per diem charge such additional payment shall be made to the state tuberculosis board.

(2) The state tuberculosis board may also admit to any hospital operated by it any other tuberculous person who may be certified to the board by any county in the state, or by any agency of the federal government, upon such terms and conditions as may be prescribed by said board and provided satisfactory arrangements are made with said board for the payment of all hospital charges for the care and maintenance of said tuberculous person while in the hospital.

(3) The state tuberculosis board shall prescribe what amount shall be charged for the care and maintenance of each tuberculous patient, except indigent and semi-indigent patients, received in any of said hospitals while such patients are receiving treatments therein or in and out-patient department of said hospitals.

(4) All moneys required to be paid by the several counties and patients for the care and maintenance of patients in the hospitals or while being treated by the out-patient department, shall be paid to the state tuberculosis board, and said board shall forthwith transmit the same to the treasurer of the state who shall place the same in two accounts as follows, to-wit: (1) such amounts as the board shall from time to time designate as necessary to meet the interest and sinking fund requirements of the board shall be placed in the state tuberculosis hospitals interest and sinking fund trust fund; and (2) the balance of the money transmitted to the treasurer of the state shall be placed in the hospitals maintenance trust fund. All moneys from all sources received by the board, other than from the state and other than the funds now or hereafter in the state tuberculosis hospitals interest and sinking fund trust fund, shall be placed in a separate fund known as the hospitals maintenance trust fund. All moneys now in or hereafter placed in: (a) the state tuberculosis hospitals interest and sinking fund trust fund are hereby appropriated to the use of the board to be expended in the payment of interest and sinking fund charges of the board; and (b) the hospitals maintenance trust fund, are hereby appropriated to the use of the board to be expended in carrying out its other powers and duties, and said moneys shall not be deducted from any sums of money otherwise appropriated by the state to the board, and such moneys shall be disbursed as provided in §392.13.

History.—§1, ch. 18284, 1937; CGL 1940 Supp. 3316(4); §2, ch. 22763, 1945; §1, ch. 25240, 1949; (4) a. by §2, ch. 61-119.

392.091 Ward of federal government may be received in tuberculosis hospital.—The state tuberculosis board is hereby authorized and empowered, in its discretion, to receive for hospitalization, care and treatment in any tuberculosis hospital operated by said board, any tuberculous ward or charge of the federal government or any agency thereof, under such rules and regulations and upon such terms and conditions as said board may from time to time prescribe. Said state tuberculosis board is also authorized to enter into such contracts as it may deem necessary with the federal government, or any agency thereof, in relation to any of the powers hereby granted to said state tuberculosis board.

History.—§1, ch. 22764, 1945.

392.11 Out-patient department. — The state tuberculosis board may establish an out-patient department in connection with the operation of said hospital and furnish to patients in such out-patient department such treatments, medical assistance and check-ups as said board may deem necessary, and said board may prescribe from time to time such rules and regulations as may be found necessary for the proper conduct and operation of the out-patient department of the hospital.

History.—§5, ch. 18284, 1937; §2, ch. 19025, 1939; CGL 1940 Supp. 3316(8).

392.12 Appropriation.—The legislature shall include in its biennial appropriations bill a sufficient sum for the purpose of carrying out the provisions of this chapter.

History.—§6, ch. 18284, 1937; §1, ch. 19016, 1939; CGL 1940 Supp. 3316(9); §69, ch. 26869, 1951.

392.13 Disbursement of funds.—All expenditures of the state tuberculosis board shall be made upon voucher or vouchers issued and certified by the auditor of the board, or any other person designated by the board, and countersigned by the chairman of the board, or a person or persons designated by him in writing for a specified period of time; provided, however, that all expenses for the operation of the hospitals shall be approved by the medical director of the hospital or an alternate designated in writing by the said medical director, and countersigned by the chairman of the board or by a person or persons designated in writing by the chairman; all expenditures shall be paid by warrant issued by the comptroller upon the state treasurer.

History.—§8, ch. 12284, 1927; CGL 3315; §27, ch. 29615 and §3, ch. 29868, 1955.

392.14 Additional powers of board. — The state tuberculosis board is hereby authorized to use any sums of money which it may heretofore have saved or which it may hereafter save from its regular operating appropriation, or to use any sums of money acquired by gift or grant, or any sums of money it may acquire by the issuance of revenue certificates of the hospital to match or supplement any state or federal funds, or any moneys received by said board by gift or otherwise, for the construction and equipment of additional facilities as may be in the opinion of said board required or deemed necessary.

(2) This section shall have the effect of extending and broadening the authority of the state tuberculosis board and shall be additional and supplemental to all previous acts of authority of the state tuberculosis board.

History.—§§1, 2, ch. 20630, 1941.

392.24 W. T. Edwards tuberculosis hospital.—Upon the construction of a tuberculosis hospital in state tuberculosis board district number one, such hospital shall be named and designated the W. T. Edwards tuberculosis hospital.

History.—Comp. §1, ch. 26327, 1949.

392.241 The northeast Florida tuberculosis hospital.—

(1) The state tuberculosis board is hereby authorized and directed to establish a tuberculosis hospital in Union county, on lands which shall be conveyed to the said board without cost to said board or the state. The conveyance shall be by fee simple deed to said tuberculosis board from the board of county commissioners of Union county.

(2) The said institution shall be known as the northeast Florida tuberculosis hospital, and the state tuberculosis board shall select and determine the situs of lands to be deeded to said board within Union county where said hospital shall be located which shall not be less than one hundred acres. The board of county commissioners shall clear and grub the site selected and shall clear and grade all necessary access roads and streets to and in the selected site at no cost to the state tuberculosis board or the state.

History.—Comp. §§1, 2, ch. 29781, 1955.

392.25 Petition; contents.—When any physician, or other interested person, reports to the state board of health, or its authorized representative, that any person is afflicted with tuberculosis and that such person so conducts himself as to expose other persons to the danger of infection, the state board of health, through its authorized representative, shall investigate the circumstances; and if after such investigation the representative of the state board of health is of the opinion that an active case of tuberculosis is found, he shall encourage the person infected to take voluntary treatment therefor, such treatment to meet the minimum requirements prescribed by the state tuberculosis board. If such afflicted person refuses to accept such voluntary treatment, or if his record and actions indicate that he will not actually persist in treatment in a tuberculosis hospital until he is no longer a danger to the public health, or if said afflicted person has absented himself from a state tuberculosis hospital against medical advice and without having been discharged by the medical director thereof, then the state board of health, or its authorized representative, may file a petition setting forth such facts and asking that examination be conducted as herein provided. Such petition may be presented to the county judge, or in his absence or disability, to the judge of the circuit court of the county wherein such person resides or is found.

History.—§1, ch. 26828, 1951; §4, ch. 29868, 1955.

392.26 Order on petition; appointment of examining committee; notice; hearing on report of committee.—

(1) Whenever a petition is filed under the provisions of §392.25, the county judge, or in his absence or disability, the judge of the circuit court in the county in which said petition is submitted, shall:

(a) Appoint one intelligent citizen and two practicing physicians of good professional standing, who shall be doctors of medicine or doctors of osteopathic medicine, who shall constitute an examining committee; and

(b) Enter an order directed to the person against whom the petition has been filed, advising him: 1. that the petition has been filed, copy of which shall be attached to the order when served on such person; and 2. that a committee, whose names shall appear in the order, has been appointed; and the order shall

direct such person to appear before the committee for examination at the time and place, which shall be fixed by the committee, and due notice of the time and place of the examination shall also be served on such person, so that the committee may determine whether or not such person: a. has active infectious tuberculosis and is dangerous to the public health; and b. is indigent or is possessed of sufficient available means to pay for his care and treatment at a hospital operated by the state tuberculosis board; and

(c) Fix the time and place for the hearing before the court on the report of the committee.

(2) The examining committee: (a) may secure the presence of the alleged tuberculous infected person and shall make such thorough investigation of his condition as will enable the committee to determine whether or not he has active infectious tuberculosis and is dangerous to the public health; and (b) shall determine whether or not he has sufficient available means to pay for his care and treatment at a hospital operated by the state tuberculosis board; and (c) shall make a report of its findings, which shall be signed by each of the committeemen and which shall be immediately transmitted by it to the judge appointing the committee prior to the time set by the court for hearing thereon.

(3) If the committee finds and so reports to the court: (a) that the alleged tuberculous infected person does not have active infectious tuberculosis and is not dangerous to the public health, the court shall enter an order dismissing the cause; or (b) that the alleged tuberculous infected person has active infectious tuberculosis and is dangerous to the public health, the judge shall hold the hearing on the report at the time and place fixed in the order theretofore served on the person examined. At the hearing the alleged tuberculous infected person may appear in person or by counsel and contest the correctness of such report and interpose his defense thereto. After the hearing the judge shall enter an appropriate order. If the judge determines that such person has active infectious tuberculosis and is dangerous to the public health, he shall commit such person for quarantine, isolation and compulsory treatment to the custody of the medical director of a hospital operated by the state tuberculosis board for such period of time as shall, in the opinion of the medical director of the hospital, be necessary to improve the health of such person, so that he will not have active infectious tuberculosis or will not be dangerous to the public health, and such order shall determine whether or not the person so committed has sufficient available means to pay for his care and treatment at a hospital operated by the state tuberculosis board.

(4) The alleged tuberculous infected person shall have the right to summon witnesses in his own behalf, and if indigent and unable to procure the attendance of witnesses in his behalf, the court shall have summoned a reasonable number of witnesses for such person to be paid by the county.

(5) If the person against whom a petition has been filed under §392.25 shall refuse to present himself to said examining committee for examination or shall refuse to allow such committee to examine him, the judge appointing such committee may issue necessary process requiring the presence of such person before said committee for such examination, and the sheriff shall execute the process.

History.—Comp. §2, ch. 26828, 1951.

392.27 Detention of alleged tuberculous infected person pending hearing on report of examining committee.—Upon consideration of the petition filed under §392.25, and such other evidence as may be before him, the judge may enter an order: (1) determining that it is necessary for the protection of the public health that the alleged tuberculous infected person be confined until the disposition by the court of the report of the examining committee; and (2) directing the sheriff to forthwith confine such alleged tuberculous infected person until the further order of the court, and that during such confinement he shall be quarantined and/or isolated by the sheriff, who shall enforce all applicable sanitary rules, laws, and regulations; provided, that the detention of the alleged tuberculous infected person shall be for such time as may reasonably be necessary for the examining committee to make its examination and report to the court and such further reasonable time as may be necessary for the disposition of the matter by the judge, but in no event shall the detention exceed fifteen days unless for good cause shown, the time of the detention is extended by order of the judge.

History.—Comp. §3, ch. 26828, 1951.

392.28 Right of appeal from order committing person to state tuberculosis hospital.—Any person who shall feel aggrieved by the entry of an order of commitment shall have ten days within which to appeal from said order to the circuit court. The filing of the notice of appeal shall not operate to supersede the effect of the order from which the appeal is taken. Every order entered under the terms of §§392.25-392.36 shall be executed forthwith unless the court entering such order or the appellate court, in its discretion, enters a supersedeas order and fixes the terms and conditions thereof. The appeal shall be taken in the manner provided by the Florida appellate rules.

History.—§4, ch. 26828, 1951; §25, ch. 63-559.

392.281 Isolation; misconduct.—

(1) When any patient in any state tuberculosis hospital shall conduct himself in such

a disorderly manner and in disregard of the rules and regulations of the hospital as to unreasonably disturb other patients or employees of the hospital, the medical director of said hospital may petition the county judge, or in his absence or disability, the judge of the circuit court of the county wherein the hospital lies to commit the patient to the custody of the medical director of a hospital operated by the state tuberculosis board for quarantine, compulsory isolation and compulsory treatment in facilities provided by the board for such compulsory isolation and treatment. If the judge determines that the said patient has active infectious tuberculosis and is dangerous to the public health and that he has conducted himself in such a disorderly manner so as to unreasonably disturb other patients or employees of the hospital, he shall commit the patient for compulsory isolation and treatment for a period of time as shall be necessary, in the opinion of the medical director of the hospital, to improve the health of such person so that he will not have active infectious tuberculosis and be a danger to the public health.

(2) The alleged tuberculous infected person under this section shall have all the rights, including a hearing, counsel, witnesses, examining committee and appeal afforded tuberculous persons under §§392.25-392.36.

History.—Comp. §5, ch. 29868, 1955.

392.29 State tuberculosis board authorized to provide adequate facilities; payment of cost of treatment.—The state tuberculosis board is hereby authorized and directed to provide adequate facilities for such compulsory isolation and treatment at one or more of the hospitals which are operated by it for the care and treatment of tuberculous patients. The cost of compulsory treatment, care, and maintenance of such persons at such state operated hospitals shall be provided for by the board of county commissioners of the county from which such patient is committed paying one dollar and twenty-five cents per day to the state tuberculosis board, and the remainder of such expense shall be paid for by the state tuberculosis board. If such patient is able to pay all or any part of his per diem hospital charges, the board of county commissioners of the county from which he is committed shall collect and retain one dollar and twenty-five cents per day thereof to reimburse itself for the one dollar and twenty-five cents per diem charges it has paid or is obligated to pay for such patient to the state tuberculosis board. If the patient is able to pay more than one dollar and twenty-five cents on his per diem charges, such additional payment shall be made to the state tuberculosis board.

History.—Comp. §5, ch. 26828, 1951.
cf.—§392.02 State tuberculosis board to be a body corporate.

392.30 Sheriff or constable to deliver person to state tuberculosis hospital.—The judge, in his order committing a person under §§392.25-392.36 to one of the hospitals operated by the state tuberculosis board, shall direct the sheriff of the county, or the constable in whose district such person resides, to take such person into his custody and forthwith deliver him to the medical director of the state tuberculosis hospital named in the commitment.

History.—Comp. §6, ch. 26828, 1951.

392.31 Return of person to state tuberculosis hospital.—Any person committed under §§392.25-392.36 who leaves the state tuberculosis hospital to which he has been committed without having been discharged by the medical director thereof shall be apprehended by the sheriff of the county or the constable in whose district such person is found and delivered forthwith to the state tuberculosis hospital from which he left.

History.—§7, ch. 26828, 1951; §6, ch. 29868, 1955.

392.32 Appointment of counsel to represent indigent person. — In case of indigency, the court, upon application of a person against whom a petition has been filed under §392.25, may appoint a member of the bar of the court to represent such person.

History.—Comp. §8, ch. 26828, 1951.

392.33 Fees and other compensation; payment by board of county commissioners.—

(1) For the services required to be performed under the provisions of §§392.25-392.36 compensation shall be paid as follows:

(a) Each member of the examining committee appointed under §392.26 shall receive reasonable compensation, to be fixed in each case by the court appointing the members of the committee;

(b) The county judge shall be allowed the sum of ten dollars as his costs in each case;

(c) The sheriff shall receive the same fees and mileage as are prescribed for like services in criminal cases;

(d) The counsel appointed by the court to represent an indigent person shall receive such reasonable compensation as shall be fixed by the court appointing him.

(2) All fees, mileage, and charges shall be taxed by the court as costs in each proceeding and shall be paid by the board of county commissioners out of the general or fine and forfeiture funds of the county.

History.—Comp. §9, ch. 26828, 1951.

392.34 Service of notices, processes, and orders by sheriff and constable.—All notices required to be given, all processes issued, and all orders entered, pursuant to §§392.25-392.36 shall be served by the sheriff of the county or the constable in whose district the alleged tuberculous infected person resides; provided that only the sheriff shall execute orders entered under §392.27.

History.—Comp. §10, ch. 26828, 1951.

392.35 Treatment by prayer or spiritual means in exercise of religious freedom.—Nothing in §§392.25-392.36 shall be construed to authorize or empower the detection or medical treatment of any person who desires treatment by prayer or spiritual means, in the exercise of religious freedom; provided, however, that such person shall be quarantined and/or isolated in his own home and while so quarantined and/or isolated shall comply with all applicable sanitary rules, laws, and regulations.

History.—Comp. §11, ch. 26828, 1951.

392.36 Forms to be prescribed.—The state board of health and the state tuberculosis board shall jointly prescribe and furnish to the county judges all forms required under §§392.25-392.35, and the court shall use such forms where appropriate.

History.—Comp. §12, ch. 26828, 1951.

CHAPTER 393

SUNLAND TRAINING CENTERS

(See Ch. 965, Divisions of board of commissioners of state institutions.)

393.01 Sunland training centers established.—

(1) There are established in this state a sunland hospital at Orlando and the sunland training centers to be located at Gainesville and Fort Myers. The said centers shall be under the supervision and control of the board of commissioners of state institutions.

(2) Any person committed pursuant to the provisions of this chapter, shall be committed only to the director of the sunland training centers who shall assign such person to such center as he may deem proper and who, by proper rules and regulations, shall provide for the transfer of persons between such centers.

(3) All appropriations, moneys, supplies or other benefits which have hereto or shall hereafter accrue for the said centers shall accrue to the benefit of the division of sunland training centers.

(4) The board of commissioners of state institutions is authorized and directed to accept from the board of county commissioners of Dade county, a grant of a tract of property containing two hundred and forty acres, more or less, located in the northern part of Dade county, and to construct thereon, a new sunland training center. The board of commissioners of state institutions is directed to accomplish the necessary planning and preliminary studies relative to the construction and operation of the new sunland training center on this site with the goal of expediting said construction and placing into operation the center. The board of commissioners of state institutions is further authorized to enter into any contracts with any state agency, board of county commissioners or municipal corporation necessary to achieve this goal and to expend state, county, municipal and federal matching funds as necessary and available for the construction of said sunland training center.

History.—§1, ch. 7887, 1919; §§1, 2, 3, ch. 10272, 1925; CGL 3663, 3674; §2, ch. 61-426; (4) n. §1, ch. 63-62; (1), §2, ch. 63-233.

393.012 Sunland training center; new site west of Apalachicola river.—

(1) The board of commissioners of state institutions is directed to conduct studies relative to locating a new sunland training center. In making such study and selection of site the board shall take into consideration the cost of construction and operation over a period of years, the center of population and the potential growth of the area to be principally served by such center, the distance to be traveled by the majority of citizens served by this institution; also, whether medical facilities and adequate labor and transportation are available in the area being considered so as to better serve the citizens using this center.

(2) The board of commissioners of state institutions is directed to acquire a suitable site west of the Apalachicola river for the location of a new sunland training center.

(3) The acquisition of a site for the sunland training center is declared to be a public purpose and acquisition of lands for said site may be by eminent domain, condemnation, purchase or gift. The board of commissioners of state institutions, state agencies, boards of county commissioners or municipal corporations are authorized and directed to obtain the lands selected by the board of commissioners of state institutions for said site and thereafter any or all boards, agencies or municipal corporations acquiring such lands shall immediately convey same to the state.

(4) The board of commissioners of state institutions, any state agency, boards of county commissioners or any municipal corporation are authorized to enter contracts to expend state, county and municipal funds and federal matching funds as necessary and available for the acquisition of such a site.

History.—§§1-4, ch. 61-230.

393.013 Medical research center on mental retardation, Orlando.—

(1) There is hereby established in this state the Florida medical research center on mental retardation to be located at the sunland hospital at Orlando. The board of commissioners of state institutions shall employ a director of medical research qualified in this field and upon recommendation of the director such other personnel as may be necessary to carry out such medical research.

(2) The research center is authorized to purchase necessary equipment and medical supplies and may receive research grants and donations of funds, medical supplies and equip-

ment from private foundations, firms, individuals and government agencies, and the center is authorized to cooperate with federal, state, county and municipal governments to attract research grants and donations from all available sources throughout the United States.

History.—§§1, 2, ch. 63-367; (1), §2, ch. 63-233.

393.02 Superintendent; salary; regulations.—The board of commissioners of state institutions may employ a superintendent who shall be a man especially trained and qualified in the management of institutions of this kind; and may employ on the recommendation of the said superintendent, such other teachers, physicians, laborers and helpers as may be necessary to the proper conduct of the said center; and may proceed with the erection and detailed operation of the same under this chapter.

The board of commissioners of state institutions may prescribe all rules and regulations, not inconsistent with the provisions hereof, necessary to the government and control of the said center, including admission, transfers or discharges therefrom.

In accepting applications and issuing admission certificates, the acts of the superintendent done under the orders and according to the rules of the board of commissioners of state institutions shall be valid and recognized as the acts of the board of commissioners of state institutions.

History.—§3, ch. 7887, 1919; §§1, 2, 3, ch. 10272, 1925; CGL 3665, 3674, 3675, 3676; §1, ch. 15859, 1933; §4, ch. 57-401; §1, ch. 61-426.

393.021 Application for admission to centers.—

(1) Application for admission to any of the sunland training centers in the state shall be in writing on forms approved by the board of commissioners of state institutions. All applications shall be made to the county judge of the county wherein the applicant resides. Said county judge shall, upon receiving an application, open a file in the name of the applicant and forward the original and one copy of said application to the director of the division of sunland training centers or his designated authority.

(2) The application shall contain the name, address, sex and approximate age of the applicant and the nature of the disability of said applicant. It shall also contain the names and addresses of his parents or legal guardian, if such be known, and said application shall contain a report by a qualified physician of good professional standing and a graduate of a school of medicine recognized by the American medical association, stating that the applicant has been examined by said physician and the results of said examination, a diagnosis and history of the applicant's mental and physical condition.

(3) The application shall also contain or be accompanied by a statement under oath as to the financial ability of the parents or legal guardian to care for the applicant and to pay for the care of the applicant.

(4) The application shall also contain such other information as the board of commissioners of state institutions may from time to time deem necessary in order to properly classify the nature of the disability of the applicant and to adequately determine whether or not said applicant is a proper subject for admission to one of the sunland training centers.

History.—§1, ch. 59-124; (1) a. by §1, ch. 61-426.

393.03 Admission to center.—No person shall be sent to the center until the application or commitment required by regulations of the board of commissioners of state institutions has been accepted by them and an order of admission entered; provided, however, no person shall be denied admission to the center because of his age.

No female over ten years of age shall be conveyed to the center except by a female official or in the company of female escort, except that such female's own father or full brother may act as her escort to the center.

No applicant shall be admitted while suffering from any contagious or communicable disease.

No female applicant who is pregnant shall be received.

History.—§4, ch. 7887, 1919; §§1, 2, 3, ch. 10272, 1925; CGL 3666, 3675, 3676; §1, ch. 57-279; §1, ch. 61-426.

393.04 Board declared legal guardian of inmates.—The board of commissioners of state institutions shall be the legal guardian and custodian of all persons admitted to the sunland training center for epileptic and the mentally retarded and feeble-minded under the provisions of this chapter.

History.—§6, ch. 7887, 1919; §§2, 3, ch. 10272, 1925; CGL 3668, 3674, 3675, 3676; §1, ch. 61-426.

393.05 Removal, dismissal and transfer of patients.—Whenever the parents or former legal guardians of a child at the center shall desire to remove him thence, they shall make application to the board of commissioners of state institutions on a blank to be provided by the board. If they can demonstrate to the satisfaction of the said board that the child will be in good care, that he will be protected and the community be protected against him, or that he will be permanently removed from the state, the board in its discretion may dismiss the child to the care of its parents or former legal guardians.

The board in its discretion may dismiss any child from the center when ever it shall appear to be for the benefit of the child or the center that this be done. In such case the guardian of the child, or the county commissioners of the county from whence he came, shall, on proper notification, remove the child without expense to the state, or failing, the board shall remove the child and charge up the expense to the county from whence the child came.

Any child in the center becoming insane may be transferred to the Florida state hos-

pital for the insane in the manner provided by law for action in lunacy.

History.—§7, ch. 7887, 1919; §§2, 3, ch. 10272, 1925; CGL 3669, 3674, 3675, 3676; §1, ch. 61-426.

cf.—§393.10, Transfer to Florida state hospital.
§§394.20-394.22, Commitment to Florida state hospital.

393.051 Furloughing of inmates.—The board of commissioners of state institutions may permit any inmate of the center to leave the institution on furlough for such lengths of time and on such conditions as they may determine, and may from time to time extend the period of such furlough or change the conditions upon which it is granted. The board shall cause an investigation to be made prior to the granting of any furlough as to the home into which the inmate is to go if furloughed and other conditions and circumstances which may affect his welfare and behavior and shall provide such supervision of furloughed inmates as they deem necessary for his welfare. The board shall have the powers as to the revocation of the permit and as to the return of the inmate to whom the furlough has been granted as are provided by law for the return of insane and the mentally retarded and feeble-minded persons to the institutions from which they have been temporarily released. No length of absence on furlough under this section from the sunland training center for the epileptic and the mentally retarded and feeble-minded shall be construed as a discharge therefrom.

History.—Comp. §1, ch. 25045, 1949; §1, ch. 61-426.

393.06 Purposes of center.—The purpose of the sunland training center for epileptic and the mentally retarded and feeble-minded shall be recognized as three-fold:

(1) As an asylum for the care and protection of the epileptic and the mentally retarded and feeble-minded.

(2) As a school for the education and training of the epileptic and the mentally retarded and feeble-minded.

(3) As a center for the segregation and employment of the epileptic and the mentally retarded and feeble-minded.

This center shall include the three departments of asylum, school and center coordinating and conducted as integral parts of a whole, to the end that these unfortunates may be prevented from reproducing their kind, and the various communities and the state at large relieved from the heavy economic and moral losses arising by reason of their existence.

History.—§8, ch. 7887, 1919; CGL 3670; §1, ch. 61-426.

393.07 Accommodations to be limited.—In carrying out the provisions of this chapter, the board of commissioners of state institutions shall provide accommodations for only such number of inmates from year to year as can be advantageously cared for with the appropriations granted for that year, giving preference, first, to girls and women of child-bearing age, and to those from both sexes who are most likely to profit by the special education and training.

History.—§9, ch. 7887, 1919; §§2, 3, ch. 10272, 1925; CGL 3671, 3675, 3676.

393.08 Means of support of center.—In addition to the means herein provided the sunland training center for epileptic and the mentally retarded and feeble-minded shall be supported by state, county or municipal appropriations, and in addition thereto by gifts, donations or endowments from any individuals, firms or corporations, all of which shall be accepted and disbursed by the board of commissioners of state institutions as the law provides.

History.—§10, ch. 7887, 1919; §§2, 3, ch. 10272, 1925; CGL 3672, 3675, 3676; §1, ch. 61-426.

393.09 Patients received on paid admission.—Whenever the parent, guardian or estate of the child is able to do so, the cost of maintenance in whole or in part shall be borne by them, the amount and payment thereof to be determined and arranged by the board of commissioners of state institutions from time to time as conditions and circumstances may warrant, all payments thereunder to be made to the superintendent to be remitted by him to the state treasurer at stated intervals as required by the board to be placed to the credit of the fund for the maintenance of the center. The expenses of commitment and admission, including conveyance to the center, shall be borne by the county from which the applicant is admitted, except in the case of the pay applicant in which case such expenses shall be borne by the parent, guardian or estate supporting such child. When any child is received on paid admission such payment shall not be allowed to influence the treatment of the child; every child within the center is to be treated solely on his or her own merits and according to mental and physical ability, irrespective of question of monetary payment. It shall be a misdemeanor punishable by dismissal, for any officer or employee of the center to accept any gratuity from the parent or guardian or other friend of any of the children under his or her care.

History.—§11, ch. 7887, 1919; §§2, 3, ch. 10272, 1925; CGL 3673, 3675, 3676; §1, ch. 61-426.

393.10 Transfer of patients to Florida state hospital.—When it shall be made to appear to the satisfaction of the board of commissioners of state institutions of Florida that the Florida state hospital is more suitable to the needs of any person or persons committed to the sunland training center for epileptic and the mentally retarded and feeble-minded said board of commissioners of state institutions may order such person transferred from the sunland training center for epileptic and the mentally retarded and feeble-minded to the Florida state hospital, and thereupon such person or persons shall be received, treated and cared for in said Florida state hospital as if originally committed thereto in the manner provided by law.

History.—§1, ch. 15025, 1931; CGL 1936 Supp. 3669(1); §1, ch. 61-426.

cf.—§394.18, Transfer of patients to sunland training center.
§394.60 Transfer of psychotic children from center to sunland training center.

393.11 County judge to issue order for commitment upon presentation of petition.—The

county judge of any county in this state where a person afflicted with epilepsy, or a person who is of such feeble mind as to be either irresponsible or requiring restraint (but not being insane), resides, shall have jurisdiction to make and enter an order or orders committing such person to the sunland training center for the epileptic and the mentally retarded and feeble-minded. Said jurisdiction shall be exercised by the filing of a petition by three persons (one of whom shall be a physician) who are acquainted with the person sought to be committed to such institution, which petition shall state under oath of the persons signing the same the name of the person sought to be committed, his residence, the condition of his family, the physical and financial condition of the person sought to be committed and the financial condition of the family of such person, and the nature and extent of the derangement suffered by the person sought to be committed, and all other facts which may be necessary to inform the court of the condition and situation of the party sought to be committed and of the property of such commitment. Upon the presentation of such petition the county judge shall issue an order to the sheriff to bring the person sought to be committed before the county judge at a time and place therein named and he shall thereupon appoint a commission as is appointed to examine persons alleged to be insane, which commission shall examine the person sought to be committed and report its findings to the county judge and thereupon the county judge shall either discharge the person sought to be committed or shall commit such person to the sunland training center for the epileptic and the mentally retarded and feeble-minded in the same manner as persons are committed to the Florida state hospital; provided, however, that before any county judge shall commit a person to the said institution he shall ascertain from the superintendent thereof whether or not there are available means then provided at said institutions to take care of the person to be committed.

History.—§4, ch. 10272, 1925; CGL 3677; §1, ch. 61-426.
cf.—§394.20, Hospitalization of mentally ill.
§394.22 Adjudication of persons mentally or physically incompetent.

393.12 Restoration to mental competency.—(1) CERTIFICATE.—When a person because of mental incompetency has been committed to sunland training center and has been under observation and treatment at said institution, if the superintendent upon the advice of his staff is of the opinion that said person is capable of managing his own affairs, then the superintendent of the institution may issue to him a certificate so stating; said certificate shall be signed by the superintendent and attested by the chief physician of the institution or someone designated by said superintendent. Said certificates shall be admissible in evidence in any hearing for restoration to mental competency of the person.

(2) PETITION.—Any guardian, relative, husband or wife, or next friend of any person who has been adjudged mentally incompetent under the provisions of this chapter may apply to the county judge of the county wherein the incompetent was adjudged incompetent or to the county judge of the county wherein he then resides to have an inquiry made into the mental status of the incompetent to determine whether he is still incompetent. The petition shall state all the facts upon which an order restoring the incompetent to competency is prayed and shall be under oath. Before the petition is filed or at the time it is filed if the incompetent whose competency is sought to be restored is the holder of a certificate issued under the provisions of subsection (1) of this section the certificate shall be filed in the office of the county judge of the county where the judgment of mental incompetency and order of commitment were entered or with the county judge in the county where he then resides. If not filed within ninety days from date of issuance, the certificate shall be void. The county judge shall set a date for hearing in said petition within thirty days from date of filing. Upon the date of filing the petitioner or his attorney shall give notice of filing of petition and hearing thereon to the state attorney and attach to the notice a copy of the petition and certificate if one has been issued and filed. Proof of service of the notice and attachment shall be by affidavit or acknowledgment to be filed with the court.

(3) HEARING; ORDER OF RESTORATION.—Upon hearing, the incompetent shall personally appear before the court, and such evidence as should come before the court on the petition shall be heard. After hearing, the judge shall either enter an order showing that the person previously adjudged mentally incompetent is capable of managing his own affairs or dismiss the petition with findings. The order of restoration, if entered, shall be in words and language substantially as provided in former §62.35, and shall be recorded.

(4) APPEAL.—All orders and judgments entered by the county judge pursuant to this chapter may be appealed to the appropriate district court of appeal within the time and in the manner set forth in the Florida appellate rules, or to the supreme court if authorized by §4, Art. V of the state constitution.

(5) ATTORNEYS.—In cases of indigency the court, upon application of the incompetent, may appoint an attorney to represent faithfully such incompetent before the court. The attorney shall be entitled to a reasonable fee not to exceed twenty-five dollars, to be allowed by the county judge and paid by the county commissioners of the county from the county's general fund.

History.—§1, ch. 29853, 1955; (1) §1, ch. 61-426; (4) §26, ch. 63-559.

CHAPTER 394

FLORIDA STATE HOSPITALS; PSYCHIATRIC CENTERS

(See Ch. 965, Divisions of board of commissioners of state institutions.)

PART I FLORIDA STATE HOSPITALS

PART II CHILDREN'S PSYCHIATRIC CENTERS

PART I—FLORIDA STATE HOSPITALS

394.01 Name and location of hospitals and providing for a branch or branches thereof; assignment by director of mental health.—

(1) The institution formerly known as the Florida hospital for the insane, shall be known and hereafter called the Florida state hospital and shall be located at Chattahoochee, in Gadsden county, and the public buildings of the state at that place are devoted to that purpose. There may be established from time to time by law a branch or branches of said hospital in other parts of this state.

(2) Patients committed by proper courts in pursuance of the provisions of this chapter, as now or hereafter amended, shall be committed only to the director of mental health who shall assign such patients to such institution as he may deem proper and who, by proper rules and regulations, shall provide for the transfer of patients between such institutions.

History.—§1, ch. 2012, 1874; RS 835; §1, ch. 4801, 1899; GS 1187; §1, ch. 7832, 1919; RGS 2295; CGL 3641; am. §1, ch. 23800, 1947; (2) by §7, ch. 57-317.

394.011 G. Pierce Wood memorial branch of Florida state hospital separate, under director of mental health.—

(1) The Dorr field and Carlstrom field branch of the Florida state hospital, now located at Arcadia, DeSoto county, shall be named and known as the G. Pierce Wood memorial hospital and shall hereafter be operated as a distinct and separate unit under the director of mental health.

(2) All appropriations, monies, supplies, or other benefits which have hitherto or shall hereafter accrue for either or both the Dorr field and the Carlstrom field branches of the Florida state hospital, located in DeSoto county, shall from and after the passage of this bill, accrue to the benefit of the G. Pierce Wood memorial hospital.

History.—§§1, 2, ch. 25367, 1949; (1) by §8, ch. 57-317.

394.012 Northeast Florida mental hospital.—The board of commissioners of state insti-

tutions is hereby authorized and directed to establish a branch of the Florida state hospital in Baker county, on lands which shall be conveyed to the state without cost by fee simple deed by the board of county commissioners of Baker county. The said institution shall be known and designated as the northeast Florida mental hospital. The board of commissioners of state institutions shall determine the situs of lands to be deeded to the state within Baker county, where said institution shall be located, which shall not be less than three hundred acres.

History.—Comp. §1, ch. 29617, 1955.

394.02 Management and control. — The board of commissioners of state institutions shall have the management and control of the Florida state hospital.

History.—§1, ch. 3578, 1885; RS 836; GS 1188; §2, ch. 7882, 1919; RGS 2296; CGL 3642; §1, ch. 19164, 1939; CGL 1940 Supp. 3653(1).

394.03 Employment of superintendent, physicians and persons necessary.—The board of commissioners of state institutions shall employ a superintendent and such physicians and such other persons as may be necessary for the proper management and care for the patients committed by law to the said Florida state hospital, and of the properties therein or thereto belonging or appertaining.

History.—§1, ch. 3578, 1885; RS 837; GS 1189; RGS 2297; CGL 3643; §2, ch. 19164, 1939; CGL 1940 Supp. 3653(2).

394.031 Medical personnel for state institutions.—

(1) The superintendent of the Florida state hospital and any other institutions under the direction of the board of commissioners of state institutions when in need of additional medical personnel and unable to obtain such medical personnel residing in the state, the superintendent, with the approval of the board of commissioners of state institutions, may employ competent, experienced medical personnel from without the state.

(2) That so long as any medical personnel employed under the provisions of subsection (1) of this section is engaged exclusively on the medical staff of such institutions and does not engage in private practice within the state, such medical personnel shall be exempt from existing requirements of law as to time of residence in the state and also as to requirement as to passing examination in basic science.

(3) It shall be the duty of the superintendents of state institutions before employing any medical personnel under the provisions of this section to make a thorough investigation as to qualifications, experience, character and ability of such medical personnel.

(4) The provisions of this section may apply to hospitals operated by the state tuberculosis board.

History.—§§1-3, ch. 23675, 1947; sub §(4) comp. §7, ch. 29868, 1955.

394.04 Powers and duties of superintendent and other employees; bond and accounts.—The board of commissioners of state institutions shall prescribe the powers and duties of the superintendent and of all the other employees, and shall require of the superintendent bond with sureties, conditioned to properly apply and fully account for all supplies, property and moneys which may be entrusted to or received by him, and for the faithful performance of his duties, as they may from time to time be prescribed by such board of commissioners of state institutions.

History.—§2, ch. 3578, 1885; RS 838; GS 1190; RGS 2298; CGL 3644; §3, ch. 19164, 1939; CGL 1940 Supp. 3653(3).

cf.—§113.07 Bonds of officials.

394.05 Compensation of superintendent and employees.—The compensation of such superintendent and all other employees shall be prescribed by the board of commissioners of state institutions.

History.—§3, ch. 3578, 1885; RS 839; GS 1191; §3, ch. 7832, 1919; RGS 2299; CGL 3645; §4, ch. 19164, 1939; CGL 1940 Supp. 3653(4).

394.06 Bond may be required of any employee.—The board of commissioners of state institutions may require bond and sureties of any employee other than the superintendent, conditioned as they may prescribe.

History.—§4, ch. 3578, 1885; RS 840; GS 1192; RGS 2300; CGL 3646; §5, ch. 19164, 1939; CGL 1940 Supp. 3653(5).

cf.—§113.07 Bonds of officials.

394.07 Removal of employees.—The superintendent and other employees shall be removable at the pleasure of the board of commissioners of state institutions.

History.—§5, ch. 3578, 1885; RS 841; GS 1193; RGS 2301; CGL 3647.

394.08 Chief physician to keep complete clinical records on all patients.—The superintendent of the Florida state hospital shall cause the chief physician of said hospital to thoroughly investigate the history of each patient, and keep a complete clinical record of each patient, which record shall contain the name of the patient, the diagnosis, the date of beginning of each treatment, each day's prescription while under treatment, and such other therapy as may be indicated. This record shall be open for future reference by his successors, the superintendent, the cabinet authorities, legislative committees and such others as may legally be entitled to the same.

History.—Ch. 3706, 1887; RS 842; GS 1194; RGS 2302; CGL 3648; §6, ch. 19164, 1939; CGL 1940 Supp. 3653(6); am. §7, ch. 22858, 1945.

394.09 Custody and transportation of mentally ill persons.—If it shall appear to the committing judge that any mentally ill person, hereinafter called the patient, is destitute, he shall commit such patient to the sheriff for safekeeping, who shall notify the director of mental health, who shall thereupon cause some suitable attendant or nurse to be sent for such patient. Said attendant or nurse shall, upon arrival, notify the sheriff, who shall thereupon deliver such patient to such attendant or nurse, who shall carry such patient to such hospital

as shall be previously directed by the director of mental health, and upon arrival shall deliver such patient to the proper officer for the purpose of care, custody and treatment; provided, that the actual expenses of transporting such patient, shall be paid from the money appropriated for the operation and maintenance of such hospital; provided, further, that the necessary expenses of the sheriff in delivering the patient to the attendant or nurse shall be paid, together with his other costs as provided in §394.23; provided, however, that the judge may, in his discretion, deliver such patient to any other person for care, custody and maintenance, in which event the patient shall be delivered to such person who shall provide for his care, custody and maintenance.

History.—§1, ch. 3036, 1877; RS 846; GS 1195; §1, ch. 5706, 1907; RGS 2303; §1, ch. 10179, 1925; CGL 3649; am. §1, ch. 23133, 1945; §9, ch. 57-317; §1, ch. 61-18.
cf.—§394.23(6) Compensation for services.

394.10 Admission to institutions of pay patients.—It is lawful for the superintendent of any institution under the jurisdiction of the director of mental health, when directed by the board of commissioners of state institutions and upon receipt of a commitment order issued by the director of mental health, to receive into such institution any mentally ill person whose friends, parents or guardians are willing and able to pay for the care, custody and maintenance of said mentally ill person. Any such person properly committed shall receive proper care, food, clothing and medical attention.

History.—§§1, 2, ch. 3115, 1879; RS 853; GS 1196, 1197; RGS 2304, 2305; CGL 3650, 3651; §§7, 8, ch. 19164, 1939; CGL 1940 Supp. 3653(7), 3653(8); §10, ch. 57-317; §2, ch. 61-18.
cf.—§394.25 Persons receivable as patients.

394.11 Payments for patients.—The board of commssioners of state institutions shall, in such cases, prescribe what amount shall be paid by the friends, parents or guardians of said mentally ill person, and such money shall be paid by the friends, parents or guardians of said mentally ill person quarterly to the superintendent of the Florida state hospital, who shall receipt for the same; and remit to the treasurer of the state moneys so received.

History.—§3, ch. 3115, 1879; RS 855; GS 1198; RGS 2306; CGL 3652; §9, ch. 19164, 1939; CGL 1940 Supp. 3653(9); §3, ch. 61-18.

394.12 Bonds for payment of maintenance charges of patients.—When the board of commissioners of state institutions shall deem it necessary or expedient they may require a good and sufficient bond, from the friends, parents or guardians of any patient committed to any institution, for the prompt and faithful payment of what may be charged for the care, custody and maintenance of said patient; and if such friends, parents or guardians do not pay the amounts required by the board of commissioners of state institutions, within six months after the same is due, said board shall commence suit upon said bond; and any moneys recovered in any such action shall be applied to the maintenance of indigent patients.

History.—§4, ch. 3115, 1879; RS 856, GS 1199; RGS 2307; CGL 3653; §10, ch. 19164, 1939; CGL 1940 Supp. 3653(10); §11, ch. 57-317.

394.13 Censorship of correspondence of patients of all hospitals for the mentally ill, public and private.—Each and every patient of each and every hospital for the mentally ill, both public and private, in the state, shall be allowed to choose one individual to whom she or he may write, when and whatever he or she desires, and over these letters to this individual there shall be no censorship exercised or allowed by any of the hospital officials or employees; but their postal rights, so far as this one individual is concerned, shall be as free and unrestricted as are those of any other resident or citizen of the state, and shall be under the protection of the same postal laws; and each and every patient may make a new choice of this individual party every three months, if he or she so desires.

History.—§1, ch. 4035, 1891; GS 1205; RGS 2313; CGL 3659; §4, ch. 61-18.

394.14 Writing materials and handling of mail in all hospitals for the mentally ill, public and private.—The superintendent shall furnish each and every patient of every hospital for the mentally ill in this state, either public or private, with suitable material for writing, enclosing, sealing, stamping and mailing letters, sufficient at least for the writing of one letter a week, provided they request the same, unless they are otherwise furnished with such materials; and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a post office box provided by the state at the hospital, and kept in some place easy of access to all the patients; the attendant is required in all cases, to see that this letter is directed to the patient's correspondent, and if it is not so directed it shall be held subject to the superintendent's disposal, and the contents of these boxes shall be collected once every week by an authorized person from the post office department, and by him placed in the hands of the United States mail for delivery.

History.—§1, ch. 4035, 1891; GS 1206; RGS 2314; CGL 3660; §5, ch. 61-18.

394.15 Posting of names of correspondents; instructions to correspondents; delivery of mail to patients.—The superintendent shall keep registered and posted, in some public place at the hospital for the mentally ill, a true copy of the names of every individual chosen as the patient's correspondent and by whom chosen; and the superintendent shall inform each of the individuals of the name of the party choosing him, and he shall request him to write his own name on the outside of the envelope of every letter he writes to this individual patient; and all these letters bearing the individual writer's name on the outside, he shall deliver or cause to be delivered, any letter or writing to him directed, without opening or reading the same, or allowing it to be opened or read, unless there is reason for believing the letter contains some foreign substance which might be used for medication, in which case the letter shall be opened in the presence of a competent witness,

and this substance shall be delivered to the superintendent to be used at his discretion, but the letter must be delivered as directed.

History.—§2, ch. 4035, 1891; GS 1207; RGS 2315; CGL 3661; §6, ch. 61-18.

394.16 Sections of law to be posted in every ward of all hospitals for the mentally ill, public and private.—A printed copy of §§394.13-394.16, shall be framed and kept posted in every ward of every hospital for the mentally ill, both public and private, in the state.

History.—§4, ch. 4035, 1891; GS 1208; RGS 2316; CGL 3662; §7, ch. 61-18.

394.17 Punishment for violation of §§394.13-394.16.—Any person refusing or neglecting to comply with, or willfully or knowingly violating any of the provisions of §§394.13-394.16 for the regulation of hospitals for the mentally ill, shall, upon conviction thereof, be punished by imprisonment not exceeding sixty days, or by a fine not exceeding three hundred dollars, and shall be ineligible to any office in any hospital for the mentally ill in the state after conviction.

History.—§3, ch. 4035, 1891; GS 3489; RGS 5365; CGL 7499; §8, ch. 61-18.

394.18 Transfer of patients to sunland training center.—When it shall be made to appear to the satisfaction of the board of commissioners of state institutions that a sunland training center is more suitable to the needs of any person or persons committed to the Florida state hospital said board of commissioners of state institutions may order such person or persons transferred from the Florida state hospital to a sunland training center, and thereupon such person or persons shall be received, treated and cared for in said sunland training center as if originally committed thereto in the manner provided by law.

History.—§1, ch. 15026, 1931; CGL 1936 Supp. 3667(1). §9, ch. 61-18.

394.19 Autopsy of deceased patient. — In every case where a person is committed to and received as a patient in the Florida state hospital, and shall die while a patient therein, it is lawful for the superintendent of the Florida state hospital, and he may hold and perform, or cause to be held and performed, an autopsy on such deceased patient, when such deceased patient leaves surviving him no relative or guardian, or when said superintendent shall be unable to communicate with or contact any relative or guardian of such deceased patient for the purpose of procuring consent to such autopsy, and when in the judgment and discretion of the superintendent of the Florida state hospital, such autopsy is in the interest of medical science necessary or desirable.

History.—§1, ch. 19367, 1939; CGL 1940 Supp. 3653(11).

394.20 Hospitalization of the mentally ill; voluntary.—

(1) AUTHORITY TO RECEIVE VOLUNTARY PATIENTS.—The head of a hospital may admit for observation, diagnosis, care and treatment any individual, and in the case of a public hospital only such a person as qualifies under §394.27, who is mentally ill, or has symptoms of mental illness and who, being twenty-one years of age or over, applies therefor, and any individual under twenty-one years of age who is mentally ill or has symptoms of mental illness, if his parent or legal guardian applies therefor in his behalf.

(2) DISCHARGE OF VOLUNTARY PATIENTS.—The head of the hospital shall discharge any voluntary patient who has recovered or whose hospitalization he determines to be no longer advisable. He may also discharge any voluntary patient if to do so would, in the judgment of the head of the hospital, contribute to the most effective use of the hospital in the care and treatment of the mentally ill.

(3) RIGHT TO RELEASE ON APPLICATION.—

(a) A voluntary patient who requests his release or whose release is requested in writing by his legal guardian, parent, spouse, or adult next of kin, shall be released forthwith, except that

1. If the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient thereto, or

2. If the patient, by reason of his age, was admitted on the application of another person, his release prior to becoming twenty-one years of age may be conditioned upon the consent of his parent or guardian, or

3. If the head of the hospital, within the hours of the ensuing business day, from the receipt of the request, files in the office of the county judge in the county where such patient is situate certification that in his opinion the release of the patient would be unsafe for the patient or others, release may be postponed for as long as the county judge determines to be necessary for the commencement of proceedings for judicial hospitalization, but in no event for more than five days; provided however, that in the event it becomes necessary that a voluntary patient in a state hospital be judicially committed after admission therein, as provided in this section, the costs incident to such commitment proceedings shall be borne by the county of the patient's residence.

(b) Notwithstanding any other provision of this chapter, judicial proceedings for hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by himself or by a duly authorized person, as provided by paragraph (a) herein, or such proceedings are recommended by the head of the hospital.

(4) Nothing herein contained shall be construed to prohibit any authorized hospital from receiving private pay patients in the usual course of the business thereof.

History.—§1, ch. 4357, 1895; GS 1200; RGS 2308; CGL 3654; §1, ch. 23157, 1945; §11, ch. 25035, 1949; sub. §(e) §1, ch. 26340, 1949; §1, ch. 29909, 1955.

394.22 Adjudication of persons mentally or physically incompetent; procedure.—

(1) PETITION FOR EXAMINATION OF PERSONS BELIEVED TO BE MENTALLY OR PHYSICALLY INCOMPETENT; PETITION.—Whenever any person within this state is believed to be incompetent by reason of mental illness, sickness, drunkenness, excessive use of drugs, insanity, or other mental or physical condition, so that he is incapable of caring for himself or managing his property, or is likely to dissipate or lose his property or become the victim of designing persons, or inflict harm on himself or others, application by written petition, under oath, may be made to the county judge of the county wherein the alleged incompetent resides or may be found, or, in the absence or disability of the county judge, to the judge of the circuit court of the county wherein such petition is filed, for a judicial inquiry as to the mental or physical condition, or both, of the alleged incompetent.

(2) WHO MAY FILE PETITION.—The petition may be filed by:

(a) The mother, father, brother, sister, husband, wife, child or next of kin of the alleged incompetent;

(b) Any three citizens of the state of Florida;

(c) The sheriff of the county where such alleged incompetent resides, if none of the persons named in paragraphs (a) and (b) file such petition;

(d) Any citizen of this state who requests the examination of himself, provided he presents a certificate of a physician authorized to practice medicine in this state, certifying that he believes such petitioner to be incompetent for any one or more of the reasons specified in subsection (1) of this section.

(e) In addition to the persons set forth and described in paragraphs (a)-(d), who may file a petition for the examination of a person believed to be incompetent as contemplated by this section, the superintendent of the state prison farm in Union county, and the superintendent of the branch thereof in Marion county, are hereby authorized to file such a petition with respect to any person at said institution.

(3) NECESSARY ALLEGATIONS.—Every petition shall allege the name, approximate age, address, if known, and nature of the disability of such alleged incompetent, and shall name all the members of his family with their addresses, if known to petitioner, and shall pray for an examination of such alleged incompetent as provided by law and for an order adjudging such person to be incompetent.

(4) NOTICE; HEARING.—Whenever a petition is filed the county judge, or, in his absence or disability, a circuit judge, shall set a date for an immediate or a very early hearing on the petition. Reasonable notice shall then be given in writing to the alleged incompetent and to one or more members of his family, if any (other than petitioner) are known to the county judge to be residing within his jurisdiction, notifying them that application has been made for an inquiry into either the mental or the physical condition, or both, of the alleged incompetent and that a hearing on such application will be had before the judge having jurisdiction at the time and place to be specified in said notice. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered and shall not be bound by the rules of evidence. An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel, the court may appoint counsel.

(5) DETENTION OF ALLEGED INCOMPETENT.—

(a) If it appears, before the date of the hearing, from evidence produced before the judge, by affidavit or otherwise, that it is for the best interest of the alleged incompetent or others that he be detained for observation and examination, said judge may order that said alleged incompetent be placed in the protective custody of the spouse or of one or more of the near relatives of the incompetent or in the protective custody of any other responsible citizen of the state.

(b) The judge may, if in his opinion the public safety or the safety of the alleged incompetent requires it, direct that the sheriff forthwith confine said alleged incompetent in some specified place until the further proceedings herein provided for have been had, or until his further order; the judge may also order the detention of said person for such reasonable time as may be necessary for proper medical observation and examination, not to exceed fifteen days, unless extended for good cause; provided, that in all such cases, there shall first be filed with said judge an affidavit setting forth facts which make such detention necessary.

(6) EXAMINING COMMITTEE.—

(a) The judge shall appoint an examining committee consisting of a responsible citizen of this state and two practicing physicians of good professional standing, each of whom shall be a graduate of a school of medicine recognized by the American medical association; provided, however, the two doctors appointed shall not be permanently associated with each other in the practice of medicine and the citizen appointed shall not be associated with or employed by either doctor. The examining committee, within a reasonable time after notice of their appointment, shall proceed to make such examination of said person as will enable it to ascertain thoroughly his mental and physical condition as of the time of the examination. No petitioner shall serve as a member of the examining committee; provided,

however, the provisions of this section shall not apply in those counties where there are not more than four resident practicing physicians. The provisions of this section shall not apply to resident physicians under the jurisdiction of the division of mental health.

(b) If the examining committee considers the person under examination to be incompetent, it shall determine whether the condition is acute or chronic, what the apparent cause is, and what hallucinations, if any, he has, and what the age and propensities of the person examined are. The report shall cover specifically the findings of the committee; it shall be on the form hereinafter prescribed, shall be signed by each member of the examining committee, and shall be transmitted immediately to the judge. If the report of the designated examiners is to the effect that the proposed patient is not mentally ill, the court may without taking any further action terminate the proceedings and dismiss the application.

(7) INDIGENCY OF INCOMPETENT; ATTORNEY'S FEES; WITNESSES.—

(a) The judge shall ascertain, or direct the examining committee to ascertain whether the person being examined is indigent or possesses sufficient available means for his support. This investigation may extend to the possibilities of acquiring property in the future.

(b) At any state of the proceeding the judge may, upon the application of any alleged incompetent who is indigent, appoint an attorney to represent said person, and the compensation of said attorney shall be fixed by the court in an amount not to exceed fifty dollars and shall be paid by the county commissioners out of the general fund of the county.

(c) If the alleged incompetent person is found to be indigent and unable to procure the attendance of witnesses in his behalf, the judge shall upon written application therefor, summon a reasonable number of witnesses for such person, and the witness and mileage fees of said witnesses shall be paid by the county commissioners of the county from its general fund.

(8) NOTICE; PROCESS; TESTIMONY.—In any trial or proceeding under this section, notice of hearing, service of notice or process, the taking of depositions, summoning of witnesses, and the taking of testimony shall be governed by rules pertaining to such matters in the general guardianship law of this state except as otherwise specified in this section.

(9) JUDGMENT.—If the judge, from the report of the examining committee and the hearing, finds that the person under investigation is incompetent, mentally or physically or both, he shall so adjudge, and his judgment shall set forth the nature and extent of the incompetency; but, if he finds that such person is not incompetent he shall dismiss the cause and discharge said person.

(10) EFFECT OF JUDGMENT.—

(a) After the judgment adjudicating a person to be mentally incompetent is filed in the office of the county judge, such person shall be presumed to be incapable, for the duration of such incompetency, of managing his own affairs or of making any gift, contract, or any instrument in writing which is binding on him or his estate. The filing of said judgment shall be notice of such incapacity.

(b) After a judgment adjudicating a person to be physically incompetent is filed in the office of the county judge, such person shall be presumed to be incapable, for the duration of such incompetency, of making any gift inter vivos or any contract which will bind him or his estate. The filing of said judgment shall be notice of such incapacity.

(11) COMMITMENT.—

(a) Whenever any person who has been adjudged mentally incompetent requires confinement or restraint to prevent self-injury or violence to others, the said judge shall direct that such person be committed to the sheriff for safekeeping and the sheriff shall proceed as provided in §394.09.

(b) The order of commitment shall be accompanied by a copy of the report of the examining committee, the judgment of mental incompetency, and copies of such other instruments and records as may be required by the board of commissioners of state institutions; said copies to be forwarded to the director of mental health.

(c) Where, however, the judge finds, from the report of the examining committee or otherwise, that such person does not require confinement or restraint to prevent self-injury or violence to others and that treatment in the Florida state hospital is unnecessary or would be without benefit to such person, he may further adjudge and decree that such person is harmless and that confinement or restraint of such person is unnecessary, and that he be delivered to a guardian of his person or to any responsible person who may offer to assume the care and custody of such harmless person, without cost to the state or county, or, if he is also found indigent and without funds for self-support, that he be delivered to the county commissioners of the county of his residence, for care and maintenance in the manner provided for paupers.

(d) After adjudication and commitment and before admission to the Florida state hospital the county judge for good cause shown may revoke said commitment and discharge the alleged incompetent.

(12) TEMPORARY HOSPITALIZATION AND CONFINEMENT; PROCEDURE FOR ADJUDICATION OF MENTAL INCOMPETENCY; DISCHARGE; TEMPORARY GUARDIAN.—

(a) Any person under a petition for examination to determine his mental competency before the county judge of any county in this state, as provided in this section, upon the recommen-

dation of the examining committee, appointed by the county judge as provided in this section, that such person is, in the opinion of said examining committee, only temporarily incompetent and through specialized care and treatment may speedily be restored to competency, or upon good cause shown to said county judge at the hearing provided for in this section that said person is only temporarily incompetent and through specialized care and treatment may be speedily restored to competency may, by order of the county judge, be certified to an approved county, city or privately operated hospital, with the consent of said county, city or private hospital, or to the director, division of mental health, for admission to one of the state hospitals, and there be subject to intensive care, treatment and observation for a period not to exceed six months.

(b) If at any time prior to the expiration of the six month period it is the opinion of the staff of the hospital where a person admitted pursuant to this subsection is a patient that said person is mentally competent, or that he has regained his status of mental competency, or that said person will not benefit from further hospitalization, the head of the hospital may discharge said person from said hospital and immediately notify the county judge issuing the order of certification in writing, stating the reason for said discharge. Upon receipt of the notice of discharge, the county judge shall file and record the same. The filing and recording thereof in the office of said county judge shall constitute a discharge of the alleged incompetent and terminate the proceedings thereon.

(c) If at any time prior to the expiration of the six month period it is the opinion of the staff of the hospital where a person admitted pursuant to this subsection is a patient, that said person is mentally incompetent and requires further hospitalization and confinement to prevent self-injury or violence to others, the head of the said hospital shall notify the county judge issuing the order of certification to that effect and shall deliver to said county judge a report, signed by not less than two members of the hospital staff, containing their findings of said person's mental condition, prognosis and recommendation that said person be adjudicated incompetent. Upon receipt of such report, said county judge shall forthwith notify the person or persons who filed the original petition upon which the certificate was based, or in his or their absence, such next of kin or legal guardian of such person as may be found in the jurisdiction of the county judge, that said report has been filed and the notice to such person or persons shall state that the mental competency of such person shall be determined from the report of the hospital staff and the report of the original examining committee unless a hearing and the further examination of the alleged incompetent by an examining committee is requested in writing within ten days of receipt of said notice. A copy of the report of the medical staff of the said hospital shall accompany said notice and a copy of the notice and the report of the medical staff of the hospital shall be delivered to the alleged incompetent. The notice herein required to be given to the person or persons who filed the original petition, or in their absence, to next of kin or guardian of the alleged incompetent, shall be by registered or certified mail.

If the head of the hospital is of the opinion that release of the patient at the expiration of the six month period would be unsafe to the patient or others, and if a report praying for the adjudication of said patient is filed, the release of said patient by said hospital may be postponed for a period not to exceed fifteen days, during which time the adjudication proceedings shall be commenced as herein provided, and when commenced, release of said patient shall be postponed until the cause is determined before the county judge.

(d) If a hearing and further examination of the alleged incompetent is requested as herein provided, the county judge shall proceed with the adjudication and commitment procedure as set forth in this section. If a hearing and further examination of the alleged incompetent is not requested within the time allowed by law, they shall be deemed waived and the county judge shall determine from the report of the hospital staff, together with the original petition and the report of the original examining committee, whether or not the alleged incompetent is incompetent and in need of further hospitalization and treatment.

(e) If the judge finds the alleged incompetent to be incompetent he shall so adjudge; but if he finds such person is not incompetent he shall dismiss the cause and order such person immediately discharged. A judgment of incompetency shall have the same effect as that specified in subsection (10). Once a judgment of incompetency has been entered, the judge shall follow the provisions of subsection (11) as regarding the commitment of said incompetent.

(f) The head of a state hospital may, upon filing the report as provided in this subsection, include in such report a request that in the event any hearing is requested on such report that the cause be transferred to the county judge of the county in which the hospital at which the patient is confined is located. Upon receipt of such request the county judge shall, except for good cause shown, forthwith transmit the entire file and record to the proper county judge of the county where the hospital wherein the alleged incompetent is confined is located; provided that all costs and fees incident to such proceedings shall be borne by the county from which the original order of certification was issued.

(g) No person who is senile, addicted to the use of drugs, mentally retarded, addicted to the use of alcohol, convulsively disordered, a nonresident or subject to pending criminal

charges shall be certified to a state hospital under the provisions of this subsection.

(h) After the entry and filing of the order certifying a person for admission to a hospital, such person shall be presumed to be incapable, for the duration of such hospitalization, of managing his own affairs or of making any gift, contract, or any instrument in writing which is binding on him or his estate. Such civil rights of said person are suspended for the period of such hospitalization. The filing of said order of certification shall be notice of such incapacity and suspension of civil rights. Provided that upon the discharge of said person from the hospital, his civil rights shall be deemed automatically restored.

(i) *Temporary guardian.*—

1. After the entry and filing of an order certifying any person to a hospital, the county judge, upon application of any party, may appoint a temporary guardian of the property of such person. Such appointment shall be made only after notice to said person or to one or more members of his family or next of kin as may be required in the discretion of the county judge.

2. From and after the rendition of the order appointing a temporary guardian of the property of such person, the general guardianship laws of this state shall apply to all subsequent proceedings thereon. Any temporary guardian of the property appointed as a result of the filing of such application shall qualify to serve as such by filing his oath, furnishing bond, and making such accounting as shall be required by order of the county judge. The general guardianship laws of this state shall apply to such guardian of the property.

3. Upon the discharge of such person for whom a temporary guardian of the property has been appointed by the hospital as in paragraph (b) provided, the temporary guardian shall forthwith file his final account and, upon approval of the same and surrender of the assets in the hands of the temporary guardian of the property, as ordered by the county judge shall be discharged.

4. Any person for whom a temporary guardian of the property has been appointed, thereafter adjudicated incompetent as in paragraph (c), may have a guardian of the property, or of the person, or of both, appointed under the general guardianship law of this state. Upon such adjudication of incompetency and the appointment of a guardian of the property of such person, the temporary guardian shall forthwith file his final account in the office of the county judge and upon its approval by the county judge and the surrender of the assets in the hands of the temporary guardian as directed by order of the county judge, the temporary guardian shall be discharged.

(13) PAYMENT FOR THE CARE OF COMMITTED INCOMPETENTS.—Reasonable charges and expenses for the care, maintenance and treatment of committed incompetents under any provision of this section and reimbursement for such charges and expenses that may be advanced by the state or any political subdivision thereof, shall be a lawful charge against the person and estate or property, real, tangible or intangible, of said incompetent in this state. Such charges and expenses may lawfully be paid from the estate of the said incompetent by any authorized personal representative, parent, or legal guardian of said incompetent; provided, however, that the payment thereof, in advance or otherwise, shall never be a prerequisite to the care, maintenance and treatment of any committed incompetent under any circumstances whatsoever. In cases of commitments to state hospitals or institutions, such charges and expenses shall be fixed or approved by the board of commissioners of state institutions of Florida. In the case of commitments to private hospitals or to public hospitals or institutions other than state hospitals or institutions, such charges and expenses shall be fixed or approved by the board of county commissioners of the county wherein the patient is or has been committed. Any suit or action instituted by the state or any political subdivision thereof for the recovery of such charges and expenses against the person or his duly authorized personal representative, parent, or legal guardian, shall be brought by the state attorney of the judicial circuit in which said incompetent was committed, or by the office of the attorney general or both such state attorney and office of the attorney general, as the case may be, as party plaintiff.

(14) HOSPITALIZATION BY AN AGENCY OF THE UNITED STATES.—If an individual ordered to be hospitalized pursuant to the previous section is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of such advice from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order him to be placed in the custody of such agency for hospitalization. When any such individual is admitted pursuant to the order of such court to any hospital or institution operated by any agency of the United States within or without the state, he shall be subject to the rules and regulations of such agency. The chief officer of any hospital or institution operated by such agency and in which the individual is so hospitalized, shall with respect to such individual be vested with the same powers as the heads of hospitals within this state with respect to detention, custody, transfer, conditional release, or discharge of patients.

An order of a court of competent jurisdiction of another state, or of the district of Columbia, authorizing hospitalization of an individual by any agency of the United States shall have the same force and effect as to the individual while in this state as in the jurisdiction in which is situated the court entering the order; and the courts of the state or district

issuing the order shall be deemed to have retained jurisdiction of the individual so hospitalized for the purpose of inquiring into his mental condition and of determining the necessity for continuance of his hospitalization, as is provided in this section with respect to individuals ordered hospitalized by the courts of this state. Consent is hereby given to the application of the law of the state or district in which is located the court issuing the order for hospitalization with respect to the authority of the chief officer of any hospital or institution operated in this state by any agency of the United States to retain custody, transfer, conditionally release, or discharge the individual hospitalized.

(15) RESTORATION TO MENTAL COMPETENCY; PROCEDURE.—

(a) In all cases where any person who has been heretofore, or hereafter may be adjudged incompetent, whether such person be confined in the Florida state hospital or has been discharged therefrom, or is in the custody of any person, persons, or committee, it shall be lawful for any relative, husband or wife, or next friend of such person as the case may be, to apply by petition to the county judge of the county where the alleged incompetent was adjudged incompetent, or where such person may be living at the date of such application, to have the mental status of such adjudged incompetent inquired into, as to whether such person is still incompetent and unable to manage his or her affairs; provided, however, that when the alleged incompetent is confined in the Florida state hospital, or any branch thereof, the proceedings shall be brought in the county in which said institution is located.

(b) Such petition shall contain all the facts upon which an order restoring such person to a judicially sound mental condition or status of competency is prayed, and shall be under oath. Such proceeding shall be ex parte and without respondent being named therein; provided however, that service of a copy of said petition shall be served upon the state attorney of the judicial circuit embracing the county in which the cause is brought, and he shall represent the state in such cases. In the event a legal guardian, as provided under the laws of Florida, has been appointed, of the person or property of said adjudicated incompetent, that then and in that event service of a copy of said petition for restoration shall be made upon said legally appointed guardian of the person or property of the adjudicated incompetent. Proof of service of copies of the notice, certificates, and petition shall be by affidavit or acknowledgment to be filed with the court.

(c) Upon the filing of such petition, the county judge of such county shall cause the adjudicated incompetent to be brought before him at an early date, after reasonable notice to the state attorney and legal guardian of said adjudicated incompetent; the time of said notice to be fixed by the county judge, at which time the issue in the said petition shall be tried, unless for the cause of justice the time shall be enlarged in the discretion of the court. In all other respects the hearing before the county judge on said petition shall be had in the same manner as the hearing provided in subsection (4) of this section.

(d) If upon the hearing of such cause it shall appear to the court that the adjudicated incompetent is of sound mind and is capable of managing his or her own affairs, the county judge hearing such cause shall immediately issue his order herein, which order shall be to the following effect:

1. That said person is of sound mind judicially and is capable of managing his own affairs.
2. That said person be immediately restored to his personal liberty.
3. That the guardian, committee, or custodian, as the case may be, of such person, shall, within thirty days, or such time as the county judge may fix, make full settlement with such person so restored to the status of judicial competency of all his or her property in their or his hands, custody or control, as the case may be, under penalty of contempt of court and the punishment thereof.

(e) The county judge entering such order shall forthwith cause a certified copy thereof to be forwarded to the office of the county judge of the county where said incompetent was originally committed, and said certified copy of order of restoration shall be filed in the original proceedings of record in said county; and a certified copy thereof shall be forwarded to the office of the superintendent of the Florida state hospital.

(f) The petitioner shall be entitled to an appeal to the appropriate district court of appeal in the time and in the manner prescribed by the Florida appellate rules, or to the supreme court if authorized by §4, Art. V of the state constitution from a final order of the county judge entered pursuant to this subsection or subsections (9), (12), (16) or (17) of this section.

(16) RESTORATION TO MENTAL COMPETENCY; BY CERTIFICATE.—

(a) *Certificate.* When a person because of mental incompetency has been committed to the Florida state hospital, or to any institution known as a United States veterans bureau hospital, mentioned in §293.16, and when said person has been under observation at the said hospital or institution for a period of thirty days or more, if a majority of the medical staff of said hospital or institution who are graduates of schools recognized by the American medical association, are of the opinion that said person has recovered his reason and is capable of managing his own affairs, then the superintendent or the manager of said hospital or institution may issue to him a certificate so stating, signed by the three members of the medical staff of the said hospital or institution. Said certificate shall be attested by the superintendent or manager of the said hospital

or institution or someone designated by such superintendent or manager, and said certificate shall be admissible in evidence in any hearing for the restoration to sanity of such person and shall be prima facie proof that such person is sane.

(b) *Automatic restoration.* — Upon issuing the certificate as provided in the foregoing paragraph, the original of said certificate shall be sent to the office of the county judge where said patient to whom said certificate was issued was originally committed. Upon receipt of said certificate it shall be docketed and filed in the file of said person and the county judge shall notify the legally appointed guardian of said discharged person, if there be one appointed, and the state attorney of the judicial circuit embracing the county that said person has been discharged from the state hospital with a certificate of competency and said state attorney shall represent the state in this matter. The state attorney shall file any objections he might have to the restoration to competency of the person named in the certificate within twenty days of his receiving notice of said discharge; provided, the state attorney may prior to the expiration of the twenty day period file a waiver of objection. If no objections are filed within the time allowed herein or if a waiver of objection is filed, the person named in said certificate shall automatically be restored to competency on the basis of said certificate and an order to that effect shall forthwith be entered by the county judge. Provided, however, no fee shall be charged by the county judge for such proceedings. In the event an objection to such restoration is made by the state attorney, a copy of said objections shall be served by registered or certified mail upon the person named in said certificate or upon his next of kin, if known, or legal guardian if one has been appointed, together with a notice that said person or his next of kin, if known, or legal guardian if one has been appointed must institute restoration proceedings which shall be the same in substance as those proceedings provided in subsection (15) of this section.

(c) *Attorneys.* In cases of indigency the court, upon application of the incompetent, may appoint an attorney to represent faithfully such incompetent before the court. The attorney shall be entitled to a reasonable fee not to exceed fifty dollars, to be allowed by the county judge and paid by the county commissioners of the county from the county's general fund.

(17) REMOVAL OF PHYSICAL INCOMPETENCY.—

(a) *Petition.* After a judgment of physical incompetency has been entered, if the person affected thereby shall at any time thereafter become able to care for his property, he or one or more of his family or any of his next of kin may petition the court having jurisdiction of his case, setting forth the recovery of such incompetent and the reasons why he should be restored to his former status.

(b) *Notice and hearing.* The judge shall set a time for the hearing of such petition, and reasonable notice of the hearing shall be given to the incompetent, if he is not the petitioner, and to one or more of the members of his family, if any, and, if he has no family, or next of kin, known to the county judge to be within his jurisdiction, then such notice shall be given as the judge may direct.

(c) *Order.* After the hearing, if the judge shall find that such person has regained the ability to care for his property, an order to that effect shall be entered, and thereupon, such person, so far as his person and property are concerned, shall occupy the same status as though he had never been adjudicated incompetent. If a guardian has been appointed for him during such physical incompetency, such guardian shall immediately render his accounting to the court having jurisdiction and apply for his discharge as provided by the general guardianship laws of this state.

(18) FORMS.—The board of commissioners of state institutions shall cause to be prepared and prescribe forms for applications, notices, medical reports, orders of commitment, and such other forms as may be found necessary or convenient, in administering this law. The board of commissioners of state institutions shall cause said forms to be printed and distributed to the county judges of this state.

(19) APPLICATION OF THIS SECTION.—The provisions of this section shall be cumulative to all other laws on the restoration of sanity.

(20) CRIMINAL COMMITMENTS.—All persons committed to any of the state hospitals by order of any criminal court shall be liable for the payment of care and maintenance charges in the same manner and at the same rate as persons who have been committed by a county judge in a noncriminal proceeding. Such charges shall be paid from the estate of such mentally ill person admitted under a criminal court order and shall be a lawful charge against the estate or property, real, tangible or intangible, of said mentally ill person wheresoever situate; provided, however, the provisions of this subsection shall be applicable only to persons committed by a court having criminal jurisdiction prior to entry of any order of sentence, but shall not apply to persons who have been committed to the state hospitals while serving a criminal sentence.

History.—§2, ch. 4357, 1895; §1, ch. 5264, 1903; GS 1201; RGS 2309; CGL 3655; repealed by §6, ch. 22000, 1943. §3, ch. 23157, 1945; §3, ch. 29909, 1955; (11)(a) §1, ch. 31403, 1956; (6)(a) §§1, 2, ch. 57-231; (11)(a), (b) §12, ch. 57-317; (15)(f) n. §1, ch. 57-197; (11) (a) §13, ch. 59-1; (12) §1, ch. 59-42; (16) (b) §1, ch. 59-155; (6)(a) §1, ch. 63-498; (15)(f) §27, ch. 63-559; (20) n. §1, ch. 63-559.

394.23 Compensation for services.—For the services required under the provisions of this chapter, compensation may be allowed as follows:

(1) The fees of the county judge shall be the sum of seven dollars and fifty cents for each case in which it is sought to have a person adjudicated to be physically or mentally inca-

pacitated, and five dollars in each case where it is sought to remove the physical or mental incapacity of a person previously so adjudicated.

(2) Each examining physician on the committee shall receive not less than ten dollars and not more than twenty-five dollars each, and the other committeemen shall receive two dollars each. Each such physician shall receive the minimum sum herein provided except where the file of the proceeding discloses that the time required of the physician in the proceeding demands a greater sum; and in such event, the county judge shall certify to the board of county commissioners the sum to be paid to the physician, not to exceed the maximum herein provided.

(3) The sheriff shall receive such compensation as may be deemed reasonable by the board of county commissioners, but not to exceed that allowed for service of summons.

(4) Subject to the exceptions set forth in succeeding subsections (5) and (6) hereof, all accounts accruing in pursuance of this chapter shall be approved and paid by order of the board of county commissioners of the county wherein the incapacitated person resides.

(5) That when proceedings contemplated by this chapter are had in Union county, with respect to a person who is a prisoner at the state prison farm, all accounts accruing in pursuance of this chapter and with respect to such proceedings shall be paid by the comptroller of the state, upon requisition therefor of the county judge of Union county, approved by the superintendent of said institution, and in such form as the comptroller shall prescribe, and the amount thereof in each instance shall be charged by the comptroller to the funds appropriated for the necessary and regular expense of said institution; and there is hereby appropriated from such funds sufficient amounts to pay said accounts.

(6) That when, under reciprocal or other agreements or understandings, delivery of a resident of Florida, who has been held as a mental incompetent in an institution of another state or the federal government, is accepted by the State of Florida, and proceedings as contemplated by this chapter are required to be held in Gadsden county, with respect to any such person so delivered to this state, in order that such person, if found incompetent, may properly be committed to Florida state hospital, all accounts accruing in pursuance of this chapter in connection with such proceedings shall be paid by the comptroller of Florida upon requisition of the county judge of Gadsden county, approved by the superintendent of said institution, and in such form as the comptroller shall prescribe, and in each instance the comptroller shall charge the amount thereof to the funds appropriated for the necessary and regular expense of Florida state hospital; and there is hereby appropriated from such funds sufficient amounts to pay said accounts.

History.—§2, ch. 20504, 1941; §4, ch. 23157, 1945; §1, ch. 26341, 1949; sub. §(2) am. §1, ch. 28155, 1953.
cf.—§30.23 Fees of sheriffs and constables.
§394.09 Custody and transportation of mentally ill persons.

394.24 Minimum age of person committed.—(1) COMMITMENT OF CHILDREN; PROCEDURE.—A child between twelve and fifteen years of age may be committed to the state hospital under procedures as provided in this section.

(a) By transfer from another state institution of the state, who, following the commitment of such person to such other state institution, has actually been found to be mentally ill.

(b) Any child committed pursuant to subsection (1) shall be committed as provided in §394.22, and upon diagnosis by a practicing psychiatrist of good professional standing, a graduate of a school of medicine recognized by the American medical association who shall certify that such child is psychotic. The psychiatrist must be one of the members of the examining committee. Children who are mentally defective or suffering from convulsive disorder are not eligible for commitment.

(2) RELEASE FROM HOSPITALIZATION.—If, after observation at said hospital, a majority of the psychiatric staff of said hospital are of the opinion that the child is able to return to the community such child shall be released to his parent, guardian, juvenile court judge or county judge.

History.—§3, ch. 20504, 1941; §1, ch. 57-836.

394.25 Persons receivable as patients.—No person shall be received as a patient in the Florida state hospital except upon a commitment duly issued by the judge under whom the examination of such person has been conducted, or unless the commitment so issued shall specifically commit the said person to the Florida state hospital.

History.—§4, ch. 20504, 1941.
cf.—§394.10 Admission to institutions of pay patients.
§917.01 Examination of defendant's mental condition to determine whether he shall be tried.

394.251 Acceptance, examination and commitment of Florida residents from out of state mental health authorities.—

(1) Upon request of the state mental health authorities of another state, the Florida division of mental health is hereby authorized to accept as patients, for a period of not more than fifteen days, persons who are and have been bona fide residents of Florida for a period of not less than one year.

(2) Any person received pursuant to the preceding subsection shall be examined by the staff of the state hospital where such patient has been accepted which examination shall be completed during the said fifteen day period.

(3) If upon examination such person is found to be incompetent, a petition for commitment pursuant to the provisions of this chapter shall be filed with the county judge of the county wherein the state hospital receiving the patient is located or the county whereof the patient is a resident.

(4) During the pendency of the examination period herein provided for and the pendency of the commitment proceedings herein provided for, such person may continue to be de-

tained by the state hospital unless the county judge having jurisdiction enters his order to the contrary.

History.—§1, ch. 63-455.

394.26 Persons not receivable as patients; chronic alcoholics.—Chronic alcoholics as such and other persons not demonstrating a psychosis shall not be committed to or received as patients for treatment in the Florida state hospital, nor shall persons be committed to or received as patients for treatment in the Florida state hospital by reason alone of senility.

History.—§5, ch. 20504, 1941.

394.27 Residence requirements.—

(1) No person shall be committed to or received as a patient for treatment in a Florida state hospital, who has not been a bona fide resident of the state continuously for one year immediately preceding the examination of said person under the provisions of §394.22. Provided, however, that any person not a bona fide resident of the state may be committed to the director of the division of mental health, for the purpose of transferring said person back to the state of his residence. Upon the admission of a nonresident person to a state hospital, the director of the division of mental health shall forthwith ascertain the state of residence of said person and take all steps necessary to transfer said person to the state of his residence. All expenses incident to effecting said transfer shall be borne by the county wherein said nonresident is committed, provided, however, before any nonresident is committed under the provisions of this section, the county wherein said nonresident is found shall make a diligent effort to contact the spouse, parents or next of kin of said nonresident and request that they transfer or cause said nonresident to be transferred back to his state of residence.

(2) If after a diligent effort, a nonresident person cannot be transferred to the state of his residence, or if said state will not accept said person, and if it appears that said person is in need of hospitalization and is likely to injure himself or others if he is not confined, then in the discretion of the director of the division of mental health, said nonresident may be allowed to remain in said state hospital until such time as he can be transferred to the state of his residence or is no longer in need of confinement.

History.—§6, ch. 20504, 1941; §1, ch. 59-108.

394.271 Additional residence requirements.—For the purposes of this chapter, no nonresident person who has been adjudicated mentally incompetent in a judicial proceeding in any state or territory shall be capable of establishing residence in this state so long as said person remains an adjudicated mentally incompetent.

History.—§1, ch. 59-53.

394.39 Chief psychiatrist; qualifications; assistants.—The board of commissioners of state institutions is hereby authorized and directed to employ with all reasonable promptness a chief psychiatrist, and additional psychiatrists who shall have fully recognized and accredited training and experience in the practice of medicine and psychiatry, who shall be attached to the medical staff of the Florida state hospital at Chattahoochee. The chief psychiatrist so employed shall be a reputable well educated physician, a graduate of a recognized class A medical school (as classified by the American medical association, and the association of American medical colleges), and a certified psychiatrist, and shall have had at least five years experience in the actual practice of psychiatry at least two years of which must have been in an institution for care and treatment of the mentally ill. Any of such additional staff members shall also be available for assisting at any branch of the Florida state hospital, or any other state operated mental institution.

History.—Comp. §1, ch. 25374, 1949.

394.40 Training program to be established.—As soon as a sufficient number of additional staff members as above mentioned have been acquired the superintendent and chief physician and the chief psychiatrist of the Florida state hospital shall take steps for setting up a training program that will meet the requirements of the American psychiatric association for training residents, internes, psychologists and other psychiatric staff members and also for training attendants in the most advanced and progressive psychiatric methods of treating mentally ill patients.

History.—Comp. §2, ch. 25374, 1949.

394.41 Dieticians; training.—The food served for the mentally ill being a factor in any such hospital, the board and the superintendent are directed to employ an adequate number of dieticians and provide any necessary training of personnel in the preparation of food.

History.—Comp. §3, ch. 25374, 1949.

394.42 Administration; rules and regulations.—The board of commissioners of state institutions is hereby authorized and directed to take such action and pass such rules and regulations as may be necessary to carry out promptly and effectively the provisions of §§394.39-394.43, to the end that improved and more adequate facilities for treating the patients in state institutions for the mentally ill, and such board is hereby further authorized to transfer on the recommendation of the medical and psychiatric staff of the Florida state hospital patients from one institution for mentally ill to another of like nature.

History.—Comp. §5, ch. 25374, 1949.

394.43 Mental hospitals, establishing; scope of program.—The establishment of a mental hospital at Dorr field and Carlstrom field near Arcadia, hereafter designated and known as the G. Pierce Wood memorial hospital is confirmed

and approved. Such hospital is to be a separate and distinct unit under the division of mental health and is to be included in the improved and extended treatment program provided for in §§394.39 through 394.43.

History.—§6, ch. 25374, 1949; §13, ch. 57-317.

394.45 Writ of habeas corpus.—Any individual detained pursuant to any section of this chapter shall be entitled to the writ of habeas corpus upon proper petition by himself or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which he is detained.

History.—§1, ch. 63-121.

PART II—CHILDREN'S PSYCHIATRIC CENTERS

394.50 Children's division established.—There is established in this state a children's psychiatric center with an initial capacity of not less than forty-eight beds, to be located on the grounds of the south Florida state hospital in Broward county, and such other locations as may hereafter be designated by law. Said children's center shall be known as the children's division of the south Florida state hospital and shall be a part of the south Florida state hospital. Said center shall be under the supervision of the director of the division of mental health.

History.—§1, ch. 59-383.

394.51 Employment of director of children's division, physicians and persons necessary.—The superintendent of the south Florida state hospital shall employ a director of the children's division subject to the approval of the director of division of mental health and the board of commissioners of state institutions. The director of the children's division shall employ such physicians and clinical personnel necessary for the proper management of the center subject to the approval of the superintendent of the south Florida hospital.

History.—§2, ch. 59-383.

394.52 Powers and duties of director and other employees.—The superintendent of the south Florida state hospital shall prescribe the powers and duties of the director and all other employees, subject to approval of the director of division of mental health.

History.—§3, ch. 59-383.

394.53 Compensation of director and employees.—The compensation of such director and all other employees shall be prescribed by the superintendent of the south Florida state hospital and subject to the approval of the director of division of mental health.

History.—§4, ch. 59-383.

394.54 Bond may be required of any employees.—The board of commissioners of state institutions may require bond and sureties of any employee including the director, conditioned as said board may prescribe.

History.—§5, ch. 59-383.

394.55 Removal of employees.—The director shall be removable for good cause by the superintendent of the south Florida state hospital with the approval of the director of division of mental health. Other employees shall be removed at the pleasure of the director of the children's division subject to approval of the superintendent of the south Florida state hospital.

History.—§6, ch. 59-383.

394.56 Admission to center voluntary; procedure; etc.—

(1) Application for admissions, on forms prescribed by the director of division of mental health and approved by the board of commissioners of state institutions shall be made to the director of the division of mental health or his designated authority. Provided, however, that every application shall be signed by the parent or legal guardian of the applicant or in absence of such, the person or agency having custody of said applicant and the application shall be accompanied by a certificate of at least one licensed physician of good professional standing and a graduate of a school of medicine recognized by the American medical association, and shall state that the applicant has been examined by said physician and it is the opinion of said physician that the applicant is severely emotionally disturbed or psychotic and is in need of and will benefit from intensive care and treatment at the children's center. Said certificate shall also contain a diagnosis and history of the applicant's condition. Provided the certificate shall be based on an examination conducted not less than fifteen days prior to the date of the application.

(2) Upon receipt of the application the director of division of mental health or his designated authority shall, on the basis of the certificate of examination, reject or accept the applicant as a patient at the center. If the ap-

plication is accepted, the applicant shall be admitted to the center as space and facilities shall become available. The director of division of mental health or his designated authority shall have the sole discretion of determining the order of admissions of applicants based on the type of case, the urgency, and facilities available. Provided, however, the ability to pay shall never be a prerequisite to admissions or care and treatment at the center.

(3) Any child admitted to the center under this section whose parent or legal guardian requests his release in writing shall be forthwith released except that if a majority of the medical staff of the center is of the opinion that the release of the child would be unsafe for the child or others, the superintendent may file a petition in the office of the county judge of the county where the patient is situate requesting the certification of said child to the center pursuant to the procedure set forth in this law, and said petition shall be so filed within the next succeeding business day after the request for release is made. Upon filing said petition the patient's release shall be determined by final order of said court.

History.—§7, ch. 59-383.

394.57 **Admissions, involuntary, procedure, etc.**—

(1) PETITION.—Whenever any child in this state is believed to be severely emotionally disturbed or psychotic a written petition under oath may be made to the county judge of the county wherein said child resides or may be found for judicial inquiry into the mental condition of said child. Every petition so filed shall be accompanied by a report of at least one qualified physician of good professional standing and a graduate of a school of medicine recognized by the American medical association, stating that the child named in the petition has been examined by said physician and said report shall contain the results of the examination, a diagnosis and history of the child's mental and physical condition, and a statement of belief that the child would benefit from intensive care and treatment at the children's division of the south Florida state hospital.

(2) WHO MAY FILE PETITION.—The petition may be filed by: the mother, father or legal guardian of the said child; any three citizens of the state who are acquainted with the child, provided one such citizen shall be a qualified physician who has examined the mental condition of the child named in the petition.

(3) NECESSARY ALLEGATIONS.—Every petition shall allege the name, approximate age, address, and nature of the disability of the alleged mentally ill child. It shall also allege the names and addresses of his parents or legal guardian, if such be known, and shall pray for an order certifying said child for admission to the children's division of the south Florida hospital.

(4) NOTICE, HEARING.—Whenever a petition is filed the county judge shall set an immediate or very early hearing on the petition. Reasonable notice shall be given in writing to the petitioner and to one or more of the parents or legal guardian, if such be known, of the child named in said petition, notifying them that said hearing will be held at the time and place specified in said notice. All hearings shall be conducted in an informal manner, as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the child. The court will receive all relevant evidence and the child and his parents or legal guardian shall have an opportunity to be represented by counsel and if no counsel is provided the court may appoint counsel.

(5) EXAMINATION.—The parents or legal guardian at any time before the hearing or the judge may request further examination of the alleged severely emotionally disturbed or psychotic child and if such request is made the judge shall appoint an examining committee composed of two practicing physicians of good professional standing, each of whom shall be a graduate of a school of medicine recognized by the American medical association. Within a reasonable time after their appointment the committee shall examine the child named in the petition and upon the completion of said examination forthwith file a written report of said examination. Said report shall contain the results of the examination, a diagnosis and history of the child's mental and physical condition and a statement as to whether or not the committee believes said child will benefit from intensive care and treatment at the children's division.

(6) CERTIFICATION.—On the basis of the petition and original examination report and examining committee's report, if any, and such other evidence and testimony as may be presented, the judge shall determine whether or not the child named in the petition is severely emotionally disturbed or psychotic and will benefit from intensive care and treatment at the children's division. If the judge finds the child is severely emotionally disturbed or psychotic and will benefit from intensive care and treatment at the center, he shall certify the child for admission to the center; provided, however, no child shall be admitted to the center without the consent of the director of the children's division; if he finds said child is not severely emotionally disturbed or psychotic and will not benefit from intensive care and treatment at the center, said judge may dismiss the cause or make such other order as he may deem in the best interest of said child.

History.—§8, ch. 59-383.

394.58 **Records.**—The order of certification shall be forwarded to the director of the division of mental health or his designated authority, together with a copy of all medical examinations.

History.—§9, ch. 59-383.

394.59 Payment for care of certified children.—Whenever the parent, guardian or estate of the child is able to do so, the cost of care and maintenance in whole or in part shall be borne by said parent, guardian or estate; the amount and payment thereof to be determined and arranged by the board of commissioners of state institutions from time to time as conditions and circumstances may warrant. All payments hereunder shall be made to the superintendent and remitted by him to the state treasurer at stated intervals and deposited to general revenue fund. The expenses of certification and transportation to and from and admission to the center shall be borne by the county from which the child is admitted, except in cases of paying children in which case such expenses shall be borne by the parent, guardian or estate of said child. Whether or not a child is admitted to the center on a paying basis shall in no way influence the treatment of said child; every child at the center is to be treated solely on his merits and according to his mental and physical condition.

History.—§10, ch. 59-383.

394.60 Transfer of patients.—When it is made to appear to the director of the division of mental health that any child at the center is not responding to or benefiting from the intensive care and treatment at the center and that such child is in need of further care and treatment and would be more suitably treated and cared for at one of the Florida state hospitals or sunland training center, said director of mental health may order such child transferred from the center to sunland training center or to one of the state hospitals, as the case may be, and thereupon said child shall be received and treated and cared for in Florida state hospital or sunland training center, as the case may be. Provided, however, all transfers to sunland training center shall first be approved by the board of commissioners of state institutions.

History.—§11, ch. 59-383.

394.61 Discharge.—

(1) When a child has been a patient at the center and there subject to care and treatment, if the director upon advice of his medical staff is of the opinion that said child is cured or sufficiently improved or for other reasons will no longer benefit from care and treatment at the center, the director may issue a certificate of discharge and discharge said child from the center. The original of said certificate shall be forwarded to the county judge who originally certified said child and copy shall be sent by registered or certified mail to the parent or guardian of the child. Upon the filing and docketing said certificate, the case shall be terminated. In the event the parent or legal guardian cannot be found or refuses to accept custody of said discharged child, the child shall be placed in the care and custody of the juvenile court of the county from which the child was originally admitted, as a dependant child.

(2) In addition to the discharge procedure contained in subsection (1), the director of the division of mental health, together with the superintendent of the south Florida state hospital, may make such rules and regulations as they deem necessary to provide for the trial visits or vacation leaves of patients at the center who are not sufficiently improved to be discharged from the center.

History.—§12, ch. 59-383.

394.62 Age limit.—Any child between the ages of five to fourteen years, inclusive, is eligible for admission to the children's center as provided in Part II of this chapter.

History.—§13, ch. 59-383.

CHAPTER 395

HOSPITAL LICENSING AND REGULATION

395.01 Definitions.—As used in this chapter:

(1) "Hospital" means any establishment that offers:

(a) Services more intensive than those required for room, board, personal services and general nursing care; and

(b) Facilities and beds for use beyond twenty-four hours by ten or more nonrelated individuals requiring diagnosis, treatment or care for illness, injury, deformity, infirmity, abnormality disease or pregnancy, and regularly makes available at least: clinical laboratory services, diagnostic x-ray services, treatment facilities for surgery, or obstetrical care or other definitive medical treatment of similar extent, and one registered nurse on duty at all times; provided, however, that the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing in the practice of the religion of such church or denomination.

(2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(3) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

(4) "Licensing agency" means the state board of health.

History.—§1, ch. 24091, 1947; §11, ch. 25035, 1949.
Am. (1), (5) R. by §§1, 2, ch. 57-80.

395.02 Purpose.—The purpose of this chapter is to provide for the development, establishment and enforcement of standards:

(1) For the care and treatment of individuals in hospitals and,

(2) For the construction, maintenance and operation of hospitals, which, in the light of advancing knowledge, will promote safe and adequate treatment of such individuals in hospitals.

History.—§2, ch. 24091, 1947.

395.03 Licensure.—After December 31, 1947, no person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this state without a license under this law.

History.—§3, ch. 24091, 1947.

395.04 Application for license; disposition of fees; expenses.—

(1) An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for license shall be accompanied by a license fee of fifteen dollars, payable to the state board of health, to be deposited with the state treasurer into the general revenue fund.

(2) The expenses of the state board of health and the advisory hospital council incurred in carrying out the provisions of this chapter shall be paid from moneys appropriated for that purpose. The state board of health shall include a sufficient amount in its legislative budget request to properly carry out the provisions of this chapter.

History.—§4, ch. 24091, 1947; §1, ch. 61-33.

395.05 Issuance and renewal of license.—Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and hospital facilities meet the requirements established under this law. A license, unless sooner suspended or revoked, shall be renewable annually upon payment of a fee of ten dollars, payable and expendable as set out in §395.04, and upon filing by the licensee, and approval by the licensing agency, of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulations. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

History.—§5, ch. 24091, 1947.

395.06 Denial or revocation of license; hearings and review.—The licensing agency after notice and opportunity for hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law.

Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and

fixing a date not less than thirty days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty days after it is so mailed or served, unless the applicant or licensee, within such thirty day period, appeals the decision to the court, pursuant to §395.14.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency with the advice of the advisory hospital council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to §395.14. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either part.

History.—§6, ch. 24091, 1947.

395.07 Rules, regulations, and enforcement.—The licensing agency with the advice of the advisory hospital council, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals or different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare. However, it is understood that no rule, regulation or standard shall be promulgated hereunder by the licensing agency, with the advice of the advisory hospital council, which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein; provided, that such school or system of practice is recognized by the laws of this state; and provided, further, that nothing in the preceding part of this sentence shall be construed to limit the powers of the licensing agency, with the advice of the advisory hospital council, to provide and require minimum standards for the maintenance and operation of those hospitals and the treatment of patients in those hospitals which receive federal aid, to meet minimum standards related to such matters in said hospitals which may now or hereafter be required by appropriate federal officers or agencies in pursuance of federal law or promulgated in pursuance of federal law.

History.—§7, ch. 24091, 1947.

395.08 Effective date of regulations.—Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed one year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards.

History.—§8, ch. 24091, 1947.

395.09 Inspections and consultations.—The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary. The licensing agency may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the licensing agency for preliminary inspection and approval or recommendation with respect to compliance with the regulations and standards herein authorized. Necessary conferences and consultations may be provided.

History.—§9, ch. 24091, 1947.

395.10 Advisory hospital council.—The governor shall appoint an advisory hospital council to advise and consult with the licensing agency in carrying out the administration of this chapter. The council shall consist of the state health officer who shall serve as chairman ex-officio, and six members and shall include representatives of nongovernmental organizations or groups, and of state agencies, concerned with the operation, construction and utilization of hospitals, including representatives of the consumers of hospital services. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term and the terms of office of the members first taking office shall expire, as designated at the time of appointment, one at the end of the first year, one at the end of the second year, two at the end of the third year, and two at the end of the fourth year after the date of appointment. Council members while serving on the business of the council shall be reimbursed for traveling expenses as provided in §112.061. The council shall meet as frequently as the chairman deems necessary, but not less than once each year. Upon request by three or more members, it shall be the duty of the chairman to call a meeting of the council.

History.—§10, ch. 24091, 1947; §19, ch. 63-400.

395.11 Functions of advisory hospital council.—The advisory hospital council shall have the following responsibilities and duties:

(1) To consult and advise with the licensing agency in matters of policy affecting administration of this chapter, and in the development of rules, regulations and standards provided for hereunder.

(2) To review and make recommendations with respect to rules, regulations and standards

authorized hereunder prior to their promulgation by the licensing agency as specified herein.

History.—§11, ch. 24091, 1947.

395.12 Information confidential.—Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this law, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure.

History.—§12, ch. 24091, 1947.

395.13 Annual report of licensing agency.—The licensing agency shall prepare and publish an annual report of its activities and operations under this law.

History.—§13, ch. 24091, 1947.

395.14 Judicial review.—Any applicant for license or the state acting through the attorney general, aggrieved by the decision of the licensing agency after a hearing, may file a petition for the issuance of a writ of certiorari in the circuit court of the county in which the hospital is located or to be located and serve a copy thereof upon the licensing agency. Thereupon the licensing agency shall promptly certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. The proceeding for certiorari shall be had in the manner and within the time provided by the Florida appellate rules. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

History.—§14, ch. 24091, 1947; §11, ch. 25035, 1949; §36, ch. 63-512.

395.15 Penalties.—Any person establishing, conducting, managing, or operating any hospital without a license under this law shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars for the first offense and not more than five hundred dollars for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

History.—§15, ch. 24091, 1947.

395.16 Injunction.—Notwithstanding the existence or pursuit of any other remedy, the licensing agency, may in the manner provided by law upon the advice of the attorney general who shall represent the licensing agency in the proceedings maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license under this law.

History.—§16, ch. 24091, 1947.

CHAPTER 396

REHABILITATION OF ALCOHOLICS

396.011 Definitions.—As used in this chapter:

(1) "Board" means the board of commissioners of state institutions.

(2) "Rehabilitation center" means the Florida rehabilitation center for alcoholics.

History.—Comp. §1, ch. 28134, 1953.

396.021 Duties of board.—

(1) It shall be the duty of the board to formulate and effect a plan for the prevention, care, treatment and rehabilitation of alcoholics.

(2) In formulating and effecting the plan defined in subsection (1), the board shall:

(a) Furnish such aid to alcoholics in any manner which, in its judgment will afford the greatest benefit to said alcoholics, and shall have the power in this connection to make suitable arrangements with hospitals, or clinics which, in its discretion shall be deemed advisable to afford proper treatment, care or rehabilitation of alcoholics.

(b) Set up and operate out-patient clinics in the various geographic areas of the state and cooperate with and assist similar clinics operated by other nonprofit agencies.

(c) Carry on an educational program on alcoholism for the benefit of the general public, chronic alcoholics or professional persons who care for or may be engaged in the care and treatment of alcoholics.

(d) Cooperate with properly qualified private doctors of medicine in making arrangements for the treatment and care of indigent alcoholics, and may arrange for payment for hospital care on a cost basis for such indigent alcoholics.

(3) The board shall employ an administrator to assist it in carrying out the purposes of this chapter. Such administrator shall post such bond, perform such duties and draw such compensation as shall be prescribed by the board.

(4) The board shall employ such other persons as may be necessary to carry out the provisions of this chapter and prescribe their duties and compensation.

History.—Comp. §2, ch. 28134, 1953.

396.031 Rehabilitation center; construction, location.—

(1) The board shall forthwith construct and equip a rehabilitation center for alcoholism on lands owned in fee simple by the state and unencumbered, situate in Highlands county, described as:

Lots two and three, block one; the north two hundred feet of lots three and four, block five together with lots one and two of the said block five; all of blocks two, three, six, seven, ten and eleven all in section thirty-four, township thirty-three south, range twenty-eight east as per the recorded map of the Avon park township, together with approximately one hundred acres of land lying east of and contiguous to the hereinbefore specifically described lands, and lying and being between public road known as the Sebring highway and the right-of-way of the Seaboard airline railway, as now located and established.

(2) The board is empowered to spend six thousand five hundred dollars to be used within the next year to purchase with the moneys deposited with the state treasurer and credited to the account of the Florida alcoholic rehabilitation fund five acres of land located adjacent to the present site of the rehabilitation center, and take a deed thereto in the name of the state. If additional money is required such sums must come from private interests.

(3) The board of commissioners of state institutions shall forthwith construct and equip an addition to the present facilities located at the rehabilitation center, Avon Park. The addition shall provide facilities for a minimum of twenty-five additional beds and necessary equipment.

The board shall expend not more than one hundred twenty-five thousand dollars, and the sum of one hundred twenty-five thousand dollars is appropriated out of the Florida alcoholic rehabilitation trust fund for the payment of said addition and equipment.

History.—§3, ch. 28134, 1953; §1, ch. 29811, 1955; (3) n. §1, ch. 63-563.

396.041 Same; operation, designation.—Immediately upon completion of said rehabilitation center provided in §396.031, the board shall staff, maintain and operate said rehabilitation center which shall be known as the "Florida rehabilitation center for alcoholism."

History.—Comp. §4, ch. 28134, 1953.

396.051 Same; fees for care. — The board shall prescribe reasonable fees to be charged for treatment and care in said rehabilitation center except as to indigent persons, in which case, the board shall receive such indigents under rules and regulations as the board shall promulgate.

History.—Comp. §5, ch. 28134, 1953.

396.061 Admissions to center; qualifications.

—No person shall be received for treatment and care in said rehabilitation center who has not been a bona fide resident of the state continuously for one year immediately preceding admission thereto. All such admissions shall be on a voluntary basis upon payment of such fees for services as shall be set by the board as provided in §396.051.

History.—Comp. §6, ch. 28134, 1953.

396.071 Rules and regulations.—The board shall, with the advice of the advisory council, promulgate, adopt, amend and enforce such rules and regulations as may be deemed necessary to carry out the purposes of this chapter.

History.—Comp. §7, ch. 28134, 1953.
cf.—§396.101 Advisory council.

396.081 Authority to accept gifts. — The board is hereby authorized to accept, receive, administer and expend any money, material or other gifts or grants of any description.

History.—Comp. §8, ch. 28134, 1953.

396.091 To cooperate with federal government.—The board is hereby authorized and directed to cooperate with the federal government or any of its agencies in the establishment, maintenance, operation and control of the said Florida rehabilitation center for alcoholism. This section shall be liberally construed as authorizing the said board to cooperate with the federal government, or any of its agencies, to the fullest possible extent of any federal law, rule or regulation, except where such cooperation is prohibited by organic law.

History.—Comp. §9, ch. 28134, 1953.

396.101 Advisory council; membership, term, organization.—The governor shall appoint an advisory council to advise and consult with the board in carrying out the administration of this chapter. The council shall consist of one doctor of medicine, one person experienced in hospital administration and three other members who shall be representatives of nongovernmental organizations or groups concerned with the prevention treatment, care and rehabilitation of alcoholics. As soon as practical after the appointment of the council members, the members thereof shall meet and select from among their number a chairman. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term and the terms of office of the members first taking office shall expire, as designated at the time of appointment, one at the end of the first year, one at the end of the second year, one at the end of the third year, and two at the end of the fourth year after the date of appointment. Council members while serving on the business of the council shall be reimbursed for traveling expenses as provided in §112.061. The council shall meet as frequently as the chairman deems necessary, but not less than once each year. Upon request by three or more members, it shall be the duty of the chairman to call a meeting of the council.

History.—§10, ch. 28134, 1953; §19, ch. 63-400.
cf.—§112.061 Travel expenses of state officers and employees.

396.111 Same; duties.—The advisory council shall have the following responsibilities and duties:

(1) To consult and advise with the board in matters of policy affecting the administration of this chapter, and in the development of rules and regulations provided for hereunder.

(2) To review and make recommendations with respect to rules and regulations authorized hereunder prior to their promulgation by the board.

History.—Comp. §11, ch. 28134, 1953.

396.121 Appropriation.—

(1) There is hereby appropriated until June 30, 1965, out of the additional tax on alcoholic beverages as imposed by §561.461 twenty per cent of said additional tax imposed by and collected under said section from July 1, 1963, which money shall be paid into the state treasury to be credited to the account of Florida alcoholic rehabilitation trust fund and transfers of moneys to such fund shall be made by the state treasurer from time to time as collections of such tax are made; which said fund shall be expended by the board only for the purposes contemplated in this chapter. Authority is hereby granted to make expenditures from said fund for grants to governmental units for the development of educational and treatment services for alcoholism in the state.

(2) Expenditures authorized for the purposes set forth in subsection (1) shall be subject to the following conditions:

(a) The policies and procedures governing all such grants and all requests for grants must receive the approval of the advisory council, the budget commission, and the board of commissioners of state institutions.

(b) Grants will not be made to extend beyond the biennial budget period in which they are authorized.

(3) The state treasurer shall transfer any and all funds in the state treasury to the credit of the account of Florida state hospital for alcoholism fund to the Florida alcoholic rehabilitation trust fund created by subsection (1), and all such funds so transferred shall be expended as provided in said subsection (1).

History.—§12, ch. 28134, 1953; sub §(1) am. §2, ch. 29811, 1955 Am. (1) by §1, ch. 57-211; (1) by §1, ch. 59-324; (1), (3) a. by §2, ch. 61-119; §1, ch. 61-205; §1, ch. 63-325.
cf.—§561.461 Additional tax on certain beverages.

CHAPTER 398

UNIFORM NARCOTIC DRUG LAW

398.01 Short title.—This chapter may be cited as the uniform narcotic drug law.

History.—§26, ch. 16087, 1933; CGL 1936 Supp. 3397(1).

398.02 Definitions.—The following words and phrases, as used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use, mix or otherwise prepare narcotic drugs in connection with such treatment, provided such person holds a valid federal narcotics tax stamp denoting payment of the special tax required by the narcotic laws of the United States.

(2) "Dentist" means a person authorized by law to practice dentistry in this state, provided such person holds a valid federal narcotics tax stamp denoting payment of the special tax required by the narcotic laws of the United States.

(3) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state, provided such person holds a valid federal narcotics tax stamp denoting payment of the special tax required by the narcotic laws of the United States.

(4) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs under the immediate and direct supervision of a duly licensed pharmacist, and who holds a valid federal narcotics tax stamp denoting payment of the special tax required by the narcotic laws of the United States; but the word "manufacturer" does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescription.

(5) "Wholesaler" means a person who supplies narcotic drugs that he himself has not packaged or prepared, on official written orders on forms prescribed by the treasury department of the United States, but does not supply narcotic drugs on prescriptions; and who holds a valid narcotics tax stamp denoting payment of the special tax required by the narcotic laws of the United States.

(6) "Apothecary" means a licensed pharmacist as defined by the laws of this state, and where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; and who holds a valid narcotics tax stamp denoting payment of the special tax required by the narcotic laws of the United States, but nothing in this law shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of this state.

(7) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the state board of health as proper to be intrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian, provided said institution holds a valid narcotics tax stamp denoting payment of the special tax required by the narcotic laws of the United States.

(8) "Laboratory" means a laboratory approved by the state board of health, or operated by the state board of health, as proper to be intrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for the purposes of instruction, and to aid narcotic officers, prosecuting attorneys, sheriffs and other peace officers in the enforcement of criminal laws.

(9) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(10) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which

cocaine or ecgonine may be synthesized or made.

(11) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium including apomorphine or any of its salts.

(12) "Cannabis" includes all parts of the plant cannabis sativa whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(12A) "Isonipecaine" means the substance identified chemically as "ethyl 1-methyl-4-phenylpiperidine-4-carboxylate hydrochloride" or any salt thereof by whatever trade name identified including the trade names demerol, demerol hydrochloride, meperidine, dolanthin, pethidine, dolosal, dolantal, endolat, dispadal, and dolvanol.

(13) (a) "Narcotic drugs" shall mean coca leaves, opium, isonipecaine, cannabis and every substance neither chemically nor physically distinguishable from them, and any and all derivatives of same, and any other drug to which the narcotics laws of the United States now apply.

(b) Upon the publication by the state board of health that it has, after reasonable notice and opportunity for hearing, determined that any other drug has an addiction-forming or addiction-sustaining quality similar to that of any narcotic drug as defined in paragraph (a) hereof, such determination by the board shall be prima facie evidence that such drug has the qualities so found.

(14) "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provisions therefor, if such order forms are authorized and required by federal law, and if no order form is provided, then on an official form provided for that purpose by the state board of health.

(15) "Special written order" means a written order accompanied by a certificate of exemption, as required by the federal narcotics laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(16) "Prescription" means a written or oral order for a narcotic drug for the use of a particular person or a particular animal given by a practitioner in accordance with the regulations promulgated by the United States commissioner of narcotics pursuant to the narcotic laws of the United States.

History.—§1, ch. 16087, 1933; CGL 1936 Supp. 3397(2); §1, ch. 20459, 1941; am. §7, ch. 22858, 1945; am. §1, ch. 23823, 1947; sub §(13) am. §1, ch. 28233, 1953; sub §(12A) am. §1, sub. §§(14), (15) comp. §2, ch. 29885, 1955; (1)-(7) by §1, (16) n. by §2, ch. 57-188; (5) a. by §1, ch. 61-52.

cf.—§1.01 for general definitions.
Ch. 500, Foods, drugs and cosmetics.

398.03 Narcotic drugs legal only as provided in this chapter.—It is unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter.

History.—§2, ch. 16087, 1933; CGL 1936 Supp. 3397(3).

398.04 Licenses.—No person shall manufacture, compound, mix, cultivate, grow, or by any other process, produce or prepare narcotic drugs, and no person shall dispense, nor shall any person as a wholesaler supply the same without first having obtained a license so to do from the state board of health. Provided, that the provisions of this section shall not apply to the dispensing, administration, giving away, mixing or otherwise preparing any of the drugs mentioned in this chapter by a registered physician, dentist or veterinarian in the course of his professional practice, where such drugs are dispensed, administered, given away, mixed or otherwise prepared for legitimate medical purposes.

History.—§3, ch. 16087, 1933; CGL 1936 Supp. 3397(4). am. §2, ch. 28233, 1953.

398.05 Proof necessary to secure license.—No license shall be issued under §398.04 unless and until the applicant therefor has furnished proof satisfactory to the state board of health that:

(1) The applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character;

(2) The applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application;

(3) The applicant is not a narcotic drug addict and has not been convicted of a violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic leaves, or other narcotic drugs; provided however that where such conviction was a first conviction, such license may be granted after a period of one year from the date of the conviction, and provided further, that if such conviction was a second conviction, such license may be granted after a period of three years from the date of such conviction. No license shall be issued to any applicant who shall have been so convicted three or more times.

(4) The state board of health may suspend or revoke any license for cause.

History.—§4, ch. 16087, 1933; CGL 1936 Supp. 3397(5); am. §7, ch. 22858, 1945; (3) by §3, ch. 57-188; (3) by §1, ch. 59-327.

398.06 Applications.—

(1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to

any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler, or apothecary;

(b) To a physician, dentist, or veterinarian;

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the Federal narcotic laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ships or aircraft, then not in port; provided, such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States public health service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) An official written order for any narcotic drug shall be signed in triplicate by the person giving such order or by his duly authorized agent. The original and one copy shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the federal laws, respecting the requirements governing the use of order forms.

(4) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

History.—§5, ch. 16087, 1933; CGL 1936 Supp. 3397(6); (3) by §4, ch. 57-188.

398.07 Apothecaries.—

(1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written or oral prescription of a physician, dentist, or veterinarian under the following conditions:

(a) Such a written prescription must be dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws, of the person prescribing, if he is required by those laws to be so registered.

(b) Such an oral prescription may be made only in pursuance to regulations promulgated by the United States commissioner of narcotics under federal narcotic laws, and must be promptly reduced to writing by the apothecary. In issuing an oral prescription, the prescriber shall furnish the dealer with the same information as is required by law or regulation in case of a written prescription for narcotic drugs or compounds of a narcotic drug except for the written signature of the prescriber, and the apothecary who fills such prescription shall be required to inscribe such information on the written record of the prescription made, filed, and preserved by him, and shall inscribe on the label of the container of the narcotic drug or compound of a narcotic drug the same information as is required in filling a written prescription.

(c) The following requirements are applicable to both written and oral prescriptions:

1. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed.

2. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription.

3. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter.

4. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy upon discontinuance of dealing in said drugs may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty percent of the completed solution, to be used for medical purposes.

History.—§6, ch. 16087, 1933; CGL 1936 Supp. 3397(7); §7, ch. 22858, 1945; sub §(1) am. §3, ch. 29885, 1955.

398.08 Physicians, dentists, veterinarians and persons administering drug in their absence.—(1) A physician or a dentist, in good

faith and in the course of his professional practice only, may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

(2) A veterinarian, in good faith and in the course of his professional practice only, and not for use by human being, may prescribe, administer, dispense, mix, or otherwise prepare narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian, shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient.

History.—§7, ch. 16087, 1933; CGL 1936 Supp. 3397(8).

398.09 Exceptions.—Except as otherwise in this chapter specifically provided, this chapter shall not apply to the following cases:

(1) Prescribing, administering, dispensing or selling at retail of any medicinal preparation,

(a) Those commonly known as class X preparations that contain in one fluid ounce, or if a solid or semi-solid, in one avoirdupois ounce,

1. Not more than one grain codeine,
2. Not more than one-half grain dihydrocodeine,
3. Not more than one-quarter grain ethyl morphine,
4. Not more than one-quarter grain morphine,
5. Not more than two grains opium,
6. Pharmaceutical preparations in solid form containing not more than 2.5 milligrams diphenoxylate and not less than 25 micrograms atropine sulfate per dosage unit,
7. And not more than one of the drugs named above in subparagraphs 1.-5., and 6,

(b) Those commonly known as class M preparations, which contain noscepine (narcotine), papaverine, narceine or cotarnine or any of their salts, without limit as to quantity, combined with active or inactive non-narcotic ingredients of the type used in medicinal preparations.

(2) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations, that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this chapter shall apply to all liniments, ointments, and other preparations, that contain coca leaves in any quantity or combination.

(3) The exemptions authorized by this section shall be subject to the following conditions:

(a) No person shall prescribe, administer, dispense, or sell under the exemptions of this section, to any one person, or for the use of any one person or animal, and no person shall purchase or possess, any preparation or preparations included within this section, when he knows, or can by reasonable diligence ascertain that such prescribing, administering, dispensing, selling, purchasing, or possessing, will provide the person to whom or for whose use, or the owner of the animal for the use of which such preparation is prescribed, administered, dispensed, sold, purchased, or possessed, within forty-eight consecutive hours, with more than, two grains codeine, one grain dihydrocodeine, one-half grain ethyl morphine, one-half grain morphine, four grains opium, or will provide such person or the owner of such animal within forty-eight consecutive hours, with more than one preparation; provided, however, that the foregoing limitations shall not apply to physicians acting in good faith in the course of their professional practice, in prescribing for patients afflicted with disease, whose suffering can only be alleviated by administration of narcotic drugs in greater quantities than those specified herein.

(b) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(c) Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

(4) Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this chapter.

History.—§8, ch. 16087, 1933; CGL 1936 Supp. 3397(9). Sub. § (3) (a) am. §4, ch. 29885, 1955; (1) by §5, ch. 57-188. (1), (3) (a) a. by §1, ch. 61-341.

398.10 Records.—(1) Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided, that no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one

patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight consecutive hours: Two grains codeine, one grain dihydrocodeine, one-half grain ethyl morphine, one-half grain morphine, four grains opium, or a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any of the drugs named above in the quantity stated.

(2) Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection five of this section.

(3) Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(4) Every person who purchases for resale, or who sells narcotic drug preparations exempted by section (8) of this chapter, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection (5) of this section.

(5) The official records to be kept in the sale and disposal of narcotic drugs shall be prescribed by the state board of health. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves, and the proportions of resin contained in or producible from the dried flowering or fruiting tops of the pistillate plant cannabis sativa L., from which the resin has not been extracted, received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the correct name and address of the person to whom, or for whose use, or the owner and species of animal for which sold, administered or dispensed, and the kind and quantity of drugs, such correct name and address to be signed by the person or owner (in case of an animal) to whom narcotic drugs are delivered for the use of such person or owner. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovering of such loss, destruction, or theft.

History.—§9, ch. 16087, 1933; CGL 1936 Supp. 3397(10). §7, ch. 22858, 1945; sub §(5) am. §5, ch. 29885, 1955.
Am. (1) by §6, ch. 57-188; 2nd para. of (1) a. by §2, ch. 61-341.

398.11 Labels.—(1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells and dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person except an apothecary for the purpose of filling a prescription under this chapter, shall alter, deface, or remove any labels so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name and address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed, so long as any of the original contents remains.

History.—§10, ch. 16087, 1933; CGL 1936 Supp. 3398(11).
cf.—§500.06, Embargoing, destroying, etc., of adulterated or misbranding articles.

398.12 Containers.—A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed, by a physician, dentist, apothecary, or other person authorized under the provisions of §398.06, and the owner of any animal for which any such drug has been prescribed. sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

History.—§11, ch. 16087, 1933; CGL 1936 Supp. 3397(12).

398.13 Possession and control; exceptions.—The provisions of this chapter restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

History.—§12. ch. 16087, 1933; CGL 1936 Supp. 3397(13).

398.14 Places where narcotic drugs are il-

legally kept, sold or used, declared public nuisance.—Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance.

History.—§13, ch. 16087, 1933; CGL 1936 Supp. 3397(14).

398.15 Forfeitures.—All narcotic drugs the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(1) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(2) Upon written application by the state board of health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said state board of health for distribution or destruction, as hereinafter provided.

(3) Upon application by any hospital within the state, not operated for private gain, the state board of health may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medical use. The state board of health may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or shall destroy same.

(4) The state board of health shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal and state officers charged with the enforcement of federal and state narcotic laws.

History.—§14, ch. 16087, 1933; CGL 1936 Supp. 3397(15).

398.16 Suspension, revocation and reinstatement of business and professional licenses.—On the conviction of any physician, dentist, veterinarian, manufacturer, wholesaler, or apothecary of a violation of any of the provisions of this chapter, in any court of competent jurisdiction, the clerk of said court shall send a certified copy of the indictment, affidavit, information, and of the plea, verdict and sentence to the board or officer, by whom the convicted defendant has been licensed to practice his or her profession or to carry on his or her business. Such board or officer may in its or his discretion, suspend or revoke the license or registration of the convicted defendant to practice his or her profession or to carry on his or her business. On the application of any such convicted defendant whose license or registration has been suspended or revoked, upon proper showing and for good cause said board or officer may reinstate such license or registration. Any court of competent jurisdiction in which such a defendant is convicted of a violation of any of the provisions of this chapter shall have the power in its discretion to suspend or revoke the license or registration of the convicted defendant, and may thereafter, upon proper showing and for good cause reinstate such license or registration; provided, that no board or officer shall reinstate any such license or registration where the same shall have been suspended or revoked by a court of competent jurisdiction; and provided further that no court shall reinstate any license of such a convicted defendant which has been revoked by the board or officer by whom the convicted defendant was licensed to practice his or her profession or to carry on his or her business, except upon a proceeding brought in a court of competent jurisdiction for the purpose of setting aside or restraining such suspension or revocation of license.

History.—§15, ch. 16087, 1933; §1, ch. 17129, 1935; CGL 1936 Supp. 3397(16).

398.17 Inspections.— Prescriptions, orders, and records, required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal and state officers whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge except in connection with a prosecution or proceeding in court or before a licensing board or officer where the person to whom such prescriptions, orders or records relate is a party to the prosecution or proceeding.

History.—§16, ch. 16087, 1933; CGL 1936 Supp. 3397 (17). Am. §3, ch. 28233, 1953.

398.18 Affidavits as to drug addicts; examination; commitment for treatment.—

(1) Whenever an affidavit, duly verified by any narcotic officer of the bureau of narcotics of the state board of health or any other person claiming to have knowledge of the fact and setting forth that any person named or described therein habitually uses any narcotic drugs as defined by the narcotic drug laws of Florida, so as to endanger the public morals, health, safety and welfare, or who is or has been so addicted to the use of narcotic drugs as to have lost the power of self control with reference to such addiction, shall be filed with the state attorney of any judicial circuit of any county in which such habitual user of narcotic drugs is or may be found, such state attorney shall issue a notice requiring the person so named or described to appear before

a circuit judge of the judicial circuit of which said county is a part, at a time and place specified in such notice, and shall cause a copy thereof to be served upon the person so named or described by any narcotic officer, or other officer duly qualified to serve process in civil and criminal cases. Copy of affidavit and notice shall be furnished the state board of health. The affidavit, and original notice shall be filed with the clerk of the circuit court at or before the time specified for such appearance, but the same and all other records shall be open for inspection only to the person named or described therein or his counsel or by narcotic officers. In the event it should be made to appear to said circuit judge at the time or after filing said affidavit with the clerk of the circuit court that the person named or described in said affidavit should be restrained or taken into custody, said circuit judge shall issue an order directing the sheriff or other officer authorized to serve process in civil or criminal cases in said county to take and hold said person without bail until after the said hearing or any and all other hearings in said cause.

(2) The hearing on the affidavit and notice in said cause shall be held not more than ten days from the date of service of notice on the person named or described in said affidavit; provided, however, that the court, in its discretion, may postpone such hearing from time to time.

(3) Upon receipt of a copy of the notice of hearing in said cause by the state board of health, the bureau of narcotics of the state board of health shall immediately cause an investigation to be made of the matters and things set forth in said affidavit by one or more of its narcotic officers, who shall file with the circuit judge before whom said hearing is to be held a report of his or their findings before or at the time of said hearing. The narcotic officers who make such investigation and report shall be present at said hearing for examination by the state attorney and the person named or described in said affidavit, or his attorney.

(4) At the time and place specified in the notice, the judge shall hear and consider the evidence presented and the report of the narcotic officer or officers, and may, if he deems necessary, appoint a commission of two physicians who shall examine such person and certify to the court as to whether such person is an habitual user of narcotic drugs, as defined by §398.02. Upon being satisfied that the allegations of the affidavit are true, the judge shall make and file an order requiring the person so named or described to forthwith take and continue such treatment for the cure or withdrawal of such drug addiction at the hospital of the state prison, and shall commit said person to the hospital of the state prison until cured or free of the habit of using narcotic drugs, and the sheriff of the county shall take such person into custody and transmit such person to the state prison where the terms of such commitment and order of court shall be carried out. Such treatment shall be designed to rehabilitate and restore such person to mental and physical health, and all such persons committed for treatment shall be classified by the hospital of the state prison as "narcotic patients." The superintendent of the state prison shall have full supervision and authority over such narcotic patients necessary to carry out the intention of this law, including the right to confine such narcotic patients. The order of commitment shall require monthly reports to be made to the court and to the state board of health by the superintendent of the state prison as to the effect and progress of such treatment. The superintendent of the state prison, the chief physician of the hospital of the state prison, together with the director of the bureau of narcotics of the state board of health, shall make such rules and regulations as they deem best and necessary for the treatment and discipline of narcotic patients. All persons shall be held for treatment until discharged by the court committing them. It shall be the duty of the superintendent of the state prison and the director of the bureau of narcotics of the state board of health to make a report in writing to the court when the mental and physical condition of such narcotic patient is such as to entitle said narcotic patient to discharge; and the court, upon determining that it is to the best interest of said narcotic patient, may make an order releasing said narcotic patient from such commitment, either finally or upon such conditions as the court may determine for the public interest and the welfare of the narcotic patient.

(5) All narcotic officers, agents and inspectors shall have authority to administer oaths in connection with their official duties, and any person making a false statement under oath before such officers, agents, inspectors and representatives of the state board of health shall be deemed guilty of perjury and subject to the same punishment as prescribed for perjury. The bureau of narcotics of the state board of health shall adopt a seal which shall be used on any and all papers and documents of an official nature.

(6) It shall be unlawful for any person to interfere with any narcotic officer, agent, or inspector in the performance of his official duties. And it shall be unlawful for any person to falsely represent himself to be a representative of the state bureau of narcotics, or to falsely represent that he is an officer of or authorized to enforce the narcotic laws of the state, the United States, or any other state, and any person so doing shall be punished as provided for in §398.22.

(7) Upon the recommendation of a duly licensed physician or public health official that a person habitually uses narcotic drugs as contemplated in subsection (1), a circuit judge of the county in which such person is then living, may commit to the hospital of the Florida state prison a person making voluntary application for treatment for drug addiction. Such person shall be discharged from the hospital of the

Florida state prison in the manner provided for same in subsection (4) hereof.

(8) Any person who shall fail, refuse, or neglect to comply with the terms or conditions of any order of court duly issued and served in accordance with this section shall be deemed in contempt of court and shall be proceeded against accordingly.

History.—§17, ch. 16087, 1933; §2, ch. 17129, 1935; CGL 1936 Supp. 3397(18); §2, ch. 23823, 1947; §11, ch. 25035, 1949; sub. §(1), §10, ch. 26484, 1951; am. §4, ch. 28233, 1953.
cf.—§945.12 Transfer for medical treatment.

398.19 Fraud in obtaining narcotic drugs.—(1) No person shall obtain or attempt to obtain a narcotic drug, or obtain or attempt to obtain a prescription for a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

(2) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(3) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(4) No person shall make or utter any false or forged prescription or written order for any narcotic drug.

(5) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(6) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of §398.09, in the same way as they apply to transactions under all other sections.

History.—§18, ch. 16087, 1933; CGL 1936 Supp. 3397(19). Am. (1) by §7, ch. 57-188.

398.20 Proof of exemption in action to enforce provisions of this chapter to be upon defendant.—In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant.

History.—§19, ch. 16087, 1933; CGL 1936 Supp. 8374(2).

398.21 Enforcement; state police; bond.—The state board of health, its agents, inspectors, officers and representatives, and all peace officers of the state, and all prosecuting attorneys, shall enforce all provisions of this chapter, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, this state, and all other states relating to narcotic drugs. All officers, agents, inspectors, and representatives of the state board of health engaged in the enforcement of the provisions of this chapter, shall in addition to their respective positions be designated as "state police" and shall have the same authority as a deputy sheriff, to bear arms concealed or otherwise, and to make searches, seizures, and to arrest with or without warrants for any violation of the provisions of this chapter, and any other laws of the state; provided, however, that such officers, agents, inspectors, and representatives, shall first furnish a bond of not less than one thousand dollars approved by the state board of health, and made payable to the governor of this state.

History.—§20, ch. 16087, 1933; §3, ch. 17129, 1935; CGL 1936 Supp. 3397(20).

398.22 Punishment for violations. — Violation of any provision of this chapter shall be a felony and the punishment shall be: for a first offense, imprisonment in the state prison for not less than two years nor more than five years, or by a fine of not less than five hundred dollars, nor more than five thousand dollars; for a second offense, imprisonment in the state prison for not less than five years nor more than ten years and in addition the person convicted may be fined not more than ten thousand dollars; for a third or subsequent offense, imprisonment in the state prison for not less than ten years nor more than twenty years and in addition the person convicted may be fined not more than twenty thousand dollars. In case of conviction for a second or subsequent offense imposition of sentence shall not be suspended or deferred, nor shall the person so convicted be placed on probation.

History.—§21, ch. 16087, 1933; §4, ch. 17129, 1935; CGL 1936 Supp. 7699(1); am. §5, ch. 28233, 1953.
cf.—§775.06, Alternative punishment.

398.23 Judgment under United States laws bar to prosecution for same acts hereunder.—A judgment of conviction or acquittal on the merits under the laws of the United States for any alleged violation of the narcotics laws thereof shall be a bar to any prosecution hereunder for the same act or acts.

History.—§22, ch. 16087, 1933; CGL 1936 Supp. 8364(1).

398.24 Narcotic drug law; seizure and forfeiture of vehicles, boats and aircraft used in violating.—(1) Any vehicle, boat or aircraft which has been or is being used for or in the violation of the uniform narcotic drug law of Florida, shall be seized and forfeited to the state. Provided, however, that the provisions of this section shall not apply to common carriers, as defined by law; and provided, further, that the provisions of this section shall not apply to innocent parties nor destroy any valid lien or retain title contract on motor vehicles as defined by existing registration law and the notation of a lien upon the face of the certificate of title shall be deemed prima facie valid.

(2) It shall be the duty of all narcotic officers, agents, inspectors and representatives of the bureau of narcotics of the state board of health and all other duly authorized officers of the state to forthwith arrest any and all per-

sons violating the uniform narcotic drug laws of the state and to seize any and all vehicles, boats and aircraft used, or which have been used, for or in the violation of said law.

(3) Upon the trial and conviction of such person for the violation of said uniform narcotic drug law, it shall be the duty of the judge at the time of pronouncing sentence of conviction, to order and adjudge that any and all vehicles, boats and aircraft used for or in the violation of the uniform narcotic drug law, forfeited to the state and the court shall decree all such vehicles, boats and aircraft to be the property of the state. All such vehicles, boats and aircraft may be used for any public state purpose or they may be sold at public outcry for cash to the highest and best bidder for cash, and any such cash received shall be deposited in the general revenue fund of the state, to be used by the state.

(4) Upon the sale of any motor vehicle the state shall issue title certificate to the purchaser, subject to any existing valid liens or retain title contract.

History.—§ § 1-3, ch. 22800, 1945; am. §6, ch. 28233, 1953.

CHAPTER 399
ELEVATORS

399.01 Definitions.—When used in this chapter:

(1) The term "commission" whenever used in this chapter shall mean Florida industrial commission or its legally constituted representatives.

(2) The term "elevator" shall mean all machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides, and shall include all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but shall not include hand operated dumbwaiters, construction hoists, or other similar temporary lifting or lowering apparatus, provided that the provisions of this chapter shall not be applicable to elevators, dumbwaiters, escalators, gravity elevators, or other lifting apparatus or device installed and operating in private residences while such premises are used solely as private residences.

(3) The term "inspector" shall mean an inspector qualified by the commission to inspect elevators and lifting apparatus in the state.

(4) The term "alteration" of an elevator shall mean a change in the use, classification, operation, control, motor, brake, character of power supply, capacity, dead weight of car or counterweights, car travel, speed, sizes or number of hoists or counterweight ropes, guide rails, car or counterweight safety devices, or safety governors, application for which is filed with the commission under the provisions of this chapter.

(5) The term "existing installation" of an elevator shall mean an installation before July 1, 1947.

(6) The term "new installation" of an elevator, shall mean a complete elevator, dumbwaiter, escalator, or special equipment installation, the application for which is filed with the commission after July 1, 1947.

History.—§1, ch. 24096, 1947; (2) by §1, ch. 57-227.

399.02 General requirements.—

(1) The requirements of this chapter shall apply to all installations of elevators, as defined, as hereinafter specified.

(2) The commission shall adopt an elevator safety code the same as or similar to the latest revision of the "American standard safety code for elevators, dumbwaiters and escalators," which is hereinafter referred to as the "Elevator safety code." This may be changed from time to time to comply with future revisions.

(3) The commission shall by regulation fix the responsibilities of the manufacturer, the constructor and the owner for all elevator installations.

(4) The commission only shall have the power to grant exceptions or permit the uses of other devices or methods as may be provided by the elevator safety code.

(5) All new and existing elevators shall have a serial number assigned by the commission painted on or attached to the elevator car in plain view and also to the driving mechanism. This serial number shall be shown on all required certificates.

(6) (a) A permit shall be obtained from the Florida industrial commission before erecting or constructing new elevators, moving such apparatus from one hoistway to another, or before making alterations to existing equipment.

(b) The contractor, company or individual employed to do the work, shall submit an application for a permit accompanied by specifications and drawings showing the proposed construction, equipment, and mode of operation in such form as the commission may prescribe.

History.—§2, ch. 24096, 1947; (6) (b) by §2, ch. 57-227.
cf.—§399.13, Certain municipalities exempt.

399.03 Design, installation and alterations of elevators.—

(1) All new elevators, dumbwaiters, and escalators shall be designed and installed in accordance with the requirements of the elevator safety code.

(2) All alterations to, and relocations of, elevators, dumbwaiters, and escalators, installed after the adoption of this act, shall meet the requirements of the elevator safety code.

(3) Elevators, dumbwaiters and escalators installed before July 1, 1947, may be used without being rebuilt to comply with the requirements of the elevator safety code; provided, however, all such elevators shall be equipped with standard hoistway entrance protection, and all passenger elevators of more than one hundred feet per minute contract speed shall be provided with car doors or gates which meet the requirements of the elevator safety code on or before July 1, 1959. Such installations shall be maintained in a safe operating condition and shall be subject to inspections and tests required by §399.08. The commission shall issue a certificate for

each existing elevator, dumbwaiter, and escalator, which certificate shall be posted in the car, and on, near, or plainly visible from the dumbwaiter and escalator.

(4) Elevators, dumbwaiters and escalators, moved from one shaft or location to another, shall conform to the requirements of the elevator safety code.

(5) (a) Existing installations may be altered to obtain the advantage of any provisions of the elevator safety code, provided the safety requirements covering such provisions are met.

(b) Where alterations are made to existing installations, any part of the installation which is directly affected as to safety, due to the alteration, shall comply with the requirements of the elevator safety code, subject also to the following subsections of this section.

(6) Where an increase is made in the contract load, the installation shall meet the requirements of the elevator safety code for car and counterweight safeties, interlocks and terminal stopping devices.

(7) Where an increase is made in the contract speed, the installation shall meet the requirements of the elevator safety code for car and counterweight safeties, buffers, speed governor, interlocks and terminal stopping devices. The pull-out of the governor cable need not meet the requirements of the elevator safety code.

(8) Where any change is made in the method of operation, or type of control, the installation shall meet the requirements of the elevator safety code for interlocks and terminal stopping devices.

(9) Where any change is made in the classification, the installation shall meet all of the requirements of the elevator safety code.

(10) Change in power supply (general):

(a) Change in voltage, frequency, or number of phases of an alternating current supply; or

(b) Change from direct current to alternating current or alternating current to direct current; or

(c) Change to a combination of direct current and alternating current.

(11) Only such electrical equipment or parts thereof as are adjusted or altered to operate safely and properly in the opinion of the industrial commission may be retained.

(12) Change from direct to alternating current.

(13) (a) Where the change of power supply is from direct current to alternating current, existing electric brakes, if inadequate in the opinion of the commission, shall be replaced with electrically released brakes of sufficient capacity to meet the operating and test requirements of the elevator safety code.

(b) Where elevators and escalators are not equipped with electrically operated brakes, such equipment shall be provided in accordance with the elevator safety code.

(14) Where the change of power supply is from direct to alternating current, the motor and control shall be of a type which will provide at least one slowdown step having a stable speed not more than one half the contract speed, except as follows:

(a) If the contract speed is one hundred and ten feet per minute or less, one-speed motor and control may be used.

(b) If the contract speed is two hundred feet per minute or less, and the overhead car and counterweight clearances are at least as great as required by the elevator safety code for the contract speed, one-speed motor and control may be used.

(15) Where the change in power supply is from direct to alternating current terminal stopping devices shall be provided to conform to the requirements of the elevator safety code.

(16) (a) Damaged or defective parts shall be wholly or partially replaced at the discretion of the commission; broken parts subject to bending, tension or torsional stresses, and parts upon which the support of the car depends, shall not be welded.

(b) Ordinary repairs or replacement on existing installations may be made with parts equivalent in material, strength and design to those replaced. Such repairs and replacements need not conform to the requirements of this chapter.

History.—§3, ch. 24096, 1947; (3) by §3, ch. 57-227.

399.04 Inspectors.—

(1) To carry out the provisions and the intent and purpose of this chapter, the commission is authorized, and its duty shall be, to appoint and fix salaries of the necessary state elevator inspectors on a merit basis, and may delegate to such inspectors such powers and authority as may be necessary to enable them to effectively discharge their duties, provided, however, that no person shall be appointed to such position unless he has had seven and one-half years practical experience in the construction, installation or inspection of elevators.

(2) No person shall be authorized to act as an inspector of elevators, unless he holds a certificate of competency from the commission, as provided in this section.

(a) The eligibility of applicants for a certificate of competency shall be determined by written and practical examinations, such examinations to be given under the supervision of the chief of industrial safety of the Florida industrial commission. Application for such examinations shall be in writing, stating school education of applicant and his employment and employers.

(b) The examinations shall cover the construction, installation, operation, maintenance and repair of elevators and their appurtenances.

(3) Certificates of competency shall be issued to applicants who have successfully completed examinations for inspector, and any certificate holder may make inspections required by §399.05, when employed by the

commission, or an insurance company, in accordance with regulations of the commission.

(4) Certificates of competency may be revoked by the commission for cause, after a hearing is afforded the holder thereof before the full commission.

(5) A certificate of competency may be issued to an applicant therefor without examination when such applicant shall furnish to the commission satisfactory evidence that he is employed as an inspector of elevators by an insurance company authorized to do business in this state, by a manufacturer or dealer in elevators, or by a municipality, and such applicant is otherwise qualified as provided in this chapter.

History.—§4, ch. 24096, 1947; §11, ch. 25035, 1949; §4, ch. 57-227; (2) (a) a. by §1, (3) a. by §2, ch. 61-194.

399.05 Inspection and tests of new, moved or altered installations.—

(1) The operation or use of any new, altered or moved elevator, is prohibited until such equipment has passed tests and inspection as required by this article and a certificate to this effect has been issued in accordance with §399.07.

(2) The person or firm installing, moving or altering elevators, shall notify the industrial commission in writing, at least three days before completion of the work and shall, in the presence of a representative of the commission, subject the new, moved, or altered portions of the equipment to tests required to show that such equipment meets the requirements of this chapter. Where the industrial commission grants specific permission, such tests and inspection may be made without the presence of the commission's representative, provided a certified copy of the test is furnished to such official.

History.—§5, ch. 24096, 1947.

399.06 Registering of existing installations, reports of inspectors.—

(1) The owner or user of any elevator in this state shall register with the Florida industrial commission every elevator operated by him, giving the type, capacity and description, name of manufacturer and purpose for which each is used on or before ninety days after this chapter becomes effective. Such registration shall be made on a form to be furnished by the commission.

(2) Every inspector shall forward to the commission a full report of each inspection made of any elevator, as required to be made by him under the provisions of §399.05, showing the exact condition of the said elevator. If this report indicates that the said elevator is in a safe condition to be operated, the commission shall issue a certificate of operation for a capacity not to exceed that named in the said report of inspection, which certificate shall be valid for one year after the date of inspection unless the certificate is suspended or revoked by the commission. No elevator may lawfully be operated on or after January 1, 1948, without having such a certificate conspicuously posted thereon; where there is an elevator cab it shall be posted conspicuously therein.

(3) If any elevator be found which, in the judgment of an inspector, is dangerous to life and property, or is being operated without the operating certificate required by §399.07, such inspector may require the owner or user of such elevator to discontinue its operation, and the inspector shall place a notice to that effect conspicuously on or in such elevator. Such notice shall designate and describe the alteration or other change necessary to be made in order to insure safety of operation, date of inspection, and time allowed for such alteration or change. Such inspector shall immediately report all facts in connection with such elevator to the commission. In the event a certificate has been issued for such elevator, the said certificate shall be suspended and not renewed until such elevator has been placed in safe condition. In such case, where an elevator has been placed out of service, the owner or user of such elevator shall not again operate the same until repairs have been made and authority given by the commission to resume operation of the said elevator.

(4) Before any permanent elevator shall be erected, removed to a different location, or whenever any changes or repairs are made which alter its construction or the classification, grade or rating lifting capacity thereof, detailed plans and specifications of the said apparatus, in duplicate, shall be submitted to the commission for approval. Except in those municipalities which maintain their own elevator inspection departments, in which event, such plans and specifications shall be submitted to the elevator department of such municipality for its approval, and if approved a permit for the erection or repair of such elevator shall be issued by the municipality. Where plans and specifications are submitted to, and approved by the commission, a permit for the erection or repair of such elevator shall be issued by the commission. A final inspection shall be made of the apparatus when installed or repairs completed, before final approval shall be given by the commission. The elevator shall not be operated until such final inspection and approval be given, unless a temporary permit be granted by the said commission.

History.—§6, ch. 24096, 1947; §11, ch. 25035, 1949; sub §(4) repealed by §1, ch. 28318, 1953 remaining subsection renumbered.

399.07 Certificates.—

(1) A certificate shall be issued by the industrial commission where inspections and tests as required by §399.05 show that elevators are installed in accordance with the requirements of this chapter.

(2) Certificates shall be printed on a six inch wide by nine inch high card and suitably framed in metal with a glass cover.

(3) Certificates shall show the serial number of the elevator for which it is issued, as required in subsection (5) of §399.02.

(4) The required certificate shall be posted in a conspicuous location in the elevator car, and on, near, or plainly visible from the dumbwaiter, escalator, amusement device or special equipment.

(5) The industrial commission may permit the temporary use of any elevator, dumbwaiter, or escalator, for passenger or freight service during the installation or alteration, under the authority of a limited certificate, issued by them for each class of service. Such limited certificate shall not be issued until the elevator shall have been tested under contract load, and the car safety and terminal stopping equipment for construction purposes.

(6) Limited certificates shall be issued for a period not to exceed thirty days. Such certificates may be renewed at the discretion of the commission.

(7) Where a limited certificate is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted on, near, or visible from each entrance to such elevator, dumbwaiter or escalator.

History.—§7, ch. 24096, 1947.
Am. §11, ch. 25035, 1949.

399.08 Routine inspections, tests and maintenance.—

(1) Passenger and freight elevators shall be inspected by an inspector and tested by the owner in the presence of the inspector at least once each calendar year.

(2) Whenever the commission shall, from inspection of any elevator, determine that in the interest of the public safety such elevator or any part or appliance thereof, is out of order and in an unsafe condition contrary to the requirements of this chapter they shall have the power to order the discontinuance of the use of any such elevator and to compel the person, firm, or corporation having control or possession or use thereof to discontinue such use until such elevator or part or appliance thereof, has been satisfactorily repaired or replaced so that the said elevator is in a safe and proper condition as required by this chapter.

(3) The Florida industrial commission shall certify the inspection of each elevator which, after inspection, is judged to be in conformity with the requirements of this chapter. This certification shall be in the form of an endorsement of the certificate required in §399.07, and shall include the date of the inspection and the signature of the inspector.

History.—§8, ch. 24096, 1947.

399.10 Enforcement of law.—It shall be the duty of the Florida industrial commission to enforce the provisions of this chapter.

History.—§10, ch. 24096, 1947.

399.11 Penalties.—

(1) Whoever violates any of the provisions of this chapter, or the rules and regulations of the commission, as herein provided for, or who shall fail or neglect to pay the fees herein provided for, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for the first offense, or by imprisonment for not more than one year, or by both such fine and imprisonment in the discretion of the court having jurisdiction.

(2) Whoever continues to operate his elevator or other lifting or lowering apparatus, after notice to discontinue its use as set forth in subsection (3) of §399.06, shall be likewise fined twenty-five dollars for each day the said elevator or lifting or lowering apparatus has been operated after the service of the said notice, in addition to the fines above set forth.

(3) All fines collected under this chapter shall be forwarded to the commission, who shall pay the same into the state treasury to the credit of the commission.

History.—§11, ch. 24096, 1947; sub. §(1) am. §10, ch. 26484, 1951.
cf.—A16 S9 Disposition of fines.

399.12 Construction of law.—Nothing contained in this chapter shall be construed to prevent the inspection of elevators by dealers in elevators or elevator equipment, or inspectors for insurance companies, but such inspection shall not be in lieu of the state inspection, as provided in this chapter, unless such inspector shall have qualified with the commission as herein provided.

History.—§12, ch. 24096, 1947.
Am. §11, ch. 25035, 1949.

399.13 Municipalities exempted.—The provisions of this chapter shall not apply to municipalities where said municipalities have provided for the regular inspection of elevators as provided in §399.06.

History.—§13, ch. 24096, 1947.

399.14 Hotels, restaurants, etc., exempted.—The provisions of chapter 399, relating to design, installation, alteration, maintenance and inspection of elevators shall not apply to hotels, apartment houses, rooming houses and restaurants where the hotel commission has provided for the regular inspection of elevators as provided for by §509.211(6),(7).

History.—Comp. §1, ch. 25039, 1949.

CHAPTER 400

NURSING HOMES

400.001 Purpose.—The purpose of this chapter is to provide for the development, establishment and enforcement of basic standards for the health, care and humane treatment of persons in nursing homes, and for the construction, maintenance and operation of such institutions which, in the light of existing knowledge, will ensure safe and adequate care, treatment and health of persons in such homes.

History.—Comp. §1, ch. 28140, 1953.

400.01 Definitions.— For the purposes of this chapter, unless the context otherwise requires:

(1) "Nursing home" or "home" means a private home, institution, building, residence, or other place, whether operated for profit or not, including those places operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding twenty-four hours, maintenance, personal care, or nursing for three or more persons not related by blood or marriage to the operator, who by reason of illness or physical infirmity or advanced age are unable to care for themselves; provided that this definition shall include homes offering services for less than three persons when the homes are held out to the public to be establishments which regularly provide nursing and custodial services.

(2) "Board" means the state board of health.

(3) "Health officer" means the state health officer and secretary to the state board of health.

(4) For the administration of this chapter "nursing home" or "home" shall be licensed in the following categories:

(a) Home for aged—a home providing domiciliary and custodial service.

(b) Home for special service—a home providing domiciliary and custodial service to children or young adults.

(c) Nursing home—a home providing nursing service in addition to custodial service.

(5) "Nursing service" means such services or acts as may be rendered directly or indirectly to, and in behalf of a person, by individuals as defined in §464.021.

(6) "Custodial service" means care for the person which entails observation of diet, sleeping habits, maintenance of a watchfulness over the general health, safety and well-being of the aged or infirm.

History.—§1, ch. 28140, 1953; (1) by §1, ch. 57-806; (1) a. and (4)-(6) n. by §1, ch. 61-354.

400.02 Homes or institutions exempt from provisions of chapter.—The following shall be exempt from the provisions of this chapter:

(1) Any home, institution or other place operated by the federal government or agency thereof.

(2) Any child welfare agency, maternity or lying-in home requiring a state license.

(3) Any home or institution conducted only for persons who rely exclusively upon treatment by prayer or spiritual means, in accordance with the creed or tenets of any organized church or religious denomination, shall be exempt only from any requirement of this act or rule and regulation adopted pursuant thereto, requiring medical examinations or medical treatment of residents or patients therein.

(4) Any hospital devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or medical care for not less than twenty-four hours in any week of two or more nonrelated individuals suffering from illness, disease, injury, or deformity.

(5) Any custodial, educational or penal institution operated by the state or agency thereof.

(6) Any facilities, hospital or clinic operated in connection with the offices of any practitioner of any of the healing arts licensed to practice under the laws of the state when such facilities, hospital or clinic are not designed nor used for the care or nursing of more than eight persons.

(7) Any institution which offers its services primarily for medical treatment or surgery.

(8) The old people's home known as "Moosehaven," owned and operated by the loyal order of Moose, a national fraternal organization, located at Orange Park, and the Florida Christian home, a home for the aged, owned and operated by the National benevolent association of the Christian churches of the southeast area of the United States, and located at 1071 Edgewood avenue, Jacksonville, and old age homes owned and maintained by any national fraternal organization which had been

in existence for a period of more than twenty-five years.

History.—§1, ch. 28140, 1953; (7), (8) n. by §2, ch. 61-354.

400.03 License required.—

(1) After July 1, 1953, it shall be unlawful to operate or maintain a nursing home without first obtaining from the board a license as provided in §400.04.

(2) Homes which are already in operation on July 1, 1953, shall be given a reasonable time, not to exceed one year, within which to comply with the rules and regulations and minimum standards provided for herein.

(3) Separate licenses shall be required for homes maintained in separate premises, even though operated under the same management; provided, a separate license shall not be required for separate buildings on the same grounds.

History.—Comp. §1, ch. 28140, 1953.

400.04 Application for license; fee.—

(1) Application for license as required by §400.03, shall be made to the health officer on form blanks furnished by the board, and shall be accompanied by a license fee of one dollar; provided that counties or municipalities applying for such licenses shall be exempt from the payment of said license fee. Such licenses shall be effective until suspended or revoked.

(2) The application shall be under oath and shall contain the following:

(a) The name and address of the applicant if an individual, and if a firm, partnership or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers;

(b) The location of the home for which a license is sought, and indicating that such location conforms to the local zoning ordinances;

(c) The name of the person or persons under whose management or supervision the home will be conducted;

(d) The number and type of residents for which maintenance, care and nursing is to be provided, and

(e) Such information relating to the number, experience and training of the employees of the home and of the moral character of the applicant and employees as the board may deem necessary.

(3) Each application shall be accompanied by a statement relative to the financial status of the applicant.

History.—§1, ch. 28140, 1953; (1) by §1, ch. 59-211.

400.05 Licenses; issuance, display.

(1) Upon receipt of an application for a license hereunder, the health officer shall cause a thorough investigation to be made of the premises proposed to be licensed, and of the applicant, and if satisfied that the minimum standards as provided in §400.10 are met, and if the applicant is otherwise qualified, shall issue a license.

(2) The license shall be displayed in a conspicuous place in the hall or near the main entrance inside the home.

(3) A license shall be valid only in the hands of the person to whom it is issued and shall not be subject of sale, assignment or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than those for which originally issued.

History.—Comp. §1, ch. 28140, 1953.

400.06 Same; grounds for denial.—An application for a license may be denied for any of the following reasons:

(1) Failure to meet any of the minimum standards prescribed by the board under §400.10.

(2) Conviction of a felony, as shown by a certified copy of the record of the court of conviction, of the applicant, or by a copy of the applicant's fingerprint record from the federal bureau of investigation, showing felony convictions, or if the applicant is a firm or corporation, of any of its members or officers, or of the person designated to manage or supervise the home; or other satisfactory evidence that the moral character of the applicant or the manager, or supervisor of the home is not reputable.

(3) Financial inability to operate and conduct the home in accordance with the requirements of this act and the minimum standards, rules and regulations promulgated thereunder.

History.—Comp. §1, ch. 28140, 1953.

400.07 Revocation of licenses; grounds.— The health officer may revoke or suspend a license for any of the following reasons:

(1) Cruelty or indifference to the welfare of the residents.

(2) Misappropriation or conversion of the property of the residents.

(3) Violation of any provision of this chapter or of the minimum standards, rules and regulations of the board promulgated hereunder.

(4) Any ground upon which an application for a license may be denied as prescribed in §400.06.

History.—§1, ch. 28140, 1953: intro. par., (3) by §2, ch. 59-211.

400.08 Expiration of license and renewal, fee; conditional permit.—

(1) Licenses issued for the operation of a nursing home, unless sooner suspended or revoked, shall expire on December 31 of each year unless the same shall have been renewed prior thereto for the next succeeding year. Licenses shall be renewed upon the filing of an application on forms furnished by the board, provided the applicant shall have first met all the requirements established under this chapter and upon the payment to the board of a fee of one dollar.

(2) Licensed operators against whom a re-

vocation proceeding is pending at the time of license renewal shall be issued a conditional permit effective until final disposition by the health officer of such proceedings. If the final order of the health officer is appealed for review, the court before whom the appeal is taken may order the extension of the conditional permit for a period of time to be specified in said order.

History.—§1, ch. 28140, 1953; repealed by §3, ch. 59-211; reenacted and amended by §4, ch. 61-354.

400.09 Refusal of license; renewal; revocation; notice; hearing.—

(1) No license shall be denied, revoked or suspended except after notice in writing to the applicant or licensee, setting forth the particular reasons for the proposed action, and a fair hearing if demanded by the licensee or applicant. Such notice shall be effected by registered or certified mail with return receipt requested, or by personal service. The licensee or applicant shall within ten days after receipt of said notice request a hearing which request shall be in writing, and be delivered to the health officer in person or by due course of mail. If no such request is made within the time fixed, said officer shall proceed to refuse, revoke or suspend said license as set out in the notice of the proposed action.

(2) All hearings under this law shall be held by the health officer or any agent designated by him, within the county in which the licensee or applicant operates or applies for license to operate a home as defined herein. If the hearing is conducted by an agent designated by the health officer, a transcript of the proceedings shall be reviewed by said health officer who shall enter his decision thereon.

(3) The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board. The health officer or any agent designated by him may take testimony concerning any matter within his jurisdiction and may administer oaths for that purpose. Said health officer or agent shall have the power to issue summons and subpoenas for any witness and subpoenas duces tecum, which shall be served and returned as provided by law. At the hearing the applicant or licensee shall have the right to cross-examine witnesses against him, and to produce witnesses in his defense, and to appear personally or by counsel.

(4) On the basis of any such hearing, or upon the failure of the applicant or licensee to request a hearing, the health officer shall make a determination specifying his findings of fact and conclusions of law. A copy of such determination shall be sent registered or certified mail or personally served upon the applicant or licensee. The determination shall become final sixty days after it is so mailed or served unless the applicant or licensee within that period applies for a writ of certiorari in the circuit court in and for the county where the headquarters of the board is located in the manner provided in chapter 59 and the Florida appellate rules.

(5) A full and complete record shall be kept of all proceedings and all testimony shall be reported but need not be transcribed unless the decision is appealed. A copy or copies of the transcription may be obtained by any interested party on payment of the cost of preparing such copy or copies.

History.—§1, ch. 28140, 1953; (1) by §4, (4) by §5, ch. 59-211.

400.091 Procedure for reinstatement of revoked or suspended license.—

(1) When a license has been revoked or suspended in accordance with the provisions of §400.09, the licensee, provided he has not previously had a license revoked or suspended under this chapter, may at any time after the determination has become final, request a hearing for the purpose of showing that the reasons for the revocation or suspension of license have been corrected and that the license should be reinstated. No licensee who has previously had a license suspended or revoked under this chapter, shall request for a hearing to reinstate the license prior to one year after the determination becomes final.

(2) The request for hearing shall be in writing, and shall be delivered to the health officer in person or by due course of mail.

(3) Any hearing conducted under this section shall not operate to stay or supersede any decision revoking or suspending a license.

(4) Hearings conducted under this section shall be conducted in the same manner as prescribed for hearings in §400.09.

History.—§7, ch. 59-211.

400.10 Minimum standards, rules and regulations to be prescribed by board.—

(1) The board shall prescribe and publish minimum standards in relation to:

(a) Location and construction of the home, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazard; which shall include adequate provisions for fire alarm and fire protection suitable to the size and type of structure;

(b) Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents;

(c) All sanitary conditions within the nursing home and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall ensure the health and comfort of residents;

(d) Equipment essential to the health and welfare of the residents.

(2) The board may adopt and enforce rules and regulations relating to the operation and conduct of nursing homes and the care, treatment and maintenance of the residents thereof as it shall deem necessary for an effective administration of this act.

(3) Provided, however, that all minimum

standards, rules and regulations to be prescribed hereunder shall be reasonable and fair, it being the intention of the legislature to provide safe and sanitary homes for the inmates thereof.

History.—Comp. §1, ch. 28140, 1953.

400.11 Inspection of homes. — Every home conducted by a licensee hereunder, and any premises proposed to be conducted by an applicant for a license, shall be open at all reasonable times to inspection by the board and by any agency designated by the board as provided in §400.05.

History.—Comp. §1, ch. 28140, 1953.

400.12 Records of licensee.—Every licensee shall keep such records and make reports as the board shall prescribe and all such records shall be open to inspection by the board, or its authorized representatives.

History.—Comp. §1, ch. 28140, 1953.

400.13 Enforcement and penalties.—

(1) This chapter and regulations adopted hereunder shall be enforced in the manner provided in §381.031(4).

(2) The opening or operation of a nursing home as herein defined without a license therefor, or for the violation of any other provision of this chapter, including rules, regulations and minimum standards, prescribed by the board thereunder, shall be a misdemeanor and subject to the penalties provided in §381.411.

History.—§1, ch. 28140, 1953; §3, ch. 61-354.

400.14 Educational program authorized.— Upon application of what he deems a sufficient number of licensees or applicants for licenses under the terms of this act, or in his discretion, the health officer shall conduct a clinic or seminar at such times and places as shall be convenient for the greatest number, at which clinic or seminar information and instruction shall be offered in the general field of health education, management and other subjects that will increase the knowledge and efficiency of applicants or licensees hereunder.

History.—Comp. §1, ch. 28140, 1953.

400.15 Disposition of fees. — All fees required under the provisions of this chapter shall be paid to the secretary of the board, who shall deposit said funds with the state treasurer to the credit of the general revenue fund.

History.—Comp. §1, ch. 28140, 1953.

400.161 Misleading advertisements prohibited.—It shall be unlawful for any person, persons, associations, copartnerships, corporations, or institutions, to offer or advertise to the public in any way or by any medium whatsoever, nursing home care or service, or custodial services, unless they shall have first secured a license under the provisions of this chapter.

History.—§5, ch. 61-354.

CHAPTER 401

HOSPITAL SERVICE FOR THE INDIGENT

401.01 Hospital service for the indigent.—There is hereby created a service to be administered by the state board of health to be known as "hospital service for the indigent," the purpose of which is to provide hospitalization for medically indigent persons of this state, the hospital charges to be limited to the nonprofit basic cost of the hospitalization. Such service is to be designed for the purpose of furnishing bed, board, and any hospital services needed for the effective treatment of the acutely ill or injured indigent as deemed necessary and ordered by the physician in charge of the case.

History.—Comp. §1, ch. 29957, 1955.

401.011 Out-patient care for the indigent.—When approved by the board and the advisory committee hereinafter created, funds created by this chapter may be used to provide out-patient care in out-patient clinics approved by the board for the treatment of acutely and chronically ill medically indigent persons of the state. Charges for these services shall be limited to the nonprofit basic cost of the clinic furnishing them.

History.—§1, ch. 59-349.

401.012 Visiting nurse care for the indigent.—When approved by the board and the advisory committee hereinafter created, funds created by this chapter may be used to provide acutely and chronically ill or injured medically indigent persons visiting nurse services rendered by nonprofit organizations providing such services and approved by the board, and visiting nurse services rendered by the board or its affiliated county health units.

History.—§2, ch. 59-349; §1, ch. 61-418.

401.02 Definitions.—The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) "Board" means the state board of health.

(2) "Applicant" means a person who has applied for assistance under this chapter.

(3) "Recipient" means a person who has received or is receiving assistance under this chapter.

(4) "Assistance" means money payments made to any hospital for an applicant, under the provisions of this chapter.

(5) "Hospital" means an institution, publicly or privately owned, having not less than ten beds for the care of persons needing medical or surgical care, and duly approved by the board.

(6) "Medically indigent person" means a person in this state who is unable to provide himself with necessary services incident to illness, injury or disability as prescribed and ordered by a physician.

(7) "Physician" means a doctor of medicine or doctor of osteopathy duly licensed to practice in this state.

(8) "County" means any one of the several counties of this state.

(9) "Participating county" means a county, the board of county commissioners of which or other local official agency therein which has effectively provided its share of the fund as set forth in this chapter.

(10) "Acutely ill or injured person" means a person with an urgent illness, who may respond to short-term remedial treatment, the postponement of which may constitute a hazard to the patient's life or health, and shall include a person having cancer, or suspected of having cancer, for whom hospitalization or hospital diagnostic service is recommended by the medical staff of a cancer unit or tumor clinic operating under the provisions of §381.361, and shall include a person suffering from mental illness who is admitted by a psychiatrist to an approved psychiatric facility of a participating hospital for intensive short-term psychiatric treatment.

History.—§2, ch. 29957, 1955; (7) by §1, ch. 59-93; (6) a. and (10) n. by §2, ch. 61-418.

401.03 Appropriation.—The board shall include in its legislative budget request the estimated amounts needed for the purpose of carrying out this program and the legislature shall appropriate such amounts as it deems necessary for the program.

History.—§3, ch. 29957, 1955; §1, ch. 61-26.

401.04 State board of health to administer; advisory committee, membership, expenses.—The service herein provided shall be administered by the state board of health, in consultation with the advisory committee as herein created. Such advisory committee shall be composed of nine discreet and public spirited citizens of this state who shall be selected by the board for a term of four years each. Two of such members shall be physicians duly licensed to practice in this state; two of such members shall be county commissioners; two of such members shall be actively and professionally engaged in hospital administration in this state; two of such members shall be members of the Florida legislature as recommended by the president of the senate and speaker of the house; and one such member shall be representative of the general public. The members of the advisory committee shall receive no compensation for their services but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§4, ch. 29957, 1955; §3, ch. 61-418; §19, ch. 63-400; §1, ch. 63-287.
cf.—Ch. 381, state board of health.

401.05 Cost of administration; funds to be expended.—In the administration of this chapter, the board is authorized to expend from funds appropriated for this service, for administrative purposes, a sum not exceeding five per cent of the total fund expended consisting of the amount appropriated by the state, plus the amounts added to the fund by the several counties of the state in the manner hereinafter set out, and plus also, any federal funds which may become available for this service at any time. In the interest of efficiency, the board may transfer funds for administration of this program to county health unit accounts.

History.—Comp. §5, ch. 29957, 1955.

401.06 Rules and regulations to be adopted by state board of health.—The board shall adopt such rules and regulations as may be necessary for the proper administration of this chapter. Such regulations shall be binding on the participating counties and shall be complied with by all local agencies or persons responsible for enforcement of any part of this chapter, and shall include, among other things:

(1) Every indigent patient accepted under this program should be seen and referred by a practicing doctor of medicine or doctor of osteopathy who would make a general determination of medical indigency and need for hospitalization, out-patient care or visiting nurse services. The county health department when necessary shall make a more definite check as to indigency except that when it is determined that the patient is a recipient of benefits under the state department of welfare, no further check shall be necessary. The county health department in consultation with the referring physician shall be responsible after the check for indigency for referring the indigent patient to a hospital within or outside of such county on the basis of the specific illness or convenience to the patient.

(2) The development of a formula to be used as a basis for the allotment of funds appropriated by the state for this service, such formula to be so devised that:

(a) Of the total amount constituting the "fund" as herein provided, not more than fifty per cent shall be provided from the state appropriation. The participation required from each county each year shall be equal to at least one-half dollar for each inhabitant of said county, according to the estimate of the population of said county, according to the estimate of the population of said county for such year by the bureau of vital statistics of this state.

(b) The distribution of state funds for the benefit of residents of or other persons in a participating county shall require the providing of local funds by the participating county in the amount specified in the formula, provided that the formula be arrived at as if all counties are participating.

(c) The distribution of funds by the formula shall be such as to bring all participating counties to an equal per capita level.

(3) Criteria for approval and acceptance of participating hospitals.

(4) Method of determining reimbursable costs for indigent hospital service.

(5) Broad rules to determine medical indigency, taking into consideration any appropriate modification which may be necessary in individual counties.

(6) Requirements concerning reports that shall be made by participating hospitals, including medical and financial reports.

(7) Method of determination of need for hospitalization by persons eligible for indigent hospital service.

History.—Comp. §6, ch. 29957, 1955; (5) by §24, ch. 57-1; (1) by § 2, ch. 59-93; (1) by § 3, ch. 59-349.

401.07 Eligibility for assistance.—To qualify for assistance under this program, a person shall be:

(1) A medically indigent person as hereinabove defined; and

(2) One not an inmate of or eligible for admission to an institution or for hospital service under any other provision of law.

History.—Comp. §7, ch. 29957, 1955.

401.08 Annual budgets of participating counties; state board to submit; county matching funds.—

(1) The board shall on or before the time when the participating county shall commence to make up budgets for the ensuing year, submit to each county a budget containing an estimate and supporting data setting forth the

amount of money needed to carry out the provisions of this chapter in the county for which such report is submitted, and the amount of money required to be provided by the county as hereinafter set forth.

(2) Each board of county commissioners of this state is authorized and empowered to budget for and provide county funds as may be necessary to match, on a formula basis, the county's part of the cost of this program.

History.—Comp. §§8, 11, ch. 29957, 1955.

401.09 Necessary forms furnished by state board of health.—The board shall, in accordance with regulations established by it as herein provided, prepare and supply all county committees, hospitals, and local health departments, and any other persons or agencies affected hereby with such forms as may be deemed necessary and advisable.

History.—Comp. §9, ch. 29957, 1955.

401.10 Cooperation with state and federal agencies.—The board is authorized to cooperate with other state departments and with any board or agency of the United States in any reasonable manner, as may be necessary to qualify for federal aid for assistance to needy recipients, in conformity with this chapter.

History.—Comp. §10, ch. 29957, 1955.

401.11 Hospital service for the indigent trust fund; direct expenditures by counties; certification and credit.—There shall be established in the state treasury an account or fund to be designated as the "hospital service for the indigent trust fund" and all funds, from whatever source, appropriated or received for indigent hospital service shall be deposited into this fund and be expended by the board solely for the purposes set forth in this chapter, and in accordance with the provisions thereof; provided, that upon proper certification approved by the board, any county may receive credit for direct expenditures made during a current year by the county to a hospital or hospitals when such expenditures can be shown to have been made for the care of "medically indigent persons" as herein defined. When such certifications of direct expenditures by a county are made and approved, the board may authorize direct payments from the county's share of the state portion of the fund, less any charges for administration and necessary emergency treatment of that county's patients in other hospitals.

History.—§12, ch. 29957, 1955; §2, ch. 61-119.

401.12 Obligation of state; limitation.—It is not intended herein that the state be obligated to provide hospitalization for all indigent of the state through the funds created by this chapter, and this chapter shall not be construed as interfering with any existing or future county plans for providing hospital and medical care for the indigent of such county.

History.—Comp. §13, ch. 29957, 1955.

401.13 Priority for reimbursement to hospitals for nonresidents of county.—The first priority for payment from the fund herein created shall be to reimburse hospitals for the cost of hospital care provided for the benefit of acutely ill or injured medically indigent persons who are not residents of or from the county in which such hospital is located and shall be charged against the portion of the fund due the county of residence.

History.—Comp. §14, ch. 29957, 1955.

401.14 Reserve fund for out-of-state medically indigent persons.—The board is authorized and directed to hold in reserve a reasonable amount of the state appropriation herein provided for the purpose of providing hospital care of any medically indigent person who becomes acutely ill or injured in this state and who may not be properly classified as being a resident in or from a particular county of this state, and the board may, upon proper certification in accordance with its rules and regulations, make such payments for the benefit of such out-of-state medically indigent persons.

History.—Comp. §15, ch. 29957, 1955.

401.15 Hospital to render service determined by state board of health.—The funds herein provided for may be used by the board in such a way as to provide indigent hospitalization and out-patient care in any participating hospital or clinic that can most effectively render the particular treatment the individual patient needs, without regard to the county in which the hospital is located.

History.—§16, ch. 29957, 1955; §4, ch. 59-349.

401.16 Limitations on assistance.—It is hereby declared that the intent of this chapter is to provide a program designed and administered so as to pay the cost of hospitalization for those residents of this state or persons within the state who become acutely ill or injured and who can be helped markedly by treatment in a hospital, and to pay the cost of out-patient care and visiting nurse services for those residents of the state who become acutely or chronically ill or injured, and who are clearly unable to meet the cost from their own resources or those upon whom they are legally dependent. It is not intended that the program shall be burdened by attempting to provide purely domiciliary care for persons with chronic permanently disabling illnesses, or illnesses already provided for by special programs of the state.

History.—§17, ch. 29957, 1955; §5, ch. 59-349.

401.161 Authority and duties of state department of public welfare.—

(1) The state department of public welfare is hereby authorized and directed to:

(a) Acting by and through the state welfare board, enter into such agreements with the state board of health and any agency of the federal government and accept such duties in respect to social welfare or public aid as may be necessary to qualify for federal aid for assistance to public assistance recipients under this chapter;

(b) Acting by and through the state board of public welfare employ such staff and prescribe such rules and regulations as may be necessary to meet the requirements of federal legislation, rules, regulations or enactments not inconsistent with the constitution and laws of this state.

(2) Hospital care afforded to public assistance recipients under this section shall not exceed twelve days per calendar year per person except by approval of the medical advisory committee. A person who has received the maximum amount of care allowable under this section may, if he meets the definition of a medically indigent person, secure the benefits allowable to such a person under other sections of this chapter.

History.—§6, ch. 59-349.

401.17 Willful false representation; penalty.—Any person knowingly obtaining or attempting to obtain, or who aids or abets any other person to obtain or attempt to obtain by means of a willfully false statement or representation or impersonation or other fraudulent device, any benefits provided by this chapter to which he is not lawfully entitled, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment of not more than six months, or by both such fine and imprisonment.

History.—Comp. §18, ch. 29957, 1955.

CHAPTER 402

MENTAL HEALTH

402.01 Council on mental health.—There is created and established a council on mental health in Florida composed of eleven citizens of this state, to advise and consult with the state board of health in carrying out a program of training and research in mental health.

History.—Comp. §1, ch. 29880, 1955.

402.02 Membership; expenses.—

(1) The members of the council shall be appointed by the governor for a term of office of four years or until their successors are appointed or qualified, except that of the first council appointed under this chapter, two members shall be appointed for a term of one year, three members shall be appointed for a term of two years, three members shall be appointed for a term of three years, and three members shall be appointed for a term of four years.

(2) The council shall be composed of six members from the professions concerned with mental health and five members of the general public.

(3) The council shall elect from its members a chairman and a secretary. The council shall meet at the chairman's discretion, provided however that at least one meeting each year be held.

(4) Members of the council shall serve without remuneration; however, members shall receive per diem and mileage as prescribed in §112.061, from place of their residence to place of meeting and return. The expenses necessarily incurred by the council members in the regular performance of their duties shall be paid from the moneys appropriated by the legislature, upon vouchers to be made out and signed by the chairman of the council, and approved by the state health officer.

History.—§2, ch. 29880, 1955; (4) by §9, ch. 59-1.

402.03 Powers and duties of the council.—The council shall have the following powers and duties:

(1) To consult with and recommend to the state board of health regarding:

(a) The administration of all funds appropriated in this chapter.

(b) The awarding of training grants.

(c) The allotments for mental health research projects.

(2) To collect and prepare data on the needs for training and research in mental health.

(3) To promote the training of mental health personnel.

(4) To encourage research in mental health.

(5) To encourage coordination of training and research activities to avoid unnecessary duplication.

History.—Comp. §3, ch. 29880, 1955.

402.04 Award of scholarships and stipends; disbursement of funds; administration.—The award of scholarships and/or stipends provided for herein shall be made by the council on mental health hereinafter referred to as the council, and the state board of health hereinafter referred to as the board, shall handle the administration of the scholarship and/or stipend and the state department of education hereinafter referred to as the department, shall for and on behalf of the board handle the notes issued for the payment of the scholarships and/or stipends provided for herein and the collection of same. The council shall prescribe regulations governing the payment of scholarships and/or stipends to the school, college, or university for the benefit of the scholarship and/or stipend holders. All scholarship awards, expenses and costs of administration shall be paid from moneys appropriated by the legislature and shall be paid upon vouchers approved by the state health officer and properly certified by the comptroller.

History.—§4, ch. 29880, 1955; §10, ch. 59-1.

402.05 Requisites for holding scholarship and stipend.—Scholarships and/or stipends are to be awarded only to such residents of the state as intend to make psychiatric social work, psychiatry, psychiatric nursing and clinical psychology their professions. Among other essential requisites for holding a scholarship and/or stipend hereunder are citizenship, residence in Florida for a period of one year, good moral character, good health, exceptional scholarship, and the applicant shall have met the entrance requirement at a college or university for their professional specialization.

History.—Comp. §5, ch. 29880, 1955.

402.06 Notes required of scholarship holders.—Each person who receives a scholarship and/or stipend as provided for in this chapter, shall execute a promissory note under seal, on forms to be prescribed by the department, which shall be endorsed by his or her parent or guardian, or if he or she is over twenty-one years of age, by some responsible citizen and shall deliver said note to the state board of health. Each note shall be payable to the state and shall bear interest at the rate of five per cent per annum from the date of the note; said note shall provide for any and all costs of col-

lection to be assessed against and paid by the maker of the note; said note shall be delivered by the board to the department for collection and/or final disposition.

History.—Comp. §6, ch. 29880, 1955

402.07 Payment of notes.—Prior to the award of a scholarship and/or stipend provided herein for trainees in psychiatric social work, psychiatry, clinical psychology, and psychiatric nursing, the recipient thereof must agree in writing to practice his or her profession in the employ of the state for one year for each year of grant immediately after graduation or, in lieu thereof, to repay the full amount of the scholarship and/or stipend, together with interest at the rate of five per cent per annum.

History.—§7, ch. 29880, 1955; §1, ch. 59-249.

402.081 Advisory committee on mental health.—

(1) There is hereby created an advisory committee on mental health composed of seven members who shall be appointed by the governor from the state at large and who shall serve at his pleasure.

(2) At the earliest practicable date said advisory committee shall take such steps as are necessary to secure a comprehensive survey of the mental health program in this state. The purpose of the survey shall be to insure that said mental health program is being effectively, efficiently and economically operated.

(3) The members of the advisory committee shall receive no compensation but shall be reimbursed for travel expense as provided by law for state officers and employees.

(4) There is hereby appropriated from the general revenue fund of the state to the advisory committee on mental health the sum of twenty-five thousand dollars to be used by said committee in carrying out the purpose of this act.

History.—§§1-4, ch. 61-226.
cf.—§112.061 Travel expenses of state officers and employees.

CHAPTER 403

FLORIDA AIR POLLUTION CONTROL COMMISSION

403.01 Short title.—This chapter shall be known and may be cited as the "Florida air pollution control law."

History.—Comp. §1, ch. 57-369.

403.02 Definitions.—In this chapter the following words shall mean:

(1) "Commission"—the Florida air pollution control commission;

(2) "Board"—the state board of health;

(3) "Air pollution"—the presence in the outdoor atmosphere of substances in quantities which are injurious or reasonably could be expected to become injurious to human, plant or animal life, provided that all aspects of employer-employee relationship as to health and safety hazards are excluded; and provided further, the term "air pollution" shall not be deemed to include smoke effluent from pulp or paper mills equipped with and operating electrostatic precipitators or other mechanical devices whereby not less than ninety per cent of the solids of such smoke are removed therefrom.

(4) "Person" or "persons"—any individual, firm, partnership, corporation, association or other organization.

History.—§2, ch. 57-369; (3) §1, ch. 59-403; (4) n. §1, ch. 63-392.

403.03 Commission; membership; appointment.—There is hereby created in the state board of health the Florida air pollution control commission. The commission shall consist of ten members, residents of Florida, to be appointed by the governor as follows:

(1) The state health officer or some member of the staff of state board of health designated by him;

(2) The commissioner of agriculture or a member of the department of agriculture designated by the commissioner;

(3) A person actively engaged in the raising of cattle.

(4) The director of the Florida industrial commission or a member of its staff designated by the director;

(5) One professional engineer experienced in sanitary engineering;

(6) Two representatives from industry;

(7) Two discreet citizens of the state representing the general public.

(8) A person actively engaged in the growing of citrus.

History.—§3, ch. 57-369; §2, ch. 59-403.

403.04 Commission; terms of office.—The members of the first commission shall be appointed as follows: One for one year; two for two years; three for three years; and three for four years. Thereafter all appointments shall be for terms of four years. A member appointed to fill a vacancy shall be appointed for the unexpired term only.

History.—Comp. §4, ch. 57-369.

403.05 Commission; removal from office.—The governor may remove from office any appointed member for cause after public hearing.

History.—Comp. §5, ch. 57-369.

403.06 Commission; compensation; expenses.—Members of the commission shall serve without compensation but shall be entitled to per diem and travel expenses as provided by §112.061.

History.—Comp. §6, ch. 57-369.

403.07 Commission; organization.—The commission shall elect annually a chairman and vice-chairman from its membership. Five members of the commission shall constitute a quorum to transact its business, except that any action shall be by at least a majority of the entire commission. The commission shall have the authority to employ an executive assistant and necessary clerical help as it may deem necessary to carry out the provisions of the law. This personnel shall serve on the staff of the agency charged with air pollution control in the Florida state board of health. The state sanitary engineer or other professional employee designated by him with the concurrence of the commission shall serve as the secretary of the commission.

History.—§7, ch. 57-369; §1, ch. 61-451; §2, ch. 63-392.

403.08 Employment of personnel.— The board with the approval of the commission shall have the power to employ personnel as it may deem necessary to carry out the purposes of this chapter.

History.—Comp. §8, ch. 57-369.

403.09 Commission; functions, powers, rules and regulations; existing regulations saved.—

(1) The commission shall have the power to consult with the board on matters of policy, administration, procedures, and any other matters pertaining to the carrying out of this chapter, including the discharge by the board of the powers conferred upon it by §403.10.

(2) The commission shall have the power to promulgate, amend and repeal regulations as it may deem necessary:

(a) Without prior notice and hearing, to control and regulate the internal affairs of, and procedures before the commission;

(b) To control and prohibit pollution of the air in any air control district heretofore or hereafter created; provided, however, no rule or regulation, or amendment or repeal thereof, affecting any district or districts shall be adopted under the provisions of this chapter except after public hearing to be held after thirty days prior notice by publication thereof, in every county of any district affected, at least one time in a newspaper published in and having general circulation in the county or counties so affected, and there shall be stated in such notice the date, time and place of the hearing at which time opportunity to be heard by the commission with respect thereto shall be given to the public; provided, further, no rule or regulation shall be adopted unless a need for such action is shown by a preponderance of the evidence introduced at such public hearing.

(3) The commission shall be a separate commission within the board and responsible directly to the board.

(4) Any regulation adopted and any air control districts created by the commission prior to June 19, 1959 shall continue in effect until repealed by the commission.

(5) In cooperation with the state health officer or his designated representatives, representatives of the commission shall prepare the budget for air pollution control activities. The budget as approved by the commission shall be submitted by the board.

(6) In event a new industry or plant hereafter shall locate, or propose to locate, in any county of this state which emits, or may emit, substances which may constitute air pollution as defined herein, it shall be the duty of any municipality with respect to any such industry or plant proposed to be located within its corporate limits and the duty of the board of county commissioners with respect to any industry or plant proposed to be located without the corporate limits of any municipality, to notify the commission within thirty days after obtaining knowledge thereof and the commission shall forthwith advise the owners or operators of the industry or plant, or proposed industry or plant, that the advisory services of the commission are and will be made available to such owners or operators. The owners or operators may request (but shall not be required so to do) that a reasonable advisory criteria be prescribed with respect to the purity of the air to be maintained in the vicinity of the industry or plant and the extent to which substances may be emitted without creating concentrations which will pollute the air.

History.—§9, ch. 57-369; §3, ch. 59-403; (5) and (6) n. by §2. ch. 61-451.

403.10 Board; functions, powers.—The board shall control air pollution in accordance with the rules and regulations adopted and promulgated by the commission and for this purpose shall have power to:

(1) Conduct and supervise research programs for the purpose of determining the causes, effect and hazards of air pollution;

(2) Conduct and supervise state-wide programs of air pollution control education including the preparation and distribution of information relating to air pollution control;

(3) Require the registration of persons engaged in operations which may result in air pollution in any air control district and the filing of reports by them containing information relating to location, size of outlet, height of outlet rate and period of emission and composition of effluent and such other information as the board shall prescribe to be filed relative to air pollution. The requirement for filing of reports shall be conditional upon either the consent of the person engaged in operations which may result in air pollution or the direction of the board which direction may be issued only after a hearing upon notice to the person engaged in such operation.

(4) Enter and inspect any building or place except private residences, for the purpose of investigating an actual or suspected source of air pollution in any air control district and ascertaining compliance or noncompliance with the rules and regulations adopted and promulgated by the commission. The right to enter and inspect shall be conditional upon either the consent of the owner or lessee of the premises or the direction of the board, which direction may be issued only after hearing upon notice to the owner or lessee of the premises. Before any entry and inspection is made the person who is to make the same shall sign a statement in the presence of and witnessed by a notary public or other officer qualified to take acknowledgment, that all information shall be kept confidential except as it relates directly to air pollution. If samples are taken for analysis, the same shall be taken in the presence of a representative of the company. A duplicate of the analytical report shall be furnished promptly to the person suspected of causing air pollution;

(5) Receive or initiate complaints of air pollution, hold hearings in connection with air pollution and institute legal proceedings for the prevention of air pollution and for the recovery of penalties in accordance with this chapter;

(6) Cooperate with and receive money from the federal government or any county or munic-

ipal government or from private sources for the study and control of air pollution.

History.—Comp. §10, ch. 57-369.

403.11 Hearings.—Any hearing held before the commission under the provisions of this chapter shall be held before five or more members of the commission designated by the chairman and any member shall have the power to subpoena witnesses and compel their attendance, administer oaths, and require the production for examination of books or papers, excluding financial records, relating to any matter under investigation in any such hearing. Any information as to secret processes or methods of manufacture or production shall not be disclosed in public hearing before the commission, insofar as practicable and shall be kept confidential.

History.—Comp. §11, ch. 57-369.

403.12 Creation and dissolution of districts for control.—The commission may organize and create within the state such air control districts as are necessary for the control of air pollution as herein defined, to consist of one county or any part thereof, or two or more counties or parts thereof. No district shall be created or dissolved by the commission except pursuant to a hearing after prior notice has been given in the same manner and for the same period as is required by §403.09 for the adoption of rules and regulations, but no such district shall be created or dissolved by the commission unless a necessity therefor shall be established by a preponderance of evidence at a hearing. Such hearings may be called by the commission:

(1) Upon petition from the board of county commissioners of any county or the boards of county commissioners of any combination of counties in this state as may be wholly or partly within any area proposed to be created as a district; or

(2) Upon petition signed by fifteen per cent of the freeholders, according to the most recent list of registered freeholders as disclosed by the records in the office of the supervisors of registration of the county or counties concerned, of any territory proposed to be included in any such district; or

(3) Upon a petition by the board after investigation that a necessity exists for such action.

History.—§12, ch. 57-369; §3, ch. 61-451.

403.13 Complaint; remedy.—In the event a complaint is filed with the board, or should the board have cause to believe that any person is violating any rule or regulation promulgated by the commission, the board shall cause a prompt investigation to be made in connection therewith and if it shall determine after investigation that a violation of any rule or regulation of the commission exists, it shall immediately endeavor to eliminate any source or cause of air pollution resulting from such violation by conference, conciliation and persuasion.

History.—Comp. §13, ch. 57-369.

403.14 Notice; hearing.—Should the board, within a period of sixty days after the filing of the complaint with the board that any person is violating any rule or regulation promulgated by the commission, or within a period of sixty days after the board has cause to believe that such a violation exists, fail by conference, conciliation and persuasion to correct or remedy such violation, it shall cause to be issued and served a written notice together with a copy of the complaint filed with or initiated by it in connection with the violation, requiring the person named in the complaint to answer the charges thereof at a hearing before the commission at a time and place to be specified in the notice.

History.—§14, ch. 57-369; §3, ch. 63-392.

403.15 Hearing procedure.—The respondent to such complaint may file a written answer thereto and may appear at such hearing in person or by representative, with or without counsel and submit testimony or both. The testimony taken at the hearing shall be under oath and recorded stenographically, but the parties shall not be bound by the strict rules of evidence prevailing in the courts of law and equity at the hearing. True copies of any transcript and of any other record made of or at the hearing shall be furnished to the respondent at his request and at his expense.

History.—Comp. §15, ch. 57-369.

403.16 Subpoena power.—Any hearing required by this chapter to be held before the commission with respect to any proceeding instituted under §403.14, shall be held before the commission, or by the representative or representatives thereof designated by resolution of the commission, who shall have power to subpoena witnesses and compel their attendance, administer oaths and require the production for examination of any books or papers, excluding financial records, relating to any matter being investigated at the hearing. The commission at the request of any respondent to a complaint made by it or to it, pursuant to this chapter, shall subpoena and compel the attendance of witnesses designated by the respondent and require the production for examination of any books and papers relating to any matter being investigated at the hearing.

History.—Comp. §16, ch. 57-369.

403.17 Violation; time for correction.—If at the hearing, the commission shall determine that the person against whom the complaint was made is violating any rule or regulation promulgated by the commission, it shall fix a time during which said person shall be required to take such measures as may be necessary to prevent the same and give periodic progress reports. That time shall not exceed sixty days unless the commission shall find that more than sixty days are reasonably necessary. Any information as to secret processes or methods of manufacture or production revealed by such

periodic progress reports shall be kept confidential.

History.—§17, ch. 57-369; §4, ch. 63-392.

403.18 Injunctive relief; penalty.—If such preventive or corrective measures are not taken in accordance with the order of the commission, the commission shall institute proceedings in any court of competent jurisdiction for injunctive relief to prevent any further violation of such rule or regulation. Said court shall have the power to grant such injunctive relief upon notice and hearing. The commission shall not be required to furnish an injunction bond pursuant to a final decree, but an injunction bond may be required by the court pending a final decree as provided by law.

History.—§18, ch. 57-369; §5, ch. 63-392.

403.181 Petition for rehearing.—Any person whose interest is substantially affected by any ruling of the commission may file a petition for a rehearing before the commission, provided the petition for such rehearing is filed within thirty days from the entry of the ruling of the commission.

History.—§4, ch. 61-451.

403.19 Review of actions and decisions; appeals.—

(1) Any person whose interest is substantially affected by the adoption or repeal of any rule or regulation by the commission may obtain a judicial declaration as to the validity, meaning or application of such rule or regulation by bringing an action for a declaratory judgment in the circuit court of the county in which such person resides or in which the executive offices of the agency are maintained.

(2)(a) Any person whose interest is substantially affected by the entry of any order of the commission, including without limitation, orders creating or dissolving districts as herein provided, shall be subject to review by the district court of appeals exercising jurisdiction over the major portion of the area in which the air control district lies, by filing notice of appeal with the secretary of the commission within thirty days after the adoption of any such rule or regulation or entry of the order of the commission, or within twenty days after any rehearing is denied, whichever is later.

(b) Within twenty days from the receipt of appeal the secretary of the commission shall prepare or have prepared and forwarded to the appellant or his attorney a transcript of the proceedings together with a copy of the order or decision of the commission and a copy of the notice of appeal. All documents shall be certified by the secretary. The appellant shall pay all costs incident to the preparation of said record and all copies thereof desired by said appellant.

History.—§19, ch. 57-369; §4, ch. 59-403; (1) a. by §5, ch. 61-451; (2) §6, ch. 63-392; §37, ch. 63-512.

403.20 Construction in relation to other law.—

(1) No civil or criminal remedy for any wrongful action which is a violation of any rule or regulation of the commission shall be excluded or impaired by the provisions of this chapter.

(2) No ordinances or regulations of a municipality or county or board of health not inconsistent with this chapter or any rules or regulations promulgated pursuant thereto shall be superseded by this chapter. Nothing in this chapter or any rules or regulations promulgated pursuant thereto shall preclude the right of any governing body of a municipality or county or board of health to adopt ordinances or regulations promulgated pursuant thereto.

(3) The powers, duties and functions vested in the board under the provisions of this chapter shall not be construed to affect in any manner the powers, duties and functions vested in the board under any other provision of law.

(4) The failure of any owner or operator within any air control district to institute preventive or corrective measures in accordance with the order of the commission shall constitute a misdemeanor, and a fine of up to $300.00 may be levied against the violator. Each day of continued violation shall constitute a separate offense and may be punishable in a like manner. Penalties collected shall revert to the general revenue fund of the state.

History.—§20, ch. 57-369; (4) n. by §6, ch. 61-451.

403.211 Appropriation.—The board shall include in its legislative budget request the estimated amounts needed for the purpose of carrying out the provisions of this chapter and the legislature shall appropriate such amounts as it deems necessary for this purpose.

History.—§2, ch. 61-26.

CHAPTER 404

FLORIDA BARBITURATE LAW

404.01 Definitions.—For the purposes of this chapter:

(1) The words "barbiturate" or "barbiturates" mean each of the salts and derivatives of barbituric acid, also known as "malonyl urea," and derivatives, compounds, mixtures or preparations thereof; and "barbiturate" or "barbiturates" shall include hypnotic and somnifacient drugs, whether or not derivatives of barbituric acid, except that this law shall not apply to narcotics, as now or hereafter defined by the legislature of Florida, or bromides.

(2) The words "central nervous system stimulant" or "central nervous system stimulants" means amphetamine, desoxyephedrine (methamphetamine), mephentermine, pipradol, phenmetrazine, methylphenidylacetate or any of the salts of any of the foregoing.

(3) The word "delivery" means selling, dispensing, giving away, leaving with, or supplying in any other manner.

(4) The word "patient" means, as the case may be:

(a) The individual medically requiring a barbiturate or a central nervous system stimulant, for whom a barbiturate or central nervous system stimulant is prescribed, or to whom a barbiturate or a central nervous system stimulant is administered; or

(b) The owner or the agent of the owner of an animal medically requiring a barbiturate or a central nervous system stimulant, for which a barbiturate or a central nervous system stimulant is prescribed, or to which a barbiturate or a central nervous system stimulant is administered.

(5) The word "person" includes individual, corporation, partnership, and association.

(6) The word "practitioner" means a person authorized by law to practice medicine, osteopathic medicine, dentistry, veterinary medicine, or naturopathic physicians who have been actively practicing in and licensed by the state for a period of at least fifteen years prior to October 1, 1957.

(7) The word "pharmacist" means a person authorized by law to practice pharmacy in this state.

(8) The word "prescription" means an order written or signed or transmitted by word of mouth, telephone or telegraph or other means of communication issued in good faith in the course of professional practice only, by a practitioner to a pharmacist for a barbiturate or a central nervous system stimulant for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient (and, if such barbiturate or central nervous system stimulant is prescribed for an animal, the species of such animal), the name and quantity of the barbiturate or central nervous system stimulant prescribed, the directions for the use of such drug, and the record so made shall constitute the original prescription to be filled and preserved by the pharmacist.

(9) The word "manufacturer" means a person who manufactures barbiturates and central nervous system stimulants, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, packaging, or other process, but does not include a pharmacist who merely packages, prepares or compounds drugs to fill prescriptions received, or to be received by him from practitioner.

(10) The word "wholesaler" means a person engaged in the business of distributing barbiturates and central nervous system stimulants to persons included in any of the classes named in §404.04(2)(a)-(f).

History.—Comp. §1, ch. 57-384.

404.02 Prohibited acts.—The following shall be unlawful:

(1) The delivering or causing to be delivered any barbiturate or central nervous system stimulant, except as provided in §404.04, unless

(a) Such barbiturate or central nervous system stimulant is delivered by a pharmacist in good faith, upon a prescription, or an authorized refill thereof, as hereinafter provided, and there is affixed to the original container in which such drug is delivered a label bearing:

1. The name and address of the establishment from which such drug was delivered;
2. The date on which the prescription for such drug was filled;
3. The number of such prescription as filed in the prescription files of the pharmacist who filled such prescription;
4. The name of the pharmacist and his license number;
5. The name of the practitioner who prescribed such drug;
6. The name of the patient, and if such

drug was prescribed for an animal a statement showing the species of the animal; and

7. The directions for the use of the drug as contained in the prescription; or

(b) Such barbiturate or central nervous system stimulant is delivered or administered by a practitioner in good faith and in the course of professional practice only, and the original container in which such drug is delivered bears a label on which appears the date of delivery, the directions for use of such drug, the name of such practitioner, the name of the patient, and if such drug is prescribed for an animal a statement showing the species of the animal.

(2) The refilling of any prescription for a barbiturate or a central nervous system stimulant unless and to the limited extent designated on the prescription by the practitioner, or subsequently authorized by him.

(3) The delivery of a barbiturate or a central nervous system stimulant upon written prescription unless the pharmacist who filled such prescription files and retains it for a period of two years.

(4) The actual or constructive possession or control of a barbiturate or a central nervous system stimulant by any person unless such person obtained such drug on the written prescription of a practitioner or unless such person obtained such drug by direct delivery from a practitioner for bona fide medical use, and except as provided in §404.04.

(5) The refusal to make available and to afford full opportunity to check any record, file, stock or inventory, as required by §404.06.

(6) The failure to keep records, as required by §404.05.

(7) The using by any person to his own advantage, or the revealing of any information required under the authority of §404.06, concerning any method or process which, as a trade secret, is entitled to protection, except to law enforcement officers, or an officer or employee of the Florida board of health, or to a court when relevant in a judicial proceeding under this chapter.

(8) Obtaining or attempting to obtain a barbiturate or a central nervous system stimulant, or procuring or attempting to procure the administration of a barbiturate or a central nervous system stimulant:

(a) By fraud, deceit, misrepresentation or subterfuge, or

(b) By the forgery or alteration of a prescription, or

(c) By the concealment of a material fact, or

(d) By the use of a false name or the giving of a false address.

(9) Making a false statement in any prescription, order, report, or record referred to in this chapter.

(10) Falsely assuming the title of, or falsely representing any person to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person, for the purpose of obtaining a barbiturate or a central nervous system stimulant.

(11) Making, issuing or uttering any false or forged prescription.

(12) Affixing any false or forged label to a package or receptacle containing a barbiturate or a central nervous system stimulant.

History.—Comp. §2, ch. 57-384.

404.03 Exemptions, general. — Nothing in this chapter shall apply to any compound, mixture, or preparation containing, in addition to a barbiturate or a central nervous system stimulant, a sufficient quantity of another potent drug or drugs to prevent its use as a hypnotic, or a somnifacient, or a central nervous system stimulant, as the case may be.

History.—Comp. §3, ch. 57-384.

404.04 Exemptions, additional.— The provisions of §404.02 (1) and (4) shall not be applicable to:

(1) The delivery for medical or scientific purposes only of barbiturates or central nervous system stimulants to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be, or

(2) The actual or constructive possession or control of barbiturates or central nervous system stimulants by such persons or their agents or employees for such employees for such use, to-wit:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure barbiturates or central nervous system stimulants for disposition in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them; or for the purpose of lawful research, teaching, or testing, and not for resale, including medical schools.

(d) Hospitals and other institutions which procure barbiturates or central nervous system stimulants for lawful administration by practitioners, but only for use by or in the particular hospital or other institution.

(e) Officers or employees of federal, state or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(f) Manufacturers, wholesalers, carriers, and warehousemen.

History.—Comp. §4, ch. 57-384.

404.05 Records. — Persons designated in §404.04, except carriers and warehousemen, officers active in official capacity, shall keep such records pertaining to barbiturates and central nervous system stimulants for two years.

History.—Comp. §5, ch. 57-384.

404.06 Inspection.—Prescriptions, files and records required by or under the authority of this chapter, and stocks of barbiturates and

central nervous system stimulants, shall be open for inspection to officers and employees of the Florida board of health. No person having knowledge by virtue of his office of any such prescriptions, files or records shall divulge such knowledge, except in connection with a prosecution or proceeding in court, or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, files or records relate is a party.

History.—Comp. §6, ch. 57-384.

404.07 Contraband.—All barbiturates and central nervous system stimulants, as herein defined, which may be handled, delivered, possessed, or distributed contrary to any provision of this chapter shall be and the same are hereby declared to be contraband, and shall be subject to seizure and confiscation by any law enforcement officer of this state, or any political subdivision thereof, and by any officer or employee of the Florida board of health.

History.—Comp. §7, ch. 57-384.

404.08 Seizure and forfeiture of vessel, vehicle, or aircraft illegally used.—

(1) Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of this chapter, or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited, provided that no vessel, vehicle, or aircraft used by any person as a common carrier, in the transaction of business as such common carrier, shall be forfeited under the provisions of this chapter unless it shall appear that in the case of a railway car or engine, the owner, or in the case of any other such vessel, vehicle, or aircraft the owner or the master of such vessel, or the owner or conductor, driver, pilot, or other person in charge of such vehicle, or aircraft, was at the time of the alleged illegal act a consenting party thereto; provided further that no vessel, vehicle, or aircraft shall be forfeited under the provisions of this chapter by reason of any act or omission established by the owner thereof to have been committed, or omitted, by any person other than such owner while such vessel, vehicle, or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal law of the United States, or of this state or any political subdivision thereof.

(2) Any law enforcement agency is empowered to authorize or designate officers, agents, or other persons to carry out the seizure provisions of this section. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever he shall discover any vessel, vehicle, or aircraft which has been or is being used in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken or is taking place, to seize such vessel, vehicle, or aircraft and to place it in the custody of such person as may be authorized or designated for that purpose by the respective law enforcement agency, pursuant to these provisions.

History.—Comp. §8, ch. 57-384.

404.09 Procedure to have vessel, vehicle, or aircraft forfeited or sold.—

(1) The state attorney within whose jurisdiction the vessel, vehicle, or aircraft has been seized because of its use or attempted use in violation of any provision of this chapter shall proceed against the vessel, vehicle, or aircraft by rule to show cause in the circuit court having jurisdiction of the offense, and have it forfeited to the use of or the sale by the law enforcement agency making the seizure on producing due proof that the vehicle was being used in violation of the provision of this chapter.

(2) Where it appears by affidavit that the residence of the owner of the vessel, vehicle, or aircraft is out of the state, or is unknown to the state attorney, the court shall appoint an attorney-at-law to represent the absent owner against whom the rule shall be tried contradictorily within ten days after its filing. This affidavit may be made by the state attorney or one of his assistants. The attorney so appointed may waive service and citation of the petition or rule, but shall not waive time nor any legal defense.

(3) Whenever the head of the law enforcement agency effecting the forfeiture deems it necessary or expedient to sell the property forfeited, rather than retain it to the use of the law enforcement agency, he shall cause an advertisement to be inserted in an official newspaper of the county where the seizure was made, and after ten days shall dispose of said property at public auction to the highest bidder for cash and without appraisal.

(4) The proceeds of all funds collected from any such sale shall be paid into the general fund of the county in which the seizure and sale was made.

History.—Comp. §9, ch. 57-384.

404.10 Rights of mortgagee or vendor.—The rights of any bona fide holder of a duly recorded mortgage, or duly recorded vendor's privilege, on the property seized under this chapter shall not be affected by the seizure.

History.—Comp. §10, ch. 57-384.

404.11 Injunctions.—The Florida board of health shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this chapter. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

History.—Comp. §11, ch. 57-384.

404.12 Rules and regulations.—The Florida board of health shall, from time to time, adopt such rules and regulations as may be reasonably necessary to implement and carry out the purpose of this chapter.

History.—Comp. §12, ch. 57-384.

404.13 Exceptions and exemptions not required to be negatived.—In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this chapter, and the burden of proof in any such exception, excuse, proviso, or exemption shall be upon the defendant.

History.—Comp. §13, ch. 57-384.

404.14 Notice of conviction to be sent to licensing board or officer.—On the conviction of any person of the violation of any provision of this chapter a copy of the judgment and sentence and of the opinion of the court, if any opinion be filed, shall be sent by the clerk of the court to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person the court may, in its discretion, recommend to the respective licensing board or officer the suspension or revocation of the registration or license of the convicted defendant to practice his profession or to carry on his business.

History.—Comp. §14, ch. 57-384.

404.15 Penalties.—Any person who violates any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not more than $1,000.00, or shall be imprisoned in the state penitentiary for not more than 2 years, or both such fine and imprisonment. For any second offense any person violating any provision of this chapter shall be punished by fine of not more than $5,000.00, or shall be imprisoned in the state penitentiary for not less than 2 years, nor for not more than 5 years, or both such fine and imprisonment. For any third or succeeding offense any person violating any provision of this chapter shall be punished by a fine of not more than $10,000.00, or shall be imprisoned in the state penitentiary for not less than 5 years, nor for more than 10 years, or both such fine and imprisonment. Any practitioner, as defined in §404.01(6), or any pharmacist, as defined by §404.01(7), upon a third conviction his license to practice in Florida shall be automatically revoked.

History.—Comp. §15, ch. 57-384.

TITLE XXVIII

SOCIAL WELFARE

CHAPTER 409

DEPARTMENT OF PUBLIC WELFARE

409.01 State department of public welfare; state board; membership; terms, etc.—There is hereby created a state department of public welfare for the purpose of administering public assistance and related welfare programs in the state as hereinafter set forth. The state department of public welfare, hereinafter referred to as the department, shall be administered by a state welfare board, hereinafter referred to as the state board, consisting of nine citizens of the state who shall be appointed by the governor and confirmed by the senate for terms of four years each, appointments to fill vacancies to be for the unexpired term. One member shall be appointed from each of the congressional districts of the state as constituted on January 1, 1959, and one member from the state at large, the term of the present member of the state board from the state at large to continue until the expiration of his term on July 2, 1960, the members from districts one, three and six to continue until July 2, 1959, and the member from district five to continue until July 2, 1961. The initial term of the new member from district seven created by this law shall expire on July 2, 1960, and that of the new member from district eight on July 2, 1961. The existing state board as thus supplemented shall assume the duties and functions of the state board under the provisions of this chapter. Each member of the state board under this chapter shall have been a citizen and elector of this state for not less than five years immediately preceding the date of his appointment. Each member shall furnish a surety bond, payable to the governor and his successors in office, in the sum of ten thousand dollars. Members shall receive no compensation for their services, but shall be reimbursed for traveling expenses as provided in §112.061, which expenses, for each member other than the chairman, shall not exceed the sum of twelve hundred dollars annually. Premiums on qualifying bonds and fees for the issuance of commissions shall be an expense of the department.

No federal, state, county, or municipal officer or employee shall be eligible to serve as a member of the state board during his term as such official.

When any additional congressional district shall be created in this state, a member from that district shall be provided according to the provisions of this section. The initial term of such additional member shall expire with the terms of the smallest group of members whose terms expire together.

History.—§1, ch. 18285, 1937; §1, ch. 19375, 1939; CGL 1940 Supp. 4139(1); former section repealed by §34, ch. 26937, 1951; present section relating to the same subject matter was comp. §1, ch. 26937, 1951; §1, ch. 59-337; first para. a. by §1, ch. 61-485; §19, ch. 63-400.

409.02 Functions.—

(1) The department shall, pursuant to regulations promulgated by the state board, determine the amount of money or other things of value that each applicant or recipient of assistance or benefits under this law is entitled to receive subject to the limitation herein provided; and shall conduct, supervise and administer, or cause to be administered, within the state, all social welfare and relief work which is or will be carried on by the use of federal or state funds, and receive and distribute all commodities donated by the United States or any agency thereof for any such social relief. Social welfare within the meaning of this law shall include aid to dependent children, mothers' aid, old age relief, aid to the sick, blind, indigent, unemployed and similar unfortunates.

(2) On behalf of the department the state board may accept such duties in respect to public aid or social welfare as may be delegated to it by any agency of the federal government, state government, or any county or municipal government; and may act as agent of the federal government, state government, or any county or municipal government in the conduct and administration of public aid and social welfare activities and in the disbursement of funds received from the federal government, state government, or any county or municipal government for public aid and social welfare purposes within the state, such as assistance to unemployed and to those who for any reason are unable to provide for their own needs, aid to dependent children, mothers' aid, blind, old age relief, and the like; it may employ such staff and prescribe such rules and regulations as may be necessary to meet the requirements of federal legislation, rules, regulations or enactments not inconsistent with the constitution and laws of this state; and take such action as may be necessary to secure the benefits of any public aid or assistance of any character as may be available from the federal government or any agency thereof which is not inconsistent with the constitution and laws of this state; and accept from any person, or organization and avail itself of any or all offers of personal services or other aid or assistance in carrying out the purposes of this law. The state board shall prescribe the salary standards for the personnel employed, subject to the limitations of this law.

(3) Provided, however, that nothing in this law shall be construed to limit, abrogate, or abridge the powers and duties of the Florida crippled children's commission, state tuberculosis board, or state board for vocational education.

History.—§2, ch. 18285, 1937; CGL 1940 Supp. 4139(2).

Former section repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §3, ch. 26937, 1951.

409.03 Care of children.—

(1) The following children shall be subject to the protection, care and guidance of the department or any duly licensed public or private agencies, except as heretofore provided under §409.02, relating to the powers and duties of the Florida crippled children's commission:

(a) Children with improper guardianship, including abandoned and neglected children.

(b) Destitute children.

(c) Mentally defective or physically handicapped children.

(d) Morally defective children.

(2) The juvenile courts and judges of the various counties of this state shall give full and sympathetic cooperation to the department and its employees in carrying out the purposes and intent of this law; provided, however, no child shall be taken away from its parents or guardians except after a judicial hearing or proceeding before a court of competent jurisdiction, and after notice to such child's parents or guardians of such judicial hearing or proceeding, or by the written consent of said child's parents or guardians.

(3) The department is authorized to provide adoption services and to accept permanent commitment of children by order of any court of competent jurisdiction for the purpose of adoption placement of said children.

History.—§3, ch. 18285, 1937; CGL 1940 Supp. 4139(3).

Former section repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §4, ch. 26937, 1951; (3) n. §1, ch. 63-449.

cf.—Chapter 39, Juvenile courts.

409.04 Institutional care for children.—

(1) The department may cooperate with all child welfare institutions or agencies within the state which shall meet the standards and regulations for proper care and supervision prescribed by the state board for the well being of such children.

(2) With the written consent of parents or guardians, the department under rules and regulations properly established, may place a child in a home or institution, private or public, paid or free, or in a foster home under such conditions as shall be determined to be for the best interests or the welfare of said child. Any child so placed in an institution or in a family home by the department or its agency or agencies may be removed therefrom by like

authority and such disposition made as shall be for the best interest of the child, including the transfer to another institution, another home or to the home of the child.

History.—§4, ch. 18285, 1937; CGL 1940 Supp. 4139(4). Former section repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §5, ch. 26937, 1951.

409.05 Licenses.—The state board may, by rules and regulations, set minimum standards for the care of dependent children away from their own homes and shall prescribe, amend or alter such rules and regulations as may be necessary for the care and supervision of such children. No person other than a relative or a person who is considering the adoption of a child in the manner provided for by law, and no institution, society, or association may receive a dependent child for boarding or custody, unless such a person, society, association or institution shall have first procured a license from the department empowering or authorizing such person, association, institution, or society to care for, receive or board a child or children. Application for license shall be made on blanks provided by the department. The application must also be approved by the state board of health after inspection of health and sanitary conditions. A copy of the license so issued, which shall be provided by the department without charge, shall be on the approved form established by the state board and shall be kept readily available by the licensee. Such license shall be valid for not more than one year after the date of issue but may be renewed or extended as provided for by the rules of the state board. Any such license may be revoked by order of the board for violation of the regulations of the state board governing the activities of the licensee. If such order is not complied with, within a reasonable time, then after a reasonable notice, the state board shall apply to a court of equity having jurisdiction over the institution, and such court of equity shall hear and determine the case, and shall grant such relief, mandatory or injunctive, as the case may require. If such order of revocation is not complied with, within a reasonable time, or if any person, society, association or institution shall receive a dependent child for boarding or custody without having first procured a license from the department, or without the approval of the state board of health, as herein provided, then, after a reasonable notice, the state board shall apply to a court of equity having jurisdiction over the person, society, association or institution, and such court of equity shall hear and determine the case and shall grant such relief, mandatory or injunctive, as the case may require.

History.—§5, ch. 18285, 1937; CGL 1940 Supp. 4139(5). Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §6, ch. 26937, 1951.

409.06 Supervision of state institutions for children.—The board of commissioners of state institutions may designate the department to have supervision and control of the state industrial school for boys and the state industrial school for girls; provided, however, that in the exercise of these powers and duties the department shall act in conjunction with and at all times subject to the control and supervision of the board of commissioners of state institutions.

History.—§6, ch. 18285, 1937; CGL 1940 Supp. 4139(6). Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §7, ch. 26937, 1951.

409.07 Study of causes of dependence; rehabilitation.—The department shall investigate and study the causes of the dependence of indigents, encourage them to support themselves, if possible, and make and carry out plans for their permanent rehabilitation to the end that they may cease to be a charge upon the community whenever possible.

History.—§7, ch. 18285, 1937; CGL 1940 Supp. 4139(7). Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §8, ch. 26937, 1951.

409.08 Administrative districts for the purpose of and to facilitate and aid in the administration of this chapter.—The state is hereby divided into twelve social welfare districts as follows:

District one. The counties of Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, and Bay;

District two. The counties of Jackson, Calhoun, Gulf, Franklin, Liberty, Gadsden, Leon, Wakulla, and Jefferson;

District three. The counties of Levy, Madison, Taylor, Dixie, Lafayette, Suwannee, Hamilton, Columbia, and Gilchrist;

District four. The counties of Citrus, Hernando, Pasco, and Pinellas;

District five. The counties of Nassau, Baker, Union, Bradford, Alachua, Clay, Putnam, St. Johns, and Flagler;

District six. The county of Duval;

District seven. The county of Hillsborough;

District eight. The counties of Manatee, Hardee, Sarasota, DeSoto, Charlotte, Lee, Hendry, Collier, Highlands, and Glades;

District nine. The counties of Dade and Monroe;

District ten. The counties of Indian River, Okeechobee, St. Lucie, Martin, Palm Beach, and Broward;

District eleven. The counties of Sumter, Lake, Polk, and Marion;

District twelve. The counties of Volusia, Seminole, Orange, Osceola, and Brevard.

History.—§8, ch. 18285, 1937; CGL 1940 Supp. 4139(8). Am. §1, ch. 25396, 1949. Former section was repealed by §34, ch. 26937, 1951; present section re-enacted and comp. §29, ch. 26937, 1951.

409.09 District welfare boards created.—In each social welfare district there shall be established a district board of social welfare consisting of two citizens from each county, the population of which has less than twenty-five thousand persons, and of two or more persons from each other county the population of

which exceeds twenty-five thousand persons, one representative for each twenty-five thousand population or fraction thereof. Members of district boards shall be appointed by the governor according to the population fixed by the 1950 federal census and such members shall serve at the pleasure of the governor, for a period not to exceed four years, without compensation, but members shall be reimbursed for traveling expenses as provided in §112.061. No member shall be appointed who has not been a citizen and elector of the state for at least five years during the nine years immediately preceding the date of his or her appointment.

Each district board shall be the agent of the state board and shall be responsible within its welfare district for the administration of such public assistance and social welfare activities as may be delegated to it as provided for in this chapter. All public assistance and social welfare activities of each district board shall be subject to the supervision and control of the state board, and subject to the rules and regulations of the state board. District boards by and with the consent and approval of the state board shall employ a secretary or district director and such other clerical, administrative and trained or otherwise qualified social personnel as may be necessary, in keeping with the provisions of §409.02.

The members of the district boards from each county shall review at least once each year all case files of recipients of aid under public assistance programs administered by the welfare department in the county represented by said members and shall purge from the rolls any recipients who do not meet the requirements for receiving such aid under the laws of this state.

Any district board member who intentionally absents himself from regular or special meetings for a period of four months, automatically forfeits his membership on said board and the said district board shall declare a vacancy to exist.

History.—§9, ch. 18285, 1937; §2, ch. 19375, 1939; CGL 1940 Supp. 4139(9); §§30, 34, ch. 26937, 1951; first para. a. by §1, ch. 61-345; §19, ch. 63-400.
cf.—§113.01 Commissions issued by governor.

409.10 Employees. — The state board, and each district board, subject to the provisions of §409.02, shall hire its own employees, prescribe their duties, and fix their salaries; provided, however, that all personnel, other than the director, physicians designated as approved ophthalmologists and optometrists employed for the aid to the blind examinations and paid on a fee basis, part time technicians, the attorney, one confidential secretary to the director, and janitors and other common labor shall be employed under a merit system, and the department may participate with other state departments or agencies in a joint merit system. No federal, state, county or municipal officer shall be eligible to serve as an employee of the department. The functions to be performed by employees shall be determined by the director in accordance with the policies and regulations of the state board.

History.—§10, ch. 18285, 1937; CGL 1940 Supp. 4139(10); am. §1, ch. 22551, 1945; am. §1, ch. 23849, 1947.
Former section was repealed by §34, ch. 26937, 1951; present section relating to same subject matter was comp. §9, ch. 26937, 1951.

409.11 State welfare director. — The state board shall employ an administrator who shall be designated as state welfare director and shall prescribe his duties and functions in carrying out the purposes of this chapter. The state board shall not delegate to the director employed hereunder the power to make regulations or to decide appeals. His residence qualifications shall be the same as those provided for the state board members. No person shall be employed for the position of director who has not had at least two years practical business experience and such other qualifications as the state board may prescribe to meet the requirements of the United States or its agencies or instrumentalities. He shall furnish a surety bond in the sum of twenty-five thousand dollars to the governor of the state, the premium of which shall be paid from funds of the department.

History.—§11, ch. 18285, 1937; CGL 1940 Supp. 4139(11); §1, ch. 23979, 1947; §11, ch. 25035, 1949.
Former section was repealed by §34, ch. 26937, 1951; present section relating to same subject matter was comp. §2, ch. 26937, 1951.
cf.—§113.07 Bonds of officials.

409.111 Salary of director; assistant.—The salary of the director and assistant director shall be set by the legislature.

History.—§32, ch. 26937, 1951; am. §1, ch. 28256, 1953.

409.12 Department to be corporation.—The department shall be a corporation with power to contract and be contracted with, to sue and be sued in actions ex contractu but not in torts, and to have and to possess corporate powers for all purposes necessary to administer this act. The corporate seal shall be adopted by the state board.

History.—§12, ch. 18285, 1937; CGL 1940 Supp. 4139(12).
Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §28, ch. 26937, 1951.

409.13 Depositary of funds.—All state and federal funds to be administered under this law shall be deposited with the state treasurer in a separate account and shall be withdrawn only by warrant of the comptroller countersigned by the governor, payable to the department or to its order or nominee.

History.—§13, ch. 18285, 1937; CGL 1940 Supp. 4139(13).
Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same subject matter was comp. §10, ch. 26937, 1951.

409.15 Institutions. — The department may establish and operate almshouses, public homes, farms, schools and hospitals for the indigent as are necessary to carry out the purposes of this law, and the department may give or render financial assistance to any political unit or municipality of the state which is operating almshouses, public homes, farms, schools and hospitals for the care of or the

board of aged, blind persons and dependent children.

History.—§15, ch. 18285, 1937; CGL 1940 Supp. 4139(15); am. §1, ch. 22762, 1945.
Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §11, ch. 26937, 1951.

409.16 Old age assistance.—There shall be paid monthly assistance of not more than seventy dollars, except in a limited number of cases, not to exceed three hundred for a demonstration program, which are determined by the state department of public welfare to be in need of foster home care in which instances there shall be paid a monthly assistance of not more than one hundred thirty-five dollars, to any person who:

(1) Is sixty-five years of age or over, proof of which shall be obtained in as simple and expeditious a manner as possible;

(2) Has been a resident of the state during at least five years of the nine years immediately preceding the application for old age assistance and has resided in the state for one year immediately preceding the application;

(3) Has not sufficient income or other resources to provide reasonable subsistence compatible with decency or health; in determining what is sufficient income or other resources under this section it is the intent that insurance, homestead property and liquid assets shall be liberally and equitably considered;

(4) Is not an inmate of any public institution except as a patient in a medical institution or is not a patient in an institution for tuberculosis or mental diseases, or is not a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis.

(5) Has not made an assignment or transfer of property for the purpose of rendering or keeping himself eligible for assistance under this law at any time within two years immediately prior to the filing of application for assistance, pursuant to the provisions of this law;

(6) Is a citizen of the United States or has been a resident of the United States for at least twenty years, proof of which shall be obtained in as simple and expeditious a manner as possible.

(7) Is not an inmate of any institution which is not subject to licensing by the proper state licensing authority.

History.—§17, ch. 18285, 1937; §4, ch. 19375, 1939; CGL 1940 Supp. 4139(17); §1, ch. 20675, 1941; am. §1, ch. 23815, 1947.
Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same subject matter was comp. §13, ch. 26937, 1951; am. §1, ch. 28138, sub. §(5), am. §10, ch. 27991, 1953; sub. §§(4) am., (7) comp. §1 ch. 29679, 1955; first para. by §1, ch. 57-263; (6) by §1, ch. 57-240; (5) §1, ch. 59-92; §1, ch. 63-364.

409.162 Recipients permitted to work for added income.—

(1) Any person receiving old age assistance under §409.16 shall be permitted to work and receive for personal labor or income from farming conducted by the recipient to the extent of fifty dollars per month without causing his or her monthly payment for old age assistance to be reduced because of such added income.

(2) This section shall not become effective until congress amends the federal law which now prohibits a recipient from earning additional income.

History.—Comp. §1, ch. 57-305.

409.17 Aid to the blind.—There shall be paid monthly assistance of not more than seventy dollars to any blind person who:

(1) Has been a resident of the state during at least five years of the nine years immediately preceding the application for assistance and who has resided in the state for one year immediately preceding application; provided, that such assistance may be paid to any blind child who has resided in the state for one year preceding the application for such aid, or if under one year of age, the parent or relative with whom the child is living must have resided in the state for one year immediately preceding the birth of such child. Provided further, that no child of school age shall receive such aid unless such child is receiving education, or is excused from receiving education, in accordance with the provisions of chapter 232.

(2) Has not sufficient income or other resources to provide reasonable subsistence compatible with decency or health;

(3) (a) Is not an inmate of any public institution except as a patient in a medical institution or is not a patient in an institution for tuberculosis or mental diseases, or is not a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis.

(b) Is not an inmate of any institution which is not subject to licensing by the proper state licensing authority.

(4) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this chapter at any time within two years immediately prior to the filing of application for assistance, pursuant to the provisions of this chapter.

(5) Is not receiving old age assistance.

(6) Is a citizen of the United States or has been a resident of the United States for at least twenty years, proof of which shall be obtained in as simple and expeditious a manner as possible, except that assistance may be paid to any blind child who has resided in the state for one year preceding the application, or if under one year of age, the parent or relative with whom the child is living must have resided in the state for one year immediately preceding the birth of such child.

History.—§18, ch. 18285, 1937; CGL 1940 Supp. 4139(18); §1, ch. 20714, 1941; am. §1, ch. 21879, 1943; am. §1, ch. 23895, 1947; §1, ch. 25038, 1949; former section was repealed by §34, ch. 26937, 1951; present section containing same material was re-enacted and comp. §14, ch. 26937, 1951; am. §1, ch. 28229, 1953; §§1, 2, ch. 29720, 1955; first para. by §2, ch. 57-263; (1), (3)(a) a. by §1, ch. 61-361; §1, ch. 63-364; (6) n. §1, ch. 63-384.
cf.—Ch. 413, Council for the blind.

409.18 Dependent children.—

(1) Assistance shall be granted to any de-

pendent child living in a suitable home with its parents, relatives, or guardians, or in some other suitable family home meeting the standards of care and health fixed by the laws of this state and the rules and regulations of the state board, who:

(a) Has resided in the state for one year preceding the application for such aid; or

(b) If under one year of age, the parent or other relative with whom the child is living has resided in the state for one year immediately preceding application.

(2) Provided, however, that if aid to dependent children shall be claimed or applied for on the ground of physical or mental disability of parent or other person liable for the support of the dependent child, such aid shall not be granted unless the parent or other person liable for the support of the child be examined by a physician and a certificate of disability shall be signed by said physician and filed with the department. Where such physician certifies to the disability of the parent or other person liable for the support of the dependent child, re-examination as to disability shall be made annually, if said disability is not obvious, and aid to the dependent child shall be discontinued if at any such examination a physician shall certify that the parent or other person liable for support of the child is able to provide such support.

(3)(a) The state board shall, during the initial and any subsequent determination of eligibility, evaluate the suitability of the home in which the dependent child lives, consideration to be given, but not limited, to physical care and supervision provided in the home; social, educational, and religious opportunities for the child; the child's physical and mental health and emotional security; special needs occasioned by the child's physical handicaps or illnesses, if any; the extent to which desirable factors outweigh the undesirable in the home; and the apparent possibility for improving undesirable conditions in the home; provided, however, that the state board shall find the home unsuitable if any of the following conditions are found to exist:

1. Abuse of the child physically or mentally by beating, overwork, or other cruel treatment; or by improper relations with the child.

2. Exploitation of the child by having it beg on the streets, sell or make contacts for the sale of illegal products, or engage in prostitution.

3. Repeated conviction of the parent or other relative for disorderly conduct, alcoholism, prostitution, or other violations of law evincing a weakness or lack of moral structure in the home.

4. Neglect of the needs of the child by failing to provide proper food and clothing where this results, not from lack of income, but from use of the income or grant for purposes other than the procurement of necessities, or neglect of the child by failure to assist it in maintaining a satisfactory school attendance record when not prevented by factors outside the control of the parent or relative.

5. Neglect in care of the child by reason of the absence of the parents or relatives who leave the child alone in the home, on the streets, or in the homes of neighbors, where such absence is not due to employment or other valid requirements, but to engagement in social activities or undesirable pursuits.

6. Feeble-mindedness or disability of the parents or relatives to such extent that the parent cannot give the child the minimum care necessary to protect his physical and mental health.

7. Failure of the parent or relative to provide a stable moral environment for the child, by engaging in promiscuous conduct either in or outside the home, or by having an illegitimate child after receiving an assistance payment from the department, or by otherwise failing to demonstrate an intent to establish a stable home.

(b) If it be determined by the state board that the parents of any child have placed their child with any other person for the purpose of enabling such other person to receive aid for the child to which he would not otherwise be entitled under this section, then both the home of the parents and the home of such other person shall be deemed unsuitable, provided, however, that this paragraph shall not be construed to apply to any home wherein the child has been placed by order of court or by the state board.

(c) The parents or relatives with whom the child is living shall make a written declaration to the state board setting forth their marital status, and shall notify the state board of any change therein. If married, they shall furnish to the state board documentary evidence of their marriage.

(d) If the home in which the child lives is found to be unsuitable, but there is reason to believe that elimination of the undesirable conditions can be effected, and the child is otherwise eligible for aid, a grant shall be initiated or continued for such time as the state board and the family require to complete the improvements.

(e) When intensive efforts over a reasonable period have failed to improve the home conditions, the state board shall determine if any other relatives specified by the social security act are maintaining a suitable home and are willing to take custody and care for the child in their home. Upon an affirmative finding the state board shall, if the parents or relatives with whom the child is living consent, take the necessary steps for placement of the child with such other relatives, but if the parents or relatives with whom the child lives refuse their consent to the placement, then the state board shall file a petition in the appropriate juvenile court for a decree adjudging the home unsuitable and placing the dependent child with such other relatives.

(f) If a diligent search reveals no other relatives as specified in the social security act maintaining a suitable home and willing to

take custody of the child, then the state board may file a petition in the appropriate juvenile court for placement of the child according to the law relating to dependent children.

(g) Notwithstanding the provisions of this section a child otherwise eligible for aid shall not be denied such assistance where a relative as specified in the social security act is unavailable or refuses to accept custody and the appropriate circuit court or juvenile court fails to enter an order removing the child from the custody of the parent, relative or guardian then having custody.

History.—§19, ch. 18285, 1937; CGL 1940 Supp. 4139(19). Former section was repealed by §34, ch. 26937, 1951; present section was reenacted and comp. §15, ch. 26937, 1951.
Sub. §(1)(b), am. §1, ch. 29670, 1955; (1) by §1, (3)n. by §2, ch. 59-202.
cf.—Chs. 39, 416 and 417.

409.182 Dependent children; support by relatives.—No application to the department for any aid to dependent children which is within its power to grant shall be approved unless such applicant shall first have instituted in the proper court, and in good faith prosecutes, an action for support from persons liable for the support of applicant's dependent child, as the case may be, whenever such cause of action exists. The department shall assist applicants in bringing proceedings to enforce support by such persons who may be liable for the support under the laws of this state; and such assistance shall be by consultation and arrangements with legal aid societies and bureaus established by local bar associations, if there be such legal aid societies able and willing to act, otherwise through the county attorney, county prosecuting attorney or county solicitor, as the case may be, having charge of the prosecution of misdemeanors in the county in which said action may properly be instituted, or, in the event of his absence, disability or disqualification, then through the state attorney of the circuit in which such county is located. It shall be the duty of said public officers when so requested to diligently prosecute such actions. Assistance shall in due course be granted persons otherwise eligible pending the institution and during the prosecution of such action, but payments may be terminated whenever in the opinion of the director the action is not being prosecuted in good faith through the fault of the recipient of public assistance or the fault of the person receiving assistance on behalf of dependent children.

History.—Comp. §12, ch. 26937, 1951.

409.183 Assistance for dependent children; registration of common law marriages.—When called into question in any matter pertaining to the payment of welfare for dependent children of this state, the existence of a valid common law marriage shall not be subject to proof on behalf of either of the parties to such marriage unless the same shall be registered in the office of the county judge of the county wherein the parties reside. Such registration shall be on forms provided by the county judge setting forth under oath substantially the same facts required on the application for a marriage license, shall be subject to the payment of the same fees and shall be signed by both parties to the marriage. Upon receipt of the completed registration and fees the county judge shall cause the marriage to be recorded in a register to be known as Register of Common-Law Marriages. Provided, however, that nothing contained herein shall affect any right, title or interest of any person not a party to such marriage, but whose right, title, or interest depends upon the validity of such marriage relation; and providing further that the provisions of this section shall apply only to matters concerning the application for or receipt of aid by any child under the welfare laws of this state or the inclusion of needs of such child in any welfare budget.

History.—§1, ch. 59-472.

409.19 Opportunity for hearing and appeal.—

(1) If an application for public assistance is not acted upon by the district board within a reasonable time after the filing of the application, or is denied in whole or in part, or if an award of assistance is modified or canceled under any provision of this chapter, the applicant or recipient may appeal to the state board in the manner and form prescribed by the state board. The state board shall, upon receiving such appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing.

(2) The state board may also, upon its own motion, review any decision of a district board and may consider any application upon which a decision has not been made by the district board within a reasonable time. The state board may make such additional investigations as it may deem necessary, and shall make such decision as to the grant of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this chapter. Applicants or recipients affected by such decisions of the state board shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state board.

(3) All decisions of the state board shall be final and shall be binding upon the district boards involved and shall be complied with by the district boards.

History.—§20, ch. 18285, 1937; CGL 1940 Supp. 4139(20). Former section was repealed by §34, ch. 26937, 1951; present section containing same material was re-enacted and comp. §16, ch. 26937, 1951; am. §1, ch. 28257, 1953.

409.20 Reports.—

(1) The department shall, on or before the thirty-first day of July of each year, make an annual written report to the governor. Such report shall contain a complete accounting of all funds received and disbursed during the preceding fiscal year.

(2) The department shall also make such reports, in such forms and containing such information, as the federal government, its agencies and instrumentalities, may from time

to time require, and shall comply with such provisions as the said agencies may from time to time find necessary to insure the correctness and verification of such reports.

History.—§21, ch. 18285, 1937; CGL 1940 Supp. 4139(21). Former section was repealed by §34, ch. 26937, 1951; present section containing same subject matter was comp. §17, ch. 26937, 1951.

409.21 Federal cooperation. — The department shall cooperate fully with the United States government, its agencies and instrumentalities, and the state board shall prescribe such rules and regulations for the administration of this law as shall meet with the requirements of said federal agencies, when not inconsistent with the laws of Florida, to the end that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this law.

History.—§22, ch. 18285, 1937; CGL 1940 Supp. 4139(22). Former section repealed by §34, ch. 26937, 1951; present section relating to the same subject matter was comp. §18, ch. 26937, 1951.

409.24 Department may sell certain property and accept certain fees.—

(1) The department is hereby authorized to sell any real or personal property that it may acquire or may heretofore have acquired by way of donation, gift, contribution, bequest or devise from any person, persons or organizations, when such real or personal property is, in the judgment of the state board, upon recommendation of the director, not necessary for use in connection with the work of the department, and all proceeds derived from the sale of such property shall be transmitted to the state treasury to be credited to the department.

(2) The department is authorized to use for public aid and social welfare purposes any moneys realized from the sale of real or personal property sold pursuant to the authorization hereby given; it being expressly declared to be the intention of the legislature that such moneys are hereby appropriated to the department and may be used by it for public aid and social welfare purposes; provided, however, that such money shall be withdrawn in accordance with law. Such moneys are hereby appropriated to the use of the department in addition to other funds which have been or may otherwise be appropriated for public aid and social welfare purposes.

(3) The department may charge and accept fees for adoption placement costs, for other adoption services and for the investigation of adoptions where the child is not related to the petitioners and has not been placed by the department or a licensed child-placing agency. All such fees charged by the department shall be established by the state welfare board, except that in investigations of adoptions where the child has not been placed by the department or a licensed child-placing agency the fee shall be subject to approval of the court. All money from fees shall be placed in a special fund in the state treasury to be used toward the expense of the adoption services of the department.

History.—§1, ch. 20352, 1941. Former section was repealed by §34, ch. 26937, 1951; present section relating to same subject matter was comp. §19, ch. 26937, 1951; (3) n. §2, ch. 63-449; §1, ch. 63-504.

409.30 Public assistance; payment on death.—

(1) Upon the death of any person receiving public assistance in the state through the department, all public assistance accrued to such person from the date of last payment to date of death shall be paid to the person who shall have been designated by the person entitled to receive such public assistance; said designation to be under oath and on a form prescribed by the state board and filed with the department during the lifetime of the person making such designation. In the event no designation is made, or the person so designated is no longer living, or cannot be found, then payment shall be made to such person as may be designated by the county judge of the county where the public assistance recipient resided. Such designation by the county judge may be made on a form provided by the state board or by letter or memorandum to the comptroller. No filing or recordation of such designation shall be required and the county judge shall receive no compensation for such service. If a warrant has not been issued and forwarded prior to notice by the department of such recipient's death, upon notice thereof the state board shall promptly requisition the state comptroller to issue a warrant in the amount of such accrued assistance payable to the person designated to receive it and shall attach to such requisition the original designation, or if none, the original designation made by the county judge, as well as a notice of such death, and the comptroller shall issue a warrant in the appropriate amount payable as aforesaid.

(2) If a warrant or warrants have been issued and not cashed by the recipient payee prior to his death, such warrant or warrants shall be promptly returned to the department, together with notice of the death of the recipient, and thereupon the original warrant or warrants shall be endorsed on the back thereof by an employee or employees of the department to be designated by the state board, which endorsement shall be on a form to be prescribed by the state board and approved by the comptroller of the state and shall be in substance as follows: It shall contain the name of the deceased recipient; a statement of his death; the date thereof, and in compliance with this law, pay to the order of the designated beneficiary, without recourse, and signed by the authorized employee or employees of the department, and thereupon such warrant shall be payable to the designated beneficiary as fully and completely as if issued to and payable to such designated beneficiary. The department shall furnish each month to the comptroller of the state a list of such

deceased recipients, the designated beneficiaries or persons to whom such warrants are endorsed and a description of such warrants as herein provided. The state board shall cause all persons now and hereafter receiving public assistance through it to make the designations herein provided for as soon as conveniently may be, and shall preserve such designations in a safe place for use as hereinbefore provided for.

History.—§1, ch. 21954, 1943.

Am. §1, ch. 25043, 1949.

Former section was repealed by §34, ch. 26937, 1951; present section containing the same material was comp. §24, ch. 26937, 1951.

409.33 Appropriation to the state welfare board and transfer of surplus funds.—Whenever any appropriation heretofore or hereafter made to the department either for old age assistance, aid to dependent children, or aid to the blind, shall be insufficient to fully provide such assistance to all persons lawfully entitled thereto, and there should then exist a surplus in the appropriation for any other of said aids over and above the amount required to provide such assistance to all persons lawfully entitled thereto, the state budget commission shall determine the amount of such surplus appropriation and shall, by a majority vote of its members, with the approval of the governor, and on application by the department, transfer so much of such surplus to said insufficient appropriation as they may find necessary to provide assistance to persons lawfully entitled to aid therefrom; provided, however, that any funds thus transferred shall be retransferred by the budget commission if unforseen or subsequent events should disclose need for additional money in the appropriation from which the transfer was made. Funds which have been thus transferred are hereby appropriated to the department for the aid or assistance for which the transfer was made and shall be disbursed and expended in the same manner as if originally appropriated for such aid. This law shall be liberally construed to the end that old age assistance, aid to dependent children, and aid to the blind may be fully maintained, and if necessary, by transfer of funds under the circumstances and in the manner herein authorized.

History.—§1, ch. 24036, 1947.

Former section repealed by §34, ch. 26937, 1951; present section containing same material was re-enacted and comp. by §25, ch. 26937, 1951.

409.34 Destruction of records.—

(1) The department is hereby authorized to destroy correspondence, documents and records relating to surplus commodities which are more than two years old, if permission is obtained from the federal government.

(2) The state board, in its discretion, and in pursuance of appropriate resolution, may authorize the destruction of any other correspondence, documents, or records where the matters or things therein involved have been closed or terminated and the department is not required by federal laws, rules or regulations to preserve such correspondence, documents or records, but no agent, employee or servant of the department shall destroy any of said correspondence, documents or records unless such authority is given by a resolution, rule or regulation duly adopted by the state board.

History.—Comp. §§1, 2, ch. 25470, 1949.

Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. by §26, ch. 26937, 1951.

409.35 Photographing, etc., of records; admissible as evidence.—

(1) The department is hereby authorized to photograph microphotograph or reproduce on film any documents and records whereby each page will be exposed in exact conformity with the original, all old case files and records and documents it may be required to permanently maintain, or such other documents and records as it may in its discretion select, and said department is hereby authorized to destroy or order destruction of, any of said original documents and records after they have been properly photographed and filed, provided such action is in conformity with, and not in violation of any federal law, rule or regulation requiring the preserving of public assistance records of those receiving assistance through joint state and federal funds.

(2) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence in the same manner, the same extent, and with the same effect as duly certified or authenticated copies of the original document of record might have been admitted in evidence.

History.—Comp. §§3, 4, ch. 25470, 1949.

Former section was repealed by §34, ch. 26937, 1951; present section containing substantially the same material was comp. §27, ch. 26937, 1951.

409.36 Fraud.—

(1) Whoever knowingly obtains, or attempts to obtain, or aids or abets any person in obtaining or attempting to obtain, by means of a false statement or representation or by false impersonation, or by other fraudulent device, assistance or service to which he is not entitled, or assistance or service greater than that to which he is justly entitled, or whoever willfully makes any unauthorized disposition of any food commodity donated under any program of the federal or state government, or whoever, not being an authorized recipient thereof, willfully converts to his own use or benefit any such food commodity, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $500.00 nor less than $50.00, or imprisoned in the county jail for not more than 12 months, or both.

(2) Upon becoming aware that any applicant or recipient has, by mis-statement, or by withholding facts, violated or attempted to

violate, knowingly, any provision of this law which violation or attempted violation resulted in, or if undiscovered, would have resulted in the applicant or recipient receiving assistance or service, or in receiving more assistance or service than that to which he was otherwise or would have been justly entitled under the provisions of this law, it shall be the duty of each officer of any board, committee, council, authorized or created by this act, or any employee of the department, of the state board, or any council or committee provided by this law, or any other person having any duties with respect to the administration or enforcement of this law, or any part thereof, promptly to make a written report, with complete details of such facts, to the department.

The department shall within thirty days after receipt of this report forward a copy to the district welfare board in the welfare district in which the applicant or recipient who is the subject of the report resides. It shall be the duty of the district welfare board promptly to conduct an investigation into the facts and circumstances set out in such report and to obtain such additional facts as are required and to conduct a hearing, if the same is deemed advisable; provided, however, the applicant or recipient involved in the suspected fraud be given, by registered mail, an eight day notice of said hearing.

If such investigation, including any hearing held thereon, shows that there is evidence of a violation or attempted violation of this law, the district welfare board shall, within forty-five days of the receipt of the report, forward the report along with its comments and recommendations and other material evidence to the proper prosecuting authority for the county in which the applicant or recipient who is involved in the suspected fraud resides.

It shall be the duty of the proper prosecuting authority to conduct an investigation into the facts and circumstances set out in such report and, if the investigation supports said facts and there is adequate evidence of a violation or attempted violation of this law, to prosecute such fraud or attempted fraud.

If required by the prosecuting authority, the department shall furnish assistance in the prosecution of such fraud or attempted fraud including the filing of affidavits where the prosecuting authority cannot legally do so.

(3) Whoever violates any provision of this law for which no penalty is specifically provided shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars nor less than fifty dollars, or imprisoned in the county jail for not more than twelve months, or both.

History.—§31, ch. 26937, 1951; sub. §(2) am. §1, ch. 28273, 1953; (2) §24, ch. 57-1; (2) §1, ch. 59-120; (1) §1, ch. 63-360.

409.361 Recovery of payments made due to mistake or fraud.—Whenever it becomes apparent that any person has received any benefits under this chapter to which he is not entitled, either through simple mistake, or fraud, the state board shall take all necessary steps to recover same, unless it be determined that extreme hardship would result if repayment were forced at that time, in which case repayment may be deferred. Pursuant to this provision, the state board may arrange for repayment either by installment payments or by a reduction of current benefit payments.

History.—§1, ch. 59-74.

409.37 Basis for determination of eligibility to receive aid under chapter.—

(1) In the determination of what may be sufficient income or other resources to provide reasonable subsistence compatible with decency and health, required in connection with the application for public assistance under chapter 409 there shall be excluded produce from a garden grown and used exclusively for the support of the applicant and his family residing with him, and from which garden no produce is sold or exchanged. There shall also be excluded from such determination hogs, cows, domestic fowl and other livestock, if owned and used exclusively for the support of the applicant or recipient and his family residing with him; provided that these exemptions shall not be allowed to more than one applicant or recipient in any one household. There shall also be excluded from such determination cash value of life insurance held by each applicant for or recipient of old age assistance up to seven hundred and fifty dollars.

(2) In support of subsection (1) of this section, the legislature finds that the costs incident to the propagation, cultivation and care, of the produce, livestock, and domestic fow involved will equal the benefit therefrom and hence no net income is considered to be derived therefrom.

History.—§ 1, 2, ch. 26853, 1951; sub. §(1) am. §1, ch. 28143, 1953; (1) a. by §1, ch. 61-379.

409.38 Welfare rolls opened.—

(1) On or before the tenth day of October, 1951, and on or before the tenth day of each quarter thereafter each district welfare board in the state shall file with the clerk of the circuit court of every county in its district a list of the names of all persons who have received welfare payments during the previous month showing opposite each name the amount of such payments received for such period. Such lists shall be retained by the said clerks of the circuit court as part of the records of their respective offices.

(2) It shall be the duty of the state welfare board and the comptroller to furnish the several district welfare boards with all necessary information to carry out the provisions of this act.

(3) The board of commissioners of state institutions shall be authorized and empowered to suspend compliance with the terms and provisions of this act at any time the best interests of the general public will best be served for such periods as to said board shall be deemed necessary.

(4) (a) Except as specifically authorized or

required by this section, it shall be unlawful for any person, for himself, or for any other person, body, association, firm, corporation, group or agency, to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of, any of the lists of names of public assistance recipients herein required to be filed, or parts of such lists, for commercial or political purposes of any nature.

(b) In case this law is suspended as provided in subsection (3), then each county clerk shall destroy all records provided herein to be filed in the office of county clerk.

(c) Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

History.—Comp. § § 1-3, ch. 27993, 1953; (4) (b) by §24, ch. 57-1.

409.39 Definitions for §§409.40-409.43.—As used in §§409.40-409.43, a "permanently and totally disabled" person is one who is substantially precluded from engaging in useful work, including homemaking, by reason of medically-determinable physical or mental impairment which can be expected to be permanent, as determined and certified in writing by one or more physicians designated by the state department of public welfare to examine the applicant; "state department of public welfare" shall include any successor agency of the state which may be authorized to administer the state's public assistance program.

History.—§4, ch. 28161, 1953; §2, ch. 29669, 1955.

409.40 Aid to permanently and totally disabled.—There shall be paid monthly assistance of not more than seventy dollars to any person who:

(1) Is permanently and totally disabled, as herein defined;

(2) Is not less than eighteen years of age nor more than sixty-four years of age;

(3) Has been a resident of the state for at least five years of the nine years immediately preceding his application for aid and has resided in the state continuously for one year immediately preceding his application;

(4) Has not sufficient income or other resources to provide reasonable subsistence compatible with decency and health;

(5) Is not an inmate of a public institution except as a patient in a public medical institution; is not a patient in any public institution for tuberculosis or for mental diseases; and is not a patient in a medical institution as a result of having been diagnosed as suffering from tuberculosis or psychosis; and is not an inmate of any institution which is not subject to licensing by the proper state licensing authority.

(6) Has not made an assignment or transfer of property for the purpose of rendering or keeping himself eligible for assistance under this act at any time within two years immediately preceding the filing of his application for assistance pursuant to the provisions of this act;

(7) Is not receiving aid to the blind under the public assistance program of the state; and

(8) Is a citizen of the United States or has been a resident of the United States for at least twenty years, proof of which shall be obtained in as simple and expeditious a manner as possible.

History.—§1, ch. 28161, 1953; sub §(5) §1, ch. 29669, 1955; (8) §2, ch. 57-240; §3, ch. 57-263; §1, ch. 63-364; (9) r. §2, ch. 63-384.

409.41 Administration.—Assistance for the indigent permanently and totally disabled shall be disbursed and administered by the state department of public welfare and that department shall promptly set up and establish a state plan for the administration of such aid to those prescribed for other public assistance administered with the help of federal grants, and not in conflict with the constitution and laws of the state.

History.—Comp. §2, ch. 28161, 1953.

409.411 Court appointed guardian unnecessary.—It is unnecessary for any incompetent person entitled to welfare payments, as provided by chapter 409, to have a court appointed guardian in order to receive such payments; provided said incompetent person is living in the household with an adult member of his family.

History.—§1, ch. 63-353.

409.42 Public assistance laws to apply.—All statutes of the state relating to hearings and appeals for and by applicants and recipients of other kinds of public assistance administered by the state department of public welfare, and to cooperation by the state department of public welfare with the United States government, its agencies and instrumentalities, in meeting the requirements of said federal agencies for federal grants for such aid, as well as all other provisions of the statutes relating to the public assistance program of the state reasonably applicable to the administration thereof, shall be applicable to assistance for the indigent permanently and totally disabled and to the state department of public welfare, its officers and employees, in the administration of said public assistance for the permanently and totally disabled.

History.—Comp. §3, ch. 28161, 1953.

409.44 Medical program for recipients of public assistance.—The state department of public welfare may make available, through a vendor payment plan, drugs prescribed for public assistance recipients by doctors of medicine or doctors of osteopathy, provided, however, such drugs shall be furnished only in the most economical manner. For this purpose the state welfare board is authorized to adopt a formulary and require its use in the writing of prescriptions. The medical school at the university of Florida is hereby authorized to assist

the state welfare board, upon request, in determining the feasibility and economy of adopting a formulary and in determining the type of formulary most desirable.

History.—§1, ch. 61-484.

409.45 Medical assistance for the aged.—

(1) The state department of public welfare is authorized to provide medical services to any person who:

(a) Is sixty-five years of age or older.

(b) Is a citizen of the United States and resides in this state.

(c) Is not a recipient of any other public assistance program administered by our state department of public welfare.

(d) Has not sufficient income, resources or assets as determined by the state department of public welfare to provide needed medical care without utilizing his resources required to meet his basic needs for shelter, food, clothing and personal expenses.

(2) Such medical services shall be limited to a program of medical assistance for the aged through which hospital care and visiting nurse care shall be made available.

(3) The state department of public welfare is hereby authorized and directed to:

(a) Enter into such agreement with the state board of health or any agency of the federal government and accept such duties in respect to social welfare or public aid as may be necessary to implement the provisions of subsection (2) in order to qualify for federal aid including compliance with provisions of public law 86-778.

(b) The service herein provided shall be administered by the state welfare board, in consultation with the advisory committee as provided for in §401.04.

History.—§1, ch. 63-132.

CHAPTER 412

FLORIDA COMMISSION ON AGING

412.011 Florida commission on aging, membership.—There is hereby created the Florida commission on aging hereinafter called the commission. The commission shall consist of nineteen members as follows: Six public members, who shall be the state health officer, the state public welfare director, the head of the state hospitals, the superintendent of public instruction, the director of the state development commission and the director of the state industrial commission. One member shall be an officer of the state association of county commissioners. Twelve members, hereinafter called citizen members, shall be citizens of the state who have an interest in and knowledge of the problems of the aging. The twelve citizen members shall be distributed geographically so that one member shall reside in each of the twelve congressional districts of the state. In making appointments to the commission the governor shall give consideration to mature citizens who are currently providing leadership in senior citizen programs in the state and give consideration also to the diverse problems of aging by appointing people from a number of fields such as medicine, nursing, recreation, housing, education, social welfare, law, and business.

History.—§1, ch. 63-461.

412.021 Appointment.—With the exception of the public members, all members of the commission shall be appointed by the governor. The member who must be an officer of the state association of county commissioners shall be appointed to a four-year term or to a term which terminates simultaneously with the termination of his status as an officer of the state association of county commissioners. Thereafter as the term of the officer of the state association of county commissioners expires, each new appointment of this member shall be made on the same basis. Upon the establishment of the commission the term of the citizen members initially appointed shall be one, two, three, and four years as follows: Three shall be appointed to a term of one year, three to a term of two years, three to a term of three years, and three to a term of four years. Thereafter as a term expires each new appointment shall be for a four year term or in the case of a vacancy until the expiration of the respective term. All terms of citizen members shall expire on June 30, but they shall continue in office until their successors are appointed. No citizen member may serve more than two successive terms.

The governor may terminate the appointment of any member of the commission for good and just cause and the reason for the termination of each appointment shall be communicated to each member of the commission.

History.—§2, ch. 63-461.

412.031 Quorum; officers.—A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall elect a chairman, a vice-chairman and such other officers as it deems necessary. The commission shall have at least one meeting in each quarter of the year, and more often if necessary on call of the chairman.

History.—§3, ch. 63-461.

412.041 Compensation of citizen members.—Citizen members shall serve without compensation, but shall be reimbursed for expenses incurred in work of the commission at the prevailing state rates for travel and per diem.

History.—§4, ch. 63-461.

412.051 Director.—The commission shall appoint a director who will act as chief administrative officer of the commission and who shall serve at the pleasure of the commission. He shall be a person who has demonstrated leadership qualities and an interest in and a knowledge of problems of aging and of older people. The director's annual salary shall be fixed by the legislature at a rate comparable to heads of state agencies. The director shall also be reimbursed for travel and other expenses incurred in the performance of his official duties at the prevailing state rates for travel and per diem as provided in §112.061.

History.—§5, ch. 63-461; §19, ch. 63-400.

412.061 Other personnel.—The director shall appoint such other personnel and consultants as the commission deems to be necessary for the efficient performance of the duties prescribed by this act, and fix the compensation therefor in accordance with established state budgetary procedures.

History.—§6, ch. 63-461.

412.071 Administration of federal aging programs.—The commission shall be the designated state agency to handle all programs of the federal government relating to the aging requiring actions within the state which are not the specific responsibility of another state agency under the provisions of federal or state law. Authority is hereby conferred on the commission to accept and use any funds in accordance with established state budgetary procedures which might become available pursuant to the purposes set out herein.

History.—§7, ch. 63-461.

412.081 Advisory committees.—The commission shall create whatever advisory committees it deems necessary in such fields as community services, education, recreation, employment, financial security, health, and housing, and may use its funds to defray the expenses of such advisory committees and of members. The commission where feasible shall designate a commission member of special competence in a field as chairman of any advisory committee it may create in that field. Advisory committees shall report to the commission in regard to their activities and findings.

History.—§8, ch. 63-461.

412.091 Purposes, duties.—The commission, through its director, shall cooperate and produce action to carry out the following purposes:

(1) Initiate requests for the investigation of problems and potentials of the aging people of this state, encourage research programs, and initiate pilot projects to demonstrate new services.

(2) Provide consulting service to local communities, including information on effective programs elsewhere in the state or nation for meeting the needs of the aging population; publish and disseminate information for the use of state, county, municipal and local officials concerned about the needs and welfare of the aging.

(3) Cooperate with, encourage and assist local agencies, both public and voluntary, which are concerned with the problems of the aging people of this state.

(4) Cooperate with officials and agencies of the United States and of this state; maintain a continuing review of their programs and make recommendations for coordinated program development.

(5) Encourage the cooperation of voluntary agencies in dealing with problems of the aging and offer assistance to voluntary groups such as churches, unions and fraternal organizations in the fulfillment of their responsibility for the aging within the spirit of this act.

(6) Make a report to the governor biennially, before January 3 of that year in which the state legislature regularly convenes, concerning the work of the commission for the preceding biennium. The report shall deal with the present and future needs of the aging people of this state with respect to employment, retirement, income maintenance, housing and living arrangements, health, medical care and rehabilitation, education, recreation, personal adjustment, and such other matters as in its judgment are pertinent to the subject.

(7) Make recommendations in conjunction with its biennial report, for legislation dealing with the problems of the aging people of this state.

(8) Recommend qualified citizens to the governor for appointment to the commission.

History.—§9, ch. 63-461.

412.101 Grants and gifts.—The commission may receive on its own behalf or on behalf of the state any grant or gift and accept the same.

History.—§10, ch. 63-461.

CHAPTER 413

COUNCIL FOR THE BLIND

413.011 Council for the blind.—The council for the blind, a state agency, shall consist of five members appointed by the governor, for terms of four years; one member of the council may be a member of the state welfare board and one member shall be by preference a blind person. Nothing herein shall be construed to affect the terms of the present members of said council. No person or persons in the employ of the state shall be eligible for membership on the council. Each member of the council shall have been a citizen and elector of this state for not less than five years immediately preceding the date of his appointment. Each member shall furnish a surety bond, payable to the governor and his successors in office, in the sum of ten thousand dollars. Members shall receive no compensation for their services, but shall be reimbursed for traveling expenses as provided in §112.061 and the cost of premiums on qualifying bonds and fees for the issuance of their commissions. No federal, state, county, or municipal officer or employee shall be eligible to serve as a member of the council during his term as such official. The council for the blind shall advise, consult and cooperate with the state department of public welfare in the administration of assistance to the needy blind, and in addition, shall plan, supervise and carry out the following activities:

(1) Appoint all personnel as may be necessary to carry out the purposes of this section;

(2) Cause to be compiled and maintained a complete register of the blind in the state, which shall describe the condition, cause of blindness, and capacity for education and industrial training, with such other facts as may seem to the council to be of value;

(3) Inquire into the cause of blindness, inaugurate preventative measures, and provide for the examination and treatment of the blind or those threatened with blindness for the benefit of such persons, and shall pay therefor, including necessary incidental expenses;

(4) Aid the blind in finding employment, teach them trades and occupations within their capacities, assist them in disposing of products made by them in home industries, and do such things as will contribute to the efficiency of self-support of the blind;

(5) May establish one or more training schools and workshops for the employment of suitable blind persons; make expenditures of funds for such purposes; receive moneys from sales of commodities involved in such activities and from such funds make payments of wages, repairs, insurance premiums and replacements of equipment; provided, further, that all of the activities provided for in this section may be carried on in cooperation with private workshops for the blind, except that all tools and equipment furnished by the council shall remain the property of the state;

(6) Provide special services and benefits for the blind for developing their social life through community activities and recreational facilities;

(7) Undertake such other activities as may ameliorate the condition of blind citizens of this state;

(8) Cooperate with other agencies, public or private, especially the vocational rehabilitation section of the state department of education, in carrying out any or all of the provisions of this law;

(9) Make contracts and agreements with federal, state, county, municipal and private corporations and individuals, sue and be sued and have all corporate powers necessary to properly carry out the provisions of this law; provided, that the council shall present to the state board for vocational education a statement of the council's general plans for any vocational training contemplated under §§409.17, 413.041 and 413.051, and such plans shall not provide for duplicating any of the vocational services now being conducted under said board with the aid of federal funds;

(10) Receive moneys or properties by gift or bequest from any person, firm, corporation or organization for any of the purposes herein set out but without authority to bind the state to any expenditure or policy except such as may be specifically authorized by law. All such moneys or properties so received by gift or bequest as herein authorized, may be disbursed and expended by the council upon its own warrant for any of the purposes herein set forth, and such moneys or properties shall not constitute or be considered a part of any legislative appropriation made by the state for the purpose of carrying out the provisions of this law;

(11) Shall, on June 30 of each year, make an annual written report to the governor. Such report shall contain a complete accounting for all funds received and disbursed under the supervision of the council, including any moneys received through gift or bequest as authorized by this law.

History.—§1, ch. 20714, 1941; am. §1, ch. 21779, 1943. Former section repealed by §34, ch. 26937, 1951; present section was comp. §20, ch. 26937, 1951; tr. from §409.26, renum. and a. §1, ch. 61-210; §19, ch. 63-400.
cf.—§17.26 Cancellation of state warrants.

413.021 Products and services by blind persons; sale, exhibition regulated.—

(1) When appearing in the Florida Statutes "blind person" shall mean an individual having central visual acuity 20/200 or less in the better eye with correcting glasses, or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter or visual field subtends an angular distance no greater than twenty degrees.

(2) For the purposes of the Florida Statutes no representation shall be made that a product or service is "blind-made" unless the manufacturer employs blind persons to an extent constituting not less than seventy-five per cent of the total hours worked by personnel engaged in the direct labor of production of manufactured blind-made products, or services. Direct labor production shall mean all work required for the preparation, processing and packing but not including supervision, administration, inspection and shipping, or the production of the materials from which the finished product is manufactured.

(3) No person or organization shall sell, distribute or exhibit any product or service which purports or is advertised to be "blind-made" unless the Florida state council for the blind shall certify that such product or service complies with the provisions of subsection (2).

(4) Any person, including the officers, owners or members of any corporation or organization that violates the provisions of this section shall be punished by fine of not exceeding $500.00 or imprisonment not exceeding one year or by both such fine and imprisonment.

History.—Comp. §§1-4, ch. 28029, 1953; transferred from §413.09, 1955; tr. from §409.261 and renum. by §2, ch. 61-210.

413.031 Products, purchase by state agencies and institutions.—

(1) DEFINITIONS.—When used in this section:

(a) "Accredited nonprofit workshop" means a Florida workshop which has been certified by either the Florida council for the blind for workshops concerned with blind persons, or the division of vocational rehabilitation where other handicapped persons are concerned, and such workshop means a place where any manufactured article or handwork is carried on and which is operated for the primary purpose of providing employment to severely handicapped individuals, including the blind, who cannot be readily absorbed in the competitive labor market.

(b) "Handicapped" means an individual so severely disabled physically, or mentally, as to be unable to enter private industry on a competitive basis, but who can be made employable through an accredited nonprofit-making agency for the handicapped, and which individual is over the age of sixteen years.

(2) State institutions and agencies shall, where possible, purchase brooms, mops, rugs, rubber mats and other supplies (other than the products of prison labor) from sheltered Florida workshops operated by accredited nonprofit corporations, provided that such goods and supplies are of standard quality and price.

(3) When convenience or emergency requires it, the executive director of the Florida council for the blind and the director of the division of vocational rehabilitation of the state department of education, may upon request of the purchasing officer of any institution or agency relieve him from the obligation of this section.

(4) No state agency or institution shall purchase products or supplies purporting to be made by physically-handicapped persons in workshops not certified under the provisions of this section.

(5) Any purchasing officer who violates the provisions of this section shall be guilty of a misdemeanor and punished according to law.

History.—§1, ch. 29663, 1955; tr. from §409.262 and renum. by §2, ch. 61-210.

413.041 Needy blind persons; placement in vending stands in public places.—For the purpose of assisting blind persons to become self-supporting, the Florida council for the blind is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands on public property. The said council may cooperate with any agency of the federal government in the furtherance of the provisions of the act of congress entitled "An Act to authorize the operation of stands in federal buildings by blind persons, to enlarge the economic opportunities of the blind and for other purposes," public law 732, 74th congress, and the said council may cooperate in the furtherance of the provisions of any other act of congress providing for the rehabilitation of the blind that may now be in effect or may hereafter be enacted by congress.

History.—§1, ch. 22681, 1945; section repealed by §34, ch. 26937, 1951 and re-enacted by §21 of same chapter; tr. from §409.271 and renum. by §2, ch. 61-210.

413.051 Needy blind persons; powers of governing bodies.—The board of county commissioners of any county, and the board, council, commission or officials in charge of any public state, county, or municipal building or property in this state may permit the operation of vending stands by needy blind persons or automatic vending machines by the Florida council for the blind for the benefit of needy blind persons, on such state, county or municipal property under their respective jurisdic-

tion; provided, however, that the establishment of such vending stands or automatic vending machines on public property shall not unduly interfere with the use of the public property for public purposes; and provided further, that all operators of vending stands on such public property be licensed by the Florida council for the blind and that said stands be operated by, or under the supervision and direction of said council.

History.—§2, ch. 22681, 1945; §1, ch. 25141, 1949; section repealed by §34, ch. 26937, 1951 and re-enacted by §22 of same chapter; am. §10, ch. 27991, 1953; tr. from §409.272 and renum. by §2, ch. 61-210.

413.061 Solicitation of funds; prohibition; exceptions.—The solicitation of funds or anything of value, by any means, including the sale of merchandise or any form of entertainment, for the use and benefit of blind persons is prohibited unless prior approval for such solicitation is obtained as prescribed in §§409.281-409.288; provided, these sections shall not apply to civic clubs of international affiliation, one of the main objects of which is the conservation of vision and service to the blind.

History.—§1, ch. 29989, 1955; tr. from §409.281 and renum. by §2, ch. 61-210.

413.062 Application for permit.—Any person, agency or organization desiring to solicit funds or anything of value for the benefit of blind persons, shall file a written application with the Florida council for the blind. The application shall set forth the time, place and type of the proposed solicitation; proposed use of the receipts from said solicitation; names and addresses of persons who will be responsible for the proper custody and disposition of receipts; and any other information the Florida council for the blind may determine to be necessary.

History.—§1, ch. 29989, 1955; tr. from §409.282 and renum. by §2, ch. 61-210.

413.063 Permit.—The Florida council for the blind shall make a thorough investigation of the applicant and of the facts alleged in his application. If the applicant is found to be responsible and the purposes and method of the proposed solicitation are determined to be in the best interests of blind persons and public welfare, the Florida council for the blind shall issue to the applicant a written permit authorizing him to conduct the proposed solicitation. Such permit shall be signed by the executive director of the Florida council for the blind and shall be limited to a period of one year. It shall set forth the specified method, purpose and organization of the solicitation which is approved and shall list the names of persons responsible for its conduct.

History.—§1, ch. 29989, 1955; tr. from §409.283 and renum. by §2, ch. 61-210.

413.064 Rules and regulations.—The Florida council for the blind shall make all necessary rules and regulations pertaining to the conduct of solicitations for the benefit of blind persons and shall determine the amount of compensation and expense money which may be retained by any person or organization from the proceeds of any solicitation within the meaning of §§413.061-413.068.

History.—§1, ch. 29989, 1955; tr. from §409.284, renum. and a. by §3, ch. 61-210.

413.065 Notice of approval.—Every person who holds a permit under the provisions of §§413.061-413.068, shall cause to appear upon every ticket, advertisement, subscription, form, placard, article or other bit of property used in direct connection with the promotion of such solicitation, and shall post in a conspicuous place near the entrance to any building or structure where any entertainment or sale is held hereunder, a statement that such solicitation activity has been approved by the Florida council for the blind.

History.—§1, ch. 29989, 1955; tr. from §409.285, renum. and a. by §3, ch. 61-210.

413.066 Revocation of permit.—Any failure on the part of any person or organization holding a permit under the provisions of §§413.061-413.068, to comply with the law or with all rules and regulations promulgated by the Florida council for the blind as authorized by §413.064, shall constitute grounds for a revocation of said permit by the Florida council for the blind.

History.—§1, ch. 29989, 1955; tr. from §409.286, renum. and a. by §3, ch. 61-210.

413.067 Penalty.—Any person who violates the provisions of §§413.061-413.068, or any rule or regulation promulgated by the Florida council for the blind pursuant to the authority hereof is guilty of a misdemeanor and shall be punished by a fine of not more than $500.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History.—§1, ch. 29989, 1955; tr. from §409.287, renum. and a. by §3, ch. 61-210.

413.068 Legislative intent.—It is the intent of the legislature that the securing of a permit from the Florida council for the blind shall be a condition precedent to the solicitation of funds for the benefit of the blind in this state except as otherwise provided in §§413.061-413.068, and said sections shall supersede the provisions of any county or city law regulating the solicitation of such funds which do not require such a permit.

History.—§1, ch. 29989, 1955; tr. from §409.288, renum. and a. by §3, ch. 61-210.

413.069 Exemptions.—Provided that nothing contained in §§413.061-413.068, shall interfere with the activities of the Florida federation of the blind, provided that organization files an annual report with the secretary of state showing total receipts and disbursements by subject.

History.—§1, ch. 29989, 1955; tr. from §409.289, renum. and a. by §3, ch. 61-210.

413.07 Traffic regulations to assist blind persons.—

(1) It is unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway,

to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red.

(2) Whenever a pedestrian is crossing or attempting to cross a public street or highway, guided by a guide dog or carrying in a raised or extended position a cane or walking stick which is white in color or white tipped with red, the driver of every vehicle approaching the intersection, or place where such pedestrian is attempting to cross, shall bring his vehicle to a full stop before arriving at such intersection or place of crossing, and before proceeding shall take such precautions as may be necessary to avoid injuring such pedestrian.

(3) Nothing contained in this section shall be construed to deprive any totally or partially blind or otherwise incapacitated person, not carrying such a cane or walking stick or not being guided by a dog, of the rights and privileges conferred by law upon pedestrians crossing streets or highways, nor shall the failure of such totally or partially blind or otherwise incapacitated person to carry a cane or walking stick, or to be guided by a guide dog upon the streets, highways or sidewalks of this state, be held to constitute nor be evidence of contributory negligence.

(4) Any person who violates any provision of this section, shall upon summary conviction thereof, be sentenced to pay a fine not exceeding twenty-five dollars and costs of prosecution, and in default of payment thereof, shall undergo imprisonment not exceeding ten days.

History.—Comp. §§1-4, ch. 25269, 1949.
Sub. §(3) am. §10, ch. 26484, 1951.

413.08 "Dog guide" to accompany blind master into hotels, restaurants, eating establishments; unlawful to prohibit or interfere with.—

(1) It shall be lawful for any "dog guide" to accompany his blind master into any hotel, restaurant or eating establishment, and it shall be unlawful for any person, directly or indirectly, either to prohibit, hinder or interfere with his doing so; provided the said blind master otherwise complies with the limitations applicable to sighted persons.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine, not exceeding one hundred dollars, or by imprisonment in the county jail for a period not exceeding sixty days, or by both such fine and imprisonment.

History.—§1, ch. 25268, 1949; (1) a. by §1, ch. 61-217.

CHAPTER 414

POOR MOTHERS WITH DEPENDENT CHILDREN

414.01 County aid for poor mothers.—The county commissioners of the several counties of the state may provide in the annual budget of the general revenue fund an appropriation sufficient to meet the purposes of this law for the support of women of insufficient income, who have dependent upon them for food, raiment, and education, orphans, or half-orphan children under sixteen years of age, including any woman whose husband is dead or is an inmate of some state institution, or whose husband is divorced from her, or whose husband has been prosecuted for desertion or non-support and has been adjudicated by the court where prosecuted to be wholly unable to support his wife and children, or whose husband is permanently incapacitated for work by reason of any mental or physical infirmity, and any woman who is the mother of a child if her own support and the support of the child depend wholly or partially upon her labor, shall be entitled to the assistance as provided for in this chapter for the support of herself and for her child.

History.—§1, ch. 13759, 1929; CGL 1936 Supp. 3727(1).

414.02 Allowance authorized. — The allowance for the aid of such women shall not exceed twenty-five dollars a month when she has but one child under sixteen years of age. If she has more than one child under the age of sixteen years it shall not exceed twenty-five dollars for the first child, and eight dollars a month for each of the other children.

History.—§2, ch. 13759, 1929; CGL 1936 Supp. 3727(2).

414.03 Condition of allowance.—The county commissioners of their respective counties may levy a tax of not more than one mill on all taxable property of their respective counties for the purpose of supplying funds to carry this chapter into effect, and provide means for the same, provided the condition of allowance of said allotment shall be made by the county commissioners after due investigation of each case by and through such agency as the board of county commissioners shall deem advisable, and only upon the following conditions:

(1) The child for whose benefit the allowance is made, must be living with the mother of such child, or other relative within the second degree, or guardian approved by the proper authorities.

(2) The mother must, in the judgment of the county commissioners of such county, which body shall finally pass upon all applications for aid under this chapter, be a proper person morally, physically and mentally fitted for the bringing up of the child, and shall be in actual need of the aid provided by this chapter.

(3) Said allowance shall, in the judgment of the county commissioners, be necessary to save the child from neglect.

(4) No person shall receive the benefit of this chapter who shall not have been a resident of the state for at least two years and a resident of the county in which the allowance is given, for at least one year next before the making of the application for aid in such county.

History.—§3, ch. 13759, 1929; CGL 1936 Supp. 3727(3).

414.04 When allowances shall cease.—Whenever any child shall reach the age of sixteen years, or the mother shall remarry, the allowance to the mother or the children shall cease; provided, however, that if it is made to appear to the board of county commissioners, after an investigation, that there exists some special reason that it is for the best interest of any child, as well as for society, to continue said allowance for a longer period of time such allowance may be continued for such time as the justice of the case may demand. In all cases, however, when the mother remarries all allowances shall cease.

History.—§4, ch. 13759, 1929; CGL 1936 Supp. 3727(4).

414.05 Female relative.—The provisions of this chapter shall also be extended for the benefit of orphan children who are dependent on some female relative unable to support them, or to any children under guardianship who are dependents or paupers and have no means of support.

History.—§5, ch. 13759, 1929; CGL 1936 Supp. 3727(5).

414.06 How carried into effect.—In order to carry the provisions of this chapter into effect, the board of county commissioners shall have direct supervision of the investigation of all cases and they may, in their discretion, use all county agencies for purposes of such investigation, and shall have the assistance of the state boards of health, public instruction and public welfare, in investigating all persons entitled to the provisions of this chapter in the gathering of data and the history, and making a report on each case, and to this end the necessary blanks will be provided, and the state board of public welfare shall provide uniform blanks to be printed and paid for by the counties to be used in gathering and recording the history of each case.

History.—§6, ch. 13759, 1929; CGL 1936 Supp. 3727(6).

414.07 History of each case.—The history of each case, when investigated by the agency or agencies used by the board of county commissioners, shall be made up in duplicate, the original

to be filed with the board of county commissioners of the county, and one copy to be forwarded to and filed with the state board of public welfare.

History.—§7, ch. 13759, 1929; CGL 1936 Supp. 3727(7).

414.08 How families are to be investigated.—The board of county commissioners of each county shall require the persons or agencies used for making the required investigation, to carefully and speedily investigate the condition of any and all poor mothers' children, orphan and half-orphan children, whose needs may be brought to their attention, and after having gathered the history of each case and recorded such history upon the blanks as hereinbefore required to be provided, to immediately place such report of such case before the board of county commissioners of such county for immediate action, and the said board of county commissioners shall examine such report and immediately take up such application and grant or reject such application, as the board of county commissioners in their judgment shall find the applicant entitled by this chapter.

History.—§8, ch. 13759, 1929; CGL 1936 Supp. 3727(8).

414.09 Other persons may be appointed to carry law into effect.—In making the investigations of cases, as required by this chapter, the board of county commissioners shall use, so far as possible, some employee of the county trained in such work, who shall not receive any additional compensation therefor, or in the absence of such employee the board of county commissioners shall appoint three capable women, residents of such county, who will be willing to accept such appointment and serve without compensation, to investigate and report such case or cases as may be submitted to them of poor mothers, orphans and half-orphan children entitled to the provisions of this chapter, and such persons so appointed shall individually or collectively make their investigation of the case submitted to them as provided for in §414.08.

History.—§9, ch. 13759, 1929; CGL 1936 Supp. 3727(9).

414.10 Where child may reside.—The child to whom the allowance is made under this chapter must be living with the mother, or other female guardian of such child, unless special privilege of separation is authorized by the board of county commissioners, such separation to be granted where advantageous for the sake of the child's education or general welfare.

History.—§10, ch. 13759, 1929; CGL 1936 Supp. 3727(10).

414.11 Require attendance at school.—All children receiving aid under the provisions of this chapter, if of school age and physically and mentally qualified, shall be required to attend the schools of the county during the whole term or terms of such schools, and upon failure of such children to attend schools for the whole term or terms thereof, the aid herein provided for such mothers and children shall cease without notice. No aid shall be paid for those of school age except upon the monthly certificate of the principal or head of the school or schools attended by such children that they have regularly attended the schools during the month in question or have been duly excused by him.

History.—§12, ch. 13759, 1929; CGL 1936 Supp. 3727(12).

414.12 County commissioners may designate county welfare board to carry law into effect.—In those counties having county welfare boards, the board of county commissioners may designate such welfare board, and it shall be the duty of such board, to make the investigation of all cases, and to pass upon all applications for aid; to pay the benefits authorized by this chapter; and the board of county commissioners is authorized, from the appropriation and tax levy authorized by this chapter, to disburse same to such welfare board for administration.

History.—§1, ch. 22716, 1945.

CHAPTER 416

DETENTION HOMES AND SCHOOLS FOR DELINQUENT CHILDREN

416.01 County commissioners authorized to establish; who may be placed in detention homes.—In all counties of this state the board of county commissioners may provide and maintain at public expense a detention room, or house of detention, separated or removed from any common jail or lockup, to be in charge of a matron or other person of good moral character, wherein all the delinquent children within the provisions of chapter 39, shall, when necessary, be detained. In all counties maintaining detention homes, no children guilty of minor offenses shall be committed to the Florida industrial school for boys except it be deemed necessary after a trial term in said detention home. Such terms shall never be longer than one year. Children under twelve years of age shall not be committed to the Florida industrial school for boys, from any county unless after probation care it is found necessary.

History.—§1, ch. 6841, 1915; RGS 2344; CGL 3740.
cf.—Chs. 955 and 956, Florida schools for boys and girls.

416.02 Counties maintaining no detention home.—In all counties having a population of less than ten thousand and which do not unite with a city or other county or counties, as hereinafter provided, the children detained under this chapter may be transferred to some county maintaining a detention home and their maintenance shall be paid for from the general funds of the county in which the commitment is made; and commitment to the Florida industrial school for boys by said last named counties shall only be made when necessary as above set out.

History.—§1, ch. 6841, 1915; RGS 2345; CGL 3741.

416.03 Judge of juvenile court may parole.—The judge of the juvenile court in any county maintaining a detention home may parole on good behavior any children committed to a detention home, and return them to their homes on parole to a probation officer whether they be from his own or some other county. But he shall first give notice to and confer with the judge who made the commitment.

History.—§1, ch. 6841, 1915; RGS 2346; CGL 3742.
cf.—Ch. 39, Juvenile courts.

416.04 Literary and industrial training.—In any county which has a city of ten thousand population or over, as given by the last United States census, a regular literary and industrial school training at the public expense shall be provided for by the board of county commissioners for the benefit of children who are detained in its detention home.

And in counties having no city of ten thousand or over and which do not unite with a city or other county or counties as hereinafter provided, the children committed shall be transferred as soon as possible after commitment to some county maintaining a literary and industrial school training in its detention home, and their maintenance shall be provided for from the general funds of the county in which the commitment is made.

History.—§2, ch. 6841, 1915; RGS 2347; CGL 3743.

416.05 Certain counties may unite in maintaining homes; board of trustees; provisos.—A county having a population of less than ten thousand, or a population of ten thousand or over, but having no city of ten thousand, according to the last United States census, may unite with one, or two or three adjacent counties, or unite with a city within that county, in maintaining a detention home and industrial school.

When the board of county commissioners and the city council, or the boards of county commissioners of the two, three or four adjacent counties shall agree to unite, the legislative bodies of the several counties or of the city and county so uniting, shall elect a board of trustees for the joint detention home and school, to consist of five or seven members who shall be chosen from the membership of the boards of the counties so uniting, or from the membership of the board of the county and of the city council so uniting in the approximate proportion to the census, children between six and seventeen years of age in the territories uniting.

The members so appointed shall serve for the remainder of the term of office for which they were elected on their respective boards of commissioners or council, and when vacancies occur on said board of trustees of joint detention homes, they shall be filled by the board or council making the original appointment.

All powers and duties by any section of this chapter conferred or imposed upon the boards of county commissioners are hereby conferred upon these boards of trustees for the support of a joint detention home; provided, however,

that in estimating the expense for maintenance of a joint detention home, the amount of money needed for the payment of teachers' salaries and for the furnishing of school supplies, shall be included in the estimate of expenses; and provided, further, that the estimate shall be transmitted to the boards of county commissioners, or to the boards of commissioners and the city council, of territory so uniting.

History.—§3, ch. 6841, 1915; RGS 2348; CGL 3744.

416.06 County commissioners authorized to acquire land for home; increase millage of taxation; superintendent; other employees.—The board of county commissioners of every county may accept as a gift, or may purchase, the land necessary for said detention home, and may increase the millage of taxation for the purpose of establishing and maintaining same. A detention home shall not be deemed to be, nor treated as a penal institution, but a home. The board of county commissioners must also provide for a suitable superintendent or matron, or both, to have charge of such detention home, and for such other employees as may be needed in the efficient management of such detention home and provide for the payment out of the general funds of the county for suitable salaries for such superintendent and matron and other employees as may be necessary; and the superintendent and matron and other needed employees shall be appointed by said board on the nomination of the county board of visitors hereinafter provided, and the approval of the judge of the juvenile court. The superintendent, matron and other needed employees shall be appointed on merit and may at any time be removed by the county board of visitors in its discretion, with the approval of the county judge, after charges have been duly preferred and hearings given.

History.—§4, ch. 6841, 1915; RGS 2349; CGL 3745.

416.07 County board of visitors; term of office.—The judge of the juvenile court in and for each county of the state, shall, by an order entered in the minutes of the court, appoint seven discreet citizens of good moral character, without regard to politics, three or more of whom shall be women, to be known as the county board of visitors, and shall fill all vacancies occurring in such committee. The judge shall immediately notify each person appointed on said committee, and thereupon said persons shall appear before the judge of the juvenile court and qualify by taking oath, which shall be entered in said juvenile court record, to faithfully perform the duties of a member of said county board of visitors.

The members of such visiting committee shall hold office for four years and until their successors are appointed and qualify; provided, that of those first appointed, one shall hold office for one year, two for two years, two for three years, and two for four years; the terms for which the respective members shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any visiting committee by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the term of four years; when any vacancy occurs for any other reason, the appointee shall hold office for the unexpired term of his predecessor.

History.—§5, ch. 6841, 1915; RGS 2350; CGL 3746.

416.08 Duties of board of visitors; compensation.—The county board of visitors shall visit, without previous notice, not less than four times a year, all persons, institutions, societies, and associations, except state institutions receiving children under this chapter; said visits shall be made by not less than two members of the board who shall go together, or shall make a joint report; said board of visitors shall report to the juvenile court from time to time the condition of children received by, or in charge of such persons, associations or institutions, and shall make an annual report in writing to the judge of the juvenile court, and on request, to the board of county commissioners, in such form as the court may prescribe, on the qualifications and management of such persons, associations and institutions, and in such report may make such suggestions or comments as to them may seem fit; such report to be filed in the office of the juvenile court prior to the first day in November.

Such persons, associations or institutions shall make reports to said visiting board showing their condition, management and competency to adequately care for such children as may be committed to them, and such other facts as said board may require.

The court shall in no case commit a child to any person, association or institution whose standing, conduct, or care of children is not satisfactory to the court.

Said board of visitors shall also have the control and management of the internal affairs of any detention home or school established by the board of commissioners of their county, and the board of county commissioners shall provide for the proper equipment of the home and for the payment of such employees as may be needed in the efficient management of such detention home.

Said committee shall serve without compensation, but shall be reimbursed for traveling expenses as provided in §112.061 by the board of county commissioners upon a written order for the amount of such expenses endorsed by the judge of the juvenile court.

History.—§5, ch. 6841, 1915; RGS 2351; CGL 3747; §19, ch. 63-400.

CHAPTER 417

CHILD WELFARE

417.01 Florida children's commission; members; term of office of commissioners; meetings.—That there is hereby created the Florida children's commission, which shall consist of not less than fifteen nor more than twenty-one members all to be appointed by the governor of Florida. The membership of the commission shall include the state superintendent of public instruction, the state health officer, the state welfare commissioner and the chairman of the crippled children's commission. One-third of the members shall be appointed for the term of four years, one-third for the term of three years, and one-third for the term of two years, and thereafter the terms of office of each member shall be four years. The members shall serve without compensation, but shall be reimbursed for traveling expenses as provided in §112.061 in attending meetings of the commission. The members shall be selected because of their broad interests and knowledge, and their ability to make contributions in specialized fields and their concern for children. The members shall, each year, select one of their own number as chairman. There shall be no less than three meetings of the commission each year; one of which shall be held in July, at which time the chairman shall be selected. The commission shall supersede and take over the duties of the present Florida children's committee.

History.—§1, ch. 23810, 1947; §11, ch. 25035, 1949; §19, ch. 63-400.

cf.—Ch. 391, Florida crippled children's commission.

417.02 Duties.—The duties of the Florida children's commission shall be:

(1) To ascertain the facts concerning the needs of children and youth in the state through adequate research studies; such research to be carried on whenever possible through the departments or agencies of the state government responsible for providing services in the fields of health, education, social welfare, employment and related services, but where such research cannot be done within the established state agencies, it shall be carried out by this commission.

(2) To review legislation pertaining to children and youth and appropriations made for services in their behalf in such fields as health, child guidance, social service, education, recreation, child labor, juvenile courts, probation, and parole service, and detention facilities, and to consider and present revisions and additions needed, and report to the governor of this state and the legislature regarding such legislation.

(3) To appraise the availability, adequacy, and accessibility of all services for children and youth within the state.

(4) To maintain contacts with local, state and federal officials and agencies concerned with planning for children and youth.

(5) To encourage and foster local community action in behalf of children through the local county children's committees.

History.—§2, ch. 23810, 1947.

417.03 County committee.—The governor shall appoint, in each county in the state, a committee of not less than nine persons charged with the duty and responsibility of developing such information as the Florida children's commission shall require concerning the needs of children within the respective counties, and submitting to the Florida children's commission plans and proposals for meeting the needs of children in the several counties. The county committees shall include the judge of the juvenile court, or the county judge in counties having no juvenile court judge, a member of the district welfare board, a member of the board of county commissioners, the county school superintendent or a member of the county school board, and the director of the county health unit where one exists. The other members shall be selected because of their interest in the needs of children, their effectiveness in promoting child welfare within the county, and their knowledge of local conditions, and the chairman shall be elected from the nonofficial members of the committee. One of the nonofficial members of the county committees shall be appointed for four years, two for three years, where five nonofficial members are appointed, and two for two years, and thereafter their successors shall be appointed for terms of four years. The members of the county committees shall receive no compensation for their services.

History.—§3, ch. 23810, 1947.
Am. §11, ch. 25035, 1949.

417.04 Employment of director and other personnel.—In order to carry out the objectives of the Florida children's commission, the commission shall select and employ a director as follows:

(1) The director shall have the professional training of recognized grade in one of the fields of work for children, social work, education, youth service, or child health, with at least five years of recent experience in one of these fields with a minimum of three to five years' experience in a supervisory or consultative position.

(2) The director to the Florida children's commission shall assist in coordinating the programs of all state youth serving agencies; shall plan, organize and coordinate the activities of the county children's committees; shall make state-wide surveys of factors contributing to juvenile delinquency, and of the resources, facilities and services available within the counties and from the state to counteract

juvenile delinquency; shall secure statistical data from the county committees and from state and local agencies; shall arrange for the exchange of information, plans and programs between public and private groups interested in youth guidance; shall prepare articles, reports and bulletins for the use of the Florida children's commission and county committees and agencies and for general publication; and shall keep and maintain records and reports and conduct correspondence relative to the work of the commission.

(3) The commission may employ such clerical and other assistants to the director as shall be necessary to carry out the provisions of this section subject to the rules and regulations of the state merit system council as adopted by the state personnel board.

History.—§4, ch. 23810, 1947; (1), (2) A. (3) N. by §1, ch. 57-168.

CHAPTER 418

PLAYGROUNDS AND RECREATION CENTERS

418.01 Scope of chapter; definition.—This chapter shall apply to all cities, towns and counties of the state. The term "such municipality or county" as used in this chapter refers to and means any city, town or county of the state.

History.—§1, ch. 10100, 1925; CGL 3728.

418.02 Recreation centers; use and acquisition of land; equipment and maintenance.—The governing body of any such municipality or county may dedicate and set apart for use as playgrounds and recreation centers and other recreation purposes, any lands or buildings, or both, owned or leased by such municipality or county and not dedicated or devoted to another or inconsistent public use; and such municipality or county, may, in such manner as may now or hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality or county, acquire or lease lands or buildings, or both, within or beyond the corporate limits of such municipality or county, for playgrounds, recreation centers and other recreational purposes and when the governing body of the municipality or county so dedicates, sets apart, acquires or leases lands or buildings for such purposes, it may, on its own initiative, provide for their conduct, equipment, and maintenance according to provisions of this chapter, by making an appropriation from the general municipal or county funds.

History.—§2, ch. 10100, 1925; CGL 3729.

418.03 Supervision.—The governing body of any such municipality or county may establish a system of supervised recreation and it may, by resolution or ordinance, vest the power to provide, maintain and conduct playgrounds, recreation centers and other recreational activities and facilities in the school board, park board, or other existing body or in a playground and recreation board as the governing body may determine. Any board so designated shall have the power to maintain and equip playgrounds, recreation centers and the buildings thereon, and it may, for the purpose of carrying out the provisions of this chapter, employ play leaders, playground directors, supervisors, recreation superintendents or such other officers or employees as they deem proper.

History.—§3, ch. 10100, 1925; CGL 3730.

418.04 Playground and recreation board.—If the governing body of any such municipality or county shall determine that the power to provide, establish, conduct and maintain a recreation system as aforesaid shall be exercised by a playground and recreation board, such governing body shall, by resolution or ordinance, establish in such municipality or county a playground and recreation board which shall possess all the powers and be subject to all the responsibilities of local authorities under this chapter. Such board, when established, shall consist of five persons serving without pay, to be appointed by the mayor or presiding officer of such municipality or county. The term of office shall be for five years, or until their successors are appointed and qualified, except that the members of such board first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. Immediately after their appointment, they shall meet and organize by electing one of their members president and such other officers as may be necessary; vacancies in such boards occurring otherwise than by expiration of term shall be filled by the mayor or presiding officer of the governing body only for the unexpired term.

History.—§4, ch. 10100, 1925; CGL 3731.

418.05 Cooperation with other units and boards.—Any two or more municipalities or counties may jointly provide, establish, maintain and conduct a recreation system and acquire property for and establish and maintain playgrounds, recreation centers and other recreational facilities and activities. Any school board may join with any municipality in conducting and maintaining a recreation system.

History.—§5, ch. 10100, 1925; CGL 3732.

418.06 Gifts, grants, devises and bequests.—A playground and recreation board or other authority in which is vested the power to provide, establish, maintain and conduct such supervised recreation system may accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use for play grounds or recreation purposes, but if the acceptance thereof for such purposes will subject such municipality or county to additional expense for improvement, maintenance or renewal, the acceptance of any grant or devise of real estate shall be subject

to the approval of the governing body of such municipality or county.

Money received for such purpose, unless otherwise provided by the terms of the gift or bequest, shall be deposited with the treasurer of such municipality or county to the account of the playground and recreation board or commission or other body having charge of such work, and the same may be withdrawn and paid out by such body in the same manner as money appropriated for recreation purposes.

History.—§6, ch. 10100, 1925; CGL 3733.

418.07 Issuance of bonds.—The governing body of such municipality or county may, pursuant to law and in conformity with the constitution of this state, provide that the bonds of such municipality or county may be issued in the manner provided by law for the issuance of bonds for other purposes, for the purpose of acquiring lands or buildings for playgrounds, recreation centers and other recreational purposes and for the equipment thereof.

History.—§7, ch. 10100, 1925; CGL 3734.

418.08 **Petition for referendum.**—Whenever a petition signed by at least five per cent of the qualified and registered electors in such municipality or county shall be filed with the governing body of such municipality or county, requesting the governing body of such municipality or county to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax for the conduct and maintenance thereof of not more than one mill on each dollar of assessed valuation of all taxable property within the corporate limits or boundaries of such municipality or county, the governing body of such municipality or county shall cause the question of the establishment, maintenance and conduct of such supervised recreation system to be submitted to the qualified electors who are freeholders, to be voted upon at the next general or special election of such municipality or county; provided, however, that such question shall not be voted upon at the next general or special election unless such petition shall have been filed at least thirty days prior to the date of such election.

History.—§8, ch. 10100, 1925; CGL 3735; §1, ch. 63-489.
cf.—§193.32 Annual tax levies, limitations.

418.09 Resolution or ordinance providing for recreation system.—Upon the adoption of such proposition by a majority of those voting on it at an election, the governing body of such municipality or county shall, by appropriate resolution or ordinance, provide for the establishment, maintenance and conduct of such supervised recreation system as they may deem advisable and practicable to provide and maintain out of the tax money thus voted. The said governing body may designate, by appropriate resolution or ordinance, the board or commission to be vested with the powers, duties and obligations necessary for the establishment, maintenance and conduct of such recreation system as provided for in this chapter.

History.—§9, ch. 10100, 1925; CGL 3736.

418.10 Tax levy.—The governing body of such municipality or county adopting the provisions of this chapter at an election and until revoked at an election by a majority of the qualified voters who are freeholders, shall thereafter annually levy and collect a tax of not less than the minimum nor more than the maximum amount set out in the said petition for such election, which tax shall be designated as the "playground and recreation tax" and shall be levied and collected in like manner as the general tax of such municipality or county.

History.—§10, ch. 10100, 1925; CGL 3737.

418.11 Payment of expenses and custody of funds.—The cost and expense of the establishment, maintenance and conduct of a supervised recreation system of playgrounds, recreation centers and other recreational facilities and activities shall be paid out of taxes or money received for this purpose, and the playground and recreation board or commission, or other authority in which is vested the power to provide, establish, conduct and maintain a supervised recreation system and facilities as aforesaid, shall have exclusive control of all moneys collected or donated to the credit of the playground and recreation fund.

History.—§11, ch. 10100, 1925; CGL 3738.

CHAPTER 421

HOUSING AUTHORITIES LAW

421.01 Short title.—This chapter may be referred to as the "Housing Authorities Law."

History.—§1, ch. 17981, 1937; CGL 1940 Supp. 7100(3-a).

421.02 Finding and declaration of necessity.—It is hereby declared:

(1) that there exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident protection, and other public services and facilities; (2) that slum areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (3) that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income (including the acquisition by a housing authority of property to be used for or in connection with housing projects or appurtenant thereto) are exclusively public uses and purposes for which public money may be spent and private property acquired and are governmental functions of public concern; (4) that the necessity in the public interest for the provisions hereinafter enact-

ed, is hereby declared as a matter of legislative determination.

History.—§2, ch. 17981, 1937; CGL 1940 Supp. 7100(3-b).

421.03 Definitions. — The following terms, wherever used or referred to in this chapter, shall have the following respective meanings for the purposes of this chapter, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean any of the public corporations created by §421.04.

(2) "City" shall mean any city or town of the state having a population of more than two thousand five hundred (according to the last preceding federal or state census). "The city" shall mean the particular city for which a particular housing authority is created.

(3) "Governing body" shall mean the city council, the commission, or other legislative body charged with governing the city (as the case may be).

(4) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(5) "Clerk" shall mean the clerk of the city or the officer of the city charged with the duties customarily imposed on the clerk thereof.

(6) "Area of operation": (a) in the case of a housing authority of a city having a population of less than twenty-five thousand, shall include such city and the area within five miles of the territorial boundaries thereof; and (b) in the case of a housing authority of a city having a population of twenty-five thousand or more shall include such city and the area within ten miles from the territorial boundaries thereof; provided however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined.

(7) "Federal government" shall include the United States, the Federal Emergency Administration of Public Works or any other agency or instrumentality, corporate or otherwise, of the United States.

(8) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

(9) "Housing project" shall mean any work or undertaking: (a) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; or (b) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes; or (c) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(10) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(11) "Debentures" shall mean any notes, interim certificates, debentures, revenue certificates, or other obligations issued by an authority pursuant to this chapter.

(12) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(13) "Obligee of the authority" or "obligee" shall include any holder of debentures, trustee or trustees for any such holders, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

History.—§3, ch. 17981, 1937; CGL 1940 Supp. 7100(3-c); §1, ch. 20219, 1941; sub. § (2) am. §1, ch. 28061, 1953; (10) by §24, ch. 57-1.

421.04 Creation of housing authorities.—(1) In each city (as herein defined) there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city by proper resolution shall declare that there is need for an authority to function in such city. The determination as to whether there is such need for an authority to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five residents of the city asserting that there is need for an authority to function in such city and requesting that the governing body so declare.

(2) The governing body may adopt a resolution declaring that there is need for a housing authority in the city if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such city or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income at rentals they can afford. In determining whether dwelling accommodations

are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

(3) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

History.—§4, ch. 17981, 1937; CGL 1940 Supp. 7100(3-d).
cf.—§1.01 for general definitions.
§421.52, Agreements and contracts.

421.05 Appointment, qualifications and tenure of commissioners. — When the governing body of a city adopts a resolution as aforesaid, the mayor with the approval of the governing body shall promptly appoint five persons as commissioners of the authority created for said city. Three of the commissioners who are first appointed shall be designated to serve for terms of one, two and three years respectively; and the remaining two of such commissioners shall be designated to serve for terms of four years each, from the date of their appointment. Thereafter commissioners shall be appointed as aforesaid for a term of office of four years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the by-laws of the authority shall require a larger number. The mayor with the concurrence of the governing body shall designate which of the commissioners appointed shall be the first chairman, but when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners. An authority shall select from among its commissioners a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

History.—§5, ch. 17981, 1937; CGL 1940 Supp. 7100(3-e). §1, ch. 59-413.

421.06 Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office.

History.—§6, ch. 17981, 1937; CGL 1940 Supp. 7100(3-f).

421.07 Removal of commissioners.—For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor with the concurrence of the governing body, but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

History.—§7, ch. 17981, 1937; CGL 1940 Supp. 7100(3-g). §2, ch. 59-413.

421.08 Powers of authority.—An authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this chapter, and having all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts

and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal by-laws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(2) Within its area of operation, to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(3) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; provided, however, that notwithstanding any other power or provision in this chapter, the authority shall not construct, lease, control, purchase or otherwise establish in connection with or as a part of any housing project or any other real or any other property under its control, any system, work, facilities, plants or other equipment for the purpose of furnishing utility service of any kind to such projects or to any tenant or occupant thereof in the event that a system, work, facility, plant or other equipment for the furnishing of the same utility service is being actually operated by a municipality or private concern in the area of operation or the city or the territory immediately adjacent thereto; provided, further, that nothing herein shall be construed to prohibit the construction or acquisition by the authority of any system, work, facilities or other equipment for the sole and only purpose of receiving utility services from any such municipality or such private concern and then distributing such utility services to the project and to the tenants and occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(4) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any debts or parts thereof (whether or not incurred by said authority), including the power to pay premiums on any such insurance.

(5) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its debentures at a price not more than the principal amount thereof and accrued interest, all debentures so purchased to be canceled.

(6) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(7) Acting through one or more commissioners or other person or persons designated by the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structure within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(8) To exercise all or any part or combination of powers herein granted. No provisions of law with respect to acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

History.—§8, ch. 17981, 1937; CGL 1940 Supp. 7100(3-h).
cf.—§§421.24, 421.47, 421.52, Validation, etc., of acts.
See: Adams v. Housing authority of city of Daytona Beach, 60 So. 2d 663.

421.09 Operation not for profit.—It is the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its

providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city.

To this end an authority shall fix the rentals for dwellings in its project at no higher rate than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenue, income and receipts of the authority from whatever sources derived) will be sufficient (1) to pay, as the same shall become due, the principal and interest on the debentures of the authority; (2) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (3) to create (during not less than the six years immediately succeeding its issuance of any debentures) a reserve sufficient to meet the largest principal and interest payments which will be due on such debentures in any one year thereafter, and to maintain such reserve.

History.—§9, ch. 17981, 1937; CGL 1940 Supp. 7100(3-i).

421.091 Financial accounting and investments.—A complete and full financial accounting and audit shall be made annually by a certified public accountant, and a copy of said report shall be filed with the governing body not less than ninety days after the close of each fiscal year. Provided, however, that it shall not be necessary to make a financial accounting and audit of federal funds furnished housing authorities by the federal government and which are audited annually by said federal government if a copy of such federal audit is furnished to the governing body.

History.—§3, ch. 59-413.

421.10 Rentals and tenant selection.—In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection: (1) it may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income; (2) it may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and (3) it shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times an annual rental of the quarters to be furnished such person or persons, except that in case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this section or §421.09 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or the preceding section.

History.—§10, ch. 17981, 1937; §1, ch. 19510, 1939; CGL 1940 Supp. 7100(3-j); am. §7, ch. 22858, 1945.

421.101 False representations to obtain lower rent in housing accommodations; penalty.—Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact in order to obtain a lower rent for housing accommodations in a low rent housing development operated pursuant to chapter 421, than the rental such person is required to pay pursuant to federal or state statutes, schedule of rents or rules and regulations as determined and fixed by housing authorities created pursuant to chapter 421, aforesaid, shall be punished by a fine of not less than $50.00 nor more than $500.00, or by imprisonment for not more than six months in the county jail, or both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact as aforesaid shall constitute a separate offense.

History.—§1, ch. 61-468.

421.11 Cooperation of authorities.—Any two or more housing authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, debentures, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects located within the area of operation of any one or more of said authorities. For such purpose, an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on its behalf with respect to any or all such powers. Any authorities joining or cooperating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities.

History.—§11, ch. 17981, 1937; CGL 1940 Supp. 7100(3-k); am. §1, ch. 21699, 1943.

421.12 Eminent domain.—An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in chapters 73 and 74. Prop-

erty already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the state or any political subdivision thereof may be acquired without its consent.

History.—§12, ch. 17981, 1937; CGL 1940 Supp. 7100(3-l). cf.—§74.13 Rights of authority after taking.

421.13 Planning, zoning and building laws.—All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

History.—§13, ch. 17981, 1937; CGL 1940 Supp. 7100(3-x).

421.14 Debentures.—An authority may issue debentures from time to time in its discretion, for any of its corporate purposes. An authority may also issue refunding debentures for the purpose of paying or retiring debentures previously issued by it. An authority may issue such types of debentures as it may determine, including debentures on which the principal and interest are payable; (1) exclusively from the income and revenues of the housing project financed with the proceeds of such debentures, or with such proceeds together with a grant from the federal government in aid of such project; (2) exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such debentures; or (3) from its revenues generally. Any of such debentures may be additionally secured by a pledge of any revenues of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the debentures shall be liable personally on the debentures by reason of the issuance thereof. The debentures and other obligations of an authority (and such debentures and obligations shall so state on their face) shall not be a debt of the city, the county, the state or any political subdivision thereof, and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such debentures or obligations be payable out of any funds or properties other than those of said authority. The debentures shall not constitute an indebtedness within the meaning of any constitutional or statutory debt or bond limitation or restriction.

History.—§14, ch. 17981, 1937; CGL 1940 Supp. 7100(3-y).

421.15 Form and sale of debentures.—Debentures of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such dates, mature at such times, bear interest at such rates, not exceeding six per cent per annum, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such places and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture may provide.

The debentures may be sold at not less than par at public sale held after notice published once at least five days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of Chicago, Illinois, or in the city of New York, New York, provided, however, that such debentures may be sold at not less than par to the federal government at private sale without any public advertisement.

In case any of the commissioners or officers of the authority whose signatures appear on any debentures or coupons shall cease to be such commissioners or officers before the delivery of such debentures, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any debentures issued pursuant to this chapter shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any debenture of an authority or the security therefor, any such debenture reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this chapter.

History.—§15, ch. 17981, 1937; CGL 1940 Supp. 7100(3-z).

421.16 Provisions of debentures and trust indentures.—In connection with the issuance of debentures or the incurring of obligations under leases and in order to secure the payment of such indentures or obligations, an authority, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, gross or net fees or gross or net revenues to which its right then exists or may thereafter come into existence.

(2) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its rights to sell, lease or to otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(3) To covenant as to the debentures to be issued and as to the issuance of such deben-

tures in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated debentures; to covenant against extending the time for the payment of its debentures or interest thereon; and to redeem the debentures, and to covenant for their redemption and to provide the terms and conditions thereof.

(4) To covenant (subject to the limitations contained in this chapter) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(5) To prescribe the procedure, if any, by which the terms of any contract with the holders of debentures may be amended or abrogated, the amount of debentures the holders of which must consent thereto, and the manner in which such consent may be given.

(6) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(7) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation, and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its debentures or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(8) To vest in a trustee or trustees or the holders of debentures or any proportion of them the right to enforce the payment of the debentures or any covenants securing or relating to the debentures; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of debentures or any proportion of them may enforce any covenant or rights securing or relating to the debentures.

(9) To exercise all or any part or combination of the powers herein granted.

History.—§16, ch. 17981, 1937; CGL 1940 Supp. 7100(3-aa).

421.17 Validation of debentures and proceedings.—A housing authority shall have the right, if it deems it expedient, to determine its authority to issue any debentures, and the legality of all proceedings had or taken in connection therewith, in the same manner and to the same extent(except as otherwise provided in this section) as provided in chapter 75 for the determination by a county, municipality, taxing district, or other political district or subdivision of its authority to incur bonded debt or to issue certificates of indebtedness and of the legality of all proceedings had or taken in connection therewith.

The petition to validate such debentures, and the proceedings had or taken in connection therewith, shall be filed by the housing authority in the circuit court for the county in which is located the city for which said housing authority was created, except that whenever it appears that a housing authority is empowered to function in more than one county the circuit court of any county in the whole or any part of which the housing authority is empowered to function shall have jurisdiction of the cause in the same manner as provided in said chapter whenever a municipality, taxing district or other political district or subdivision shall extend into more than one county.

The notice required by §75.06 shall be addressed to the taxpayers and citizens of the city for which such housing authority has been created and of the county (or counties, in the event such housing authority is empowered to function in more than one county) in the whole or any part of which the housing authority is empowered to function; and by the publication of such notice as required by said chapter 75 all taxpayers and citizens of such city and such county or counties, as the case may be, shall be considered as parties defendant to such proceedings, and the circuit court in which the proceeding is brought shall have jurisdiction of all of the same as if they were named defendants in the petition filed pursuant to said chapter and personally served with process.

In the event no appeal is taken within the time prescribed by said chapter, or if taken, and the decree validating said debentures is affirmed by the supreme court, the decree of the circuit court validating and confirming the issuance of the debentures of the housing authority shall be forever conclusive as to the validity of said debentures against the housing authority and against all taxpayers and citizens of the city for which said housing authority was created and of the county or counties in the whole or part of which the housing authority is empowered to function; and the validity of said debentures shall never be called in question in any court in this state. Debentures of a housing authority, when issued under the provisions of said chapter, shall have stamped or written thereon by the proper officers of the housing authority issuing the same, the words: "Validated and confirmed by decree of the circuit court" (specifying the date when such decree was rendered

and the court in which it was rendered), which shall be signed by the clerk of the circuit court in which the decree was rendered, which entry shall be original evidence of said decree in any court in this state.

History.—§17, ch. 17981, 1937; CGL 1940 Supp. 7100(3-bb).
cf.—§§421.26, 421.48, 421.52, Notes, bonds, debentures; validation, etc.

421.18 Remedies of an obligee of authority.—An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this chapter.

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said authority.

History.—§18, ch. 17981, 1937; CGL 1940 Supp. 7100(3-cc).

421.19 Additional remedies conferrable by authority.—An authority shall have power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in debentures, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligation of said authority as the court shall direct.

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

History.—§19, ch. 17981, 1937; CGL 1940 Supp. 7100(3-dd).

421.20 Exemption of property from execution sale.—All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligee to pursue any remedies for the enforcement of any pledge given by an authority on its rents, fees or revenues.

History.—§20, ch. 17981, 1937; CGL 1940 Supp. 7100(3-ee).

421.21 Aid from federal government; tax exemptions.—

(1) In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such authority.

(2) In addition to the powers conferred upon an authority by subsection (1) and other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance from the federal government under section 202 of the housing act of 1959 (P. L. 86-372, 86th congress) or any law or program of the housing and home finance agency, which provides for direct federal loans in the maximum amount, as defined therein, for the purpose of assisting certain nonprofit corporations to provide housing and related facilities for elderly families and elderly persons.

(a) Housing authorities created under this section are authorized to execute mortgages, notes, bills or other forms of indebtedness together with any agreements, contracts or other instruments required by the housing and home finance agency of the United States government in connection with loans made for the purposes set forth in subsection (2).

(b) This provision relating to housing facilities for the elderly is cumulative and in addition to the powers given to housing authorities under this chapter. All powers granted generally by law to housing authorities in Florida relating to issuance of trust indentures, debentures and other methods of raising capital shall apply also to housing authorities in connection with their participation in programs of the housing and home finance agency.

(3) It is the legislative intent that the tax exemption of housing authorities provided by chapter 423, shall specifically apply to any housing authority created under this section.

History.—§21, ch. 17981, 1937; CGL 1940 Supp. 7100(3-ff); §§1, 2, ch. 61-197.

421.22 Reports.—At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter.

History.—§22, ch. 17981, 1937; CGL 1940 Supp. 7100(3-gg).

421.23 Liabilities of authority.—In no event shall the liabilities, whether ex contractu or ex delicto, of an authority arising from the operation of its housing projects, be payable from any funds other than the rents, fees or revenues of such projects and any grants or subsidies paid to such authority by the federal government.

History.—§23, ch. 17981, 1937; CGL 1940 Supp. 7100(3-hh); am. §7, ch. 22858, 1945.

421.24 Organization and establishment. — The establishment and organization of housing authorities in the state under the provisions of the housing authorities law of this state, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—§1, ch. 19511, 1939; CGL 1940 Supp. 7100(3-kk).

421.25 Contracts and undertakings. — All contracts, agreements, obligations, and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions, contracts and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to cooperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—§2, ch. 19511, 1939; CGL 1940 Supp. 7100(3-ll).

421.26 Notes and bonds.—All proceedings, acts and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—§3, ch. 19511, 1939; CGL 1940 Supp. 7100(3-mm).

421.261 Continuance of municipal housing authorities when municipality abolished; counties in excess of 400,000.—Whenever a municipality in any county having a population in excess of four hundred thousand according to the most recent official census has been or hereafter shall be abolished, wherein at the time of such abolishment a housing authority of such municipality was or is in existence, such housing authority shall continue to function in all respects; provided, however, that the name of such housing authority shall thenceforth be such as may be determined by the county commissioners of the county wherein it functions. Each such housing authority and the commissioners thereof, within the area of operation of such housing authority as hereinafter defined, shall have the same functions, rights, powers, duties, immunities and privileges provided for housing authorities created for cities. Each such housing authority shall continue to operate and prosecute all projects operated or initiated by it prior to the abolishment of the municipality, and shall be entitled to all benefits and privileges thereafter conferred upon housing authorities for cities. The commissioners of each such housing authority shall continue in office after the abolishment of the particular municipality for the remainder of their respective terms. Their successors shall be appointed by resolution of the commissioners of the county. As used in the housing authorities law, the terms "mayor" and "governing body" shall be construed as meaning "county commissioners", the term "city" as used therein shall be construed as meaning "county", and the term "clerk" as used therein shall be construed as meaning "clerk of the circuit court of the county", unless different meanings clearly appear from the contents. The area of operation of any such housing authority shall continue to be the same as that before the abolishment of the municipality, unless extended by resolution of the county commissioners, provided that no such extension shall include any territory lying within a city as defined in the housing authorities law.

History.—Comp. §1, ch. 28305, 1953.

421.27 Housing authorities in counties.—In each county of the state there is hereby created a public body corporate and politic to be known as the "housing authority" of the county; provided, however, that such housing authority shall not transact any business or exercise its powers hereunder until or unless the governing body of such county, by proper resolution shall declare at any time hereafter that there is need for a housing authority to function in and for such

county, which declaration shall be made by such governing body for such county in the same manner and subject to the same conditions as the declaration of the governing body of a city required by section 421.04 for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers (except that the petition referred to in said section 421.04 shall be signed by twenty-five residents of such county).

Upon notification of the adoption of such resolution the commissioners of a housing authority created for a county (who shall be qualified electors of such county) shall be appointed by the governor in the same manner as the commissioners of a housing authority created for a city may be appointed by the mayor; and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof, within the area of operation of such housing authority as hereinafter defined, shall have the same functions, rights, powers, duties, immunities and privileges provided for housing authorities created for cities and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities were applicable to housing authorities created for counties; provided, that for such purposes the term "mayor" as used in the Housing Authorities Law shall be construed as meaning "governor," the term "governing body" as used therein shall be construed as meaning "county commissioners," the term "city" as used therein shall be construed as meaning "county," and the term "clerk" as used therein shall be construed as meaning "county clerk" (as herein defined), unless a different meaning clearly appears from the context; and provided further that the governor may appoint any persons as commissioners of a housing authority created for a county who are qualified electors in such county; and provided further that such commissioners may be removed or suspended in the same manner and for the same reasons as other officers appointed by the governor.

The area of operation of a housing authority created for a county shall include all of the county for which it is created except that portion of the county which lies within the territorial boundaries of any city as defined in the housing authorities law, as amended.

History.—§1, (27) ch. 20220, 1941.

421.28 Creation of regional housing authority.—(1) If the governing body of each of two or more contiguous counties by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all of such counties and exercise its powers and other functions in such counties; and thereupon each housing authority created by section 421.27 for each of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereafter provided; provided that the governing body of a county shall not adopt a resolution as aforesaid if there is a housing authority created for such county which has any obligations outstanding unless first (a) all obligees of such county housing authority and parties to the contracts, bonds, notes and other obligations of such county housing authority agree with such county housing authority to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes or other obligations, and (b) the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided; and provided further that when the above two conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations and property of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced and prosecuted against such regional housing authority to the same extent as they may have been asserted, enforced and prosecuted against such county housing authority.

(2) When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed with the recorder of deeds of the county where such real property is, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

(3) The governing body of each of two or more contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such governing body finds (and only if it finds) (a) that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe and sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) that a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county to carry out the purposes of this Housing Authorities Law in such county.

(4) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public

body corporate and politic and to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for a regional housing authority and finds in substantially the foregoing terms (no further detail being necessary) that the conditions enumerated above in (a) and (b) of subsection (3) exist. A copy of such resolution of the governing body of a county, duly certified by the county clerk of such county, shall be admissible in evidence in any suit, action or proceeding.

History.—§1, (28) ch. 20220, 1941.

421.29 Area of operation of regional housing authority.—(1) The area of operation of a regional housing authority shall include all of the counties for which such regional housing authority is created and established except such portions of the counties which lie within the territorial boundaries of cities, as defined in the housing authorities law, as amended.

(2) The area of operation of a regional housing authority shall be increased from time to time to include one or more additional counties not already within a regional housing authority (except such portion or portions of such additional county or counties which lie within the territorial boundaries of any city, as defined) if the governing body of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the governing body of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, the county housing authority created by §421.27 for each such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any obligations outstanding unless first (a) all obligees of any such county housing authority and parties to the contracts, bonds, notes and other obligations of any such county housing authority agree with such county housing authority and the regional housing authority to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes or other obligations, and second (b) the commissioners of such county housing authority and the commissioners of such regional housing authority adopt resolutions consenting to the transfer of all the rights, contracts, obligations and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided, and provided further, that when the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, agreements, obligations and property of such county housing authority shall be in the name of and vest in such regional housing authority, all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced and prosecuted against such regional housing authority to the same extent as they may have been asserted, enforced and prosecuted against such county housing authority.

(3) When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed with the recorder of deeds of the county where such real property is, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

(4) The governing body of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the governing body of each such additional county or counties shall by resolution declare that there is a need for the addition of such county or counties to the regional housing authority, if (a) the governing body of each of such additional county or counties finds that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income as rentals they can afford and (b) the governing body of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the governing body of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this housing authorities law if the area of operation of the regional housing authority shall be increased to include such additional county or counties.

(5) In determining whether dwelling accommodations are unsafe or insanitary under this or the preceding section, the governing body of a county shall take into consideration the safety and sanitation of the dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

(6) In connection with the issuance of bonds or the incurring of other obligations a regional housing authority may covenant as to limita-

tions on its right to adopt resolutions relating to the increase of its area of operation.

(7) No governing body of a county shall adopt any resolution authorized by this or the preceding section unless a public hearing has first been held. The clerk of such county shall give notice of the time, place and purpose of the public hearing at least ten days prior to the day on which the hearing is to be held, in a newspaper published in such county, or if there is no newspaper published in such county, then in a newspaper published in the state and having a general circulation in such county. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such county and to all other interested persons.

History.—§1, (29) ch. 20220, 1941.

421.30 Commissioners of regional authorities.—

(1) When a regional housing authority has been created as provided above, the governor shall thereupon appoint one qualified elector from each county included in such regional housing authority as a commissioner of the regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as herein provided, the governor shall thereupon appoint one qualified elector from each such additional county as a commissioner of the regional housing authority. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed as provided above for such county, shall be thereupon abolished.

(2) If the area of operation of a regional housing authority consists at any time of an even number of counties, the governor shall appoint one additional commissioner (who shall be a qualified elector from one of the counties in such area of operation) whose term of office shall be as herein provided for a commissioner of a regional housing authority, except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties.

(3) A certificate of the appointment of any commissioner of a regional housing authority shall be filed with the county clerk of the county from which the commissioner is appointed, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The commissioners of a regional housing authority shall be appointed for terms of four years, except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided herein. The governor shall thereafter appoint the successor of each commissioner of a regional housing authority.

(4) The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(5) The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes.

History.—§1, (30) ch. 20220, 1941; am. §2, ch. 21699, 1943.

421.31 Powers of regional housing authority; definitions.—Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges and immunities provided for housing authorities created for cities or counties and the commissioners of such housing authorities in the same manner as though all the provisions of law applicable to housing authorities created for cities or counties were applicable to regional housing authorities; provided that for such purposes the term "mayor" as used in the housing authorities law shall be construed as meaning "governor," the term "governing body" as used therein shall be construed as meaning "county commissioners," the term "city" as used therein shall be construed as meaning "county" and the term "clerk" as used therein shall be construed as meaning "county clerk" (as herein defined), unless a different meaning clearly appears from the context; and provided further that the governor may appoint any person as commissioner of a regional housing authority who is a qualified elector in the county from which he is appointed; and provided further that any commissioner of a regional housing authority may be removed or suspended in the same manner and for the same reason as other officers appointed by the governor. A regional housing authority shall have power to select any appropriate corporate name.

History.—§1, (31) ch. 20220, 1941.

421.32 Rural housing projects. — County housing authorities and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, any such housing authority may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this law. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and

the parties to such instrument so stipulate. In providing housing for farmers of low income, county housing authorities and regional housing authorities shall not be subject to the limitations provided in subsection (3) of §421.10 and subsection (3) of §421.08. Nothing contained in this section shall be construed as limiting any other powers of any housing authority.

History.—§1, (32) ch. 20220, 1941.

421.33 Housing applications by farmers.—The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority created for a county or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. Provided, however, that if it becomes necessary for an applicant under this paragraph to convey any portion of his then homestead in order to take advantages as provided herein, then in that event, the parting with title to a portion of said homestead shall not affect the remaining portion of same, but all rights that said owner may have in and to same under and by virtue of the Constitution of the state or any law passed pursuant thereto, shall be deemed and held to apply to such remaining portion of said land, the title of which remains in said applicant; it being the intention of the legislature to permit the owner of any farm operated or worked upon by farmers of low income in need of safe and sanitary housing to take advantage of the provisions of this law without jeopardizing their rights in their then homestead by reason of any requirement that may be necessary in order for them to receive the benefits herein provided; and no court shall ever construe that an applicant who has taken advantage of this law has in any manner, shape or form abandoned his rights in any property that is his then homestead by virtue of such action upon his part, but it shall be held, construed and deemed that such action upon the part of any applicant hereunder was not any abandonment of his then homestead, and that all rights that he then had therein shall be and remain as provided by the Constitution and any law enacted pursuant thereto.

History.—§1, (33), ch. 20220, 1941; am. §7, ch. 22858, 1945.

421.34 Additional definitions.—

(1) "Farmers of low income," as used in this law, shall mean persons or families who at the time of their admission to occupancy in a dwelling of a housing authority: (a) live under unsafe or insanitary housing conditions; (b) derive their principal income from operating or working upon a farm; and (c) had an aggregate average annual net income for the three years preceding their admission that was less than the amount determined by the housing authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing without overcrowding.

(2) "Governing body," as used in this law with regard to a county, shall mean the county commissioners or other legislative body of the county.

(3) "Clerk," as used in this law with regard to a county or county authority, shall mean the clerk and accountant of the board of county commissioners or the officer having duties customarily imposed on such clerk.

History.—§1, (34) ch. 20220, 1941.

421.35 Supplemental nature of sections.—The powers conferred by §§421.27-421.34 shall be in addition and supplemental to the powers conferred by any other law.

History.—§2, ch. 20220, 1941.

421.36 Short title.—§§421.27-421.35 may be cited and referred to as the "Rural Housing Authorities Law of Florida."

History.—§1, ch. 20220, 1941.

421.37 Defense housing; finding and declaration of necessity.—It is hereby found and declared that the national defense program involves large increases in the military forces and personnel of this state, a great increase in the number of workers in already established manufacturing centers and the bringing of a large number of workers and their families to new centers of defense industries in the state; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this state which impedes the national defense program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons to enable the rapid expansion of national defense activities in this state and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities which otherwise would not be provided at this time; and that such provisions are for the public use and purpose of facilitating the national defense program in this state. It is further declared to be the purpose of this law to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the federal government, or to cooperate with or act as agent of the federal government, in the expeditious development and the administration of projects to assure the availability when needed of safe and sanitary dwellings for persons engaged in national defense activities.

History.—§1, ch. 20221, 1941.

421.38 Defense housing by authorities.—

(1) Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity

thereof, but no housing authority shall initiate the development of any such project pursuant to this law after the termination of the existing war by the signing of a definitive treaty of peace, or by the proclamation of the President of the United States that hostilities have ceased or that the emergency in justification of extraordinary wartime powers no longer exists, whichever shall first occur.

(2) In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this law, and housing projects developed or administered hereunder shall constitute "housing projects" under the housing authorities law, as that term is used therein; provided, that during the period (herein called the "national defense period") that a housing authority finds (which finding shall be conclusive in any suit, action or proceeding) that within its area of operation (as defined in the housing authorities law), or any part thereof, there is an acute shortage of safe and sanitary dwellings which impedes the national defense activities, any project developed or administered by such housing authority (or by any housing authority cooperating with it) in such area pursuant to this law, with the financial aid of the federal government (or as agents for the federal government as hereinafter provided), shall not be subject to the limitations provided in §421.10 and the second sentence of §421.09; and provided, further, that during the national defense period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvements furnished for or in connection with any such projects. After the national defense period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of the housing authorities law.

History.—§2, ch. 20221, 1941; am. §1, ch. 21697, 1943.

421.39 Acting for federal government on defense housing. — A housing authority may exercise any or all of its powers for the purpose of cooperating with, or acting as agent for, the federal government in the development or administration of projects by the federal government to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and may undertake the development or administration of any such project for the federal government. In order to assure the availability of safe and sanitary housing for persons engaged in national defense activities, a housing authority may sell (in whole or in part) to the federal government any housing project developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project.

History.—§3, ch. 20221, 1941.

421.40 Cooperation by public bodies on defense housing.—Any state public body, as defined in the Housing Cooperation Law shall have the same rights and powers to cooperate with housing authorities, or with the federal government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities that such state public body has pursuant to such law for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income.

History.—§4, ch. 20221, 1941.

421.41 Bonds for defense housing legal investments.—Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this law shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers as bonds or other obligations issued pursuant to the housing authorities law for the development of a slum clearance or housing project for persons of low income.

History.—§5, ch. 20221, 1941.

421.42 Defense housing contracts validated. —All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking (including cooperating with or acting as agent of the federal government in) the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, are hereby validated and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—§6, ch. 20221, 1941.

421.43 Removal of restrictions for defense housing.—This law shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this law and for a housing authority to cooperate with, or act as agent for, the federal government in the development or administration of similar projects by the federal government. In acting under this authorization, a housing authority shall not be subject to any limitations, restrictions or requirements of other laws (except those relating to land acquisition) prescribing the procedure or action to be taken in the de-

velopment or administration of any public works, including slum clearance and housing projects for persons of low income or undertakings or projects of municipal or public corporations or political subdivisions or agencies of the state. A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the federal government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and to effectuate the purposes of this law.

History.—§7, ch. 20221, 1941.

421.44 Defense housing; definitions.—(1) "Persons engaged in national defense activities," as used in this law, shall include: Enlisted men in the military and naval services of the United States and employees of the war and navy departments assigned to duty at military or naval reservations, posts or bases; and workers engaged or to be engaged in any industries connected with and essential to the national defense program; and shall include the families of the aforesaid persons who are living with them.

(2) "Persons of low income," as used in this law, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(3) "Development," as used in this law, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiation or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the federal government.

(4) "Administration," as used in this law, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the federal government.

(5) "Federal government," as used in this law, shall mean the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(6) The development of a project shall be deemed to be "initiated," within the meaning of this law, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the federal government with respect to the exercise of powers hereunder in the development of such project of the federal government for which an allocation of funds has been made prior to the termination of the existing war by the signing of a definitive treaty of peace, or by the proclamation of the President of the United States that hostilities have ceased or that the emergency in justification of extraordinary wartime powers no longer exists, whichever shall first occur.

(7) "Housing authority," as used in this law, shall mean any housing authority established or hereafter established pursuant to the housing authorities law.

History.—§8, ch. 20221, 1941; am. §2, ch. 21697, 1943. §7, ch. 22858, 1945; (6) by §24, ch. 57-1.

421.45 Provisions supplemental.—The powers conferred by sections 421.37-421.44 shall be in addition and supplemental to the powers conferred by any other law, and nothing contained therein shall be construed as limiting any other powers of a housing authority.

History.—§9, ch. 20221, 1941.

421.46 Organization and establishment of housing authorities validated.—The establishment and organization of housing authorities under the provisions of the Housing Authorities Law of this state together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—§1, ch. 20222, 1941.

421.47 Contracts and undertakings of housing authorities validated.—All contracts, agreements, obligations, and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions contracts and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to cooperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—§2, ch. 20222, 1941.

421.48 Notes and bonds of housing authorities validated. — All proceedings, laws and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds here-

tofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

History.—§3, ch. 20222, 1941.

421.49 Area of operation of housing authorities for defense housing.—In the development or the administration of projects, under sections 421.37-421.48, to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities or in otherwise carrying out the purposes of such law, or in the administration of such projects in accordance with the provisions of the housing authorities law, a housing authority of a city may exercise its powers within the territorial boundaries of said city and an area within ten miles from said boundaries, excluding the area within the territorial boundaries of any other city which has heretofore established a housing authority.

History.—§1, ch. 20249, 1941.

421.50 Decreasing area of operation of regional authority.—

(1) The area of operation of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the governing body of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area; provided, that no action may be taken pursuant to this section if the regional housing authority has outstanding any bonds, debentures or notes unless first, all holders of such bonds, debentures or notes consent in writing to such action; and provided, further, that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created by and authorized to transact business and exercise its powers pursuant to §421.04 or §421.27, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county. The governing body of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area only if each such governing body and the commissioners of the regional housing authority find that (because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded) the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area.

(2) The governing body of a county shall not adopt any resolution authorized by this section unless a public hearing has first been held in accordance with the provisions of the housing authorities law.

(3) A certificate of the appointment of any commissioner of a regional housing authority shall be filed with the county clerk of the county from which the commissioner is appointed, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The commissioners of a regional housing authority shall be appointed for terms of four years, except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided herein. The governor shall thereafter appoint the successor of each commissioner of a regional housing authority.

(4) The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(5) The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes.

History.—§3, ch. 21699, 1943.

421.51 Authority for county excluded from regional authority.—At any time after a county or counties is excluded from the area of operation of a regional housing authority as provided above, the governing body of any such county may adopt a resolution declaring that there is a need for a housing authority in the county, if the governing body shall declare and find such need according to the provisions of the housing authorities law. Thereupon a public body corporate and politic, to be known as the housing authority of the county, shall exist for such county and may transact business and exercise its powers in the same manner as though created by the housing authorities law. Nothing contained herein shall be construed as preventing such county from thereafter being included within the area of operation of a regional housing authority as provided in §421.28 or §421.29.

History.—§4, ch. 21699, 1943.

421.52 Authorities; creation, obligations, etc., validated.—

(1) The creation, establishment and organization of housing authorities under the provisions of chapter 17981, laws of 1937, as amended, or chapter 20220, laws of 1941 (§§421.01-421.36), together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects.

(2) All agreements and undertakings of such housing authorities heretofore entered into,

relating to financing, or aiding in the development or operation of any housing projects, including (without limiting the generality of the foregoing) loan and annual contributions contracts, agency contracts, and leases, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or debentures issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or debentures) relating to cooperation in aid of housing projects, payments to public bodies in the state, furnishing of municipal services and facilities and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects.

(3) All proceedings, acts and things heretofore undertaken or done in or for the authorization, issuance, execution and delivery of notes and debentures by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and debentures heretofore issued by housing authorities are hereby validated and declared legal in all respects.

History.—§§1-3, ch. 21698, 1943.

421.53 Housing authority, Pinellas county; limitation.—Any housing authority created within Pinellas county by §421.04, shall construct or contract to construct any housing project only upon the approval by a majority of the freeholders voting in a referendum election to be held in the area for which the housing authority is created. Such election shall be called by the governing body of such area.

History.—§1, ch. 63-557.

CHAPTER 422

HOUSING COOPERATION LAW

422.01 Short title.—This chapter may be referred to as the "Housing Cooperation Law."

History.—§1, ch. 17982, 1937; CGL 1940 Supp. 7100(3-oo).

422.02 Finding and declaration of necessity.—It has been found and declared in the housing authorities law that there exist in the state unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is hereby found and declared that the assistance herein provided for the remedying of the conditions set forth in the housing authorities law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent and other aid given; that it is a proper public purpose for any state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest.

History.—§2, ch. 17982, 1937; CGL 1940 Supp. 7100(3-pp).

422.03 Definitions. — The following terms, whenever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority created pursuant to the housing authorities law of this state.

(2) "Housing project" shall mean any work or undertaking of a housing authority pursuant to the housing authorities law or any similar work or undertaking of the federal government.

(3) "State public body" shall mean any city, town, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(4) "Governing body" shall mean the council, commission, board of supervisors or trustees, or other board or body having charge of the fiscal affairs of the state public body.

(5) "Federal government" shall mean the United States, the Federal Emergency Administration of Public Works, or any other agency or instrumentality, corporate or otherwise, of the United States.

History.—§3, ch. 17982, 1937; CGL 1940 Supp. 7100(3-qq).
cf.—§1.01 for general definitions.

422.04 Cooperation in undertaking housing projects.—For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its property to a housing authority or the federal government;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; any city or town also may change its map;

(5) Enter into agreements, (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority or the federal government respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter;

(6) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(7) Purchase or legally invest in any of the debentures of a housing authority and exercise all of the rights of any holder of such debentures;

(8) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction;

(9) In connection with any public improvements made by a state public body in exercising the powers herein granted, such state public body may incur the entire expense thereof.

Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agree-

ment provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

History.—§4, ch. 17982, 1937; CGL 1940 Supp. 7100(3-rr).

422.05 **Contracts for payments for services.**—In connection with any housing project located wholly or partly within the area in which it is authorized to act, any state public body may contract with a housing authority or the federal government with respect to the sum or sums (if any) which the housing authority or the federal government may agree to pay, during any year or period of years, to the state public body for the improvements, services and facilities to be furnished by it for the benefit of said housing project, but in no event shall the amount of such payments exceed the estimated cost to the state public body of the improvements, services or facilities to be so furnished; provided, however, that the absence of a contract for such payments shall in no way relieve any state public body from the duty to furnish, for the benefit of said housing project, customary improvements and such services and facilities as such state public body usually furnishes without a service fee.

History.—§5, ch. 17982, 1937; CGL 1940 Supp. 7100(3-ss).

422.06 **Advances to housing authority.**—When any housing authority which is created for any city becomes authorized to transact business and exercise its powers therein, the governing body of the city, shall immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of such housing authority during the first year thereafter, and shall appropriate such amount to the authority out of any moneys in such city treasury not appropriated to some other purposes. The moneys so appropriated shall be paid to the authority as a donation. Any city, town or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it.

History.—§6, ch. 17982, 1937; CGL 1940 Supp. 7100(3-tt).

422.07 **Procedure for exercising powers.**—The exercise by a state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

History.—§7, ch. 17982, 1937; CGL 1940 Supp. 7100(3-uu).

422.08 **Supplemental nature of chapter.**—The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

History.—§8, ch. 17982, 1937; CGL 1940 Supp. 7100(3-vv).

CHAPTER 423

TAX EXEMPTION OF HOUSING AUTHORITIES

423.01 Finding and declaration of property of tax exemption for housing authorities.—It has been found and declared in the housing authorities law and the housing cooperation law (1) that there exist in the state housing conditions which constitute a menace to the health, safety, morals and welfare of the residents of the state; (2) that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident prevention, and other public services and facilities; (3) that the public interest requires the remedying of these conditions by the creation of housing authorities to undertake projects for slum clearance and for providing safe and sanitary dwelling accommodations for persons who lack sufficient income to enable them to live in decent, safe and sanitary dwellings without overcrowding; and (4) that such housing projects (including all property of a housing authority used for or in connection therewith or appurtenant thereto) are exclusively for public uses and municipal purposes and not for profit, and are governmental functions of state concern. As a matter of legislative determination, it is hereby found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation.

History.—§1, ch. 17983, 1937; CGL 1940 Supp. 7100(3-xx).

423.02 Housing projects exempted from taxes and assessments; payments in lieu thereof.—The housing projects (including all property of housing authorities used for or in connection therewith or appurtenant thereto) of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state, provided, however, that in lieu of such taxes or special assessments a housing authority may agree to make payments to any city, town, county or political subdivision of the state for services, improvements or facilities furnished by such city, town, county or political subdivison for the benefit of a housing project owned by the housing authority, but in no event shall such payments exceed the estimated cost to such city, town, county or political subdivision of the services, improvements or facilities to be so furnished.

History.—§2, ch. 17983, 1937; CGL 1940 Supp. 7100(3-yy).

423.03 Housing debentures exempted from taxation.—The debentures of a housing authority, together with interest thereon and income therefrom, shall be exempt from all taxes.

History.—§3, ch. 17983, 1937; CGL 1940 Supp. 7100(3-zz).

CHAPTER 424

LIMITED DIVIDEND HOUSING COMPANIES

424.01 Short title.—This chapter shall be known as "Florida State Housing Law."

History.—§1, ch. 16028, 1933; CGL 1936 Supp. 4151(132).

424.02 Finding and declaration of necessity.—It is hereby found and declared by the legislature to be necessary to provide housing for families of low income and in providing for such housing, being now otherwise impossible, that provision be made by law for the investment of private and public funds at low interest rates, acquisition at fair prices, of adequate parcels of land, and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit the rental or sale at prices which families of low income can afford to pay, to effectuate which there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in the public interest is hereby declared a matter of legislative determination.

History.—§2, ch. 16028, 1933; CGL 1936 Supp. 4151(133).

424.03 Purpose, intent, and construction of chapter.—The purpose and intention of the legislature in the enactment of this chapter is to provide the necessary legislation for the creation of adequate facilities to make available to persons in Florida the benefits of the laws of the United States creating the Reconstruction Finance Corporation and vesting it with power to make loans and advances for housing facilities and it shall be liberally construed as vesting in said "state housing board" all necessary authority to enable the said board to make rules and regulations for the control, supervision, regulation and promotion of the activities of housing companies in such manner as to be in accord with the requirements of the Reconstruction Finance Corporation and the laws of the United States.

History.—§3, ch. 16028, 1933; CGL 1936 Supp. 4151(134).
cf.—§421.21, Federal aid.

424.04 State housing board.—The governor of the state, comptroller, state treasurer, attorney general, and the commissioner of agriculture shall constitute a state board to be known as the "State Housing Board," to have and exercise power to control, regulate and supervise, in accordance with the terms and provisions of this chapter all housing companies authorized to be created, and which may come into existence under this chapter, and to secure the construction of new housing facilities under public supervision, in accord with proper standards of sanitation and safety, at a cost which will permit the rental or sale of such housing facilities, at prices which families of low income can afford to pay.

History.—§4, ch. 16028, 1933; CGL 1936 Supp. 4151(135).

424.05 Investigations by board.—The board shall have power to investigate into the affairs of limited dividend housing companies, incorporated under this chapter, and into the dealings, transactions or relationships of such companies with other persons. Any of the investigations provided for in this chapter may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof may administer oaths, take affidavits and make personal inspections of all places to which their duties relate. The board or a committee thereof may subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this chapter, and to examine them in relation to any matter it has power to investigate, and issue commissions for the examination of witnesses who are out of the state or are unable to attend before the board or excused from attendance.

History.—§5, ch. 16028, 1933; CGL 1936 Supp. 4151(136).

424.06 Specific powers of state housing board.—In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing companies incorporated under this chapter the board may:

(1) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporations;

(2) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board or by the terms of any project approved by the board, or to refrain from doing any acts in violation thereof;

(3) Examine all such corporations and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed;

(4) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such corporation, examine all books, contracts, records, documents and papers of any such corporation and by subpoena duces tecum compel the production thereof;

(5) In its discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited;

(6) Require every such corporation to file with the board an annual report setting forth such information as the board may require verified by the oath of the president and general manager or receiver if any thereof or by the person required to file the same. Such report shall be in the form, cover the period and be filed at the time prescribed by the board. The board may further require specific answers to questions upon which the board may desire information and may also require such corporation to file periodic reports in the form covering the period and at the time prescribed by the board;

(7) From time to time make, amend and repeal rules and regulations for carrying into effect the provisions of this chapter.

History.—§6, ch. 16028, 1933; CGL 1936 Supp. 4151(137).

424.07 Housing projects must have approval of board.—No housing project proposed by a limited dividend housing corporation incorporated under this chapter shall be undertaken and no building or other construction shall be placed under contract or started without the approval of the board. No housing project shall be approved by the board unless the corporation agrees to accept a designee of the board of housing as a member of the board of directors of said corporation.

History.—§6, ch. 16028, 1933; CGL 1936 Supp. 4151(138).

424.08 Board to fix maximum prices; basis of determination.—The board shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as hereinafter prescribed, and such rental or purchase price shall be subject to revision by the board from time to time. The payments to be made by such corporations shall be:

(1) All fixed charges, and all operating maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the board; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the board.

(2) A dividend not exceeding the maximum fixed by this chapter upon the stock of the corporation allotted to the project by the board.

(3) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of stock, and income debentures of the corporation to the extent permitted by this chapter.

History.—§7, ch. 16028, 1933; CGL 1936 Supp. 4151(139).

424.09 Actions by board for violations.—Whenever the board shall be of the opinion that any such limited dividend housing company is failing or omitting, or about to fail or omit to do anything required of it by law or by order of the board and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law of or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lienholders or the stockholders, it may commence an action or proceeding in the court of chancery of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said court of chancery, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition

and complaint or in such modified or other form as the court may determine will afford appropriate relief.

History.—§8, ch. 16028, 1933; CGL 1936 Supp. 4151(140).

424.10 Incorporation; purpose; shares; articles.—Any number of natural persons not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging and filing in the office of the secretary of state, articles of incorporation, hereinafter called "articles," setting forth the information required by §608.03, except as herein modified or changed.

(1) The purpose for which a limited dividend housing company is to be formed shall be as follows: To acquire, construct, maintain and operate housing projects when authorized by and subject to the supervision of the board of housing.

(2) The shares of which the capital shall consist shall have a par value.

(3) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it, shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the state housing law and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock together with cumulative dividends at the rate of six per cent per annum, and that any surplus in excess of such amount if said company shall be dissolved, shall revert to the state.

History.—§9, ch. 16028, 1933; CGL 1936 Supp. 4151(141).

424.11 Dividends limited.—No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six per cent per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years.

History.—§10, ch. 16028, 1933; CGL 1936 Supp. 4151(142).

424.12 No free securities to be issued.—No limited dividend housing company incorporated under this chapter shall issue stock, bonds or income debentures, except for money, services or property actually received for the use and lawful purpose of the corporation. No stock, bonds or income debentures shall be issued for property or services except upon a valuation approved by the board of housing and such valuation shall be used in computing actual or estimated cost.

History.—§11, ch. 16028, 1933; CGL 1936 Supp. 4151(143).

424.13 Income debenture certificates; exchange for stock.—The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than six per cent per annum. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of housing for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor.

History.—§12, ch. 16028, 1933; CGL 1936 Supp. 4151(144).

424.14 Limitations on powers of housing companies.—No limited dividend housing company incorporated under this chapter shall:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purpose defined in this chapter.

(2) Sell, transfer, assign or lease any real property without first having obtained the consent of the board, provided, however, that leases conforming to the regulations and rules of the board and for actual occupancy by the lessees may be made without the consent of the board. Any conveyance, incumbrance, lease or sublease made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six per cent per annum.

(4) Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the board.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story may be used for stores, commercial, cooperative or community purposes, and when permitted by law the roof may be used for cooperative or community purposes.

(8) Charge or accept any rental, purchase price or other charge in excess of the amounts prescribed by the board.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the board

under such regulations as the board from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the board.

(11) Make any guaranty without approval of the board.

History.—§13, ch. 16028, 1933; CGL 1936 Supp. 4151(145). cf.—Ch. 608 Corporation law.

424.15 Bonds and mortgages of housing companies.—Any company formed under this chapter may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgages or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto, may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into the possession in case of default; but the operation of the housing projects in the event of such entry by mortgagee or receiver shall be subject to the regulations of the board under this chapter. Provisions for the amortization of the bonded indebtedness of companies formed under this chapter shall be subject to the approval of the board.

History.—§14, ch. 16028, 1933; CGL 1936 Supp. 4151(146).

424.16 Surplus; accumulation and disposition.—The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subsections (1), (2) and (3) of §424.08 shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen per cent of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued and unpaid dividends or interest, less any payments or distributions theretofore made other than by dividends provided in §424.11, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the state, or shall be disposed of in such other manner as the board may direct and the then governor may approve.

History.—§15, ch. 16028, 1933; CGL 1936 Supp. 4151(147).

424.17 Reduction of rentals with excess earnings.—If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in §424.08, the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall, unless the board of directors with the approval of the board of housing shall deem such balance too small for the purposes, be applied to the reduction of rentals.

History.—§16, ch. 16028, 1933; CGL 1936 Supp. 4151(148).

424.18 Foreclosure actions; judicial sales.—In any foreclosure action the board shall be made a party defendant; and such board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court may make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure, or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend housing corporation organized under this chapter, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this chapter.

Notwithstanding the foregoing provision of this section, wherever it shall appear that a corporation, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage which is a lien upon any such property, such corporation shall have all the remedies available to a mortgagee under the laws of the state, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interest of the public and no costs shall be awarded against it.

History.—§17, ch. 16028, 1933; CGL 1936 Supp. 4151(149).

424.19 Purchase of property of other limited dividend housing corporations.—Before any limited dividend housing corporation incorporated under this chapter shall purchase the property of any other limited dividend housing corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this chapter, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this chapter.

History.—§18, ch. 16028, 1933; CGL 1936 Supp. 4151(150).

424.20 Sales under judgments against housing companies.—In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection

of a mortage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties.

History.—§19, ch. 16028, 1933; CGL 1936 Supp. 4151(151).

424.21 Fees for services of state housing board.—The board may charge and collect from a limited dividend housing corporation, incorporated under this chapter, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-half of one per cent of the cost of the project; for the holding of a public hearing upon application of a housing corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a housing corporation and for any act done by the board, or any of its employees, in performance of their duties under this chapter an amount reasonably calculated to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state treasury. The board may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in §424.08 pursuant to rules to be established by the board.

History.—§20, ch. 16028, 1933; CGL 1936 Supp. 4151(152).

424.22 Duration of corporate existence.—The corporate existence of any corporation authorized hereunder shall not extend beyond twenty-five years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless the incorporation board, by approval of the state board of housing, should grant an extension for an additional period of time.

History.—§22, ch. 16028, 1933; CGL 1936 Supp. 4151(154).

CHAPTER 425

RURAL ELECTRIC COOPERATIVE LAW

425.01 Short title.—This chapter may be cited as the "Rural Electric Cooperative Law."

History.—§1, ch. 19138, 1939; CGL 1940 Supp. 6494(43).

425.02 Purpose. — Cooperative, non-profit, membership corporations may be organized under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas. Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives."

History.—§2, ch. 19138, 1939; CGL 1940 Supp. 6494(45). cf.—Ch. 619, Nonprofit cooperative associations.

425.03 Definitions.—In this chapter, unless the context otherwise requires:

(1) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of twenty-five hundred persons;

(2) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic; and

(3) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

History.—§29, ch. 19138, 1939; CGL 1940 Supp. 6494(44). cf.—§1.01 for general definitions.

425.04 Powers.—A cooperative shall have power:

(1) To sue and be sued, in its corporate name;

(2) To have perpetual existence;

(3) To adopt a corporate seal and alter the same at pleasure;

(4) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per cent of the number of its members; provided, however, that no cooperative shall distribute or sell any electricity, or electric energy to any person residing within any town, city or area which person is receiving adequate central station service or who at the time of commencing such service, or offer to serve, by a cooperative, is receiving adequate central station service from any utility agency, privately or municipally owned individual partnership or corporation;

(5) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such person in, wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment, and to accept or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(6) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

(7) To become a member in one or more other cooperatives or corporations or to own stock therein;

(8) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(9) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights of way and easement;

(10) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

(11) To construct, maintain, and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

(12) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

(13) To conduct its business and exercise any or all of its powers within or without this state;

(14) To adopt, amend and repeal by-laws; and

(15) To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

History.—§3, ch. 19138, 1939; CGL 1940 Supp. 6494(46).

425.05 Name.—The name of each cooperative shall include the words "electric" and "cooperative" and the abbreviation "inc."; provided, however, such limitation shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History.—§4, ch. 19138, 1939; CGL 1940 Supp. 6494(47).

425.06 Incorporators. — Five or more natural persons or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

History.—§5, ch. 19138, 1939; CGL 1940 Supp. 6494(48).

425.07 Articles of incorporation.—

(1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed and acknowledged by each of the incorporators, and shall state: (a) The name of the cooperative; (b) The address of its principal office; (c) The names and addresses of the incorporators; (d) The names and addresses of the persons who shall constitute its first board of trustees; and (e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs. It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

(2) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

History.—§6, ch. 19138, 1939; CGL 1940 Supp. 6494(49).

425.08 By-laws.—The original by-laws of a cooperative, and the first by-laws for a corporation after the effective date of the conversion thereof into a cooperative, pursuant to §425.17, shall be adopted by its board of trustees. Thereafter, by-laws shall be adopted, amended or repealed by its members. The by-laws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation.

History.—§7, ch. 19138, 1939; CGL 1940 Supp. 6494(50).

425.09 Members.—

(1) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available through its facilities. The by-laws of a cooperative may provide that any person, including an incorporator, shall cease to be a member thereof if he shall fail or refuse to use electric energy made available by the cooperative or if electric energy shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership.

(2) An annual meeting of the members shall be held at such time as shall be provided in the by-laws.

(3) Special meeting of the members may be called by the board of trustees, by any three trustees, by not less than ten per cent

of the members, or by the president.

(4) Meetings of members shall be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(5) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten nor more than twenty-five days before the date of the meeting.

(6) Five per cent of all members, present in person, shall constitute a quorum for the transaction of business at all meetings of the members, unless the by-laws prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(7) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting shall be exercised. In any event, no person shall vote as proxy for more than three members at any meeting of the members.

History.—§8, ch. 19138, 1939; CGL 1940 Supp. 6494(51).

425.10 Board of trustees.—

(1) The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The by-laws shall prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die, or otherwise be incapable of acting. The by-laws may also provide for the removal of trustees from office and for the election of their successors. Without approval of the members, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The by-laws may, however, provide that a fixed fee and expenses of attendance, if any, may be allowed to each trustee for attendance at each meeting of the board of trustees.

(2) The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next following annual meeting of the members, except as hereinafter otherwise provided. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(3) The by-laws may provide that, in lieu of electing the whole number of trustees annually, the trustees may be divided into three classes at the first or any subsequent annual meeting, each class to be as nearly equal in number as possible, with the term of office of the trustees of the first class to expire at the next succeeding annual meeting and the term of the second class to expire at the second succeeding annual meeting and the term of the third class to expire at the third succeeding annual meeting. At each annual meeting after such classification a number of Trustees equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting.

(4) A majority of the board of trustees shall constitute a quorum.

(5) If a husband and wife hold a joint membership in a cooperative, either one, but not both, may be elected a trustee.

(6) The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by this chapter, or its articles of incorporation or by-laws.

History.—§9, ch. 19138, 1939; CGL 1940 Supp. 6494(52). Sub. §(3) am. §1, ch. 28053, 1953.

425.11 Voting districts. — Notwithstanding any other provision of this chapter, the by-laws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each such voting district, (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by such members or (3) both such trustees and delegates shall be elected by such members. In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History.—§10, ch. 19138, 1939; CGL 1940 Supp. 6494(53).

425.12 Officers.—The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint

such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

History.—§11, ch. 19138, 1939; CGL 1940 Supp. 6494(54).

425.13 Amendment of articles of incorporation.—A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall first be approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting; and

(2) Upon such approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state (a) the name of the cooperative; (b) the address of its principal office; (c) the date of the filing of its articles of incorporation in the office of the secretary of state; and (d) the amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with. Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed and acknowledged by its president or vice president under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed. Such cooperative shall also, within thirty days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if the same are not already on file therein.

History.—§12, ch. 19138, 1939; CGL 1940 Supp. 6494(55).

425.14 Consolidation. — Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative," by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state: (a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state; (b) the name of the new cooperative and the address of its principal office; (c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative; (d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting membership in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membership in respect of such converted memberships; and (e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative;

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting; and

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History.—§13, ch. 19138, 1939; CGL 1940 Supp. 6494(56).

425.15 Merger.—Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative," may merge into another cooperative, hereinafter designated the "surviving cooperative," by complying with the following requirements:

(1) The proposition for the merger of the

merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state: (a) the name of each merging cooperative, the address of its principal office, the date of the filing of its articles of incorporation in the office of the secretary of state; (b) the name of the surviving cooperative and the address of its principal office; (c) a statement that the merging cooperatives elect to be merged into the surviving cooperative; (d) the names and addresses of the persons who shall constitute the board of trustees of the surviving cooperative until the next following annual meeting of the members thereof; (e) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and (f) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperatives;

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives, parties to the proposed merger, shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting; and

(3) Upon such approval by the members of the respective cooperatives, parties to the proposed merger, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History.—§14, ch. 19138, 1939; CGL 1940 Supp. 6494(57).

425.16 Effect of consolidation or merger. —The effect of consolidation or merger shall be as follows:

(1) The several cooperatives, parties to the consolidation or merger, shall be a single cooperative, which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation, and, in the case of a merger, shall be that cooperative designed in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative, shall cease;

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter, and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action, of each of the consolidating or merging cooperatives, and furthermore all and every interest of, or belonging or due to, each of the cooperatives so consolidated or merged, shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed; and the title to any real estate, or any interest therein, under the laws of this state vested in any such cooperatives shall not revert or be in any way impaired by reason of such consolidation or merger;

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged, and any claim existing, or action or proceeding impending, by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place;

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger; and

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History.—§15, ch. 19138, 1939; CGL 1940 Supp. 6494(58).

425.17 Conversion of existing corporations. —Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors as the

case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state: (a) the name of the corporation prior to its conversion into a cooperative; (b) the address of the principal office of such corporation; (c) the date of the filing the articles of incorporation of such corporation in the office of the secretary of state; (d) the statute under which such corporation was organized; (e) the name assumed by such corporation; (f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter; (g) the names and addresses of the persons who shall constitute the board of trustees of such corporation after the completion of the conversion thereof until the next following annual meeting of its members; (h) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and (i) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of such corporation;

(2) The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter. The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation.

History.—§16, ch. 19138, 1939; CGL 1940 Supp. 6494(59).

425.18 Initiative by members. — Notwithstanding any other provision of this chapter, any proposition embodied in a petition signed by not less than ten per cent of the members of a cooperative, together with any document submitted with such petition to give effect to the proposition, shall be submitted to the members of a cooperative, either at a special meeting of the members held within forty-five days after the presentation of such petition or, if the date of the next annual meeting of members falls within ninety days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. Any affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History.—§17, ch. 19138, 1939; CGL 1940 Supp. 6494(60).

425.19 Dissolution. — (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the date of its incorporation; (d) that the cooperative has not commenced business; (e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors; (f) that no debt of the cooperative remains unpaid; and (g) that a majority of the incorporators elect that the cooperative be dissolved. Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter;

(2) A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner: (a) the board of trustees shall first recommend that the cooperative be dissolved voluntarily and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon

the affirmative vote of not less than two-thirds of those members voting thereon at such meeting; (b) upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its corporate seal shall be affixed thereto and attested by its secretary. The certificate shall state 1. the name of the cooperative; 2. the address of its principal office 3. the names and addresses of its trustees; and 4. the total number of members of the cooperative and the number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter; (c) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except in so far as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state; (d) after the filing of the certificate and affidavit by the secretary of state the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located; (e) the board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations and liabilities, shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the seven years next preceding the date of such filing of the certificate, or, if the cooperative shall not have been in existence for such period, during the period of its existence; and (f) when all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor, and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state: 1. the name of the cooperative; 2. the address of the principal office of the cooperative; 3. that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office; 4. that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor; 5. that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and 6. that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter.

History.—§18, ch. 19138, 1939; CGL 1940 Supp. 6494(61); am. §7, ch. 22858, 1945.

425.20 **Filing of articles.**—Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided, file the articles so presented in the records of his office and upon such filing the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect. The secretary of state immediately upon the filing in his office of any articles pursuant to this chapter shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles. The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to subsection (2) (b) of §425.19.

History.—§19, ch. 19138, 1939; CGL 1940 Supp. 6494(62).

425.21 **Refunds to members.**—Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

(1) To defray expenses of the cooperative and of the operation and maintenance of its

facilities during such fiscal year; (2) To pay interest and principal obligations of the cooperative coming due in such fiscal year; (3) To finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees; (4) To provide a reasonable reserve for working capital; (5) To provide a reserve for the payment of indebtedness of the cooperative maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and (6) to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History.—§20, ch. 19138, 1939; CGL 1940 Supp. 6494(63).

425.22 **Disposition of property.**—A cooperative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the cooperative, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States or any instrumentality or agency thereof.

History.—§21, ch. 19138, 1939; CGL 1940 Supp. 6494(64).

425.23 **Nonliability of members for debts of cooperative.**—The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

History.—§22, ch. 19138, 1939; CGL 1940 Supp. 6494(65).

425.24 **Recordation of mortgages.**—Any mortgage, deed of trust, or other instrument executed by a cooperative or foreign corporation transacting business in this state pursuant to this chapter, which, by its terms, creates a lien upon real and personal property then owned or after-acquired, and which is recorded as a mortgage of real property in any county in which such property is located or is to be located shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded or filed in the proper office of such county as a mortgage on personal property. Recordation of any such mortgage, deed of trust or other instrument shall cause the lien thereof to attach to all after-acquired property of the mortgagor of the nature therein described as being mortgaged or pledged thereby immediately upon the acquisition of such property by the mortgagor, and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens, except liens of prior record and tax liens, affecting such property.

History.—§23, ch. 19138, 1939; CGL 1940 Supp. 6494(66).

425.25 **Waiver of notice.**—Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History.—§24, ch. 19138, 1939; CGL 1940 Supp. 6494(67).

425.26 **Trustees, officers or members, notaries.**—No person who is authorized to take acknowledgment under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

History.—§25, ch. 19138, 1939; CGL 1940 Supp. 6494(68).

425.27 **Foreign corporations.**—Any corporation organized under the laws of another state on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in a state adjacent to this state, shall be allowed to transact business in this state and shall have the same rights, powers, and privileges as a cooperative organized under this chapter upon the filing with the secretary of state of a certified copy of its charter or articles of incorporation and upon payment of the filing fee in this chapter provided.

History.—§26, ch. 19138, 1939; CGL 1940 Supp. 6494(69).

425.28 Fees.—The secretary of state shall charge and collect for:

(1) Filing articles of incorporation ten dollars;

(2) Filing articles of amendment five dollars;

(3) Filing articles of consolidation or merger five dollars;

(4) Filing articles of conversion five dollars;

(5) Filing certificate of election to dissolve five dollars;

(6) Filing articles of dissolution five dollars;

(7) Filing certificate of change of principal office two dollars; and

(8) Filing certified copy of charter or articles of incorporation of foreign corporation pursuant to §425.27 ten dollars.

History.—§27, ch. 19138, 1939; CGL 1940 Supp. 6494(70).

425.29 Exemption from uniform sale of securities law.—The provisions of the uniform sale of securities law shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or foreign corporation transacting business in this state pursuant to this chapter to the United States or any agency or instrumentality thereof, or to any mortgage or deed of trust executed to secure the same. The provisions of said uniform sale of securities law shall not apply to the issuance of membership certificates by any cooperative or any such foreign corporation.

History.—§28, ch. 19138, 1939; CGL 1940 Supp. 6494(71).

TITLE XXIX

LABOR

CHAPTER 440

WORKMEN'S COMPENSATION LAW

440.01 Short title.—This chapter may be cited as "Workmen's Compensation Law."

History.—§1, ch. 17481, 1935; CGL 1936 Supp. 5966(1).

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise—

(1) "Employment."

(a) "Employment," subject to the other provisions of this chapter, means any service performed by an employee for the person employing him.

(b) The term "employment" shall include:

1. Employment by the state and all political subdivisions thereof and all public and quasi-public corporations therein; and

2. All private employments in which three or more employees are employed by the same employer.

(c) The term "employment" shall not include service performed by or as:

1. Officers elected at the polls;

2. Domestic servants in private homes;

3. Agricultural labor performed on a farm in the employ of a bona fide farmer or association of farmers. The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals and truck farms, ranches, nurseries and orchards.

4. Professional athletes, such as professional boxers and wrestlers and baseball, football,

basketball, hockey, polo, tennis, jai alai and similar players, and all referees, judges, umpires, trainers, masseurs and similar performers or attendants incident to professional exhibitions and performances of athletic games, sports and contests; or

5. Turpentine labor, labor in processing gum-spirits-of-turpentine, crude gum, oleorosin and gum rosin.

(2) "Employee."

(a) "Employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors whether lawfully or unlawfully employed.

(b) The term "employee" shall include any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous. Services shall be presumed to have been rendered the corporation in cases where such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(c) The term "employee" shall not include:

1. Independent contractors; or

2. Persons whose employment is both casual and not in the course of the trade, business, profession or occupation of the employer.

(3) The term "casual" as used in this section shall be taken to refer only to employments where the work contemplated is to be completed in not exceeding ten working days, without regard to the number of men employed, and where the total labor cost of such work is less than one hundred dollars.

(4) The term "employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person.

(5) The term "person" means individual, partnership, association or corporation, including any public service corporation.

(6) The term "injury" means personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury.

(7) The term "carrier" means any person or fund authorized under §440.38 to insure under this chapter and includes self-insurers.

(8) The term "commission" means the Florida industrial commission or any duly authorized deputy commissioner, inspector, agent or representative.

(9) "Disability" means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury.

(10) "Death" as a basis for a right to compensation means only death resulting from an injury.

(11) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter.

(12) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer, only when such gratuities are received with the knowledge of the employer. In employment where an employee receives consideration other than cash as a portion of this compensation the value of such compensation shall be subject to the determination of the commission.

(13) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a step-child or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include step-brothers and step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother" and "sister" includes only persons who at the time of the death of the deceased employees are under eighteen years of age.

(14) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any persons who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, and were dependent on the injured employee.

(15) The term "widow" includes only the decedent's wife, living with him at the time of his injury and death, or dependent for support upon him and living apart at said time for justifiable cause.

(16) The term "widower" includes only the decedent's husband who at the time of her death lived with her and was dependent for support upon her, and was not capacitated to support himself.

(17) The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

(18) The term "time of injury" means the time of the occurrence of the accident resulting in the injury.

(19) "Accident" shall mean only an unexpected or unusual event or result, happening suddenly. A mental or nervous injury due to fright or excitement only or disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or narcotic drugs, shall be deemed not to be an injury by accident arising out of the employment. Where a pre-existing disease is accelerated or aggravated by accident arising out of and in the course of the

employment, only acceleration of death or the acceleration or aggravation of disability reasonably attributable to the accident shall be compensable.

(20) The term "registered mail" includes certified mail and any mail service which provides for a receipt to the sender and a record of delivery at the office of address.

History.—§2, ch. 17481, 1935; §1, ch. 17482, 1935; §1, ch. 17483, 1935; CGL 1936 Supp. 5966(2); §1, ch. 18413, 1937; §1, ch. 20672, 1941; sub §(19) am. §1, ch. 28238, 1953; sub §§(1), (2) am. §1, ch. 29778, 1955; (1) by §1, ch. 57-155, (20) N. by §1, ch. 57-225; (8) by §1, ch. 59-100.
cf.—§1.01 For general definitions.

440.03 Application.—Every employer and every employee, unless otherwise specifically provided, shall be presumed to have accepted the provisions of this chapter, respectively to pay and accept compensation for injury or death, arising out of and in the course of employment, and shall be bound thereby, unless he shall have given prior to the injury, notice to the contrary as provided in §440.05.

History.—§3, ch. 17481, 1935; CGL 1936 Supp. 5966(3).

440.04 Waiver of exemption.—

(1) An employer or employee who has exempted himself by proper notice from the operation of this chapter may at any time waive such exemption and thereby accept the provisions of this chapter by giving notice as provided in §440.05.

(2) Every employer having in his employment any employee not included in the definition "employee" or excluded or exempted from the operation of this chapter may at any time waive such exclusion or exemption and accept the provisions of this chapter by giving notice thereof as provided in §440.05, and by so doing be as fully protected and covered by the provisions of this chapter as if such exclusion or exemption had not been contained herein.

(3) When any policy or contract of insurance specifically secures the benefits of this chapter to any person not included in the definition of "employee" or whose services are not included in the definition of "employment" or who is otherwise excluded or exempted from the operation of this chapter, the acceptance of such policy or contract of insurance by the insured and the writing of same by the carrier shall constitute a waiver of such exclusion or exemption and an acceptance of the provisions of this chapter with respect to such person, notwithstanding the provision of §440.05 with respect to notice.

History.—§4, ch. 17481, 1935; CGL 1936 Supp. 5966(4); §2, ch. 18413, 1937; sub §(3) comp. §2, ch. 29778, 1955.

440.05 Notice of nonacceptance and waiver of exemption.—Notice of nonacceptance of this chapter and notice of waiver of exemption heretofore referred to shall be given in accordance with the following provisions:

(1) Every employer who elects not to accept the provisions of this chapter or who waives such exemption as the case may be, shall post and keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices to such effect in accordance with a form to be prescribed by the commission. He shall file a duplicate of such notice with the commission.

(2) Every employee who elects not to accept the provisions of this chapter or who waives such exemption, as the case may be, shall deliver to the employer or shall send to him by mail addressed to him at his office, notice to such effect in accordance with a form to be prescribed by the commission. He shall file a duplicate of such notice with the commission.

(3) Such notice shall be given thirty days prior to any injury, provided, however, that if the injury occurs less than thirty days after the date of employment, such notice given at the time of employment shall be sufficient notice.

History.—§5, ch. 17481, 1935; CGL 1936 Supp. 5966(5).

440.06 When employer rejects chapter; effect.—Every employer who elects not to operate under this chapter by giving proper notice as provided in §440.05 may not, in any suit brought against him by an employee subject to this chapter to recover damages for injury or death, defend such a suit on the grounds that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

History.—§6, ch. 17481, 1935; CGL 1936 Supp. 5966(6).

440.07 When employee rejects chapter; effect.—Every employee who elects not to operate under this chapter, in any action to recover damages for injury or death brought against an employer who accepts the provisions of this chapter shall proceed as at common law and the employer in such suit may avail himself of the defense of negligence of fellow servant, assumption of risk and contributory negligence, as such defense exists at common law.

History.—§7, ch. 17481, 1935; CGL 1936 Supp. 5966(7).

440.08 When employer and employee reject chapter; effect.—When both employer and employee elect not to operate under this chapter the liability of the employer shall be the same as though he alone rejected the terms of this chapter and in any action brought against him by such employee, he may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to contributory negligence of the employee.

History.—§8, ch. 17481, 1935; CGL 1936 Supp. 5966(8).

440.09 Coverage.—

(1) Compensation shall be payable under this chapter in respect of disability or death of an employee if the disability or death results from an injury arising out of and in the course of employment. Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in subsection (6) of §440.15 shall for the purpose of this chapter be considered as a death resulting from the accident causing the hernia. Where an accident happens while the employee is employed else-

where than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this state, and if the employer's place of business is in this state or if the residence of the employee is in this state, provided, his contract of employment was not expressly for service exclusively outside of the state; provided, however, that if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided herein.

(2) No compensation shall be payable in respect of the disability or death of any employee of a common carrier by railroad or express company engaged in intrastate, interstate or foreign commerce.

(3) No compensation shall be payable if the injury was occasioned primarily by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another. Where injury is caused by the willful refusal of the employee to use a safety appliance or observe a safety rule required by statute or lawfully required or approved by the commission, and brought prior to the accident to his knowledge, the compensation as provided in this chapter shall be reduced twenty-five per cent.

(4) When any employee of the state or of any political subdivision thereof or of any public or quasi-public corporation therein, or any person entitled thereto on account of dependency upon such employee, receives compensation under the provisions of this chapter by reason of the disability or death of such employee resulting from an injury arising out of and in the course of employment with such employer, and such employee or dependent is entitled to receive any sum from any pension or other benefit fund to which the same employer may contribute, the amount of any payment from such pension or benefit fund allocable to any week with respect to which such employee or dependent receives compensation under this chapter shall be reduced by the amount of the compensation for such week; provided that if the amount of the payment from such pension or benefit fund allocable to any week is less than the amount of such compensation for such week only the amount of the pension or benefit payment allocable to such week shall be affected and the amount of the difference between the compensation and the pension or benefit payment allocable to one week shall not reduce the pension or benefit payment allocable to any subsequent week.

History.—§9, ch. 17481, 1935; CGL 1936 Supp. 5966(9); §3, ch. 18413, 1937; sub. § (4) am. §1, ch. 28236, 1953; (3) by §1, ch. 57-293.

440.10 Liability for compensation.—

(1) Every employer coming within the provisions of this chapter, including any brought within the chapter by waiver of exclusion or of exemption, shall be liable for and shall secure the payment to his employees of the compensation payable under §§440.13, 440.15 and 440.16. In case a contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for and shall secure the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.

(2) Compensation shall be payable irrespective of fault as a cause for the injury, except as provided in subsection (3) of §440.09.

History.—§10, ch. 17481, 1935; CGL 1936 Supp. 5966(10); §4, ch. 18413, 1937.

440.11 Exclusiveness of liability.—The liability of an employer prescribed in §440.10 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter an injured employee, or his legal representative, in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

History.—§11, ch. 17481, 1935; CGL 1936 Supp. 5966(11).

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) No compensation shall be allowed for the first seven days of the disability, except benefits provided for in §440.13; provided, however, that if the injury results in disability of more than twenty-one days compensation shall be allowed from the commencement of the disability.

(2) Compensation for disability resulting from injuries which occur after June 30, 1959, shall not exceed forty-two dollars per week nor be less than eight dollars per week; provided, however, that if the employee's wages at the time of injury are less than eight dollars per week he shall receive his full weekly wages.

(3) The provisions of this section as amended effective July 1, 1951, shall govern with respect to disability due to injuries suffered prior to July 1, 1959.

History.—§12, ch. 17481, 1935; CGL 1936 Supp. 5966(12); §5, ch. 18413, 1937; am. §1, ch. 21824, 1943.
Am. §§1, 3, ch. 26876, 1951; §1, ch. 59-151.

440.13 Medical services and supplies; penalty for violations; limitations.—

(1) Subject to the limitations specified in

subsection (3)(b) the employer shall furnish to the employee such remedial treatment, care and attendance under the direction and supervision of a qualified physician or surgeon, or other recognized practitioner, nurse or hospital, and for such period, as the nature of the injury or the process of recovery may require, including medicines, crutches, artificial members, and other apparatus. If the employer fails to provide the same after request by the injured employee, such injured employee may do so at the expense of the employer, the reasonableness and the necessity to be approved by the commission. The employee shall not be entitled to recover any amount expended by him for such treatment or service unless he shall have requested the employer to furnish the same and the employer shall have failed, refused or neglected to do so, or unless the nature of the injury required such treatment, nursing and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical, surgical or other remedial treatment be valid and enforceable unless within ten days following the first treatment (except in cases where first aid only is rendered) and thereafter at such intervals as the commission by regulation may prescribe the physician or other recognized practitioner giving such treatment or treatments furnish to the commission and to the employer a report of such injury and treatment on forms prescribed by the commission, provided that the commission for good cause may excuse the failure of the physician or other recognized practitioner to furnish any report within the period prescribed and may order the payment to him of such remuneration for treatment or service rendered as the commission finds equitable. The physician shall also furnish to the injured employee on demand a copy of each such report.

(2) If an injured employee objects to the medical attendance furnished by the employer, it shall be the duty of the employer to select another physician to treat the injured employee unless the commission determines that a change in medical attendance is not for the best interests of the injured employee; provided that the commission may at any time, for good cause shown, in its discretion order a change in such remedial attention, care, or attendance. It shall be unlawful for any employer or representative of any insurance company or insurer to coerce or attempt to coerce a sick or injured employee in the selection of a physician, or surgeon or other attendant or remedial treatment, nursing or hospital care, or any other service that the sick or injured employee may require; and any employer or representative of any insurance company or insurer who violates this provision shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than twenty-five dollars and not more than one hundred dollars for each and every offense.

(3)(a) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living, and shall be subject to regulations by the commission, who shall adopt schedules of charges for such treatment or services.

(b) All rights for remedial attention under this section shall be barred unless a claim therefor is filed with the commission within two years after the time of injury, except that if payment of compensation has been made or remedial attention has been furnished by the employer without an award on account of such injury a claim may be filed within two years after the date of the last payment of compensation or within two years after the date of the last remedial attention furnished by the employer; and all rights for remedial attention under this section pursuant to the terms of an award shall be barred unless a further claim therefor is filed with the commission within two years after the entry of such award, except that if payment of compensation has been made or remedial attention has been furnished by the employer under the terms of the award a further claim may be filed within two years after the date of the last payment of compensation or within two years after the date of the last remedial attention furnished by the employer.

History.—§13, ch. 17481, 1935; CGL 1936 Supp. 5966(13); §6, ch. 18413, 1937; CGL 1940 Supp. 8135(14-a); §2, ch. 20673, 1941; §2, ch. 21824, 1943; §1, ch. 22814, 1945; §1, ch. 25244, 1949; (1)-(3) §1, ch. 28241, 1953; (1) §2, ch. 57-225; (1), (3) §§1, 2, ch. 63-91.

440.14 Determination of pay.—Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined subject to limitations of subsection (2) of §440.12 as follows:

(1) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of thirteen weeks immediately preceding the injury, his average weekly wage shall be one-thirteenth of the total amount of wages earned in such employment during the said thirteen weeks.

(2) If the injured employee shall not have worked in such employment during substantially the whole of thirteen weeks immediately preceding the injury, the wages of a similar employee in the same employment who has worked substantially the whole of such thirteen weeks shall be used in making the determination under the preceding paragraph.

(3) If either of the foregoing methods cannot reasonably and fairly be applied the full-time weekly wages of the injured employee shall be used, except as otherwise provided in subsections (4) or (5) of this section.

(4) If it be established that the injured employee was a minor when injured, and that under normal conditions his wages should be expected to increase during the period of dis-

ability the fact may be considered in arriving at his average weekly wages.

(5) If it be established that the injured employee was a part-time worker at the time of the injury, that he had adopted part-time employment as his customary practice, and that under normal working conditions he probably would have remained a part-time worker during the period of disability, these factors shall be considered in arriving at his average weekly wages. For the purpose of this subsection the term part-time worker means an individual who customarily works less than the full-time hours or full-time work week of a similar employee in the same employment.

(6) If compensation is due for a fractional part of the week, the compensation for such fractional part shall be determined by dividing the weekly compensation rate by the number of days employed per week to compute the amount due for each day.

History.—§14, ch. 17481, 1935; CGL 1936 Supp. 5966(14); §3, ch. 20672, 1941; §2, ch. 28241, 1953; (5) §1, ch. 63-160.

440.15 Compensation for disability.—

Compensation for disability shall be paid to the employee, subject to the limits provided in subsection (2) of §440.12 as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, sixty per cent of the average weekly wages shall be paid to the employee during the continuance of such total disability.

(b) Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(c) In cases of permanent total disability resulting from injuries which occurred prior to July 1, 1955, such payments shall not be made in excess of seven hundred weeks.

(d) If an employee who is being paid compensation for permanent total disability shall become rehabilitated to the extent that he shall establish an earning capacity by employment he shall be paid during the period of such employment, instead of the compensation provided in paragraph (a) of this subsection, sixty per cent of the difference between his average weekly wages at the time the total disability was incurred and his wage earning capacity as determined by his actual earnings in such employment.

(2) TEMPORARY TOTAL DISABILITY.—In case of disability total in character but temporary in quality, sixty per cent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed three hundred and fifty weeks except as provided in subsection (1) of §440.12.

(3) PERMANENT PARTIAL DISABILITY.—In case of disability partial in character but permanent in quality the compensation shall, in addition to that provided by subsection (2) of this section, be sixty per cent of the average weekly wages, and shall be paid to the employee as follows:

(a) Arm lost, two hundred weeks' compensation.

(b) Leg lost, two hundred weeks' compensation.

(c) Hand lost, one hundred and seventy-five weeks' compensation.

(d) Foot lost, one hundred and seventy-five weeks' compensation.

(e) Eye lost, one hundred and seventy-five weeks' compensation.

(f) Thumb lost, sixty weeks' compensation.

(g) First finger lost, thirty-five week's compensation.

(h) Great toe lost, thirty weeks' compensation.

(i) Second finger lost, thirty week's compensation.

(j) Third finger lost, twenty weeks' compensation.

(k) Toe other than great toe lost, ten weeks' compensation.

(l) Fourth finger lost, fifteen weeks' compensation.

(m) Loss of hearing: compensation for loss of hearing of one ear, forty weeks. Compensation for loss of hearing of both ears, one hundred and fifty weeks.

(n) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for the loss of the entire digit.

(o) Amputated arm or leg: Compensation for an arm or leg, if amputated at or above the elbow or the knee, shall be the same as for the loss of the arm or leg, but, if amputated between the elbow and the wrist, or the knee and the ankle, shall be the same as for loss of hand or foot.

(p) Per cent of vision: Compensation for loss of eighty per cent or more of the vision of an eye shall be the same as for the loss of the eye.

(q) Two or more digits: Compensation for loss of two or more digits or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(r) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(s) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(t) Disfigurement: The commission shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed two thousand dollars; provided, that in such award the commission shall consider only the effect such disfigurement shall have on the

future earning capacity of the injured employee.

(u) Other cases: In all other cases in this class of disability the compensation shall be sixty per cent of the injured employee's average weekly wage for such number of weeks as the injured employee's percentage of disability is of three hundred fifty weeks.

(4) TEMPORARY PARTIAL DISABILITY.—In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be sixty per cent of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or other employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(5) SUBSEQUENT INJURY.—

(a) If any employee receives any injury for which compensation is payable while he is still receiving or entitled to receive compensation for a previous injury in the employ of the same employer, he shall not at the same time be entitled to compensation for both injuries, unless the latter injury be a permanent injury such as specified in this section; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this chapter.

(b) If any employee receives a permanent injury as specified in this section, after having previously sustained another permanent injury in the employ of the same employer, he shall be entitled to compensation for both injuries, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation. When the previous and subsequent injuries received in the same employment result in permanent total disability, compensation shall be payable for permanent total disability.

(c) The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from benefits for a later injury nor preclude benefits for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will represent his earning capacity at the time of the later injury, provided, however, that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjuncton with the previous disability.

(6) HERNIA.—In all claims for compensation for hernia resulting from injury by an accident arising out of and in the course of his employment it must be definitely proved to the satisfaction of the commission:

(a) That there was an injury resulting in hernia.

(b) That the hernia appeared suddenly.

(c) That it was accompanied by pain.

(d) That the hernia immediately followed an accident.

(e) That the hernia did not exist prior to the accident for which compensation is claimed.

(f) All hernia, inguinal, femoral, or otherwise, so proved to be the result of an injury by accident arising out of and in the course of the employment, shall be treated at the expense of the employer in a surgical manner by radical operation. Compensation shall be paid for a period of six weeks from the date of the operation. In case the injured employee refuses to undergo the radical operation for the cure of said hernia, no compensation will be allowed during the time of refusal. This shall not apply to those who by religious belief do not use medical or surgical treatment. If, however, it is shown that the employee had some chronic disease, or is otherwise in such physical condition that the commission considers it unsafe for the employee to undergo said operation, the compensation shall be paid as otherwise provided in subsection (4) of §440.15, but not for exceeding thirty weeks. Compensation shall be allowed for temporary total disability as provided by subsection (2) of this section for such disability before the operation.

(7) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee refuses employment suitable to his capacity, offered to or procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless at any time in the opinion of the commission such refusal is justifiable.

(8) EMPLOYEE LEAVES EMPLOYMENT.—If an injured employee, when receiving compensation for temporary partial disability, leaves the employment of the employer by whom he was employed at the time of the accident for which such compensation is being paid, he shall, upon securing employment elsewhere, give to such former employer an affidavit in writing containing the name of his new employer, the place of employment and the amount of wages being received at such new employment and until he gives such affidavit the compensation for temporary partial disability will cease. The employer by whom such employee was employed at the time of the accident for which such compensation is being paid may also at any time demand of such employee additional affidavit in writing containing the name of his employer, the place of his employment and the amount of wages he is receiving, and if the employee, upon such demand, fails or refuses to make and furnish such affidavit, his right to compensation for temporary partial disability shall cease until such affidavit is made and furnished.

(9) EMPLOYEE BECOMES INMATE OF INSTITUTION.—In case an employee who is permanently and totally disabled becomes an inmate of a public institution, then no compensation shall be payable unless he has dependent upon him for support a person or persons defined as dependents elsewhere in this chapter, whose dependency shall be determined as if the employee were deceased and to whom compensation would be paid in case of death and such

compensation as is due said employee shall be paid such dependents during the time he remains such inmate.

History.—§15, ch. 17481, 1935; CGL 1936 Supp. 5966(15); §4, ch. 20672, 1941; am. §2, ch. 22814, 1945; am. §1, ch. 23921, 1947; §11, ch. 25035, 1949; sub. §(1) am. §1, ch. 26877, sub. §(9) am. §10, ch. 26484, 1951; sub. §(1) am. §1, ch. 29803 and sub. §(5) am. §3, ch. 29778, 1955; (1) (d) N. by §1, ch. 59-103; (5) (d) by §1, ch. 59-102; (15) (d) 1.-3., 5.-8. a. by §2, ch. 61-119; (15) (d) 8. §1, ch. 61-188; (5) §1, ch. 63-235.

440.151 Occupational diseases.—

(1) (a) Where the employer and employee are subject to the provisions of the workmen's compensation law, the disablement or death of an employee resulting from an occupational disease as hereinafter defined shall be treated as the happening of an injury by accident, notwithstanding any other provisions of this chapter, and the employee or, in case of death, his dependents shall be entitled to compensation as provided by this chapter, except as hereinafter otherwise provided; and the practice and procedure prescribed by this chapter shall apply to all proceedings under this section, except as hereinafter otherwise provided. Provided, however, that in no case shall an employer be liable for compensation under the provisions of this section unless such disease has resulted from the nature of the employment in which the employee was engaged under such employer and was actually contracted while so engaged, meaning by "nature of the employment" that to the occupation in which the employee was so engaged there is attached a particular hazard of such disease that distinguishes it from the usual run of occupations and is in excess of the hazard of such disease in such employment, or, in case of death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in this section, and results within three hundred fifty weeks after such last exposure.

(b) No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represents himself in writing as not having previously been disabled, laid off or compensated in damages or otherwise, because of such disease.

(c) Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bears to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

(d) No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this workmen's compensation law would give right to compensation, arose subsequent to the beginning of the first compensable disability save only to afterborn children of a marriage existing at the beginning of such disability.

(e) The presumptions in favor of claimants established by §440.26 of this workmen's compensation law shall not apply to a claim for compensation for an occupational disease under this section.

(f) No compensation shall be payable for disability or death resulting from tuberculosis arising out of and in the course of employment by the state tuberculosis board at a state tuberculosis hospital, or aggravated by such employment, when the employee had suffered from said disease at any time prior to the commencement of such employment.

(2) Whenever used in this section the term "occupational disease" shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process or employment, and to exclude all ordinary diseases of life to which the general public is exposed.

(3) Except as hereinafter otherwise provided in this section, "disablement" means the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease; and "disability" means the state of being so incapacitated.

(4) This section shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred before this section shall have taken effect.

(5) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; and the notice of injury and claim for compensation, as hereinafter required, shall be given and made to such employer; provided, however, that in case of disability from any dust disease the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease for a period of at least sixty days.

(6) (a) Disability from silicosis, asbestosis or any dust disease shall be caused only from the characteristic fibrotic condition of the lungs caused from the inhalation of dust and shall be

allowed only when the employee is incapacitated from performing any remunerative employment.

(b) In the absence of conclusive evidence in favor of the claim, disability or death from silicosis or asbestosis shall be presumed not to be due to the nature of any occupation within the provisions of this section, unless during the ten years immediately preceding the date of disablement the employee has been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five years, two years of which shall have been in this state, under a contract of employment existing in this state; provided, however, that if the employee shall have been employed by the same employer during the whole of such five-year period, his right to compensation against such employer shall not be affected by the fact that he had been employed during any part of such period outside of this state.

(c) Except as in this section otherwise provided, compensation for disability from uncomplicated silicosis or asbestosis shall be payable in accordance with the provisions of this workmen's compensation law; provided, however, that no compensation shall be payable for partial disability from silicosis or asbestosis; and provided, further, that during a transitory period, the aggregate compensation payable to employees and their dependents for disability and death from uncomplicated silicosis or asbestosis shall be limited as follows: If disablement occurs or, in case of no claim for prior disablement, if death occurs in the calendar month in which this section becomes effective, the total compensation and death benefits payable shall not exceed the sum of five hundred dollars. If disablement occurs or, in case of no claim for prior disablement, if death occurs during the next calendar month, the total compensation and death benefits payable shall not exceed five hundred and fifty dollars. Thereafter the total amount of the compensation and death benefits payable for disability and death shall increase at the rate of fifty dollars per month, the aggregate payable in each case to be limited according to the foregoing formula for the month in which disability occurs, or, in case of no claim for prior disablement, in which death occurs. Such progressive increase in the limits to the aggregate compensation and benefits for disability and death shall continue until the limit upon such benefits fixed in this workmen's compensation law is reached.

(7) The time for notice of injury or death provided in §440.18 (1) shall be extended in case of occupational diseases to a period of ninety days.

History.—§1, ch. 22852, 1945; am. §1, ch. 23921, 1947; am. §11, ch. 25035, 1949; sub. §(1)(f) comp. §3, ch. 28241, 1953.

440.152 Commission to make study of occupational diseases, etc.—

(1) The workmen's compensation division of the Florida industrial commission shall make a study of occupational diseases and the ways and means for their control and prevention; shall make and enforce necessary regulations for such control. For this purpose the division is authorized to cooperate with employers, employees and carriers and with the state board of health.

(2) The result of the above study, together with its recommendations, shall be reported by the division to the governor and the legislature.

History.—§2, ch. 22852, 1945; am. §1, ch. 23921, 1947.

440.16 Compensation for death.—If death results from the accident within one year thereafter or follows continuous disability and results from the accident within five years thereafter, the employer shall pay:

(1) Actual funeral expenses not to exceed five hundred dollars.

(2) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased and in the following order of preference (subject to the limitation provided in paragraph (c) of §440.16(2) below), but such compensation shall be subject to the limits provided in subsection (2) of §440.12 and shall not exceed a period of three hundred fifty weeks; and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, sixty per cent of the average wages.

(a) To the widow if there is no child, thirty-five per cent of the average weekly wage, said compensation to cease upon her death or remarriage.

(b) To the widower if there is no child, thirty-five per cent during the continuance of dependency, said compensation to cease upon death, remarriage or the termination of dependency.

(c) To the widow or widower if there is a child or children, the compensation payable under subsection (a) or (b) hereof, and, in addition, fifteen per cent on account of each child; and in case of the death or remarriage of such a widow or widower or the termination of dependency of the widower, twenty-five per cent for each child: Provided, however, where the deceased is survived by a widow or widower and also a child or children, whether such child or children be the product of the union existing at the time of death or of a former marriage or marriages, the commission may provide for the payment of compensation in such manner as to it may appear just and proper and for the best interests of the respective parties and in so doing may provide for the entire compensation to be paid exclusively to the child or children.

(d) To the child or children, if there is no widow or widower, twenty-five per cent for each child.

(e) To the parents, twenty-five per cent to each, such compensation to be paid during the continuance of dependency.

(f) To the brothers, sisters and grandchildren, fifteen per cent for each brother, sister or grandchild.

(3) For the purpose of this chapter the dependence of a widow or widower of a deceased employee shall terminate with remarriage. The dependence of a child, except a child physically or mentally incapacitated from earning a livelihood, shall terminate with the attainment of eighteen years of age, or upon marriage.

(4) Where, because of the limitation in subsection (2), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said sixty per cent, which proportion shall be paid (a) to such person, or (b) to such class share and share alike unless the commission determines otherwise in accordance with the provisions of subsection (5).

(5) If the commission determines that payments in accordance with clause (b) of subsection (4) would provide no substantial benefit to any person of such class, it may provide for the payment of such compensation to the person or persons within such class whom it considers will be most benefited by such payment.

(6) Upon the cessation of compensation under this section to any person, the compensation of the remaining persons entitled to compensation, for the unexpired part of the period during which their compensation is payable, shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

(7) Relationship to the deceased giving right to compensation under the provisions of this section must have existed at the time of the accident, save only in the case of afterborn children of the deceased.

(8) Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury, and except that the commission may, at its option, or upon the application of the insurance carrier, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission, and provided further that compensation to dependents referred to in this paragraph shall in no case exceed one thousand dollars.

History.—§16, ch. 17481, 1935; §7, ch. 18413, 1937; CGL 1936 supp. 5966(16); §5, ch. 20672, 1941; sub. §(2) am. §1, ch. 26966, 1951; sub. §§(1), (2)(c), (7) am. §§4-6, ch. 28241, 1953. Am. (1) by §1, ch. 57-143.

440.17 Guardian for minor or incompetent.—The commission may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter; provided, however, the commission in its discretion may designate in the compensation award a person to whom payment of compensation may be paid for a minor or incompetent, in which event payment to such designated person shall discharge all liability for such compensation.

History.—§17, ch. 17481, 1935; CGL 1936 Supp. 5966(17); §8, ch. 18413, 1937.

440.18 Notice of injury or death.—

(1) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within thirty days after the date of such injury or death (a) to the commission, (b) to the employer; provided, however, that in the event of any injury which results in the death of the injured employee within twenty-four hours of the time of such injury immediate notice shall be given to the commission by telegraph or telephone. Such immediate notice shall be in addition to any other notice provided for in this section; and, provided further, that such special notice shall not be required where the death results subsequent to the submission to the commission of a previous notice of such injury which did not result in immediate death.

(2) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(3) Notice shall be given to the commission by delivering same to it or sending same by mail addressed to its office, and to the employer, by delivering same to him or by sending same by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(4) Failure to give such notice shall not bar any claim under this chapter (a) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or

death and the commission determines that the employer or carrier has not been prejudiced by failure to give such notice, or (b) if the commission excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor unless objection to such failure is raised before the commission at the first hearing of a claim for compensation in respect of such injury or death. Provided, in case the delay in giving notice is so excused, no compensation shall be payable for aggravation of the injury caused by want of "first aid" or proper medical treatment during such delay, and every presumption shall be against the validity of the claim.

History.—§18, ch. 17481, 1935; CGL 1936 Supp. 5966(18). Am. (1) by §1, ch. 57-245.

440.19 Time and procedure for filing claims.—

(1) (a) The right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within two years after the time of injury, except that if payment of compensation has been made or remedial treatment has been furnished by the employer without an award on account of such injury a claim may be filed within two years after the date of the last payment of compensation or after the date of the last remedial treatment furnished by the employer.

(b) The right to compensation for death under this chapter shall be barred unless a claim therefor is filed within two years after the death, except that if payment of compensation has been made without an award on account of such death a claim may be filed within two years after the date of the last payment.

(c) Such claim shall be filed with the commission and shall contain the name and address of the employee, the name and address of the employer, and a statement of the time, place, nature and cause of the injury or such fairly equivalent information as will put the commission and the employer on notice with respect to the identity of the parties and the nature of the claim.

(2) Notwithstanding the provisions of subsection (1) failure to file claim within the period prescribed in such subdivision shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(3) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subsection (1) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(4) Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation of time prescribed in subsection (1) shall begin to run only from the date of termination of such suit, but in such an event the employer shall be allowed a credit of his actual cost of defending said suit in a sum not exceeding two hundred and fifty dollars, which shall be deducted from any compensation allowed or awarded to said employee under this chapter.

History.—§19, ch. 17481, 1935; CGL 1936 Supp. 5966(19); §1, ch. 23908, 1947; sub §(1) am. §10, ch. 26484, 1951; sub §(1) am. §4, ch. 29778, 1955; (1)(a) by §1, ch. 57-192.

440.20 Payment of compensation.—

(1) Compensation under this chapter shall be paid periodically, promptly in the usual manner and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(2) The first installment of compensation shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation shall be paid in installments semimonthly except where the commission determines that payment in installments should be made monthly or at some other period.

(3) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun or has been suspended, as the case may be.

(4) If the employer controverts the right to compensation he shall file with the commission on or before the twenty-first day after he has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

(5) If any installment of compensation payable without an award is not paid within fourteen days after it becomes due, as provided in subsection (2) of this section, there shall be added to such unpaid installment an amount equal to ten per cent thereof, which shall be paid at the same time as, but in addition to, such compensation, such installment, unless notice is filed under subsection (4) of this section, or unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(6) If any compensation, payable under the terms of an award, is not paid within fourteen

days after it becomes due, there shall be added to such unpaid compensation an amount equal to twenty per cent thereof, which shall be paid at the same time as, but in addition to such compensation, unless review of the compensation order making such award is had as provided in §440.27.

(7) Within thirty days after final payment of compensation has been made, the employer shall send to the commission a notice, in accordance with a form prescribed by the commission stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid.

If the employer fails to so notify the commission within such time the commission may assess against such employer a civil penalty in an amount not over one hundred dollars.

(8) The commission (a) may upon its own initiative at any time in a case in which payments are being made without an award, and (b) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examination to be made, or hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

(9) Whenever the commission deems it advisable it may require any employer to make a deposit with the state treasurer to secure the prompt and convenient payments of such compensation, and payments therefrom upon any awards shall be made upon order of the commission.

(10) Upon the application of any party in interest and after giving due consideration to the interests of all interested parties, if he finds that it is for the best interests of the person entitled to compensation a deputy commissioner may enter a compensation order requiring that the liability of the employer for compensation shall be discharged by the payment of a lump sum equal to the present value of all future payments of compensation, computed at four per cent true discount compounded annually, or requiring that the employer make advance payment of a part of the compensation for which he is liable by the payment of a lump sum equal to the present value of such part of the compensation computed at four per cent true discount compounded annually. Upon joint petition of all interested parties and after giving due consideration to the interests of all interested parties, if he finds that it is for the best interests of the person entitled to compensation a deputy commissioner may enter a compensation order approving and authorizing the discharge of the liability of the employer for both compensation and remedial treatment, care and attendance by the payment of a lump sum equal to the present value of all future payments for both compensation and remedial treatment, care and attendance; and a compensation order so entered upon joint petition of all interested parties shall not be subject to modification or review under §440.28. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall in the absence of special circumstances making such course improper be determined in accordance with a standard experience table of mortality approved by the commission. The probability of the happening of any other contingency affecting the amount of duration of the compensation except the possibility of the remarriage of a widow shall be disregarded. As a condition of approving a lump sum payment to a widow the deputy commissioner in his discretion may require security which will insure that in the event of the remarriage of such widow any unaccrued future payments so paid may be recovered or recouped by the employer or carrier. Such applications shall be considered and determined in accordance with §§440.25 and 440.27 and the rules of procedure prescribed by the commission.

(11) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(12) An injured employee, or in case of death his dependents or personal representative, shall give receipts of payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the commission whenever required.

History.—§20, ch. 17481, 1935; CGL 1936 Supp. 5966(20); §9, ch. 18413, 1937; §6, ch. 20672, 1941; am. §2, ch. 23921, 1947; sub §(13) repealed §2, ch. 26877, 1951; sub §(10) am. §5, ch. 29778, 1955; (10) by §1, ch. 59-422.

440.21 Invalid agreements; penalty.—

(1) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars.

(2) No agreement by an employee to waive his right to compensation under this chapter shall be valid, unless he has rejected the chapter as provided in §440.05.

History.—§21, ch. 17481, 1935; CGL 1936 Supp. 5966(21), 8135(10).

440.22 Assignment and exemption from claims of creditors.—No assignment, release,

or commutation of compensation or benefits due or payable under this chapter except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments, or other remedy for recovery or collection of a debt, which exemption may not be waived.

History.—§22, ch. 17481, 1935; CGL 1936 Supp. 5966(22).

440.23 Compensation a lien against assets. —Compensation shall have the same preference of lien against the assets of the carrier or employer without limit of an amount as is now or may hereafter be allowed by law to the claimant for unpaid wages or otherwise.

History.—§23, ch. 17481, 1935; CGL 1936 Supp. 5966(23).

440.24 Enforcement of compensation orders; penalties.—

(1) In case of default by the employer or carrier in the payment of compensation due under any compensation order of a deputy commissioner or order of the full commission or other failure by the employer or carrier to comply with such order for a period of ten days after the order has become final, any circuit court of this state within the jurisdiction of which the employer or carrier resides or transacts business shall upon application by the commission or any beneficiary under such order, have jurisdiction to issue a rule nisi directing such employer or carrier to show cause why a writ of execution, or such other process as may be necessary to enforce the terms of such order, shall not be issued, and unless such cause is shown, the said court shall have jurisdiction to issue a writ of execution or such other process or final order as may be necessary to enforce the terms of such order of the deputy commissioner or full commission.

(2) In any case where the employer is insured and the carrier fails to comply with any compensation order of a deputy commissioner or order of the full commission for a period of ten days after such order has become final, the commission shall notify the state treasurer of such failure, and the state treasurer shall thereupon suspend the license of such carrier to do an insurance business in this state, until such carrier has complied with such order.

(3) In any case where the employer is a self-insurer and fails to comply with any compensation order of a deputy commissioner or order of the full commission for a period of ten days after such order has become final, the commission may suspend or revoke any authorization previously given to the employer to become a self-insurer, and the commission will be authorized to sell such of the securities deposited by such self-insurer with the commission as may be necessary to satisfy such order.

History.—§24, ch. 17481, 1935; CGL 1936 Supp. 5966(24); §10, ch. 18413, 1937; am. §7, ch. 28241, 1953.

440.25 Procedure in respect to claims.—

(1) Subject to the provisions of §440.19, claim for compensation may be filed with the commission in accordance with regulations prescribed by the commission at any time after the first seven days of disability following any injury or at any time after the death, and the commission shall have full power and authority to hear and determine all questions in respect to such claims.

(2) Within ten days after such claim is filed the commission, in accordance with regulations prescribed by it, shall notify the employer and any other person (other than the claimant), whom the commission considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by regular mail.

(3) (a) The commission shall make or cause to be made such investigations as it considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereof. If a hearing on such claim is ordered, the commission shall give the claimant and other interested parties at least ten days' notice of such hearing served personally upon the claimant and other interested parties by registered mail.

(b) The hearing shall be held in the county where the injury occurred, if the same occurred in this state, unless otherwise agreed to between the parties and authorized by the commission. If the injury occurred without the state, and is one for which compensation is payable under this chapter, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the state which will, in the discretion of the commission, be the most convenient for a hearing. The hearing shall be conducted by a deputy commissioner, who shall within twenty days after such hearing determine the dispute in a summary manner. At such hearing the claimant and employer may each present evidence in respect of such claim and may be represented by any attorney authorized in writing for such purpose. When there is a conflict in the medical evidence submitted at the hearing the deputy commissioner may designate a disinterested doctor to submit a report or to testify in the proceeding, after such doctor has reviewed the medical reports and evidence, examined the claimant, or otherwise made such investigation as appropriate. The report or testimony of any doctor so designated by the deputy commissioner shall be made a part of the record of the proceeding and shall be given the same consideration by the deputy commissioner as is accorded other medical evidence submitted in the proceeding; and all costs incurred in connection with such examination and testimony may be assessed as costs in the proceeding, subject to the provisions of §440.13 (3) (a).

(c) The order rejecting the claim or making an award (referred to in this chapter as a compensation order) shall set forth a statement of the findings of fact and other matters pertinent

to the questions at issue and shall be filed in the office of the commission at Tallahassee. A copy of such compensation order shall be sent by registered mail to the claimant and to the employer at the last known address of each, with the date of mailing noted thereon.

(4) (a) The compensation order rendered by the deputy commissioner shall become final twenty days after the date copies of same are mailed to the parties at the last known address of each, unless within said time any interested party shall make and file with the commission or a deputy commissioner an application for a review thereof by the full commission in accordance with the provisions of this subsection; provided, however, that an employer who has not secured the payment of compensation under this chapter in compliance with §440.38 shall, as a condition of filing such application for a review by the full commission, file with his application for review a good and sufficient bond, as provided in §59.13 of chapter 59, conditioned to pay the amount of the award, interests and costs payable under the terms of the order of the full commission, if the application shall be dismissed or the order thereon shall affirm or make an award of benefits in any amount, and upon failure of such employer to file such bond with his application for review the commission shall dismiss the application for review. The application must state concisely and particularly the grounds upon which the appellant relies, and the consideration of the commission thereof will be confined solely to the grounds so presented. A copy of all applications for review shall be served on all interested parties, and proof of service thereof shall accompany all applications when filed.

(b) The appellant shall have prepared, in accordance with such rules as the commission may prescribe, a transcript of the proceedings before the deputy commissioner, certified by the deputy commissioner, which transcript must be filed with the full commission within forty-five days from the date of the filing of the application for review, unless the commission for good cause shown by verified petition presented prior to the expiration of said period shall extend the time therefor. The appellant shall have a copy of the transcript served on the opposing party or parties or their counsel and evidence of such service shall be filed with the transcript when filed with the commission. Upon failure of the appellant to file a transcript of the proceedings with the commission, together with evidence of service of a copy thereof on the opposing party or parties, within the time specified or within such time as allowed by the commission pursuant to petition for an extension of time as aforesaid, the commission shall dismiss the application for review.

(c) Within ten days after the appellant has filed his application for review, any other interested party who desires review of any adverse ruling by the deputy commissioner must file his cross-application for review with the commission or a deputy commissioner. The cross-application for review must state concisely and particularly the grounds upon which the cross-appellant relies, and the consideration of the commission thereof will be confined solely to the grounds so presented. A copy of all cross-applications for review shall be served on all interested parties, and proof of service thereof shall accompany all cross-applications when filed.

(d) Unless the application for review is withdrawn with its permission or is dismissed as aforesaid, the commission shall consider the matter upon the record as certified by the deputy commissioner, and shall thereafter affirm, reverse or modify said compensation order, or remand the claim for further proceedings before a deputy commissioner, who shall proceed as the full commission may direct. The order of the full commission shall be filed in the office of the commission at Tallahassee, and a copy of such order shall be sent by registered or certified mail to each interested party at his last known address. The order of the full commission shall become final upon expiration of the period within which any interested party may file a petition for writ of certiorari requesting review of such order by the supreme court unless within said time any interested party shall file a petition for writ of certiorari in accordance with §440.27.

(5) An award of compensation for disability may be made after the death of an injured employee.

(6) An injured employee claiming or entitled to compensation shall submit to such physical examination by a duly qualified physician designated or approved by the commission as the commission may require. The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer or carrier may select and pay for may participate in an examination if the employee, employer or carrier so requests. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination. Any interested party shall have the right in any case of death to require an autopsy, the cost thereof to be borne by the party requesting it; and the commission shall have authority to order and require an autopsy and may in its discretion withhold its findings and award until an autopsy is held.

History.—§25, ch. 17481, 1935; CGL 1936 Supp. 5966(25); §11, ch. 18413, 1937; §7, ch. 20672, 1941; am. §3, ch. 22814, 1945; sub. §(2) am. §1, ch. 26967, 1951; am. §8, ch. 28241, 1953.

Sub. §(4) am. §6, ch. 29778, 1955; (4) (c) by §1, ch. 57-270; (4) by §2, ch 59-100; (4) (d) formerly (4) (c) by §2, ch. 59-142.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

440.26 Presumptions.—In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:

(1) That the claim comes within the provisions of this chapter.

(2) That sufficient notice of such claim has been given.

(3) That the injury was not occasioned primarily by the intoxication of the injured employee.

(4) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

History.—§26, ch. 17481, 1935; CGL 1936 Supp. 5966(26).
cf.—§28.24 Compensation of clerk of circuit court.
§29.03 Compensation for court reporters.
§696.05 Photographic recording by clerk of circuit court.

440.27 Review of compensation orders.—(1) Orders of the full commission entered pursuant to §440.25 shall be subject to review only by petition for writ of certiorari to the supreme court. The petition shall be filed in accordance with rules of procedure prescribed by the supreme court of Florida for review of such orders. The Florida industrial commission shall be made a party respondent to every such proceeding.

(2) The commission may grant a supersedeas or stay upon petitioner giving a good and sufficient bond, as provided in §59.13, conditioned to pay the amount of the award, interest and costs, if the petition shall be denied by the court; provided, however, that if the employer has secured the payment of benefits of this chapter to his employees no bond is required.

History.—§27, ch. 17481, 1935; CGL 1936 Supp. 5966(27); §12, ch. 18413, 1937; §8, ch. 20672, 1941; am. §2, ch. 23908, 1947; sub. §(6) am. §10, ch. 26484, 1951; am. §9, ch. 28241, 1953. Sub §(1) am. §7, ch. 29778, 1955; §2, ch. 57-270; (1) by §1, ch. 59-142.

440.28 Modification of orders.—Upon their own initiative or upon the application of any party in interest, on the ground of a change in condition or because of a mistake in a determination of fact the commission may at any time prior to two years after the date of the last payment of compensation pursuant to any compensation order, or at any time prior to two years after the date copies of an order rejecting a claim are mailed to the parties at the last known address of each, review a compensation case in accordance with the procedure prescribed in respect of claims in §440.25 and in accordance with such section, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the commission.

History.—§28, ch. 17481, 1935; CGL 1936 Supp. 5966(28); §9, ch. 20672, 1941; am. §10, ch. 28241, 1953.

440.29 Procedure before the commission.—(1) In making an investigation or inquiry or conducting a hearing the commission shall not be bound by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry, or conduct such hearing in such manner as to best ascertain the rights of the parties. Declaration of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(2) Hearings before the commission shall be open to the public and shall be reported, and the commission is authorized to contract for the reporting of such hearings. The commission shall by regulation provide for the preparation of a record of the hearings and other proceedings before it and shall be permitted to charge for transcripts of testimony and copies of any instrument the same fees as are allowed by law to reporters and clerks of courts of this state for like services.

History.—§29, ch. 17481, 1935; CGL 1936 Supp. 5966(29); §10, ch. 20672, 1941; sub §(2) am. §8, ch. 29778, 1955.
cf.—§28.24 Fees of clerk of circuit court.
§29.03 Compensation for services of official court reporters.
§696.05 Photographic recording authorized; clerk circuit court.

440.30 Depositions.—Depositions of witnesses, residing within or without the state, may be taken and may be used in connection with proceedings under the Florida workmen's compensation law, either upon order of the commission or at the instance of any party or prospective party to such proceedings, and either prior to or pending the institution or hearing of a claim, in the same manner, for the same purposes, including the purposes of discovery, and subject to the same rules; all as now or hereafter prescribed by law or by rules of court governing the taking and use of such depositions in civil actions at law in the circuit courts of this state. Such deposition may be taken before any notary public, court reporter or deputy, and the fees of the officer taking the same and the fees of the witnesses attending the same, including expert witness fees as provided by law or court rule, shall be the same as in depositions taken for such circuit courts. Such fees may be taxed as costs and recovered by the claimant, if successful in such workmen's compensation proceedings.

History.—§30, ch. 17481, 1935; CGL 1936 Supp. 5966(30); §13, ch. 18413, 1937; am. §1, ch. 28228, 1953.

440.31 Witness fees.—Each witness who appears in obedience to a subpoena shall be entitled to the same fees as witnesses in a civil action in the circuit court; provided, however, that any expert witness (as defined in §90.23) who shall have testified in any proceeding under this chapter shall be allowed a witness fee including the cost of any exhibits used by such witness in such reasonable amount as the deputy commissioner may determine, not in excess of

the rate prevailing in the locality for witness fees for such expert witnesses in workmen's compensation proceedings, notwithstanding the limitation provided in §90.231.

History.—§31, ch. 17481, 1935; CGL 1936 Supp. 5966(31). Am. §9, ch. 29778, 1955.
cf.—§90.14 Compensation of witnesses in various courts.

440.32 Cost in proceedings brought without reasonable grounds.—If the commission or any court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the cost of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

History.—§32, ch. 17481, 1935; CGL 1936 Supp. 5966(32); §1, ch. 63-283.

440.33 Powers of commission.—

(1) The commission may preserve and enforce order during any such proceeding; issue subpoenas for, administer oaths to, and compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; examine witnesses, and do all things conformable to law which may be necessary to enable it effectively to discharge the duties of its office.

(2) If any person in proceedings before the commission disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having taken the oath refuses to be examined according to law, the commission shall certify the facts to the court having jurisdiction in the place in which it is sitting which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

History.—§33, ch. 17481, 1935; CGL 1936 Supp. 5966(33).

440.34 Attorney's fees; costs; penalty for violations.—

(1) If the employer or carrier shall file notice of controversy as provided in §440.20, or shall decline to pay a claim on or before the twenty-first day after they have notice of same, or shall otherwise resist unsuccessfully the payment of compensation, and the injured person shall have employed an attorney at law in the successful prosecution of his claim, there shall, in addition to the award for compensation be awarded reasonable attorney's fee, to be approved by the commission which may be paid direct to the attorney for the claimant in a lump sum. If any proceedings are had for review of any claim, award or compensation order before any court, the court may allow or increase the attorney's fees, in its discretion, which fees shall be in addition to the compensation paid the claimant, and shall be paid as the court may direct.

(2) There shall be further assessed against such employer or carrier, as costs in said claim, such fees and mileages for witnesses attending the hearing at the instance of claimant, as would be allowed such witnesses in cases at law.

(3) Any person (a) who receives any fees, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (b) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof, shall, for each offense, be punished by a fine of not more than five hundred dollars or by imprisonment not to exceed one year, or by both such fine and imprisonment.

History.—§34, ch. 17481, 1935; CGL 1936 Supp. 5966(34), 8135(11); §11, ch. 20672, 1941.

440.35 Record of injury or death.—Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability or death in respect of such injury as the commission may by regulation require, and shall be available to inspection by the commission or by any state authority at such time and under such conditions as the commission may by regulation prescribe.

History.—§35, ch. 17481, 1935; CGL 1936 Supp. 5966(35).

440.36 Reports; penalties for violations.—

(1) Within ten days after the date of receipt of notice or of knowledge of injury or death the employer or carrier shall send to the commission a report setting forth: (a) the name, address, and business of the employer; (b) the name, address, and occupation of the employee; (c) the cause and nature of the injury or death; (d) the year, month, day and hour when, and the particular locality where the injury or death occurred, and (e) such other information as the commission may require.

(2) Additional reports in respect to such injury and of the condition of such employee shall be sent by the employer or carrier to the commission at such times and in such manner as the commission may prescribe.

(3) Any report provided for in subsection (1) or (2) shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(4) The mailing of any such report and copy in a stamped envelope, within the time

prescribed in subsection (1) or (2), to the commission shall be in compliance with this section.

(5) Any employer or carrier who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed one hundred dollars, for each such failure or refusal.

History.—§36, ch. 17481, 1935; CGL 1936 Supp. 5966(36). Am. §10, ch. 29778, 1955.

440.37 Misrepresentation; penalty.—Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not to exceed three hundred dollars, or by imprisonment not to exceed one year.

History.—§37, ch. 17481, 1935; CGL 1936 Supp. 8135(12).
cf.—§775.06 Alternative punishment.

440.38 Security for compensation.—

(1) Every employer shall secure the payment of compensation under this chapter:

(a) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association or exchange, authorized to do business in the state, or

(b) By furnishing satisfactory proof to the commission of his financial ability to pay such compensation and receiving an authorization from the commission to pay such compensation directly. The commission may, as a condition to such authorization, require such employer to deposit in a depository designated by the commission either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the commission, and subject to such conditions as the commission may prescribe, which shall include authorization to the commission in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer, and shall be classed as a carrier of his own insurance.

(2) The license of any stock company or mutual company or association or exchange authorized to do insurance business in the state may, upon recommendation of the commission be suspended, or revoked by the state treasurer for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

(3) The commission may suspend or revoke any authorization to a self-insurer for a good cause shown after a hearing at which the self-insurer shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any self-insurer already incurred.

(4) (a) No carrier of insurance, including the parties to any mutual, reciprocal or other association, shall write any compensation insurance under this chapter without a permit from the insurance commissioner. Such permit shall be given upon application therefor to any insurance or mutual or reciprocal insurance association upon the said commissioner being satisfied of the solvency of such corporation or association and its ability to perform all its undertakings. The said commissioner may revoke any permit so issued for violation of any provision of this chapter.

(b) Any insurer, rating bureau, agent or other representative or employee of any insurer or rating bureau failing to comply with or which is guilty of a violation of any of the provisions of this chapter, or of any order or ruling of the insurance commissioner made hereunder, shall be punished by a fine of not less than fifty nor more than five hundred dollars. In addition thereto, the license of any insurer, agent or broker guilty of such violation may be revoked or suspended by the department.

(5) The state, its boards, bureaus, departments and agencies and all its political subdivisions who employ labor shall be deemed self-insurers under the terms of this chapter unless they elect to procure and maintain insurance to secure the benefits of this chapter to their employees and they are hereby authorized to pay the premiums for the said insurance.

History.—§38, ch. 17481, 1935; CGL 1936 Supp. 5966(37), 7476(7), 8135(13); §13, ch. 22637, 1945.
cf.—§§837.01, 837.02 Perjury.

440.39 Compensation for injuries where third persons are liable.—

(1) If an employee, subject to the provisions of the Florida workmen's compensation law, is injured or killed in the course of his employment by the negligence or wrongful act of a third party tort-feasor, such injured employee, or in the case of his death his dependents, may accept compensation benefits under the provisions of this law, and at the same time such injured employee, his dependents or personal representatives may pursue his remedy by action at law or otherwise against such third party tort-feasor.

(2) If the employee or his dependents shall accept compensation or other benefits under this law or begin proceedings therefor, the employer or, in the event the employer is insured against liability hereunder then the insurer, shall be subrogated to the rights of the employee or his dependents against such third party tort-feasor, to the extent of the amount of compensation benefits paid or to be paid as provided by subsection (3) of this section.

(3) (a) In all claims or actions at law against a third party tort-feasor, the employee,

or his dependents, or those entitled by law to sue in the event he is deceased, shall sue for the employee individually, and for the use and benefit of the employer if a self-insurer, or employer's insurance carrier, in the event compensation benefits are claimed or paid, and such suit may be brought in the name of the employee or his dependents or those entitled by law to sue in the event he is deceased, as plaintiff or, at the option of such plaintiff may be brought in the name of such plaintiff and for the use and benefit of the employer or insurance carrier, as the case may be. Upon suit being filed the employer or the insurance carrier, as the case may be, may file in the suit a notice of payment of compensation and medical benefits to the employee or his dependents, which said notice shall be recorded and the same shall constitute a lien upon any judgment recovered to the extent that the court may determine to be their pro rata share for compensation benefits paid or to be paid under the provisions of this law, based upon such equitable distribution of the amount recovered as the court may determine, less their pro rata share of all court costs expended by the plaintiff in the prosecution of the suit including reasonable attorney's fees for plaintiff's attorney, such proration of court costs and attorney's fees to be made by the judge of the trial court upon application therefor and notice to adverse party. Notice of suit being filed and notice of payment of compensation benefits shall be served upon the compensation carrier and upon all parties to the suit, or their attorneys of record.

(b) If the employer or insurance carrier has given written notice of his rights of subrogation to the third party tort-feasor, and, thereafter, settlement of any such claim or action at law is made, either before or after suit is filed, and the parties fail to agree on the proportion to be paid to each, the circuit court of the county in which the cause of action arose shall determine the amount to be paid to each by such third party tort-feasor in accordance with the provisions of paragraph (a) above.

(4) (a) If the injured employee or his dependents, as the case may be, shall fail to bring suit against such third party tort-feasor within one year after the cause of action thereof shall have accrued, the employer if a self-insurer, and if not, the insurance carrier, may institute suit against such third party tort-feasor either in his own name or as provided by subsection (3) of this section, and in the event suit is so instituted, shall be subrogated to and entitled to retain from any judgment recovered against or settlement made with such third party, the following: All amounts paid as compensation and medical benefits under the provisions of this law and the present value of all future compensation benefits payable, to be reduced to its present value, and to be retained as a trust fund from which future payments of compensation are to be made, together with all court costs, including attorney's fees expended in the prosecution of such suit, to be prorated as provided by subsection (3) of this section. The remainder of the moneys derived from such judgment or settlement to be paid to the employee or his dependents, as the case may be.

(b) If the carrier or employer does not bring suit within two years following the accrual of the cause of action against a third party tort-feasor, the right of action shall revert to the employee (or in the case of his death, those entitled by law to sue), and in such event the provisions of subsection (3) shall apply.

(5) In all cases under subsection (4) of this section involving third party tort-feasors, where compensation benefits under this law are paid, or are to be paid, settlement either before or after suit is instituted shall not be made except upon agreement of the injured employee or his dependents and the employer or his insurance carrier, as the case may be.

(6) Any amounts recovered under this section by the employer or his insurance carrier shall be credited against the loss-experience of said employer.

History.—§39, ch. 17481, 1935; CGL 1936 Supp. 5966(38); §14, ch. 18413, 1937; am. §1, ch. 23822, 1947. Am. §1, ch. 26546, 1951; §1, ch. 59-431.

440.40 Compensation notice. — Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

History.—§40, ch. 17481, 1935; CGL 1936 Supp. 5966(39).

440.41 Substitution of carrier for employer. —In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this chapter upon the employer, as it considers proper in order to effectuate the provisions of this chapter. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by the commission or any court under this chapter shall be jurisdiction of the carrier, and (3) any requirement by the commission, or any court under any compensation order, finding, or decision shall be binding up-

on the carrier in the same manner and to the same extent as upon the employer.

History.—§41, ch. 17481, 1935; CGL 1936 Supp. 5966(40).

440.42 Insurance policies; liability.—

(1) Every policy or contract of insurance issued under authority of this chapter shall contain (a) a provision to carry out the provisions of §440.41, and (b) a provision that insolvency or bankruptcy of the employer and discharge therein shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(2) No contract or policy of insurance issued by a carrier under this chapter shall be cancelled prior to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the commission and to the employer in accordance with the provisions of §440.18(3); provided, however, that when duplicate or dual coverage exists by reason of two different carriers having issued policies of insurance to the same employer securing the same liability one of the policies may be cancelled instanter upon filing a notice of cancellation with the commission and serving a copy thereof upon the employer, in such manner as the commission by regulation may prescribe.

(3) When there is any controversy as to which of two or more carriers is liable for the discharge of the obligations and duties of one or more employers with respect to a claim for compensation, remedial treatment or other benefits under this chapter the commission shall have jurisdiction to adjudicate such controversy; and if one of the carriers either voluntarily or pursuant to a compensation order makes payments in discharge of such liability pending determination thereof by a deputy commissioner or pending review thereof by the full commission or the court and it is finally determined that another carrier is liable for all or any part of such obligations and duties with respect to such claim the carrier which has made payments either voluntarily or in compliance with the compensation order shall be entitled to reimbursement from the carrier finally determined liable, and the commission shall have jurisdiction to order such reimbursement.

History.—§42, ch. 17481, 1935; CGL 1936 Supp. 5966(41). Sub. §(2) am. §11, ch. 29778, 1955; (3) N by §3, ch. 57-225; (3) by §3, ch. 59-100.

440.43 Penalty for failure to secure payment of compensation.—Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year. This section shall not affect any other liability of the employer under this chapter.

History.—§43, ch. 17481, 1935; CGL 1936 Supp. 8135(14). cf.—§775.06 Alternative punishment.

440.44 Industrial commission.—

(1) INTERPRETATION OF LAW.—As a guide to the interpretation of this chapter, the legislature takes due notice of federal social and labor acts and hereby creates an agency to administer such acts passed for the benefit of employees and employers in Florida industry, and desires to meet the requirements of such federal acts wherever not inconsistent with the constitution and laws of Florida.

(2) COMMISSION CREATED.—There is created the Florida industrial commission, to consist of the workmen's compensation division, and such other divisions as may be created by law, and except as otherwise provided the commission shall administer the provisions of this act. The commission shall consist of a chairman and two other members to be appointed by the governor. Not more than one appointee shall be a person who on account of his previous vocation, employment or affiliation shall be classified as a representative of employers, and not more than one such appointee shall be a person who on account of his previous vocation, employment, or affiliation shall be classified as a representative of employees. Each commissioner shall, at the commission's expense, furnish a fidelity surety bond to the governor in the sum of ten thousand dollars and the terms of office of said commissioners shall begin and run concurrently with the regular terms of office of the successive governors of this state. The chairman of the commission shall devote his entire time to his official duties and shall receive one half of his total salary from state sources. The other two members of the commission shall receive, in addition to the moneys authorized in chapter 443, one thousand eight hundred dollars each per annum. They shall also be reimbursed for traveling expenses as provided in §112.061. Such per diem and expense allowance shall be payable out of the fund established in §440.50.

(3) DIRECTOR; EXPENSES; ETC.—(a) Under the direction and supervision of the commission the workmen's compensation division shall be administered by a full time salaried director appointed in accordance with the provisions of subsection (4) of this section. Such director shall, at the commission's expense, furnish a fidelity surety bond to the commission in the sum of ten thousand dollars.

(b) The commission shall make such expenditures including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, equipment and supplies and for printing and binding as may be necessary in the administration of this chapter. All expenditures of the commission in the administration of this chapter shall be allowed and paid as provided in §440.50 upon the presentation of itemized vouchers therefor approved by the commission.

(4) MERIT SYSTEM PRINCIPLE OF PERSONNEL ADMINISTRATION.—(a) In

order to assure the effective and economical administration of the workmen's compensation law, and provide an equal opportunity for all qualified persons to compete for positions in the workmen's compensation division, the industrial commission shall, within sixty days after the effective date of this chapter, classify positions under this chapter and shall establish salary schedules and minimum personnel standards for the positions so classified; it shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified and except for temporary appointments of not to exceed six months in duration such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. The commission shall establish and enforce fair and reasonable rules and regulations for the appointment, promotions, and demotions for the entire personnel of this division based upon rating of efficiency and fitness; and no employee of the department may be discharged or removed except for cause. Any employee so discharged shall be given opportunity for a fair hearing as provided by applicable merit system regulations; provided the provisions of this paragraph shall not apply to any member of the commission or any deputy commissioner, none of whom are hereby put under the merit system.

(b) Subject to the other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of a director, deputy commissioners, attorneys, accountants, medical advisers, technical assistants, inspectors, and such other employees as may be necessary in the performance of its duties under this chapter. No person shall be appointed as director or deputy commissioner who is not an attorney at law admitted to practice in this state; provided, however, that no deputy commissioner shall accept any employment as an attorney for an insurance company, employer or claimant to prosecute or defend any action that may arise, directly or indirectly, out of a compensation matter.

(c) With the exception of the members of the commission appointed by the governor, no full time employee of the commission shall, during his or her service under the commission, actively engage in any other business or profession; nor shall they serve as the representative of any political party, or any executive committee or other governing body thereof, or as an executive officer or employee of any political committee, organization, or association, or be engaged on the behalf of any candidate for public office in the solicitation of votes.

(5) OFFICE.—The commission shall maintain and keep open during reasonable business hours an office, which shall be provided in the capitol or some other suitable building in the city of Tallahassee, for the transaction of business under this chapter, at which office its official records and papers shall be kept. The office shall be furnished and equipped by the commission. The commission or the director or any deputy commissioner may hold sessions and conduct hearings at any place within the state.

(6) SEAL.—The commission shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Industrial commission—Florida—seal" and it shall be judicially noticed.

(7) DESTRUCTION OF OBSOLETE RECORDS.—The commission is expressly authorized to provide by regulation for and to destroy obsolete records of the commission.

(8) ADVISORY COUNCIL.—The commission may designate the state advisory council appointed pursuant to §443.12(5), to aid the commission in formulating policies, discussing problems, and in assuring impartiality and freedom from political influence in the solution of such problems, related to the administration of this chapter and/or any other law administered by the commission. The members of such advisory council shall receive no compensation for such services, but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§44, ch. 17481, 1935; CGL 1936 Supp. 5966(42); §15, ch. 18413, 1937; §1, ch. 20299, 1941; am. §1, ch. 21875, 1943; §4, ch. 22814, 1945; §1, ch. 23920, 1947; sub. §(4) am. §10, ch. 26484, 1951; am. §11, ch. 28241, 1953; (2) by §24, ch. 57-1, §1, ch. 57-785; (4)(b) §1, ch. 57-156; (2) §1, ch. 63-274; (8) §19, ch. 63-400.
cf.—§113.07 Bonds of officials.

440.45 Deputy commissioners; delegation of authority.—

(1) The commission with the approval of the governor shall appoint as many full-time deputy commissioners as may be necessary to effectually perform the duties prescribed for them under this chapter and the rules and regulations promulgated by the commission pursuant to this chapter; provided, however, that the number of deputy commissioners shall not exceed twenty during the fiscal year beginning July 1, 1963, and shall not exceed twenty-one during the fiscal year beginning July 1, 1964, and thereafter. No person shall be appointed as a full-time deputy commissioner who has not had three years experience in the practice of law in this state; and no deputy commissioner during his term of office shall actively engage in the private practice of law.

(2) Each full-time deputy commissioner shall be appointed for a term of four years and until his successor is appointed and qualified, but during his term of office may be removed by the commission for cause.

(3) Each full-time deputy commissioner shall receive a salary of thirteen thousand dollars per year, payable out of the fund established in §440.50.

(4) The commission may designate any attorney employed by it to serve as a deputy commissioner pro hac vice in the absence or disqualification of any full-time deputy commissioner or to serve upon a temporary basis as an additional deputy commissioner in any area of the state in which it determines that a need exists therefor, but an attorney so designated shall not be paid any additional compensation

for services performed as a deputy commissioner.

(5) The commission may delegate to the chairman, director, deputy director, and deputy commisioners, and to its attorneys, examiners, safety representatives, field agents, inspectors, and other legal representatives, such powers and authority as it may deem necessary in the administration of this chapter.

History.—§45, ch. 17481, 1935; CGL 1936 Supp. 5966(43). §2, ch. 57-245; §1, ch. 61-133; (1) §1, ch. 63-179; (3) §1, ch. 63-275.

440.46 Investigations by the commission; refusal to admit, penalty.—

(1) (a) The commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this chapter, and shall from time to time make to the legislature and employers and carriers such recommendations as it may deem proper as to the best means of preventing injuries. In making such studies and investigations the commission is authorized (a) to cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this chapter, or any agency or department of the state engaged in enforcing any laws to assure safety for employees, and (b) to permit any such agency or department to have access to the records of the commission.

(b) The commission and its authorized representatives shall have the power and authority to enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with this chapter and making inspections for the proper enforcement of this chapter. Any employer or owner who refuses to admit any member of the commission or its authorized representative to any place of employment or to permit investigation and inspection pursuant to this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $20.00 nor more than $100.00, or shall be imprisoned for not exceeding 6 months.

(2) Should an accidental injury occur to any inspector or employee of the industrial commission while engaged in his official duties, the industrial commission shall be considered an employer under the provisions of this chapter and shall compensate such injured employee or his dependents in accordance with the provisions hereof.

(3) No other claim on account of such accidental injury may be maintained by any person against any employer who has accepted the terms of this chapter, except as herein provided.

History.—§46, ch. 17481, 1935; CGL 1936 Supp. 5966(44); §16, ch. 18413, 1937; (1)(b) N. by §4, ch. 57-225, (1) by §3, ch. 57-245.

440.47 Traveling expenses. — The commission and other employees of the commission shall be reimbursed for traveling expenses as provided in §112.061. Such expenses shall be sworn to by the person who incurred the same and shall be allowed and paid as provided in §440.50 upon the presentation of vouchers therefor approved by the commission.

History.—§47, ch. 17481, 1935; CGL 1936 Supp. 5966(45); §19, ch. 63-400.

440.48 Annual report.—Annually on or before the fifteenth day of March the commission under the oath of at least two of its members shall make to the governor a report of the administration of this chapter for the preceding calendar year, including a detailed statement of the receipts of and expenditures from the fund established in §440.50, a statement of the causes of the accidents leading to the injuries for which the awards were made, together with such recommendations as the commission deems advisable.

History.—§48, ch. 17481, 1935; CGL 1936 Supp. 5966(46); §12, ch. 20672, 1941; am. §12, ch. 28241, 1953; §24, ch. 57-1.

440.49 Rehabilitation of injured employees; special disability fund.—

(1) In cases in which it appears that disability probably will be permanent the commission shall assist injured employees to obtain appropriate training, education and employment and may cooperate with federal and state agencies for vocational education and with any public or private agency cooperating with such federal or state agencies in the vocational rehabilitation of injured employees. The commission may, and it is authorized to, expend moneys from the special fund established by §440.50, for the purpose of assisting such injured employees to obtain appropriate training, education and employment in connection with their vocational rehabilitation.

(2) Whenever the commission determines that there is a reasonable probability that with appropriate training or education a person entitled to compensation for total or partial disability which is or is likely to be permanent may be rehabilitated to the extent that he will require less care and attendance or to the extent that he can become gainfully employed or increase his earning capacity and that it is for the best interests of such person to undertake such training or education, if the injured employee without reasonable cause refuses to undertake the training or educational program determined by the commission to be suitable for him, the commission may in its discretion suspend, reduce or limit the compensation otherwise payable to such person under this chapter, any provisions of this chapter to the contrary notwithstanding.

(3) In cases involving total disability adjudged to be permanent, within two years after a disability has been so adjudged, the commission shall determine whether there is a reasonable probability that with appropriate training or education the injured employee may be rehabilitated to the extent that he can become gainfully employed and whether it is for the best interests of such person to undertake such training or education; and whenever the

commission determines that there is a reasonable probability that the injured employee may be so rehabilitated and that it is for his best interests, if the injured employee without reasonable cause refuses to undertake the training or educational program determined by the commission to be suitable for him, the commission shall suspend or reduce by not less than fifty per cent the compensation otherwise payable to such employee under this chapter, any provisions of this chapter to the contrary notwithstanding.

(4) LIMITATION OF LIABILITY FOR SUBSEQUENT INJURY THROUGH SPECIAL DISABILITY FUND.—

(a) *Legislative intent.*—It is the purpose of this subsection to encourage the employment of the physically handicapped by protecting employers from excess liability for compensation and medical expense when an injury to a handicapped worker merges with his pre-existing permanent physical impairment to cause a greater disability than would have resulted from the injury alone. It shall not be construed to create or provide any benefits for injured employees or their dependents not otherwise provided by this chapter. The entitlement of an injured employee or his dependents to compensation under this chapter shall be determined without regard to this subsection, the provisions of which shall be considered only in determining whether an employer or carrier who has paid compensation under this chapter is entitled to reimbursement from the special disability fund.

(b) *Definition.*—As used in this subsection, permanent physical impairment means any permanent condition due to previous accident or disease or any congenital condition which is or is likely to be a hindrance or obstacle to employment and which was known to the employer prior to the occurrence of the subsequent injury or occupational disease.

(c) *Permanent disability after other permanent physical impairment.*—If an employee who has a total or partial loss or loss of use of one hand, one arm, one foot, one leg or one eye, or who has other permanent physical impairment incurs a subsequent permanent disability from injury or occupational disease arising out of and in the course of his employment which merges with the pre-existing permanent physical impairment to cause a permanent disability that is materially and substantially greater than that which would have resulted from the subsequent injury or occupational disease alone, the employer shall in the first instance pay all benefits provided by this chapter, but subject to the limitations specified in paragraph (f) such employer shall be reimbursed from the special disability fund created by this paragraph for all compensation for permanent disability paid in excess of that allowed for such injury or occupational disease when considered by itself and not in conjunction with the previous permanent physical impairment.

(d) *When death results.*—If death results from the subsequent disability contemplated in paragraph (c) within one year after the subsequent injury or within five years after the subsequent injury when disability has been continuous since the subsequent injury, and it shall be determined that the death would not have occurred except for such pre-existing permanent physical impairment, the employer shall in the first instance pay the funeral expenses and the death benefits prescribed by this chapter, but subject to the limitations specified in paragraph (f) he shall be reimbursed from the special disability fund created by this subsection for all compensation for death payable in excess of the compensation which otherwise would have been payable for acceleration of death reasonably attributable to the subsequent injury or occupational disease when considered by itself and not in conjunction with the previous permanent physical impairment.

(e) Subject to the limitations specified in paragraph (f) an employer entitled to reimbursement from the special disability fund for compensation paid for permanent disability or death shall be reimbursed from said fund for a pro rata share of the amounts paid as compensation for temporary disability and paid pursuant to §440.13 for the same injury, such pro rata share to be in the same proportion as the ratio of the reimbursement of compensation for permanent disability or death is to the total compensation payable for such permanent disability or death.

(f) No reimbursement shall be allowed under this subsection unless the total amount otherwise reimbursable to the employer with respect to any case is one thousand five hundred dollars or more.

(g) *Reimbursement of employer.*—The right to reimbursement as provided in this subsection shall be barred unless notice of claim of the right to such reimbursement is filed by the employer or carrier entitled to such reimbursement with the commission at Tallahassee within sixty days after the date copies of the order awarding the compensation with respect to which such reimbursement is claimed are mailed to the employer and carrier at the last known address of each, or, if payment of such compensation is made by the employer or carrier without an award, within sixty days after the date the first payment of compensation for the permanent disability was made. The notice of claim shall contain such information as the commission by rule or regulation may require; and the employer or carrier claiming reimbursement shall furnish such evidence in support of the claim as the commission reasonably may require. If the special disability fund through its representative denies or controverts the claim, the right to such reimbursement shall be barred unless an application for a hearing thereon is filed with the commission at Tallahassee within sixty days after notice to the claimant of such denial or controversion. When such application for a hearing is timely filed, the claim shall be heard and determined in accordance with the procedure prescribed in §440.25, to the

extent that same is applicable, and the rules of procedure prescribed by the commission. In such proceeding on a claim for reimbursement no findings of fact made with respect to the claim of the injured employee or his dependents for compensation shall be res judicata, and the special disability fund shall be made the party respondent. When it has been determined that an employer or carrier is entitled to reimbursement in any amount the employer or carrier shall be reimbursed periodically every six months from the special disability fund for the compensation and medical benefits paid by him for which he is entitled to reimbursement, upon filing request therefor and submitting evidence of such payment in accordance with rules prescribed by the commission.

(h) 1. *Special disability fund.*—There is established in the state treasury a special fund to be known as the special disability fund, which shall be available only for the purposes stated in this subsection, and the assets thereof shall not at any time be appropriated or diverted to any other use or purpose. The state treasurer shall be the custodian of such fund and all moneys and securities in such fund shall be held in trust by such treasurer and shall not be the money or property of the state. The state treasurer is authorized to disburse moneys from such fund only when approved by the commission and upon the order of the comptroller, countersigned by the governor. The state treasurer shall deposit any moneys paid into such fund into such depository banks as the commission may designate and is authorized to invest any portion of the fund which, in the opinion of the commission, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposits of state funds by such treasurer. All interest earned by such portion of the fund as may be invested by the state treasurer shall be collected by him and placed to the credit of such fund.

2. *Payments to special disability fund.*—The special disability fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state and the self-insurers under this chapter, commencing with the fiscal year beginning July 1, 1963, which assessments shall become due and be paid on a quarterly basis at the same time and in addition to the assessments provided in §440.51. The commission shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided. The annual assessment shall be calculated to produce during the ensuing fiscal year an amount which—when combined with that part of the balance in the fund on June 30 of the current fiscal year which is in excess of one hundred thousand dollars—is equal to the sum of disbursements from the fund during the immediate past three calendar years. Such amount shall be prorated among the insurance companies writing compensation insurance in the state and self-insurers. The gross premiums collected by the companies on workmen's compensation premiums in this state and the amount of premiums a self-insurer would have to pay in this state if insured are the basis for computing the amount to be assessed as a percentage of gross premiums. Such payments shall be made by each insurance company and self-insurer to the commission for the special disability fund, in accordance with such regulations as the commission may prescribe. The state treasurer is hereby authorized to receive and credit to such special disability fund any sum or sums that may at any time be contributed to the state by the United States under any act of congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(i) The commission shall administer the special disability fund with authority to allow, deny, compromise, controvert and litigate claims made against it, upon its own initiative or upon the application of any party in interest to review in accordance with the procedure prescribed in §440.25 orders of deputy commissioners by which the fund may be adversely affected, and to designate an attorney to represent it in proceedings involving claims against the fund, including negotiation and consummation of settlements, hearings before deputy commissioners and the full commission, and judicial review. The commission or the attorney designated by it shall be given notice of all hearings and proceedings involving the rights or obligations of such fund; and shall have authority to make expenditures for such medical examinations, expert witness fees, depositions, transcripts of testimony, and the like, as may be necessary to the proper defense of any claim. The commission shall appoint an advisory committee composed of representatives of management, compensation insurance carriers, and self-insurers to aid it in formulating policies with respect to conservation of the fund, who shall serve without compensation for such terms as specified by it, but be reimbursed for traveling expenses as provided in §112.061. All expenditures made in connection with conservation of the fund, including the salary of the attorney designated to represent it and necessary travel expenses, shall be allowed and paid from the special disability fund as provided in this subsection upon the presentation of itemized vouchers therefor approved by the commission.

(j) *Effective dates.*—The provisions of this subsection shall not be applicable to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease shall have occurred prior to July 1, 1955; and the provisions of paragraphs (e) and (f) of this subsection shall not be applicable to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease shall have occurred prior to July 1, 1963.

History.—§49, ch. 17481, 1935; CGL 1936 Supp. 5966(47). Am. §13, ch. 28241, 1953; §12, ch. 29778, 1955; (1), (2) by §1, ch. 59-101; (4) n. §2, ch. 63-235; (4) §19, ch. 63-400.

440.50 Workmen's compensation administration trust fund.—

(1) (a) There is established in the state treasury a special fund to be known as the workmen's compensation administration trust fund for the purpose of providing for the payment of all expenses in respect to the administration of this chapter, including the vocational rehabilitation of injured employees as provided in §440.49. Such fund shall be administered by the commission. The state treasurer shall be the custodian of such funds and all moneys and securities in such fund shall be held in trust by such treasurer and shall not be the money or property of the state.

(b) The commission is authorized to transfer as a loan an amount not in excess of two hundred and fifty thousand dollars from such special fund to the special disability trust fund established by §440.15(5), which amount shall be repaid to said special fund in annual payments equal to not less than ten per cent of moneys received for such special disability trust fund.

(2) The state treasurer is authorized to disburse moneys from such fund only when approved by the commission and upon the order of the comptroller, countersigned by the governor. He shall be required to give bond in an amount to be approved by the commission conditioned upon the faithful performance of his duty as custodian of such fund.

(3) The state treasurer shall deposit any moneys paid into such fund into such depository banks as the commission may designate and is authorized to invest any portion of the fund which, in the opinion of the commission, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer. All interest earned by such portion of the fund as may be invested by the state treasurer shall be collected by him and placed to the credit of such fund.

(4) All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the commission and shall be paid into such fund.

History.—§50, ch. 17481, 1935; CGL 1936 Supp. 5966(48). (1) §13, ch. 29778, 1955; (1) a. §2, ch. 61-119.

440.51 Expenses of administration.—

(1) The commission shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner.

(a) The commission shall as soon as practicable after the first day of July in each year, determine the expense of administration of this chapter for the preceding fiscal year. The expense of administration for such preceding fiscal year shall be used as the basis for determining the amount to be assessed against each carrier in order to provide for the expenses of the administration of this chapter for the current fiscal year.

(b) The total expenses of administration shall be prorated among the insurance companies writing compensation insurance in the state, and self-insurers. The gross premiums collected by the companies and the amount of premiums a self-insurer would have to pay if insured are the basis for computing the amount to be assessed. This amount may be assessed as a specific amount or as a percentage of gross premiums payable as the commission may direct, provided, however, such amount so assessed shall not exceed four per cent of such gross premiums.

(2) The commission shall provide by regulation for the collection of the amounts assessed against each carrier. Such amounts shall be paid within thirty days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed for each thirty days the amount so assessed remains unpaid, a civil penalty equal to ten per cent of the amount so unpaid, which shall be collected at the same time and a part of the amount assessed.

(3) If any carrier fails to pay the amounts assessed against him under the provisions of this section within sixty days from the time such notice is served upon him, the state treasurer, upon being advised by the commission may suspend or revoke the authorization to insure compensation in accordance with the procedure in §440.38(2).

(4) All amounts collected under the provisions of this section shall be paid into the fund established in §440.50.

(5) Any amount so assessed against and paid by an insurance carrier shall be allowed as a deduction against the amount of any other tax levied by the state upon the premiums, assessments or deposits for workmen's compensation insurance on contracts or policies of said insurance carrier.

(6) (a) The commission may require from each carrier, at such time and in accordance with such regulations as the commission may prescribe, reports in respect to all gross earned premiums and of all payments of compensation made by such carrier during each prior period, and may determine the amounts paid by each carrier and the amounts paid by all carriers during such period.

(b) The commission may require from each self-insurer, at such time and in accordance with such regulations as the commission may prescribe, reports in respect to wages paid, the amount of premiums such self-insurer would have to pay if insured, and all payments of compensation made by such self-insurer during each prior period, and may determine the amounts paid by each self-insurer and the amounts paid by all self-insurers during such period. For the purposes of this section the payroll records of each self-insurer shall be open to annual inspection and audit by the commission or its authorized representative, during regular business hours; and if any audit of such records of a self-insurer discloses a deficiency in the amounts reported to the commission or in the amounts paid to the commission by such self-insurer pursuant to this

section, the commission may assess the cost of such audit against such self-insurer.

(7) The commission shall keep accumulated cost records of all injuries occurring within the state coming within the purview of this chapter on a policy and calendar year basis. For the purpose of this chapter, a "calendar year" is defined as the year in which the injury is reported to the commission; "policy year" is defined as that calendar year in which the policy becomes effective and the losses under such policy shall be chargeable against the policy year so defined.

(8) The commission shall assign an account number to each employer under this chapter and an account number to all insurance carriers authorized to write workmen's compensation insurance in the state, and it shall be the duty of the commission under the account number so assigned to keep the cost experience of each carrier and the cost experience of each employer under the account number so assigned by calendar and policy year as above defined.

(9) In addition to the above, it shall be the duty of the commission to keep the accident experience, as classified by the commission, by industry as follows:

(a) Cause of the injury;

(b) Nature of the injury, and

(c) Type of disability.

(10) In every case where the duration of disability exceeds thirty days, the carrier shall establish a sufficient reserve to pay all benefits to which the injured employee, or in case of death, his dependents, may be entitled to under the law. In establishing the reserve, consideration shall be given to the nature of the injury, the probable period of disability, and the estimated cost of medical benefits.

(11) The commission shall furnish to any employer or carrier, upon request, its individual experience. The commission shall furnish to the state insurance commissioner, upon request, the Florida experience as developed under policy year and/or calendar year.

(12) In addition to any other penalties provided by this law, the failure to submit any report or other information required by this law shall be just cause to suspend the right of a self-insurer to operate as such; or, upon certification by the commission to the state insurance commissioner that a carrier has failed or refused to furnish such reports shall be just cause for the insurance commissioner to suspend or revoke the license of such carrier.

History.—§51, ch. 17481, 1935; CGL 1936 Supp. 5966(49); §17, ch. 18413, 1937; §1, ch. 24081, 1947; sub §(1) am. §14, ch. 28241, 1953; sub §§(1), (6) am. §§14, 15, ch. 29778, 1955.

440.52 Registration of insurance companies.—Each insurance company who desires to write such compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the industrial commission and pay a registration fee of one hundred dollars. This shall be deposited by the commission in the fund created by §440.50.

History.—§52, ch. 17481, 1935; CGL 1936 Supp. 5966(50).

440.53 Effect of unconstitutionality.—If any part of this chapter is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this chapter, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by law for the commencement of any action against the employer in respect of such injury; but the amount of any compensation paid under this chapter on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury.

History.—§53, ch. 17481, 1935; CGL 1936 Supp. 5966(51).

440.54 Violation of child labor law.—If the commission determines that the injured employee at the time of the accident is a minor employed, permitted or suffered to work in violation of any of the provisions of the child labor laws of Florida, the employer shall, in addition to the normal compensation and death benefits provided by this chapter, pay such additional compensation as the commission may determine according to the circumstances of the case or the seriousness of the violation, provided that the total compensation so payable shall not exceed double the amount otherwise payable under this chapter. The employer alone and not the insurance carrier shall be liable for the increased compensation or increased death benefits provided for by this section. Any provision in an insurance policy undertaking to protect an employer from such increased liability shall be void.

History.—§18, ch. 18413, 1937; CGL 1940 Supp. 5966(54). Am. §15, ch. 28241, 1953.

440.55 Proceedings against state.—Any person entitled to compensation benefits by reason of the injury or death of an employee of the state, its boards, bureaus, departments, agencies or subdivisions employing labor, may maintain proceedings and actions at law against the state, its boards, bureaus, departments, agencies, and subdivisions, for such benefit, said proceedings and action at law to be in the same manner as provided herein with respect to other employers.

History.—§19, ch. 18413, 1937; CGL 1940 Supp. 5966(55).

440.56 Safety rules and provisions; penalty.—

(1) Every employer, as defined in the workmen's compensation law, including employers who have elected not to accept the workmen's compensation law, shall furnish employment which shall be safe for the employees therein and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life, health and safety

of such employees; provided that as used in this section the terms "safe" and "safety" as applied to any employment or place of employment shall mean such freedom from danger as is reasonably necessary for the protection of the life, health and safety of employees or the public, including conditions and methods of sanitation and hygiene; and provided further that safety devices and safeguards required to be furnished by the employer by the provisions of this section or by the commission under authority of this section shall not include personal apparel and protective devices that replace personal apparel normally worn by employees during regular working hours.

(2) The commission shall have the power, jurisdiction and authority:

(a) To investigate and prescribe what safety devices, safeguards or other means of protection shall be adopted for the prevention of accidents in every employment or place of employment, and to determine what suitable devices, safeguards, or other means of protection for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments, or places of employment, and to make, amend or repeal reasonable rules for the prevention of accidents and the prevention of industrial or occupational diseases.

(b) To ascertain, fix, and order such reasonable standards and rules for the construction, repair and maintenance of places of employment as shall render them safe.

(3) Before any such rule or requirement is adopted, amended or repealed, a public hearing shall be held and not less than ten days before the hearing a notice thereof shall be published in such newspapers as the commission may prescribe. Such rule, amendment or repeal shall be promptly published in such manner as the commission may prescribe and shall take effect thirty days after such publication.

(4) If there shall be practical difficulties or unnecessary hardships in carrying out a rule or requirement of the commission, the commission may, after public hearing, make a variation from the rule or requirement if the spirit of the rule and law shall be observed. Any person affected by such rule, or his agent, may petition the commission for such variation stating the grounds therefor. The commission shall fix a day for a hearing on such petition and give reasonable notice thereof to the petitioner. A properly indexed record of all variations made shall be kept in the office of the commission and open to public inspection.

(5) The commission and its authorized representatives shall have the power and authority to enter at any reasonable time any place of employment for the purpose of examining any tool, appliance or machinery used in such employment and of making inspections for the proper enforcement of this section. No employer or owner shall refuse to admit any member of the commission or its authorized representatives to any place of employment.

(6) The provisions of §440.33 shall be applicable to all proceedings arising under this section, and it shall be the duty of the court having jurisdiction in the place in which the commission is sitting, upon application of the commission or its authorized representatives, to compel obedience to such provisions in proceedings arising under this section in the same manner as provided in §440.33 for proceedings in respect of compensation claims.

(7) Any person aggrieved by a rule made pursuant to the provisions of this section may commence an action in any court of competent jurisdiction against the industrial commission as defendant to set aside such rule on the ground that such rule is unlawful and unreasonable. Such action and pleadings therein shall be governed by the laws and rules of practice applicable to other civil actions in such court. All rules and variations of the commission shall be prima facie lawful and reasonable, and shall not be held invalid because of any technical defect, provided there is substantial compliance with the provisions of this section.

(8) (a) If any employer violates or fails or refuses to comply with any reasonable rule or variation adopted by the commission pursuant to this section for the prevention of accidents or industrial or occupational diseases or any lawful order of the commission in connection with the provisions of this section or fails or refuses to furnish or adopt any safety device, safeguard or other means of protection prescribed by the commission pursuant to this section for the prevention of accidents or industrial or occupational diseases, after he has been given reasonable notice in writing by the commission or its authorized representative, not less than fifteen days prior thereto, of the specific violation, omission, failure or refusal charged by the commission, or its authorized representative, the commission after notice and hearing as herein provided, may assess against such employer a civil penalty of not less than $20.00 nor more than $100.00; and each day such violation, omission, failure or refusal continues after the employer has given notice thereof in writing as herein provided shall be deemed a continuing violation and the penalty may not exceed $1,000.00. The commission shall give the employer at least ten days notice of such hearing by personal service or registered mail, and the hearing shall be held in the county where the violation, omission, failure or refusal is alleged to have occurred, unless otherwise agreed to by the employer and authorized by the commission. The hearing shall be conducted by a deputy commissioner, and at such hearing the commission and the employer may each present evidence in respect of such charge or charges and may be represented by counsel. No record of the hearing shall be required but either the commission or the employer may have the proceeding reported and transcribed at its or his own expense. The deputy commissioner within twenty days after such hearing shall enter the order of the commission assessing the penalty or penalties or

dismissing the charges. The order shall set forth a statement of his findings of fact and the reasons for his decision and shall be filed in the office of the commission at Tallahassee. A copy of the order shall be sent by registered mail to the employer at his last known address.

The order shall become final twenty days after the date copy of same is mailed to the employer unless within said time the employer shall take and file an appeal to the circuit court of the judicial circuit in which the hearing before the deputy commissioner was held. The appeal shall operate as a supersedeas. The proceeding on such appeal shall be governed by chapter 59, unless the employer requests a hearing de novo before the circuit court. The circuit court, when so requested by the employer, shall proceed to hear, try and determine the charges de novo as though the proceeding had been originally commenced in that court, and render final judgment therein.

Any provision of this subsection to the contrary notwithstanding, the commission shall after public notice and hearing, establish rules and procedures defining the type or types of violations constituting an emergency requiring expeditious compliance, the type and method of notice to the employer to expedite compliance, the time and method of emergency hearing and appearances, the penalty for noncompliance and method of effecting compliance with the decision; and the decision of the commission shall be subject to review by certiorari to the circuit court.

(b) Upon petition of the commission the circuit courts shall under and pursuant to the general laws of Florida applicable to such relief and upon reasonable notice have power to issue restraining orders, injunctions, writs of mandamus, and all writs necessary or proper to the enforcement of this section and to the enforcement of any reasonable rule, standard, variation or order adopted, prescribed, or made by the commission pursuant to this section.

(9) In estimating the amounts necessary for the administration of this chapter, in accordance with §440.51, the industrial commission shall also include estimates of the amounts necessary for the administration of this section which shall be made in the manner set forth in §440.51; and such amounts as may be needed to administer this section shall be disbursed from the fund established pursuant to §440.50 in the manner therein provided. If this subsection or the application of such funds to the administration of this section be declared invalid for any reason, the validity of §§440.50 and 440.51 as applied to the provisions of this chapter other than this section shall not be affected thereby.

(10) The commission shall appoint and fix the salary of a full time chief of industrial safety, who shall be appointed in accordance with the provisions of §440.44 (4)(a); provided, however, that no person shall be appointed to such position unless he either has a degree from a recognized college of engineering and the equivalent of eight full years experience in safety engineering or has had the equivalent of ten full years experience in safety engineering. It shall be the duty of the chief of industrial safety, under the direction and supervision of the director of the workmen's compensation division, to enforce the safety provisions of this chapter and all rules and regulations adopted by the commission pursuant to this section.

(11) The industrial commission shall cooperate with the federal government so that duplicate inspections will be avoided yet assure safe places of employment for the citizens of this state.

History.—§20, ch. 18413, 1937; CGL 1940 Supp. 5966(56); §2, ch. 24081, 1947; §11, ch. 25035, 1949; sub §(10) am. §16, ch. 29778, 1955; (1), (8) by §§2, 3, ch. 57-293; (1) a. by §1, (8) (a) §2, and (11) n. §3, ch. 61-428; (8) (a) §30, ch. 63-512.
cf.—§775.06 Alternative punishment.
§§837.01, 837.02, Perjury.

440.57 Pooling liabilities.—The commission may, under such rules and regulations as it may prescribe, permit two or more employers to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers and each employer member of such approved group shall be classified as a self-insurer as defined in this chapter.

History.—§20½, ch. 18413, 1937; CGL 1940 Supp. 5966(57).

CHAPTER 441

EMPLOYEES TRUST BENEFIT LAW

441.01 Trust for employees.—A trust created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit sharing plan, for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both for the purpose of distributing to such employees the earnings or the principal, or both earnings and principal, of the fund so held in trust, shall not be deemed to be invalid as violating any existing law against perpetuities or suspension of the power of alienation of title to property; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it may be created.

History.—Comp. §1, ch. 29948, 1955.

441.02 Trust for self-employed individuals and others.—No trust created under a retirement plan for which provision has been made under the laws of the United States exempting such trust from federal income tax shall be deemed to be invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property or the accumulation of income; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it may be created, may be permitted to accumulate the income until such time as such income shall become distributable to the beneficiary or beneficiaries under the terms of the trust and may according to its terms be made irrevocable and the interests of its beneficiary or beneficiaries therein may be made nontransferable by assignment or otherwise.

History.—Comp. §2, ch. 29948, 1955.

CHAPTER 443

UNEMPLOYMENT COMPENSATION LAW

443.01 Short title.—This chapter shall be known and may be cited as the "Unemployment Compensation law."

History.—§2, ch. 18402, 1937; CGL 1940 Supp. 4151(488).

443.02 Declaration of public policy.—As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nationwide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds during the periods of employment from which benefits may be paid for periods of unemployment thus maintaining purchasing power and limiting the serious social consequences of unemployment. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state, for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, subject, however, to the specific provisions of this chapter.

History.—§1, ch. 18402, 1937; CGL 1940 Supp. 4151(489); §1, ch. 20685, 1941.

443.03 Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(1) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(2) "Benefits" means the money payable to an individual, as provided in this chapter, with respect to his unemployment.

(3) "Benefit year," with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter, the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits, after the termination of his last preceding benefit year. Any claim for benefits made in accordance with §443.07(2) shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work in accordance with the provision of §443.05(5) and is unemployed as defined in §443.03 (12)(a) at the time of the filing of such claim. Provided, however, that the commission may in its discretion provide by regulation for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry when and if it has been determined by the commission, after notice to the industry and to the workers in such industry and an opportunity to be heard in the matter, that such groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, and December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1938, or the equivalent thereof as the commission may by regulation prescribe.

(5) "Employment" means: (a) "Employment," subject to the other provisions of this chapter, means any service performed by an employee for the person employing him.

(b) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

1. The service is localized in this state; or
2. The service is not localized in any state

but some of the service is performed in this state and

a. The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state, or

b. The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(c) Services not covered under §443.03(5) (b)2. and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(d) Service shall be deemed to be localized within a state if:

1. The service is performed entirely within such state; or

2. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, it is temporary or transitory in nature or consists of isolated transactions.

(e) The term "employment" shall include services covered by an arrangement pursuant to §443.18 between the commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, if the commission has approved an election of the employing unit for which such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(f) The term "employment" shall also include all service performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, provided that the operating office, from which the operations of such vessel or aircraft operating within or within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state.

The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(g) The term "employment" shall not include:

1. Agricultural labor; the term "agricultural labor" includes all services performed:

a. On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

b. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land or brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

c. In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in §15 (g) of the agricultural marketing act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

d. In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits and vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with grading, packing, packaging, or processing fresh citrus fruits.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

2. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

3. Casual labor not in the course of the employer's trade or business. For the purposes of

this subsection "casual labor" shall mean labor which is occasional, incidental, or irregular, not exceeding two hundred man hours in total duration. Duration shall mean the period of time from the commencement to the completion of the particular job or project; provided, however, services performed by an employee for his employer during a period of one calendar month or any two consecutive calendar months shall be deemed to be casual labor only if such service is performed on not more than ten calendar days, whether or not such days are consecutive. If any of the services of an individual on a particular labor project are not casual labor as defined then none of the services of such individual on such job or project shall be deemed casual labor. "Not in the course of the employer's trade or business" shall mean that which does not promote or advance the trade or business of the employer. In order for services to be exempt under this subsection such services shall constitute casual labor, as defined, and not in the course of the employer's trade or business, as defined;

4. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

5. Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except: (a) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and, (b) Service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

6. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

7. Service performed in the employ of the United States government or of an instrumentality of the United States which is:

a. Wholly or partially owned by the United States, or

b. Exempt from the tax imposed by §3301 of the internal revenue code by virtue of any provision of federal law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption; except that to the extent that the congress shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services; provided that if this state shall not be certified for any year by the secretary of labor under §3304 of the federal internal revenue code, the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided in §443.15 (6) with respect to contributions erroneously collected;

8. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more state or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the constitution of the United States from the tax imposed by §3301 of the internal revenue code;

9. Service performed in the employ of a religious, charitable, educational, or other organization described in §501(c)(3) of the internal revenue code which is exempt from income tax under §501(a) thereof;

10. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

11. a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under §501(a) of the internal revenue code, (other than an organization described in §401(a)) or under §521, if the remuneration for such service is less than fifty dollars, or

b. Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

12. Services performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

13. Service performed in the employ of an instrumentality wholly owned by a foreign government:

a. If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

b. The secretary of state shall certify to the secretary of the treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service per-

formed in the foreign country by employees of the United States government and of instrumentalities thereof;

14. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a state law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

15. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

16. Service performed by an individual for a person as a real estate salesman or agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

17. Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution; or

18. Service covered by an arrangement between the commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state or under such federal law; provided, that if wages paid for or in connection with any employment or service excluded under this subsection are, or hereafter become, taxable under §3301 of the internal revenue code by virtue of any amendment or amendments hereafter made to §3306 (c) of said code or to the federal unemployment tax act, such employment or service on and after the effective date of such amendment or amendments shall not be excluded from the term "employment" as used in this law, any other provisions of this subsection to the contrary notwithstanding.

19. Services performed by high school or college students as a part of their training in connection with the diversified cooperative training program or cooperative program under the supervision of the school or college (university) authorities in which such students are enrolled.

20. Service performed by an individual for a person as a barber if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(h) If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph 10 of subsection (g).

(6) "Employing unit" means: Any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state.

(a) Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(b) All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be performing services for a single employing unit for all the purposes of this chapter.

(c) Any person who is an officer of a corporation and who performs services for such corporation within this state, whether or not such services are continuous, shall be deemed an employee of the corporation during all of each week of his tenure of office, regardless of whether or not he is compensated for such services. Services shall be presumed to have been rendered the corporation in cases where such officer is compensated by other than dividends upon shares of stock of such corporation owned by him.

(7) "Employer" means:

(a) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year (and for the purpose of this definition, if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week) has or had in employment four or more individuals (irrespective of whether the same individuals are or were employed in each such day).

(b) An individual or employing unit which

acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter or which acquired a part of the organization, trade, or business of another which at the time of such acquisition was an employer subject to this chapter, provided such other would have been an employer under paragraph (a) or (h) of this subsection if such part had constituted its entire organization, trade or business.

(c) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit if the employment record of the predecessor prior to such acquisition together with the employment record of such individual or employing unit subsequent to such acquisition, both within the same calendar year, would be sufficient to render an employing unit subject to this chapter as an employer under paragraph (a) or (h) of this subsection.

(d) An employing unit which has become an employer under paragraphs (a), (b), (c), and has not ceased to be an employer subject to this chapter, as provided in §443.09, hereof;

(e) For the effective period of its election, any other employing unit which has elected to become fully subject to this chapter under the rules and regulations of the commission.

(f) Any employing unit not an employer by reason of any other paragraph of this subsection for which services in employment are performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; but services performed for such employing units shall constitute employment for the purposes of this chapter only to the extent that such services constitute employment with respect to which such federal tax is payable.

(g) Any employing unit which fails to keep the records of employment required by this chapter and by the regulations of the commission shall be presumed to be an employer liable for the payment of contributions pursuant to the provisions of this chapter, regardless of the number of individuals employed by such employing unit; provided, however, that the commission shall make written demand that such employing unit keep and maintain required payroll records and such demand shall have been made not less than six months before assessing contributions against any employing unit determined to have become an "employer" solely by reason of this paragraph.

(h) 1. Any employing unit which in either the current or the preceding calendar year,

a. Has paid wages in any calendar quarter in excess of six thousand dollars, and

b. Has or had in employment four or more individuals for some portion of a day, but not necessarily simultaneously, in each of eight different calendar weeks in the same calendar year, whether or not such weeks are or were consecutive. Any employing unit becoming an employer pursuant to this paragraph shall be liable for the payment of contributions upon all wages paid for the entire calendar year during which it becomes an employer and for the calendar year subsequent thereto and until terminated pursuant to §443.09 upon a showing that in the preceding calendar year there was no calendar quarter in which it paid wages in excess of six thousand dollars and that there were not eight different days, each day being in a different calendar week, in such preceding calendar year within which such employing unit had in employment four or more individuals.

2. The term "wages" as used in this paragraph means gross wages and is not limited by the definition of that term in subsection (13) (b).

(8) "Fund" means the unemployment compensation trust fund created by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(9) "Contributions" means the money payments to the unemployment compensation trust fund, required by this chapter.

(10) "Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(11) "State" includes, in addition to the states of the United States, the District of Columbia, Canada, and Puerto Rico.

(12) "Unemployment": (a) An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or "partially unemployed" in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The commission shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the commission deems necessary.

(b) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulations otherwise prescribe.

(13) "Wages": (a) "Wages" means all remuneration paid for services from whatever source, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission.

(b) The term "wages" shall not include:

1. That part of remuneration which, after remuneration equal to three thousand dollars has been paid in a calendar year to an indivi-

dual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year, unless that part of the remuneration is subject to a tax, under a federal law imposing the tax, against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection the term "employment" shall include services constituting employment under any employment security law of another state or of the federal government.

2. The amount of any payment with respect to services performed, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of

a. Retirement, or

b. Sickness or accident disability, or

c. Medical and hospitalization expenses in connection with sickness or accident disability, or

d. Death, provided the individual in its employ

(I) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit, and

(II) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his services with such employing unit;

3. The payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under §3101 of the federal internal revenue code with respect to services performed after June 30, 1941.

(14) "Week" means such period of seven consecutive days as the commission may by regulation prescribe. The commission may by regulation prescribe that a week shall be deemed to be "in," "within," or "during," that benefit year which includes the greater part of such week.

(15) "Insured work" means employment for employers.

(16) "Commission" shall mean the Florida industrial commission or any member thereof acting for the commission.

History.—§3, ch. 18402, 1937; §1, ch. 19637, 1939; CGL 1940 Supp. 4151(490); §3, ch. 20685, 1941; am. §1, ch. 21983, 1943; am. §7, ch. 22858, 1945; am. §1, ch. 24085, 1947.
Sub. §§(6)(c) and (7)(g) comp. §§1, chs. 26878 and 26879, 1951; sub. §(12)(b) am. §10, ch. 26484, 1951; sub. §(13)(b) am. §2, ch. 26879, 1951; sub. § § (7)(h), (13)(b) am. § § 1, 2, ch. 28242, 1953; §§1, 2, ch. 29771 and §§1, 2, ch. 29772, 1955.
Am. (7) (b) by §1, (7) (c) by §2, (7) (h) 3. N. by §3, ch. **57-228.** (5) (f) a. by §1, (5) (g) a. by §2, ch. 61-228; (8) and (9) a. by §2, ch. 61-119; (11) §1, ch. 61-132; (5)(g) 20. n. §1, ch. 63-56 (7)(a), (h) §§1, 2, ch. 63-155.

443.04 Payment of benefits.—

(1) MANNER OF PAYMENT.—On and after January 1, 1939, benefits shall become payable from the fund. All benefits shall be paid through employment offices in accordance with such regulations as the commission may prescribe.

(2) WEEKLY BENEFIT AMOUNT.—

(a) An individual's "weekly benefit amount" shall be an amount equal to one-half of his average weekly wages, but not less than ten dollars nor more than thirty-three dollars. Such weekly benefit amount if not a multiple of one dollar shall be rounded off to the next higher multiple of one dollar.

(b) The average weekly wages of such individual shall be computed by dividing his total base period wages by the number of weeks in such base period in which he was paid wages for insured work, provided however, that any individual shall be deemed to have been paid wages in the total number of weeks of his base period indicated in the reports submitted to the commission by his base period employers but not more than thirteen weeks in any calendar quarter.

(c) The provisions of this subsection as herein amended apply only to benefit years beginning on and after July 1, 1960; provided, that no individual currently eligible for benefits shall be redetermined ineligible pursuant to this section.

(d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this subsection, the weekly benefit amount, the average weekly wages, and total amount of benefits available with respect to all benefit years beginning on and after July 1, 1959, but prior to July 1, 1960, shall be determined and shall be payable in accordance with the following:

1. The weekly benefit amount shall be one-half of the average weekly wages of the claimant, but not more than thirty-three dollars. The average weekly wages shall be one-thirteenth of the total wages paid to the claimant in that calendar quarter of his base period in which his wages for insured employment were highest. Such weekly benefit amount, if not a multiple of one dollar, shall be rounded off to the next higher multiple of one dollar.

2. The total weeks of employment of any claimant shall be the quotient obtained by dividing his total wages for insured employment in his base period by his average weekly wages, as determined in paragraph (d) 1. Provided, that when there is a fractional portion of a week as a remainder equal to one-half or more it shall be increased to the next higher number of weeks, and when such fraction is less than one-half it shall be decreased to the next lower number of weeks.

3. Any otherwise eligible individual shall be entitled during the benefit year established

pursuant to a claim filed during the one-year period beginning July 1, 1959, to a total amount of benefits equal to the product of his weekly benefit amount and one-half the total number of weeks of employment in his base period in which he was paid wages for insured work.

4. The total available credits and weekly benefit amounts determined with respect to benefit years established pursuant to the authority of subparagraphs 1., 2., and 3., of this proviso shall be applicable throughout such benefit year.

(3) WEEKLY BENEFIT FOR UNEMPLOYMENT.—(a) *Total.*—Each eligible individual who is totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount.

(b) *Partial.*—Each eligible individual who is partially unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit less that part of the wages (if any) payable to him with respect to such week which is in excess of five dollars. Such benefits, if not a multiple of one dollar, shall be computed to the next higher multiple of one dollar.

(4) DURATION OF BENEFITS.—(a) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to the product of his weekly benefit amount and one-half the number of weeks in his base period in which he was paid wages for insured work; provided, that such total amount of benefits, if not a multiple of one dollar shall be rounded off to the next higher multiple of one dollar.

For the purposes of this subsection, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of this chapter with respect to becoming an employer.

The provisions of this subsection as herein amended apply only to the benefit years beginning after June 30, 1960.

(b) If the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to employment benefits only shall be determined in such manner as may by regulations be prescribed. Such regulations, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals.

History.—§4, ch. 18402, 1937; §2, ch. 19637, 1939; CGL 1940 Supp. 4151(491); §4, ch. 20685, 1941; am. §2, ch. 21983, 1943; §1, ch. 23919, 1947; sub §§(2), (3)(b), (4)(a), am. §§1-3, ch. 26801, 1951; sub §2, am. §1, ch. 29695, 1955; (2) by §1, ch. 57-247 and §1, ch. 57-795; (2) by §1, ch. 59-55; (4) (a) by §2, ch. 59-55; (2) (b) a. by §1, ch. 61-173.

443.05 Benefit eligibility conditions.—An unemployed individual shall be eligible to receive benefits with respect to any week only as the commission finds that:

(1) He has made a claim for benefits with respect to such week in accordance with such regulations as the commission may prescribe.

(2) He has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the commission may prescribe; except, that the commission may, by regulation not inconsistent with the purposes of this law, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs; provided, that no such regulation shall conflict with §443.04(1).

(3) He is able to work and is available for work.

(4) He has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this subsection:

(a) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits.

(b) If benefits have been paid with respect thereto.

(c) Unless the individual was eligible for benefits with respect thereto as provided in §§443.05 and 443.06 except for the requirements of this subsection and of §443.06(5).

(5) He has been paid wages for insured work equal to twenty times his average weekly wages during his base period; provided, that no unemployed individual shall be eligible to receive benefits if his average weekly wage is less than twenty dollars.

(6) In the event of national emergency, in the course of which the federal emergency unemployment payment plan is, at the request of the governor, invoked for all or any part of the state, such plan shall supersede the procedures prescribed by this chapter, and by regulations thereunder, and the Florida industrial commission shall act as the Florida agency for the United States department of labor in the administration of such plan.

History.—§5, ch. 18402, 1937; §3, ch. 19637, 1939; CGL 1940 Supp. 4151(492); §5, ch. 20685, 1941; am. §3, ch. 21983, 1943; sub. §(6) §3, ch. 26879, 1951; sub. §(5) am. §3, ch. 29771, 1955; (5) by §2, ch. 57-247; (5) by §3, ch. 59-55; (6) a. by §2, ch. 61-132.

443.06 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1) For the week in which he has voluntarily left his employment without good cause attributable to his employer or in which he has been discharged by his employing unit for misconduct connected with his work, if so found by the commission, and for not more than the twelve weeks which immediately follow such week, as determined by the commission in each case according to the circumstances in each case or the seriousness of the misconduct. Provided, however, that disqualification under this subsection shall continue for the full period of unemployment next ensuing after he has left his work voluntarily without good cause or has been discharged for misconduct connected with

his work and until such individual has become re-employed and has earned wages equal to or in excess of ten times his weekly benefit amount, and provided, further, that good cause as used in this subsection shall include only such cause as is attributable to the employer or consists of illness or disability of the individual, other than pregnancy, requiring separation from his employment.

(2) If the commission finds that the individual has failed without good cause either to apply for available suitable work when so directed by the employment office or the commission, or to accept suitable work when offered to him by employment office, commission, or employing unit (employing unit offering the work shall notify the commission in writing within the time prescribed by the commission) or to return to his customary self-employment (if any) when so directed by the commission, such disqualification shall continue for the week in which such failure occurred and for not more than five weeks immediately following such week, and/or a reduction by not more than three weeks from the duration of benefits as determined by the commission in each case. Provided, however, that disqualification under this subsection shall continue for the full period of unemployment next ensuing after he has failed without good cause either to apply for available suitable work, or to accept suitable work, or to return to his customary self-employment, pursuant to this subsection, and until such individual has become re-employed and has earned wages equal to or in excess of ten times his weekly benefit amount.

(a) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(b) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

3. If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(3) For any week with respect to which he is receiving or has received remuneration in the form of:

(a) Wages in lieu of notice;

(b) Compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States.

Provided, that if the remuneration referred to in subparagraphs (a) and (b) of this subsection is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

(4) For any week with respect to which the commission finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed; provided, that this subsection shall not apply if it is shown to the satisfaction of the commission that:

(a) He is not participating in or financing, or directly interested in the labor dispute which is in active progress; provided, however, that the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this section; and

(b) He does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at which the labor dispute occurs any of whom are participating in, or financing, or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, or are conducted in separate departments of the same premises, each department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises.

(5) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

(6) For a period of not to exceed one year from the date of the discovery by the commission of the making of any false or fraudulent representation for the purpose of obtaining benefits contrary to the provisions of this chapter, constituting a violation within the intent of §443.22 hereof; provided, that any such disqualification may be appealed from in the same manner as from any other disqualification imposed hereunder; and provided further that a conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by §443.22 herein shall be conclusive upon the appeals referee and the board of review of the making of such false or fraudulent representation for which disqualification is imposed hereunder.

(7) (a) If the commission finds that the individual is not a citizen of the United States and is residing in this state as a place of

refuge, temporarily or without formal visa, and that such individual has failed without good cause to register with an appropriate federal or state agency having jurisdiction of such individual for the purposes of registration or relocation or resettlement pursuant to the rules or regulations of such agency or of the commission. Such disqualification shall continue for the duration of such failure and for not more than ten weeks immediately following the week in which such individual registers, or a reduction by not more than five weeks from the duration of benefits as determined by the commission in each case.

(b) If the commission finds that said individual has refused without good cause an offer of resettlement or relocation, which offer provides for suitable employment for such individual notwithstanding the distance of such relocation, resettlement or employment from the current location of such individual in this state, such disqualification shall continue for the week in which such failure occurred and for not more than ten weeks immediately following such week, or a reduction by not more than five weeks from the duration of benefits as determined by the commission in each case.

History.—§6, ch. 18402, 1937; §4, ch. 19637, 1939; CGL 1940 Supp. 4151(493); §6, ch. 20685, 1941; am. §4, ch. 21983, 1943; §1, ch. 24083, 1947; (6) §3, ch. 28242, 1953; (1) §1, ch. 63-327; (7) n. §1, ch. 63-157.

443.07 Procedure concerning claims.—

(1) POSTING OF INFORMATION.—Each employer shall post and maintain in places readily accessible to individuals in his employ printed statements concerning benefit rights, claims for benefits and such other matters relating to the administration of this chapter as the commission may by regulation prescribe. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the commission may by regulations prescribe. Such printed statements and other materials shall be supplied by the commission to each employer without cost to the employer.

(2) FILING OF CLAIM.—Claims for benefits shall be made in accordance with such regulations as the commission may prescribe.

(3) DETERMINATION.—

(a) *In general.*—An initial determination upon a claim filed pursuant to §443.07 (2) shall be made promptly by an examiner designated by the commission and shall include a statement as to whether and in what amount claimant is entitled to benefits and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under §443.05 (5), and if so, the first day of the benefit year, his weekly benefit amount, and the maximum total amount of benefits payable to him with respect to a benefit year. The claimant, his most recent employing unit, and all employers whose accounts would be charged with benefits pursuant to such determination, shall be promptly notified of such initial determination, and such determination shall be final unless within ten days after the mailing of such notices to the parties' last known addresses, or in the absence of such mailing, within ten days after the delivery of such notice, appeal or written request for reconsideration is filed by the claimant or other party entitled to such notice.

(b) *Determinations in labor dispute cases.*—Whenever any claim involves the application of the provisions of §443.06 (4), the examiner handling the claim shall, if so directed by the commission, promptly transmit such claim to a special examiner designated by the commission to make a determination upon the issues involved under that subsection or upon such claims. Such special examiner shall make the determination thereon after such investigation as he deems necessary, and after affording the parties entitled to notice an opportunity for a fair hearing in accordance with the provisions of this section with respect to hearings and determinations of appeals referees. The parties shall be promptly notified of the determination, together with the reason therefor, and such determination shall be deemed to be the final decision on the claim, unless within ten days after the mailing of notices to the parties' last known addresses, or, in the absence of such mailing, within ten days after the delivery of such notice, appeal is filed with the board of review or notice of review is entered by that body.

(c) *Redeterminations.*—

1. The commission may reconsider a determination whenever it finds that an error has occurred in connection therewith, or whenever new evidence or information pertinent to such determination has been discovered subsequent to any previous determination or redetermination. No such redetermination shall be made after one year from the date the claim was filed, unless it appears that the disqualification imposed by §443.06(6) is applicable, in which case the redetermination may be made at any time within two years from the date of the making of such false or fraudulent representation. Notice of redetermination shall be promptly given to the claimant and to any employers entitled to notice thereof in the manner prescribed in this section with respect to notice of an initial determination. If the amount of benefits is increased upon such redetermination an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection (4) of this section. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Subject to the same limitations and for the same reasons, the commission may reconsider its determination in any case in which the final decision has been rendered by

an appeals referee, the board of review, or a court, and may apply to the body or court which rendered such final decision to issue a revised decision.

2. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal unless withdrawn, shall be treated as an appeal from such redetermination.

(d) *Notice of determination or redetermination pursuant to §443.06.*—Notice of any determination or redetermination which involves the application of the provisions of §443.06, together with the reasons therefor, shall be promptly given to the claimant and to any employer entitled to notice thereof, such notice to be given in the manner provided in subsection (3) hereof, provided that the commission shall by regulation prescribe the manner and procedure pursuant to which employers within the base period of a claimant may become entitled to such notice.

(4) APPEALS.—

(a) *Appeals referees.*—The commission shall appoint one or more impartial salaried appeals referees selected in accordance with subsection (4) of §443.12 to hear and decide appealed and/or disputed claims. Such appeals referees shall have such qualifications as may be established by the merit system council upon the advice and consent of the commission. No person shall participate on behalf of the commission as an appeals referee in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any appeals referee upon a temporary basis and pro hac vice which alternate shall be possessed of the same qualifications required of appeals referees. The commission shall provide the board of review and the appeals referees with proper facilities and assistance for the execution of their functions.

(b) *Filing and hearing.*—

1. The claimant or any other party entitled to notice of a determination as herein provided, may file an appeal from such determination with an appeals referee within ten days after the date of mailing of the notice to his last known address or if such notice is not mailed, within ten days after the date of delivery of such notice.

2. Unless the appeal is withdrawn with his permission or is removed to the board of review, the appeals referee, after affording the parties reasonable opportunity for a fair hearing, shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination; provided, however, that whenever an appeal involves a question as to whether services were performed by claimant in employment or for an employer, the referee shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the commission, both of whom shall thenceforth be parties to the proceeding and be afforded reasonable opportunity to adduce evidence bearing on such question.

3. The parties shall be promptly notified of such referee's decision and shall be furnished with a copy of the decision and the findings and conclusions in support thereof and such decisions shall be final unless, within ten days after the date of mailing of notice thereof to the party's last known address, or in the absence of such mailing, within ten days after the delivery of such notice, further review is initiated pursuant to paragraph (c) of this subsection.

(c) *Review by board of review.*—The board of review may, on its own motion, within the time specified in paragraph (b) of this subsection, initiate a review of the decision of an appeals referee or determination of a special examiner or may allow an appeal from such decision on application filed within such time by any party entitled to notice of such decision. An appeal filed by any such party shall be allowed as of right if the examiner's determination was not affirmed by the appeals referee. Upon review on its own motion or upon appeal, the board may on the basis of the evidence previously submitted in such case, or upon the basis of such additional evidence as it may direct be taken, affirm, modify or reverse the findings and conclusions of the appeals referee. The board may remove to itself or transfer to another appeals referee the proceedings on any claim pending before an appeals referee. Any proceeding so removed to the board prior to the completion of a fair hearing shall be heard by the board in accordance with the requirement of this subsection with respect to proceedings before an appeals referee. The board of review shall promptly notify the parties to any proceeding before it of its decision, including its findings and conclusions in support thereof, and such decision shall be final unless within the time prescribed by Florida appellate rules a proceeding for judicial review is initiated pursuant to paragraph (e) of this subsection; provided, however, that upon denial by the board of an application for appeal from the decision of an appeals referee, the decision of the appeals referee shall be deemed to be a decision of the board of review within the meaning of this paragraph for purposes of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to decisions of the board, except that the time for initiating such review shall run from the date of notice of the order of the board of review denying the application for appeal.

(d) *Procedure.*—The manner in which appealed claims shall be presented, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the board of review for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence or other technical rules of procedure. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of un-

employment, the same time and place for considering each such claim may be fixed, hearing thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the examiner or referee having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person shall participate on behalf of the commission or the board of review in any case in which he has a direct or indirect interest. A record shall be kept of all testimony and proceedings before special examiners or in connection with an appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission and fees of witnesses subpoenaed on behalf of the commission or any claimant shall be deemed part of the expense of administering this chapter.

(e) *Judicial review.*—Orders of the board of review entered pursuant to paragraph (c) of this subsection shall be subject to review only by petition for writ of certiorari to the district court of appeal in the appellate district in which the issues involved were decided by an appeals referee and the Florida industrial commission shall be made a party respondent to every such proceeding.

(5) PAYMENT OF BENEFITS.—

(a) Benefits shall be promptly paid in accordance with a determination or redetermination except that, if such determination or redetermination is upon the first claim with respect to a benefit year, or if the record of the proceeding on the claim indicates that a disqualification has been alleged or may exist, such benefits shall not be paid prior to the expiration of the period for appeal. If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal.

(b) The commencement of a proceeding for judicial review pursuant to subsection (4) (e) of this section shall not operate as a supersedeas or stay unless the board of review shall so order and the filing of a petition for judicial review by the commission from a decision of the board of review which awarded benefits shall not authorize the board or any court to direct the denial of any benefits which would have been payable under the board of review's decision. If a determination allowing benefits is affirmed in any amount by an appeals referee, or is so affirmed by the board of review or if a decision of an appeals referee, allowing benefits is affirmed in any amount by the board of review, such benefits shall be promptly paid regardless of any further appeal, and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by any court but if such decision is finally reversed, no employer's account shall be charged with benefits so paid pursuant to the erroneous determination and benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

(6) RECOVERY AND RECOUPMENT.—

(a) Any person who, by reason of his fraud has received any sum as benefits under this chapter to which he was not entitled shall be liable to repay such sum to the commission for and on behalf of the trust fund, or, in the discretion of the commission, to have such sum deducted from future benefits payable to him under this chapter, provided a finding of the existence of such fraud has been made by a redetermination or decision pursuant to this section within two years from the commission of such fraud, and provided no such recovery or recoupment of such sum may be effected after five years from the date of such redetermination or decision.

(b) If any person other than by reason of his fraud has received any sum as benefits under this chapter to which, under a redetermination or decision pursuant to this section, he has been found not entitled, he shall in the discretion of the commission be liable to have such sum deducted from any future benefits payable to him with respect to unemployment occurring within one year from the date of such redetermination or decision.

(c) No recoupment from future benefits shall be had if such sum was received by such person without fault on his part and such recoupment would defeat the purpose of this chapter or would be against equity and good conscience.

(d) In any case in which under this section a claimant is liable to repay to the commission any sum for the fund, such sum shall be collectible without interest by a deduction from benefits pursuant to a redetermination as above provided, or by civil action in the name of the commission.

History.—§7, ch. 18402, 1937; CGL 1940 Supp. 4151(494); §7, ch. 20685, 1941; am. §1, ch. 21982, 1943; am. §2, ch. 24083, 1947; sub. §(1), §10, ch. 26484, 1951; sub. §(6), §4, ch. 26879, 1951; sub §(3)(c) am. §4, ch. 28242, 1953; §§1-4, ch. 29769, 1955; (4) (e) by §1, ch. 57-268; (4) (c) a. by §3, ch. 61-132.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

443.08 Contributions.—

(1) WHEN PAYABLE. — Contributions shall accrue and become payable by each employer for each calendar quarter in which he is subject to this chapter, with respect to wages paid during such calendar quarter for employment. Such contributions shall become due and be paid by each employer to the commission for the fund, in accordance with such regulations as the commission may prescribe. Contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(2) RATES.—Each employer is required to pay contributions equal to the following per-

centages of wages paid by him with respect to employment.

(a) 1.8 per centum with respect to employment during the calendar year 1937.

(b) 2.7 per centum with respect to employment after December 31, 1937, except as otherwise determined by experience rating provisions of this Chapter; provided that for the purposes of this Section the total wages on which contributions have been paid by a single employer or his predecessor to an individual in any state within a single calendar year shall be counted to determine whether more remuneration than constitutes "wages" as defined by subsection 443.03(13)(b)1. has been paid to such individual by such employer or his predecessor in one calendar year.

(c) Should the congress either amend or repeal the Wagner-Peyser act, the federal unemployment tax act, the social security act or subtitle C of the internal revenue code, or any act or acts supplemental to or in lieu thereof, or any part or parts of either or all of said laws, or should either or all of said laws, or any part or parts thereof, be held invalid, to the end and with such effect that appropriations of funds by the said congress and grants thereof to Florida for the payment of costs of administration of the Florida state employment service and the unemployment compensation division of the commission become no longer available for such purposes, or should employers in Florida subject to the payment of tax under the federal unemployment tax act be granted full credit upon such a tax for contributions or taxes paid to the unemployment compensation trust fund, then in such case, beginning with the effective date of such change in liability for payment of such federal tax, and for each year thereafter, the standard contribution rate under this chapter shall be three per cent per annum of each such employer's payroll subject to contributions. With respect to each such employer having a reduced rate of contribution for such year pursuant to terms of subsection (3) hereof, to the rate of contribution, as determined for such year in which such change occurs, shall be added three-tenths of one per cent.

The amount of the excess of tax for which such employer is or may become liable, by reason of this subsection, over the amount which such employer would pay or become liable for except for the provisions of this subsection, shall be paid and transferred into the employment security administration trust fund to be disbursed and paid out under the same conditions and for the same purposes as are other moneys provided to be paid into such fund; provided, that if the commission shall determine that as of the first day of January of any year, there is an excess in said fund over the moneys and funds required to be disbursed therefrom for the purposes thereof for such year, then, and in such cases an amount equal to such excess, as determined by the commission, shall be transferred to and become a part of the unemployment compensation trust fund, and such funds shall be deemed to be and are hereby appropriated for the purposes set out in this chapter.

(d) In the event that the federal unemployment tax act is amended to permit credit against such tax in excess of 2.7 per cent with respect to any calendar year, payment of the amount of contributions necessary to qualify an employer for such additional credit shall be deemed to be required under this chapter.

(3) CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(a) The benefit payments made to any eligible individual shall be charged to the employment record of each employer who paid such individual wages equal to forty dollars or more within the base period of said individual in the proportion to which wages paid by each such employer to such individual within the base period bears to total wages paid by all such employers to such individual within the base period. Provided, that no benefit charges shall be made to the employment record of any employer who has furnished part-time work to an individual who, because of loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished part-time work by such employer on substantially the same basis and in substantially the same amount as has been made available to such worker during his base period. Provided, further, that benefit payments will not be charged to the accounts of employers when such employers have furnished the commission with such notices regarding separations of individuals from work and the refusal of individuals to accept offers of suitable work as are required by the provisions of this chapter and the regulations of the commission, if one or more of the following conditions are found to be applicable:

1. When an individual has left his job without good cause attributable to his employer or has been discharged by his employer for misconduct connected with his work, no benefits subsequently paid to him on the basis of wages paid to such individual by such employer prior to such separation shall be charged to such employer's account.

2. Benefits which are paid to any individual subsequent to the refusal without good cause by such individual of an offer of suitable employment from an employer will not be charged to the account of such employer when all or any part of such benefits are upon the basis of wages paid to such individual by such employer prior to the refusal by such individual to accept such offer of suitable work. (The commission shall determine with respect to the payment of all benefits whether this proviso shall be applied without regard to whether a disqualification pursuant to the provisions of §443.06 has or may be invoked against a claimant or claimants for benefits.)

(b) 1. On and after January 1, 1958, the commission shall, notwithstanding the provisions of paragraph (d) of this subsection, compute a benefit ratio for each employer not previously eligible therefor whose unemploy-

ment record has been chargeable with benefit payments for at least twelve calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. Such employer's benefit ratio shall be the quotient obtained by dividing the total benefit payments chargeable to his employment record during the twelve completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed by the total of his annual payrolls (as defined in paragraph (f) of this subsection) for the first twelve of the thirteen completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. Such benefit ratio shall be computed to the fifth decimal place, and rounded to the fourth decimal place, and shall be applicable only for the remainder of the calendar year in which it becomes effective, after which the benefit ratio of such employer shall be computed as provided in subparagraph 2. hereof. Variation from the standard rate of contribution shall be assigned on a quarterly basis to such employers eligible therefor in like manner as assignments made for a calendar year under paragraph (e) of this subsection.

2. The commission shall, for each calendar year, compute a benefit ratio for each employer whose employment record has been chargeable with benefit payments for at least three calendar years immediately preceding the calendar year for which the benefit ratio is computed. An employer's benefit ratio shall be the quotient obtained by dividing the total benefit payments chargeable to his employment record during the three-year period ending December 31 of the preceding calendar year by the total of his annual payrolls (as defined in paragraph (f) of this subsection) for the three-year period ending September 30 of the preceding calendar year. Such benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place.

(c) The standard rate of contributions payable by each employer shall be 2.7 per centum.

(d) Employers shall be eligible for rate variations from the standard rate of contributions, as hereinafter described, in any calendar year, only if their employment records have been chargeable with benefit payments throughout the three consecutive calendar years ending on December 31, of the preceding calendar year.

*(e) 1. Variations from the standard rate of contributions shall be assigned with respect to each calendar year to employers eligible therefor. In determining the contribution rate, varying from the standard rate, to be assigned each employer, adjustment factors provided for in subparagraphs a.-c. of this subparagraph will be added to the benefit ratio. This addition will be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor as defined below. The sum of these adjustment factors provided for in subparagraphs a.-c. of this subparagraph will first be algebraically summed. The sum of these adjustment factors will then be divided by a gross benefit ratio to be determined as follows: total benefit payments for the previous three calendar years charged to employers eligible to be assigned a contribution rate different from the standard rate minus excess payments for the same period divided by taxable payroll entering into the computation of individual benefit ratios for the current calendar year. The ratio of the sum of the adjustment factors provided for in subparagraphs a.-c. of this subparagraph to the gross benefit ratio will be multiplied by each individual benefit ratio below the maximum tax rate to obtain variable adjustment factors; except that in any instance in which the sum of an employer's individual benefit ratio and variable adjustment factor exceeds the maximum tax rate, the variable adjustment factor will be reduced so that the sum equals the maximum tax rate. The variable adjustment factor of each such employer will be multiplied by his taxable payroll entering into the computation of his benefit ratio. The sum of these products will be divided by the taxable payroll of such employers that entered into the computation of their benefit ratios. The resulting ratio will be subtracted from the sum of the adjustment factors provided for in subparagraphs a.-c. of this subparagraph to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor will be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor will be added to the variable adjustment factor and benefit ratio of each employer and the sum rounded to one-tenth of one per cent to obtain each employer's contribution rate; provided that no employer's contribution rate shall be less than one-tenth of one per cent nor more than the maximum contribution rate provided for in subparagraph d. of this subsection.

a. An adjustment factor for noncharge benefits will be computed to the fifth decimal place, and rounded to the fourth decimal place, by dividing the amount of benefit payments noncharged in the three preceding calendar years by the taxable payroll of employers eligible to be considered for assignment of a contribution rate different from the standard rate that have a benefit ratio for the current year less than the maximum contribution rate, except that in computing the adjustment factor for 1964 the two preceding calendar years of noncharged benefits will be used. The taxable payroll of such employers will be the taxable payrolls for the three years ending September 30 of the preceding calendar year that had been reported to the commission by December 31 of the same calendar year except that in computing the adjustment factor for 1964 the two preceding years of taxable payrolls will be used. Noncharge benefits for the purpose of this section shall be defined as benefit payments to an individual which were paid from the unemployment compensation

trust fund but which were not charged to the unemployment record of any employer.

b. An excess payments adjustment factor will be computed to the fifth decimal place, and rounded to the fourth decimal place, by dividing the total excess payments during the three preceding calendar years by the taxable payroll of employers eligible to be considered for assignment of a contribution rate different from the standard rate that have a benefit ratio for the current year less than the maximum contribution rate, except that in computing the adjustment factor for 1964 the two preceding years' excess payments will be used. The taxable payroll of such employers will be the same as used in computing the noncharge adjustment factor as described in subparagraph 1. a. Excess payments for the purpose of this section shall be defined as the amount of benefit payments charged to the employment record of an employer during the three preceding calendar years less the product of the maximum contribution rate and his taxable payroll for the three years ending September 30 of the preceding calendar year that had been reported to the commission by December 31 of the same calendar year, except that in computing excess payments for use in 1964 contribution rate determination the two preceding years will be used. Total excess payments shall be defined as the sum of the individual employer excess payments for those employers that were eligible to be considered for assignment of a contribution rate different from the standard rate.

c. If the balance in the unemployment compensation trust fund as of December 31 of the calendar year immediately preceding the calendar year for which the contribution rate is being computed is less than four per cent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the commission by December 31 of that calendar year, a positive adjustment factor will be computed. Such adjustment factor shall be computed annually to the fifth decimal place, and rounded to the fourth decimal place, by dividing the sum of the total taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the commission by December 31 of such calendar year into a sum equal to one fourth of the difference between the amount in the fund as of December 31 of such preceding calendar year and the sum of five per cent of the total taxable payrolls for that year. Such adjustment factor will remain in effect in subsequent years until a balance in the unemployment compensation trust fund as of December 31 of the year immediately preceding the effective date of such contribution rate equals or exceeds four per cent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the commission by December 31 of that calendar year. If the balance in the unemployment compensation trust fund as of December 31 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds five per cent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the commission by December 31 of that calendar year, a negative adjustment factor will be computed. Such adjustment factor shall be computed annually to the fifth decimal place, and rounded to the fourth decimal place, by dividing the sum of the total taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the commission by December 31 of such calendar year into a sum equal to one fourth of the difference between the amount in the fund as of December 31 of such preceding calendar year and five per cent of the total taxable payrolls of such year. Such adjustment factor will remain in effect in subsequent years until the balance in the unemployment compensation trust fund as of December 31 of the year immediately preceding the effective date of such contribution rate is less than five per cent but more than four per cent of the taxable payrolls for the year ending September 30 of the preceding calendar year as reported to the commission by December 31 of that calendar year.

d. The maximum contribution rate that can be assigned to any employer shall be two and nine tenths per cent with respect to the calendar year 1963, three and five tenths per cent with respect to the calendar year 1964, four per cent with respect to the calendar year 1965, and four and five tenths per cent with respect to the calendar year 1966 and subsequent calendar years.

2. In the event of the transfer of employment records to an employing unit pursuant to paragraph (g) of this subsection which, prior to such transfer, was an employer the commission shall recompute a benefit ratio for the successor employer on the basis of the combined employment records, and reassign an appropriate contribution rate to such successor employer as of the beginning of the calendar quarter immediately following the effective date of such transfer of employment records.

(f) As used in paragraph (b) 2. of this subsection, the term "annual payroll" means the total amount of wages for insured employment paid by an employer during the 12-month period ending on September 30 of any calendar year with respect to which contributions have been paid on or before the date on which they become due and payable; and as used in paragraph (b) 1. of this subsection, the term "annual payroll" means the total amount of wages for insured employment paid by an employer during a period of four consecutive calendar quarters with respect to which contributions have been paid on or before the date on which they became due and payable.

(g) 1. For the purposes of this subsection, two or more employers who are parties to a transfer of business or the subject of a merger, consolidation, or other form of reorganization, effecting a change in legal identity of

form, shall be deemed to be a single employer and shall be considered as one employer with a continuous employment record if the commission finds that the successor employer continues to carry on the employing enterprises of the predecessor employer or employers, and that the successor employer has assumed liability for all contributions required of and due from the predecessor employer or employers.

2. Whether or not there is a transfer of employment record as contemplated in this paragraph, the predecessor shall in the event he again employs persons be treated as a new employing unit.

3. The commission may provide by regulation for partial transfer of experience rating {except that the partial transfer of records authorized in this subparagraph shall be construed to allow computation and fixing of contribution rates effective only on and after July 1, 1947), where an employer has transferred at any time an identifiable and segregable portion of his payrolls and business to a successor employing unit. As a condition of such partial transfer of experience, the regulations shall require an application by the successor, agreement by predecessor, and such evidence as the commission may prescribe of the experience and payrolls attributable to the transferred portion up to the date of the transfer. The regulations shall provide that the successor employing unit, if not already an employer, shall become an employer as of the date of the transfer and that the experience of the transferred portion of the predecessor's account shall be removed from the experience-rating record of the predecessor and for each calendar year following the date of the transfer of the employment record on the books of the commission, the commission shall compute the rate of contribution payable by the successor on the basis of his experience, if any, combined with the experience of the portion of the record transferred. The regulation may also provide what rates shall be payable by the predecessor and successor employers for the period between the date of the transfer of the employment record of the transferred unit on the books of the commission and the first day of the next calendar year.

(h) No reduction in contribution rate shall be allowed under the provisions of this section unless the employer entitled thereto shall have at least one "annual payroll" as defined in paragraph (f) of this subsection and unless such employer is eligible for additional credit under the provisions of the federal unemployment tax act; and in the event the federal unemployment tax act shall be revised, amended or repealed, then and in that event this section shall be applicable only to the extent that additional credit may be allowed against the payment of the tax imposed by said federal unemployment tax act.

(i) The commission:

1. Shall promptly notify each employer of his rate of contributions as determined for any calendar year pursuant to this section. Such determination shall become conclusive and binding upon the employer unless within fifteen days after the mailing of notice thereof to his last known address, or, in the absence of mailing, within fifteen days after the delivery of such notice, the employer files an application for review and redetermination setting forth his reasons therefor. If the commission grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing, but no employer shall be allowed, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to §443.07, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and then only in the event that he was not a party to such determination, redetermination or decision or to any other proceedings provided for in this chapter in which the character of such services was determined. The employer shall be promptly notified of the commission's denial of this application, or of the commission's redetermination, both of which shall become final unless within fifteen days after the mailing of notice thereof to his last known address or in the absence of mailing, within fifteen days after the delivery of such a petition for writ of certiorari is filed in the district court of appeal of the district in which the petitioner resides or in the district court of appeal for the first district of Florida.

2. May provide by regulation for periodic notification to employers of benefits paid and chargeable to their accounts and/or of the status of such accounts, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the commission may prescribe, shall become conclusive and binding upon the employer for all purposes of this chapter. Such redetermination, made after notice and opportunity for hearing, and the commission's finding of fact in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the commission in proceedings to redetermine the contribution rate of an employer.

(j) If the commission finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the armed forces of the United States, or any of its allies, or of the United Nations after June 30, 1950, such employer's experience-rating record shall not be terminated; and, if the business is resumed within two years after the discharge or release from active

duty in the armed forces of such person or persons, the employer's experience shall be deemed to have been continuous throughout such period. The benefit ratio of any such employer for the calendar year in which he resumed business and the three calendar years immediately following shall be a percentage equal to the total of his benefit charges (including charges of benefits paid to any individual during the period the employer was in the armed forces based upon wages paid by him prior to his entrance into such forces) for the three most recently completed calendar years divided by that part of his total pay roll, with respect to which contributions have been paid to the commission, for the three most recent calendar years during the whole of which, respectively, such employer has been in business.

Provided, that no cash refund shall be made with respect to any adjustment required hereunder, but such refund shall be made by credit memorandum only.

History.—§8, ch. 18402, 1937; §5, ch. 19637, 1939; CGL 1940 Supp. 4151(495); §8, ch. 20685, 1941; am. §1, ch. 21981, 1943; §1, ch. 22946, 1945; §1, ch. 23918, 1947; §11, ch. 25035, 1949; sub. §(2)(b), §5, ch. 26879, sub. §(3)(e), §1, ch. 26958, sub. §(3)(f)(h)(i), § § 2-4, ch. 26878, sub. §(3)(k), §6, ch. 26879, 1951; sub. §(1), am. §5, sub. §(3)(a),(b),(g),(h), am. § § 6-9, ch. 28242, 1953; sub §(2) am. §4, ch. 29771, sub §(3) am. §§1-3, ch. 29817, 1955; (3) by §3, ch. 57-247; §2, ch. 57-268; (3) (b) by §1, (3) (e) by §2, ch. 59-98; (2), (3) a. by §2, ch. 61-119; (2) (d) n. §4, ch. 61-132; (3)(a) §1, ch. 63-154; (3)(e) §1, ch. 63-137. *Note.—(3)(e) effective January 1, 1964.

443.09 Employing units affected.—

(1) (a) Any employing unit which is or becomes an employer subject to this chapter as defined in §443.03(7)(a) within any calendar year shall be subject to this chapter during the whole of such calendar year.

(b) Any employing unit which is or becomes an employer subject to this chapter solely by reason of the provisions of §443.03(7)(b) shall be subject to this chapter only during its operation of the business acquired.

(c) Any employing unit which is or becomes an employer subject to this chapter solely by reason of the provisions of §443.03(7)(c) shall be subject to this chapter only with respect to employment occurring subsequent to the date of such acquisition.

(2) Except as otherwise provided in subsections (3) and (4) of this section, an employing unit shall cease to be an employer subject to this chapter as of the first day of January of any calendar year only if it files with the commission by April 30 of the year for which termination is requested, a written application for termination of coverage, and the commission finds that there were no twenty different days, each day being in a different week within the preceding calendar year, within which such employing unit employed four or more individuals in employment subject to this chapter and that the employment and payrolls of such employing unit during such calendar year were insufficient to have rendered such employing unit an employer under §443.03(7)(h). Provided, however, that the above prescribed time limitation for the filing of such written application may be waived by the commission in cases where such time limitation had expired prior to the establishment in the records of the commission of the liability of such employing unit. For the purposes of this subsection, the two or more employing units mentioned in §443.03(7)(b)(c)(d) shall be treated as a single employing unit.

(3) (a) An employing unit, not otherwise subject to this chapter, which files with the commission its written election to become an employer subject hereto for not less than one calendar year, shall, with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to the first calendar year of its election, only if by April 30 of such subsequent year such employing unit has filed with the commission a written notice to that effect. Provided, however, that at the expiration of the calendar year of such election the commission may reconsider such voluntary election of coverage and may in its discretion notify such employer that such employer will not be carried upon the records of the commission as an employer and thereupon such employer shall cease to be an employer under the provisions of this chapter as of the first of the year next succeeding the last calendar year during which it was an employer under this chapter.

(b) Any employing unit, including this state or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more of its political subdivisions, for which services that do not constitute employment as defined in this chapter are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than one calendar year. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such calendar year only if by April 30 of such subsequent year such employing unit has filed with the commission a written notice to that effect.

(4) Notwithstanding the provisions of §443.09(2), if the commission finds that an employer has become inactive and has ceased to be an employing unit as defined by this chapter for a complete calendar year the commission may automatically terminate the account of such employer, and such employer shall be notified by registered mail directed to the last address of such employer as contained in the files of the commission of the action of the commis-

sion in terminating such account as of the first of January of any year following a complete calendar year in which such employer has ceased to be an employing unit, and thereupon such employer shall cease to be an employer subject to the provisions of this chapter.

History.—§9, ch. 18402, 1937; CGL 1940 Supp. 4151(496); §9, ch. 20685, 1941; §2, ch. 21982, 1943; sub. § § (2),(3), § § 7, 8, ch. 26879, 1951; sub §(1) am. §10, ch. 28242, 1953; sub §(2) am. §5, ch. 29771, 1955; (2), (3) a. by §5, ch. 61-132.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

443.10 Unemployment compensation trust fund; establishment and control.—

(1) There is hereby established as a special fund separate and apart from all public moneys or funds of this state, an employment compensation trust fund, which shall be administered by the commission exclusively for the purposes of this chapter. This fund shall consist of (a) all contributions collected under this chapter; (b) interest earned upon any moneys in the fund; (c) any property or securities acquired through the use of moneys belonging to the fund, (d) all earnings of such property or securities; and (e) all money credited to this state's account in the unemployment compensation trust fund pursuant to §903 of the social security act as amended. All moneys in the fund shall be mingled and undivided.

(2) The state treasurer shall be the ex-officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the commission. All payments from the fund shall be approved by the commission or by a duly authorized agent and shall be made by the treasurer upon warrants issued by the comptroller and countersigned by the governor except as hereinafter provided. The treasurer shall maintain within the fund three separate accounts: (a) a clearing account, (b) an unemployment compensation trust fund account, and (c) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to §443.15 may be paid from the clearing account upon warrants issued by the comptroller as above set forth. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment compensation trust fund, established and maintained pursuant to §904 of the social security act, as amended, any provisions of the law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment compensation trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall be liable on his official bond for the faithful performance of his duties as custodian of the fund.

(3) Moneys shall be requisitioned from the state's account in the unemployment compensation trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission, except that money credited to this state's account pursuant to §903 of the social security act as amended shall be used exclusively as provided in §443.10(5). The commission, through the treasurer, shall from time to time requisition from the unemployment compensation trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account in the state treasury and warrants for the payment of benefits shall be drawn by the comptroller upon the order of the commission against such benefit account. All warrants for benefits shall be payable directly to the ultimate beneficiary. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of the comptroller and the counter-signature of the governor as above set forth. Any balance of moneys requisitioned from the unemployment compensation trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment compensation trust fund, as provided in subsection (2) of this section.

(4) The provisions of subsections (1), (2), and (3), to the extent that they relate to the unemployment compensation trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment compensation trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment compensation trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation trust fund of this state shall be transferred to the treasurer of the unemployment compensation trust fund, who shall

hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission in accordance with the provisions of this chapter; provided that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States or of the state. Provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation trust fund only under the direction of the commission.

(5) MONEY CREDITED UNDER SECTION 903 OF THE SOCIAL SECURITY ACT.—

(a) Money credited to the account of this state in the unemployment compensation trust fund by the secretary of the treasury of the United States pursuant to §903 of the social security act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this law. Such money may be requisitioned pursuant to §443.10 (3) for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this law but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

1. Specifies the purposes for which such money is appropriated and the amounts appropriated therefor,

2. Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and

3. Limits the amount which may be obligated during any twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to §903 of the social security act during the same twelve-month period and the four preceding twelve-month periods, exceeds the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such five twelve-month periods.

(b) Amounts credited to this state's account in the unemployment compensation trust fund under §903 of the social security act which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such a twelve-month period earlier than the fourth preceding such period. Any amount credited to the state's account under §903 which has been appropriated for expenses of administration, whether or not withdrawn from the unemployment compensation trust fund, shall be excluded from the unemployment compensation trust fund balance for the purposes of §443.08(3).

(c) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the employment security administration trust fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment compensation trust fund and, if it will not be expended, shall be returned promptly to the account of this state in the unemployment compensation trust fund.

(6) APPROPRIATIONS:

(a) There is hereby appropriated the sum of one million five hundred forty thousand dollars out of the funds made available to this state under the employment security administrative financing act of 1954, chapter 657, Pub. Law 567, 83rd congress, 2nd session, as amended; the said sum hereby appropriated to be divided among the locations hereinafter stated in the following manner:

1. Cocoa, an amount not to exceed two hundred fifty thousand dollars.
2. Jacksonville (in addition to amounts previously appropriated therefor), an amount not to exceed one hundred fifty thousand dollars.
3. Fort Lauderdale, an amount not to exceed five hundred thousand dollars.
4. West Palm Beach, an amount not to exceed five hundred thousand dollars.
5. Gainesville, an amount not to exceed one hundred forty thousand dollars.

(b) The sums herein appropriated are to be expended solely for the acquisition of land, and the construction thereon of appropriate offices to be used exclusively for the employment security activities of the Florida industrial commission, and for all necessary expenses incidental thereto, and said sums shall be obligated for the purposes herein appropriated not later than the two year period following the date of the enactment hereof. Of the amount hereinabove appropriated the commission may not obligate of said appropriations during the fiscal year ending June 30, 1964, an amount to exceed the total of the sums credited to Florida under the provisions of said employment security administrative financing act of 1954, for such fiscal year and the four preceding fiscal years, less the aggregate of the amounts which have been obligated for administration and paid out for benefits and charged against said sums during such five fiscal years. Nor shall the amount which may be obligated by said commission under this appropriation during the fiscal year ending June 30, 1965, exceed the total of the sums credited to this state under provisions of said employment se-

curity administrative financing act of 1954 for such fiscal year and the four preceding fiscal years, less the aggregate of the amounts which have been obligated for administration and paid out for benefits and charged against said sum during such five fiscal years.

(c) The commission is authorized to withdraw from this state's account in the unemployment trust fund referred to in said employment security administrative financing act of 1954 as amended, such sums as are from time to time needed for payment of obligations incurred under the provisions hereof, but not to exceed at any time either the amount in said fund made available by said employment security administrative financing act of 1954, as amended, or the specific appropriation made for a particular location.

(d) Any moneys requisitioned and withdrawn by the commission under the provisions of paragraph (c) shall be deposited in a separate account of this state's employment security administration trust fund, but such moneys until expended shall remain a part of the unemployment compensation trust fund. The commission shall maintain a separate record of the deposit, obligation and expenditure of such funds.

(e) The commission shall have complete authority to carry out the purposes of this section and is expressly authorized and empowered to employ necessary appraisers, architects, engineers and contractors, and to execute all contracts necessary to effectuate the declared purposes of this section, including the acquisition of the necessary real estate for said offices, which real property shall be acquired in the name of the Florida industrial commission and shall be used exclusively thereafter for providing facilities for the employment security activities of the Florida industrial commission.

(f) Money so withdrawn from the unemployment compensation trust fund shall be repaid from federal funds periodically allocated to the commission for rental of local employment office space in the named municipalities. Such money as may be used for the purposes of this subsection (including any unrepaid portion thereof) shall continue to be deemed part of the unemployment compensation trust fund for the purposes of §443.08 (3)(e)1.c., and such temporary use shall not be construed to have reduced the total of such fund for tax rate computation purposes, including interest which would have been added to such total if none of such fund had been used as authorized by this subsection.

History.—§10, ch. 18402, 1937; §6, ch. 19637, 1939; CGL 1940 Supp. 4151(497); am. §1, ch. 24084, 1947; §11, ch. 25035, 1949; (5) R. by §6, ch. 29771, 1955; (1) by §1, (3) by §2, (5) N. by §3, ch. 59-99; §2, ch. 61-119; (5) (c) a. by §6, ch. 61-132; (6) n. §1, ch. 61-172; (6)(a), (b) §§1, 2, ch. 63-276.

443.11 Administrative organization.—

(1) DIVISIONS.—There are hereby created and established in the Florida industrial commission two coordinate divisions, the Florida state employment service division, established pursuant to §443.13, and a division to be known as the unemployment compensation division. Each of said divisions shall be administered by a full-time salaried director.

The chairman of the Florida industrial commission shall be paid for the additional duties involved in the administration of this chapter such sum as may be agreed upon between the said chairman and the federal bureau of employment security. Each other member of the commission shall be paid for the additional duties involved in the administration of this chapter the sum of one thousand eight hundred dollars per annum and shall be reimbursed for traveling expenses as provided in §112.061. Each division shall be responsible for the discharge of its distinctive functions.

Each division shall be a separate administrative unit except insofar as the commission may find that such separation is impracticable. Each division shall pay its proportionate part of the administrative costs for the members and the secretary of the commission.

(2) BOARD OF REVIEW.—

(a) There is hereby created within the Florida industrial commission a board of review which shall consist of the chairman of the Florida industrial commission, who shall serve as chairman of such board, and the members of the commission, each of whom shall serve ex officio and receive no additional compensation for services performed as a member of such board.

(b) Any hearing, inquiry, or investigation required or authorized to be conducted or made by the board of review may be conducted or made by an individual member thereof, and the order, decision, or determination of such member shall be deemed the order, decision or determination of the board of review from the date of the filing thereof in the commission unless the board, on its own motion, or by application duly made to it, modifies or rescinds such order, decision, or determination.

(3) OBSOLETE RECORDS.—The commission is expressly authorized to provide by regulation for and to destroy obsolete records of the commission.

(4) ADVANCES.—The commission is authorized and directed to apply for an advance to the state unemployment compensation trust fund and to accept responsibility for the repayment of such advance in accordance with the conditions specified in title XII of the social security act as amended, in order to secure to this state and its citizens the advantages available under the provisions of said title XII of the social security act.

History.—§11, ch. 18402, 1937; §7, ch. 19637, 1939; CGL 1940 Supp. 4151(498); §10, ch. 20685, 1941; am. §3, ch. 21982, 1943; am. §2, ch. 22946, 1945; am. §1, ch. 24094, §2, ch. 24084, 1947; sub §(2) am. §11, ch. 28242, 1953; sub §(1) am. §7, ch. 29771, 1955; (1) by §1, ch. 57-786; (1) a. by §1, ch. 61-139; (2) (a) §7, ch. 61-132; (4) §2, ch. 61-119; (1) §19, ch. 63-400.

cf.—§440.44(2) Creation of Florida industrial commission.

443.12 Commission; powers, duties, etc.; rules and regulations; personnel; advisory councils; records and reports; cooperation, etc.—

(1) DUTIES AND POWERS OF COMMIS-

SION.—It shall be the duty of the commission to administer this chapter; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal which shall be judicially noticed. Not later than the 15th day of March of each year, the commission shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendment to this chapter as it deems proper. Such report shall include a balance sheet of the monies in the fund in which there shall be provided, if possible, a reserve against the liability of future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(2) REGULATIONS AND GENERAL AND SPECIAL RULES.—General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

(3) PUBLICATION OF ACTS AND RULES AND REGULATIONS.—The commission shall cause to be printed and distributed to the public the text of this chapter, the regulations and rules it adopts, its annual report to the governor, and any other matter the commission deems relevant and suitable, and shall furnish this information to any person upon application therefor; provided that the printing of any pamphlet, rules, circulars or reports required by this chapter shall contain no matter except the actual data necessary to complete same or the actual language of the said rule or regulation, together with proper notices thereof; and provided further, where the amount involved exceeds two hundred dollars that in advance of any such printing being done or contracted for, sealed written bids therefor shall be asked for by the commission and the lowest and best bid therefor shall be accepted.

(4) PERSONNEL.—Subject to other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such employees, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. Provided, however, that the commission shall pay no employee appointed pursuant to the provisions of this subsection any compensation in excess of amounts paid for comparable services performed for other state departments. The commission may delegate to any such person such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling monies or signing checks hereunder; the cost of such bonds shall be paid from the employment security administration trust fund. The commission shall classify positions under this chapter and shall establish salary schedules and minimum personnel standards for the positions so classified. It shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. Provided, however, that appointments of persons who have not participated in an examination may be continued for a period in excess of six months when such persons have been certified as possessing the necessary training and experience for admittance to an examination for the position to which appointed and such appointments may be continued until the establishment of an appropriate register for such position pursuant to the holding of an examination therefor. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon rating of efficiency and fitness and for terminations for cause.

(5) ADVISORY COUNCILS.—The commission shall appoint a state advisory council and may appoint local or industry advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve for such terms as specified by the commission, without compensation, but shall be reimbursed for traveling expenses as provided in §112.061.

(6) EMPLOYMENT STABILIZATION.—The commission with the advice and aid of advisory councils, and through the appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts and the state of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of the unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(7) RECORDS AND REPORTS.—Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission, the board of review, or an appeals referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which any of them deem necessary for the effective administration of this chapter. Information thus obtained, or obtained from any individual pursuant to the administration of this chapter, shall, except to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties), in any manner revealing the individual's or employing unit's identity, but any claimant (or his legal representative) at a hearing before an appeals referee or the board of review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the board of review or any employee of the commission who violates any provision of this subsection shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both. Provided, however, the commission may furnish to any employer copies of any report previously submitted by such employer, upon the request of such employer, and the commission is authorized to charge therefor such reasonable fee as it may by regulations prescribe not to exceed the actual reasonable cost of the preparation of such copies. Fees received by the commission for copies as herein provided shall be deposited to the credit of the employment security administration trust fund.

(8) OATHS AND WITNESSES.—In the discharge of the duties imposed by this chapter, the commission, the appeals referees, the members of the board of review, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

(9) SUBPOENAS.—In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, or transacts business, upon application by the commission, the board of review, an appeals referee, or any duly authorized representative of any of them shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, the board of review, an appeals referee or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching on the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the commission, the board of review, an appeals referee, or any duly authorized representative of any of them, shall be punished by a fine of not less than two hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(10) PROTECTION AGAINST SELF INCRIMINATION.—No person shall be excused from attending and testifying, or from producing books, papers, correspondence, memoranda, and other records before the commission, the board of review, an appeals referee, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them in any cause or proceeding before the commission, the board of review, or any appeals referee, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(11) STATE-FEDERAL COOPERATION.—

(a) In the administration of this chapter, the commission shall cooperate to the fullest extent consistent with the provisions of this chapter with the bureau of employment security or other authorized federal agencies, and is authorized and directed to take such action, through the adoption of appropriate

rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the social security act, the federal unemployment tax act, and the act of congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended. The commission shall comply with the regulations of the bureau of employment security relating to the receipt or expenditure by this state of moneys granted under any of such acts and shall make such reports, in such form and containing such information, as the bureau of employment security may from time to time require, and shall comply with such provisions as the bureau of employment security may from time to time find necessary to assure the correctness and verification of such reports.

(b) The commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

(c) The commission shall fully cooperate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs. The commission may make, and may cooperate with other appropriate agencies in making, studies as to the practicability and probable cost of possible new state-administered social security programs, and the relative desirability of state (rather than federal) action in any such field.

(12) DISCLOSURE OF INFORMATION.—Subject to such restrictions as the commission may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the commission shall furnish any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The commission may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with such request transmit any such report or return to the comptroller of the currency of the United States as provided in §3305 (c) of the federal internal revenue code.

History.—§12, ch. 18402, 1937; CGL 1940 Supp. 4151(499), 8135(40), 8135(41); §11, ch. 20685, 1941; am. §4, ch. 21982, 1943; am. §1, ch. 22832, 1945; am. §3, ch. 24084, 1947.

Sub. §§(11), (12) am. §§8, 9, ch. 29771, 1955.
(4) §1, ch. 57-269; (4), (7) §2, ch. 61-119; (5) §19, ch. 63-400.
cf.—§113.07 Bonds of officials.

443.13 State employment service.—

(1) The Florida state employment service is hereby established in the Florida industrial commission as a division. The commission, through such division, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purposes of performing such duties as are within the purview of the act of congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933 (48 Stat. 113; U. S. C., Tit. 29, §49 (c)), as amended. It shall be the duty of the division to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with §4 of said act, and this state will observe and comply with the requirements thereof. The Florida industrial commission is hereby designated and constituted the agency of this state for the purpose of said act. The commission is authorized and directed to appoint sufficient employees to carry out the purposes of this section. The commission may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

(2) FINANCING.—All moneys received by this state under the said act of congress, as amended, shall be paid into the employment security administration trust fund, and said moneys are hereby made available to the commission to be expended as provided by this chapter and by said act of congress. For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private, non-profit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a

contribution to the employment security administration trust fund.

History.—§13, ch. 18402, 1937; §8, ch. 19637, 1939; CGL 1940 Supp. 4151(500); §12, ch. 20685, 1941; (2) a. by §2, ch. 61-119.

443.14 Employment security administration trust fund; appropriation; reimbursement.—

(1) EMPLOYMENT SECURITY ADMINISTRATION TRUST FUND.—There is hereby created in the state treasury a special fund to be known as the employment security administration trust fund. All moneys which are deposited or paid into this fund shall be continuously available to the commission for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in §§443.12 and 443.13 except money received pursuant to §443.12(5)(c) shall be expended solely for the purposes and in the amounts found necessary by the authorized cooperating federal agencies for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sutained by the employment security administration trust fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this chapter. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to §443.10(5) (c) shall remain part of the unemployment compensation trust fund and shall be used only in accordance with the conditions specified in §443.10(5). All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury, except that moneys in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depositary bank. Such moneys shall be secured by the depositary in which they are held to the same extent and in the same manner as required by the general depositary law of the state and collateral pledged shall be maintained in a separate custody account. All payments from the employment security administration trust fund shall be approved by the commission or by a duly authorized agent and shall be made by the treasurer upon warrants issued by the comptroller and countersigned by the governor. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this chapter. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security administration trust fund provided for under this chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the employment security administration trust fund shall be deposited in said fund.

(2) SPECIAL EMPLOYMENT SECURITY ADMINISTRATION TRUST FUND.—There is hereby created in the state treasury a special fund, to be known as the "special employment security administration trust fund," into which shall be deposited or transferred all interest on contributions, penalties, and fines or fees collected under this chapter. Interest on contributions, penalties, and fines or fees deposited during any calendar quarter in the clearing account in the unemployment compensation trust fund shall, as soon as practicable after the close of such calendar quarter and upon certification of the commission, be transferred to the special employment security administration trust fund; provided, however, that there shall be withheld from any such transfer the amount certified by the commission to be required under this chapter to pay refunds of interest on contributions, penalties, and fines or fees collected after June 30, 1947, and erroneously deposited into the clearing account in the unemployment compensation trust fund. Such amounts of interest and penalties so certified for transfer shall be deemed to have been erroneously deposited in the clearing account and the transfer thereof to the special employment security administration trust fund shall be deemed to be a refund of such erroneous deposits. All moneys in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Said moneys shall not be expended or be available for expenditure in any manner which would permit their substitution for (or permit a corresponding reduction in) federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of the unemployment compensation law. But nothing in this section shall prevent said moneys from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The moneys in this fund, with the approval of the state budget director, shall be used by the com-

mission for the payment of costs of administration which are found not to have been properly and validly chargeable against funds obtained from federal sources. All moneys in the special employment security administration trust fund shall be continuously available to the commission for expenditure in accordance with the provisions of this chapter and shall not lapse at any time. All payments from the special employment security administration trust fund shall be approved by the commission or by a duly authorized agent thereof and shall be made by the treasurer upon warrants issued by the comptroller and countersigned by the governor. The moneys in this fund are hereby specifically made available to replace, as contemplated by subsection (3) of this section, expenditures from the employment security administration trust fund, established by subsection (1) of this section, which have been found by the bureau of employment security (or other authorized federal agency or authority), because of any action or contingency, to have been lost or improperly expended. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the special employment security administration trust fund.

(3) REIMBURSEMENT OF FUND.—If any moneys received after June 30, 1941, from the bureau of employment security under Title III of the social security act, or any unencumbered balances in the employment security administration trust fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, after reasonable notice and opportunity for hearing, are found by the bureau of employment security, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the bureau of employment security for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purposes from the general funds of this state to the employment security administration trust fund for expenditure as provided in subsection (1) of this section. Upon receipt of notice of such a finding by the bureau of employment security, the commission shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the social security act.

(4) EXEMPTION OF FUND FROM CERTAIN LAWS.—The special employment security administration trust fund provided for in subsection (2) of this section be, and the same is hereby exempt from the application of any laws of the legislature of 1949, other than this subsection, and specifically from the application or effect by §§282.001-282.002, commonly known as the continuing appropriations law.

History.—§14, ch. 18402, 1937; §9, ch. 19637, 1939; CGL 1940 Supp. 4151(501); §13, ch. 20685, 1941; am. §4, ch. 24084, 1947; sub. §(4), §1, ch. 25206, 1949; §11, ch. 25035, 1949. Sub. §§(2), (3) am. §§10, 11, ch. 29771, 1955; (1) by §4, ch. 59-99; §2, ch. 61-119.

443.15 Collection of contributions.—

(1) PAST DUE CONTRIBUTIONS.—

(a) *Interest.*—Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one-half per centum per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the special employment security administration trust fund.

(b) *Penalty for delinquent reports.—*

1. Any employing unit which fails to file any reports required by the commission in the administration of this chapter, in accordance with regulations adopted by the commission, shall pay to the commission with respect to each such report the sum of five dollars for each thirty days or fraction thereof that such employing unit is delinquent, unless the commission finds that such employing unit has or had good reason for failure to file such report or reports.

2. Sums collected as penalties under the provisions of subparagraph 1. shall be deposited by the commission in the special employment security administration trust fund.

(2) REPORTS, CONTRIBUTIONS, APPEALS.—

(a) *Failure to make reports and pay contributions; duty and power of commission.*—If any employing unit determined by the commission to be an employer subject to the provisions of this chapter fails to make and file any report as and when required by the terms and provisions of this chapter or by any rule or regulation of the commission, for the purpose of determining the amount of contributions due by said employer under this chapter, or if any such report which has been filed is deemed by the commission to be incorrect or insufficient, and such employer after having been given written notice, by registered or certified mail, by the commission to file such report, or a corrected or sufficient report, as the case may be, shall fail to file such report within fifteen days after the date of the mailing of such notice, the commission may 1. determine the amount of contributions due from such employer on the basis of such information as may be readily available to it, which said determination shall be deemed to be prima facie correct; 2. assess such employer with the amount of contributions so determined; and 3. immediately give written notice by registered or certified mail to such employer of such determination and assessment including penalties as provided in

this chapter, if any, added and assessed, demanding payment of same together with interest as herein provided on the amount of contributions from the date when same were due and payable. Such determination and assessment shall be final at the expiration of fifteen days from the date of the mailing of such written notice thereof demanding payment unless such employer shall have filed with the commission a written protest and petition for hearing specifying the obections thereto. Upon receipt of such petition within the fifteen days allowed the commission shall fix the time and place for a hearing and shall notify the petitioner thereof. The commission by regulation may appoint special deputies with full power to hold hearings hereunder, and to submit their findings together with a transcript of the proceedings before them and their recommendations to the commission for its final decision and determination. At any hearing held before the commission or its special deputy, as herein provided, evidence may be offered to support such determination and assessment or to prove that it is incorrect. Provided, however, that at such hearing the petitioner shall be required to show wherein that it is incorrect or else file full and complete corrected reports. Evidence may also be submitted at such hearing to rebut the determination by the commission that the petitioner is an employer under the provisions of this chapter, and upon evidence taken before it or upon the transcript submitted to it with the findings and recommendation of its special deputy the commission may set aside its determination that the petitioner is an employer under the provisions of this chapter or may reaffirm such determination. Any determination made by the commission with reference to the status of an employer under the provisions of this subsection shall become final upon the mailing of notice of such determination by registered or certified mail to the last known address of such employer unless within fifteen days thereof the employer shall have filed in the district court of appeal in the district in which the petitioner resides or in the district court of appeal for the first district of Florida a petition for writ of certiorari. Such review shall proceed in the same manner as provided for a review of decisions of the board of review under §443.07(4)(e). The amounts assessed pursuant to a final determination by the commission hereunder together with interest and penalties shall be paid within fifteen days after notice of such final decision and assessment and demand for payment thereof by the commission shall have been mailed to such employer, unless judicial review is instituted under the provisions hereof in cases of status determinations. Amounts due when the status of the employer is in dispute shall be payable within fifteen days of the entry of an order by the district appellate court affirming such determination. Provided, however, that any determination by the commission that an employing unit is not an employer under the provisions of this chapter shall not affect the benefit rights of any individual as determined by an appeals referee or the board of review, under the provisions of this chapter, unless such individual shall have been made a party to the proceedings before the commission by registered or certified notice served upon him at least ten days before the holding of any hearing hereunder, or unless such determination of the board of review or appeals referee shall not have become final or the employing unit and the commission shall not have been made parties to the proceedings before the appeals referee or the board of review.

(b) *Appeals.*—Subject to the foregoing provisions of this subsection, the commission shall by regulation prescribe the manner pursuant to which an employing unit which has been determined to be an "employer" may file an appeal and be afforded an opportunity for a hearing on such determination.

(3) COLLECTION PROCEEDINGS.—

(a) *Lien for payment of contributions.*—

1. There is hereby created a lien in favor of the commission upon all the property both real and personal of any employer who shall become liable for the payment of any contribution levied and imposed upon it by this law for the amount of the contributions due and payable under the provisions hereof, together with interest, costs and penalties; and if any contribution imposed by this chapter or any portion of such contribution or interest or penalty be not paid within sixty days after the same becomes delinquent the commission may thereafter issue a notice of lien under its official seal, which notice of lien may be filed in the office of the clerk of the circuit court of any county in which the delinquent employer owns property or has conducted business, and which notice of lien shall set forth the periods for which the contributions, interest or penalties are demanded and the amounts thereof, copy of which notice of lien shall be mailed to the employer at his last known address by registered mail. Provided, that notice of lien may be issued and recorded at the expiration of fifteen days from the date assessment becomes final under the provisions of §443.15(2) hereof. Upon presentation of said notice of lien the clerk of the circuit court shall record same in a book maintained by him for that purpose, and thereupon the amount of said notice of lien, together with the cost of recording and interest accruing upon the contribution amount, shall become a lien upon the title to and interest, whether legal or equitable, in any real property, chattels real, or personal property of such employer against whom such notice of lien is issued, in the same manner as a judgment of the circuit court duly docketed in the office of such circuit court clerk with execution duly issued thereon and in the hands of the sheriff for levy; and such lien shall be prior, preferred and superior to all mortgages or other liens filed, recorded, or acquired subsequent to the time such notice of lien shall have been filed. Upon the payment of the amounts due thereunder, or upon determination by the commission that such notice of lien was erroneously issued, the same may be satisfied of record by the commission by an acknowledgment under the seal of the commission that such lien has

been fully satisfied. Such satisfaction need not be acknowledged before any notary or other public officer and the seal of the commission together with the signature of the chairman or member thereof shall be conclusive evidence of the satisfaction of said lien, which satisfaction shall be recorded by the clerk of the circuit court who shall receive fees for such services as may be fixed by law for the recording of instruments generally.

2. The commission may thereafter issue a warrant under its official seal and signed by the chairman thereof, directed to all and singular sheriffs in the State of Florida, commanding them to levy upon and sell any real or personal property of the employer liable for any amount under this law within their respective jurisdictions, for the payment of the amount thereof, with the added penalties, interest and the costs of executing the warrant, together with costs of the clerk of the circuit court in recording and docketing the notice of lien, and to return such warrant to the commission and to pay to it the money collected by virtue thereof; such warrant shall issue and be enforced for all amounts due the commission as of the date of issuance thereof, together with interest accruing on the contribution amount due from said employer to the date of payment at the rate provided herein; provided, that in the event of sale of any assets of the employer, priorities under said warrant shall be determined in accordance with the priority established by the notice or notices of lien filed by the commission and recorded by the clerk of the circuit court. The sheriff shall proceed upon said warrant in all respects with like effect and in the same manner prescribed by law in respect to executions issued out of the office of the clerk of the circuit court upon judgments of the circuit court and the sheriff shall be entitled to the same fees for his services in executing the warrant as under a writ of execution out of the circuit court, said fees to be collected in the same manner.

(b) *Injunction—procedures to contest warrants after issuance.*—No writ of injunction or restraining order to stay the execution of such warrant shall issue until a bill praying therefor shall have been filed and reasonable notice of hearing of motion for such injunction has previously been served on the commission, nor unless the party applying therefor shall have previously tendered and paid into the custody of the court the full amount of contributions, interests, costs and penalties claimed in such warrant or entered into and filed in said court a bond with two or more good and sufficient sureties approved by the court in a sum at least double the amount of such contributions, interests, costs and penalties, payable to the commission, and conditioned to pay the amount of such warrant, interest thereon, and such damages as may be occasioned by the wrongful issuing of said injunction, if the said injunction shall be dissolved, or the bill upon which it may be granted be dismissed. Only one surety shall be required when such bond is executed by a lawfully authorized surety company as surety thereon.

(c) *Attachment and garnishment.*—Upon the filing of notice of lien as provided in §443.15 (3) (a) 1. hereof, the commission shall be entitled to remedy by attachment or garnishment as provided in chapters 76 and 77, as for a debt due and upon application by the commission such writs shall issue out of the office of the clerk of the circuit court as upon a judgment of the circuit court duly docketed and recorded, and such writs shall be made returnable to the circuit court. Provided, however, that no bond shall be required of the commission as a condition precedent to the issuance of said writs of attachment or garnishment. Issues raised under proceedings by attachment or garnishment shall be tried by the circuit court as upon a judgment thereof in the manner provided in chapters 76 and 77. Provided, further, that said notice of lien filed by the commission shall be of full force and effect for the purposes of all remedies provided for in this chapter until satisfied as provided in this chapter, and no revival by scire facias or other proceedings shall be necessary prior to the pursuit of any remedy herein provided for, and proceedings authorized as upon a judgment of the circuit court shall not be construed as making of said lien a judgment of the circuit court upon a debt for any purpose except as herein specifically set forth as procedural remedies only.

(d) *Third party claims.*—Upon any levy made by the sheriff under the authority of a writ of attachment or garnishment as provided in §443.15(3)(c) third party claims to property involved shall be tried by the circuit court as upon a judgment thereof and all proceedings shall be authorized on such third party claims as provided in §§55.39, 55.43, 76.21 and 77.16.

(e) *Proceedings supplementary to execution.*—At any time after a warrant provided for in §443.15(3)(a)2. shall have been in the hands of any sheriff of this state and returned unsatisfied the commission may make and file an affidavit in the circuit court affirming such fact and also that said warrant is valid and outstanding and also stating the residence of the party or parties against whom the warrant has been issued, and the commission shall thereupon be entitled to have other and further proceedings in the circuit court as upon a judgment thereof as provided in §55.52 et seq.

(f) *Photostats.*—In any proceedings in any court under this chapter photostats of original records or microfilm copies of records of the Florida industrial commission shall be primary evidence in lieu of the originals of said records or of the documents which have been transcribed into such records.

(g) *Jeopardy assessment and warrant.*—If the commission has just cause to believe and does believe that the collection of contributions from an employer will be jeopardized by delay it may assess such contributions immediately, together with interest or penalties when due, whether or not contributions accrued

have become due, and may immediately issue a notice of lien and jeopardy warrant upon which proceedings may be had as herein provided for notice of lien and warrant of the commission. Within fifteen days from the mailing of such notice of lien by registered mail the employer against whom such notice of lien and warrant is issued may protest the issuance thereof in the same manner provided in §443.15(3)(a) and further proceedings shall be had upon said protest as therein provided. Such protest shall not operate as a supersedeas or stay of enforcement proceedings until and unless the employer shall have filed with the sheriff seeking to enforce the warrant of the commission a good and sufficient surety bond in twice the amount demanded by said notice of lien or warrant conditioned upon payment of the amount subsequently found to be due from the employer to the commission by final determination of the commission upon protest of assessment. Said jeopardy warrant and notice of lien shall be satisfied by the commission in the manner heretofore provided upon payment of the amount finally determined to be due from said employer. In the event enforcement of said jeopardy warrant is not superseded as hereinabove provided the employer shall be entitled to a refund from the fund of all amounts paid as contributions in excess of the amount finally determined to be due by said employer upon application being made as provided in this chapter.

(4) MISCELLANEOUS PROVISIONS FOR ENFORCEMENT OF COLLECTION OF CONTRIBUTIONS.—(a) Independently of all other remedies and proceedings authorized by this law for the enforcement of and the collection of contributions hereby levied, a right of action by suit in the name of the commission is hereby created. Suit may be maintained and prosecuted, and all proceedings taken, to the same effect and extent as for the enforcement of a right of action for debt or assumpsit, and any and all remedies available in such actions including attachment and garnishment shall be available to the commission for the collection of any contribution accruing hereunder; provided that the commission shall not be required to post bond in any such action or proceeding; and providing further that nothing herein contained shall be construed as making of said contributions a debt or demand unenforceable against homestead property provided by article X of the constitution of the state, the above remedies being procedural only.

(b) Any employer failing to make return or to pay the contributions levied under this chapter, and who has not ceased to be an employer as provided in §443.09 hereof, may be enjoined from employing individuals in employment as defined in this chapter upon the complaint of the commission in the circuit court of the county in which said employer may be doing business; and such employer so failing to make return or to pay contributions levied hereunder shall be enjoined from employing individuals in employment until such return shall have been made and the contributions shown to be due thereunder paid to the commission.

(c) The commission or any agent or employee whom it may designate shall have the power to administer an oath to any person in respect to any return or report required by this law or by the rules and regulations of the commission and such oath made before the commission or any authorized agent or employee shall have the same efficacy as an oath made before any judicial officer or notary public of the state.

(d) Civil actions brought under this chapter to collect contributions and interest thereon, or any proceeding had herein for the collection of contributions from an employer shall be heard by the court having jurisdiction thereof at the earliest possible date, and shall be entitled to preference upon the calendar of said court over all other civil actions except petitions for judicial review of claims for benefits arising under this chapter and cases arising under the workmen's compensation law of this state.

(e) The commission is hereby authorized to commence action in any other state by and in the name of the commission to collect unemployment compensation contributions, penalties and interest legally due this state. The officials of other states which extend a like comity to this state are authorized to sue for the collection of such contributions, interest and penalties in the courts of this state. The courts of this state shall recognize and enforce liability for such contributions interest and penalties imposed by other states which extend a like comity to this state.

(f) The collection of any contribution, interest and penalty otherwise due under this chapter shall not be enforcible by civil action, warrant, claim or other means unless within five years from the date upon which such contribution, interest and penalty became due and payable as provided by law and by regulations of the commission, a notice of lien with respect to such contribution, interest and penalty was filed for record with a clerk of a circuit court as provided in subsection (3) of this section.

(5) PRIORITIES UNDER LEGAL DISSOLUTION OR DISTRIBUTIONS.—In the event of any distribution of any employer's assets pursuant to an order of any court under the laws of this state, including any receiverships, assignment for benefit of creditors, adjudicated insolvency, composition, administration of estates of decedents, or any other similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except claims for wages of not more than two hundred and fifty dollars to each claimant, earned within six months of the commencement of the proceeding, and on a parity with all other tax claims wherever such tax claims shall have been given priority. In the administration of the estate of any decedent the filing of notice of lien shall be deemed a proceeding required upon protest of the claim filed by the commission for

contributions due under this chapter and such claim shall be allowed by the county judge. Provided, however, that the personal representative of the decedent may by petition to the circuit court object to the validity of the claim of the commission and proceedings shall be had in the circuit court for the determination of the validity of the claim of the commission, and, provided further, that the bond of the personal representative shall not be discharged until such claim is finally determined by the circuit court, and where no bond has been given by the personal representative none of the assets of said estate shall be distributed until such final determination by the circuit court; and, provided, further, that upon distribution of the assets of the estate of any decendent the claim of the commission shall have priority established in class (5) of §733.20, subject to the above limitations with reference to wages. In the event of any employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in §64B of that act (U. S. C. Title II, §104(b), as amended).

(6) REFUNDS.—If not later than four years after the date of payment of any amount as contributions, interest or penalties, an employing unit who has paid such contributions, interest or penalties shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or penalties or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payment by him, or if such adjustment cannot be made, the commission shall refund said amount, without interest, from the fund. For like cause, and within the same period, adjustment or refund may be made on the commission's own initiative. Provided, however, that nothing in this chapter shall be construed to authorize a refund of contributions which were properly paid in accordance with the provisions of this chapter at the time of such payment, except as required by §443.03(5)(g) 7.; provided further that refunds under this subsection and under §443.03 (5) (g) 7. may be paid from either the clearing account or the benefit account of the unemployment compensation trust fund and from the special employment security administration trust fund with respect to interest or penalties which have been previously paid into such fund, provisions of §443.10 (2) to the contrary notwithstanding.

History.—§15, ch. 18402, 1937; §10, ch. 19637, 1939; CGL 1940 Supp. 4151(502); §14, ch. 20685, 1941; am. §5, ch 21982, 1943; §5, ch. 24084, 1947; §11, ch. 25035, 1949; sub. §(4)(f), §9, ch. 26879, 1951; sub. §(2)(b) am. §12, ch. 28242, 1953.

Sub. §(6) am. §12, ch. 29771, 1955; (2)(a) by §3, ch. 57-268; (5) by §24, ch. 57-1; (1), (6) a. by §2, ch. 61-119; (6) a. by §3, ch. 61-228.

cf.—1.01(13) defines registered mail to include certified mail with return receipt requested.

443.16 Waiver of rights; fees; privileged communications.—

(1) WAIVER OF RIGHTS VOID. — Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of any employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred nor more than one thousand dollars, or be imprisoned for not more than six months, or both.

(2) FEES.—

(a) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives, or by any court or any officer thereof, except as hereinafter provided. Any individual claiming benefits in any proceeding before the commission or representatives of the commission or a court may be represented by counsel or duly authorized agent, but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commission or by the court.

(b) An attorney at law representing a claimant for benefits in any district court of appeal of this state or in the supreme court of Florida shall be entitled to counsel fees payable by the commission as fixed by the court in either of the following cases:

1. Where petition for review or appeal is initiated by any party to such proceeding other than the claimant, or

2. Where such petition for review or appeal is initiated by the claimant and results in a decision awarding more benefits than did the decision under review or from which appeal was taken.

(c) Attorneys' fees awarded under this section shall be paid by the commission out of employment security administration funds as a part of the costs of administration of this chapter and may be paid directly to the attorney for the claimant in a lump sum.

(d) Any person, firm or corporation who or which seeks or receives any remuneration or gratuity for any services rendered on behalf of a claimant, except as allowed by this section and in an amount approved by the commission or by a court, shall be guilty of a misdemeanor. Any person, firm or corporation who or which shall solicit the business of appearing on behalf of a claimant, or shall make it a business to solicit employment for another in connection with any claim for benefits under this chapter, shall be guilty of a misdemeanor.

(3) PRIVILEGED COMMUNICATIONS. — All letters, reports, communications, or any other

matters, either oral or written, from the employer or employee to each other or to the commission or any of its agents, representatives or employees which shall have been written, sent, delivered, or made in connection with the requirements and administration of this chapter, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of the state.

History.—§16, ch. 18402, 1937; §11, ch. 19637, 1939; CGL 1940 Supp. 4151(503), 8135(42), 8135(43), 8135(44); §15, ch. 20685, 1941; Sub. §(2), §10, ch. 26879, 1951; (2)(b) §4, by ch. 57-268.

443.17 Benefits not alienable.—Benefits due under this chapter shall not be assigned, pledged, encumbered, released, or commuted and shall, except as otherwise provided in this chapter, be exempt from all claims of creditors and from levy, execution or attachment, or other remedy for recovery or collection of a debt, which exemption may not be waived.

History.—§17, ch. 18402, 1937; CGL 1940 Supp. 4151(504).

443.18 Reciprocal arrangement.—

(1) The commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

(a) Services performed by an individual for a single employing unit for which services are customarily performed by such individuals in more than one state shall be deemed to be services performed entirely within any one of the states:

1. In which any part of such individual's service is performed, or

2. In which such individual has his residence, or

3. In which the employing unit maintains a place of business, provided there is in effect as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state;

(b) Potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(c) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this chapter, and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or if the federal government is payable, but no such arrangements shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the commission finds will be fair and reasonable as to all affected interests; and

(d) Contributions due under this chapter with respect to wages for insured work shall for the purposes of §§443.08 and 443.15 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the commission finds will be fair and reasonable as to all affected interests.

(2) Reimbursements paid from the fund pursuant to paragraph (c) of subsection (1) of this section shall be deemed to be benefits for the purpose of §§443.04 and 443.10. The commission is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subsection (1) of this section.

(3) The administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information. The commission is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law.

(4) To the extent permissible under the laws and constitution of the United States, the commission is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of the state or under a similar law of such government.

History.—§19, ch. 18402, 1937; §12, ch. 19637, 1939; CGL 1940 Supp. 4151(505); §17, ch. 20685, 1941; am. §6, ch. 24084, 1947; §11, ch. 25035, 1949; sub §(1)(a) am. §1, ch. 29768, 1955.

443.19 Unemployment compensation trust fund to be sole source of benefits; nonliability of state.—The unemployment compensation trust fund established by this chapter shall be the sole and exclusive source for the payment of benefits payable hereunder, and such benefits shall be deemed to be due and payable only to the extent that contributions, with increments thereon, actually collected and credited to the fund and not otherwise appropriated and/or allocated, are available therefor. The state undertakes the administration of such fund without any liability on the part of the state beyond the amount of moneys received from the said bureau of employment security or other federal agency.

History.—§23, ch. 18402, 1937; CGL 1940 Supp. 4151(506). §13, ch. 29771, 1955; §2, ch. 61-119.

443.20 Rule of liberal construction.—This chapter shall be liberally construed to accomplish its purpose to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment. The legislature hereby declares its intention to provide for carrying out the purposes of this chapter in cooperation with the appropriate agencies of other states and of the federal government, as part of a nationwide employment security program, and particularly to provide for meeting the requirements of Title III, the requirements of the federal unemployment tax act, and the act of congress approved June 6, 1933, entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes" (the Wagner-Peyser act), each as amended, in order to secure for this state and the citizens thereof the grants and privileges available thereunder; all doubts as to the proper construction of any provision of this chapter shall be resolved in favor of conformity with such requirements.

History.—§23½, ch. 18402, 1937; CGL 1940 Supp. 4151(488), 4151(507); §2, ch. 20685, 1941; §14, ch. 29771, 1955.

443.21 Saving clause.—The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto, shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History.—§20, ch. 18402, 1937; CGL 1940 Supp. 4151(508).

443.22 Penalties.—

(1) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any benefits or other payment under this chapter or under an employment security law of any other state, of the Federal government, or of a foreign government, either for himself or for any other person, shall be punished by a fine of not less than $50 nor more than $100 or by imprisonment for not longer than thirty days, or both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(2) Any employing unit or any officer or agent of any employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any such contribution or other payment or to furnish any reports required hereunder, or to produce or permit the inspection of or copying of records as required hereunder, or who fails or refuses, within six months after written demand therefor by the commission, to keep and maintain the payroll records required by this chapter and by the regulations of the commission, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not longer than sixty days or by both such fine and imprisonment.

(3) Any person who shall wilfully violate any provision of this chapter or any order, rule or regulation hereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed hereunder nor provided by any other applicable statute, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment.

History.—§18, ch. 18402, 1937; CGL 1940 Supp. 4151(510), 8135(45), 8135(46), 8135(47); §16, ch. 20685, 1941.
Sub. §(1) am. §11, ch. 26879, 1951; sub. §(2) am. §1, ch. 29770, 1955.

cf.—§775.06 Alternative punishment.

CHAPTER 446

APPRENTICES

446.011 Voluntary apprenticeship program.—It is the declared policy of the state of Florida that the purpose of this chapter is to make available to the young people of Florida an opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship, under approved apprentice agreements, providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish within the Florida industrial commission an apprenticeship department; to provide for the administration of this chapter under the direction of the Florida industrial commission and in accordance with the prescribed standards and policies of the state apprenticeship council to assist in effectuating the purposes of this chapter; to provide for reports to the legislature and to the public regarding the status of apprentice training in the state; to establish a procedure for the determination of the apprentice agreement controversies; and to accomplish related ends; provided, however, that this chapter shall not apply to employers who with their employees are subject to the provisions of the railway labor act or amendments thereto.

History.—§1, ch. 23934, 1947; §11, ch. 25035, 1949; am. §1, ch. 28037, 1953; §1, ch. 63-153.

446.021 Definition of an apprentice.—The term "apprentice" as used herein shall mean an employed person at least sixteen years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of craftsmen, which training should be supplemented by properly coordinated studies of related technical and supplementary subjects; who has entered into a written agreement (hereinafter called an apprentice agreement) with an employer, an association of employers, or a local joint apprenticeship committee, providing for not less than four thousand hours of reasonably continuous employment for such person.

History.—§2, ch. 23934, 1947; §1, ch. 63-153.

446.031 Apprenticeship council; created.—(1) There is hereby created a state apprenticeship council, as a policy making agency, to be composed of ten members. The chairman of the Florida industrial commission shall be chairman of the council but without vote except in case of a tie. The supervisor of trade and industrial education shall be appointed a member of the council, as a consultant without vote. In addition thereto, the governor shall appoint four representatives each from employer and employee organizations, respectively, representing the building and construction industry, metal trades and shipyards, printing industry, and aircraft industry, whose terms shall run concurrently with the governor's. Each member of the council shall serve without pay, but shall be allowed necessary expenses, in accordance with state law, incurred in connection with the performance of their official duties.

(2) The council shall establish standards and policies regarding apprentice programs and agreements; it may issue such rules and regulation as may be necessary to carry out such standards and policies pertaining only to the formal procedure of this chapter. Not later than March 15 of each year the commission shall make a report to the governor of its activities and of the activities of the council.

History.—§3, ch. 23934, 1947; §2, ch. 28037, 1953; §1, ch. 63-153.

446.041 Apprenticeship department and personnel.—

(1) There is hereby created and established within the Florida industrial commission a department of apprenticeship. Such department shall be under the direction of a director who shall be appointed by the Florida industrial commission. The commission shall prescribe the salary and fix the duties of such director and such other clerical, technical, and professional personnel as may be necessary to effectuate the purposes of this chapter; the director and all of such personnel shall be appointed and employed in accordance with the merit system of the Florida industrial commission. The director and such personnel shall be reimbursed for traveling expenses as provided in §112.061.

(2) The director is authorized to administer the provisions of this chapter; in cooperation with local joint apprenticeship committees, to set up conditions and training standards for apprentice agreements; to act as executive secretary of the council; to register any apprentice programs and agreements which meet the standards established by the council; to terminate or cancel any apprentice agreement in accordance with the provisions of such agreement; to keep a record of apprentice agreements and their disposition; to issue certificates of completion of apprenticeship in accordance with the council's standards; and to perform such other duties as the commission may direct.

History.—§4, ch. 23934, 1947; §3, ch. 28037, 1953; §1, ch. 63-153; (1) §19, ch. 63-400.

446.051 Related instruction.—The administration and supervision of related and supplemental instruction for apprentices, coordination of such instruction with job experiences, and selection and training of teachers and coordinators for such instruction, all as approved by the council, shall be the responsibility of the state supervisor of trade and industrial education in the state department of education.

History.—§5, ch. 23934, 1947; §4, ch. 28037, 1953; §1, ch. 63-153.

446.061 Expenditures.—The industrial commission shall make necessary expenditures from the appropriation provided by law for personal services, travel, printing, equipment, office space, and supplies as provided by law.

History.—§6, ch. 23934, 1947; §24, ch. 57-1; §1, ch. 63-153.

446.071 Local apprenticeship committees.—A local apprenticeship committee shall be approved, in any trade or group of trades, in a city or trade area, by the council whenever the apprentice training needs of such trade or groups of trades justifies such establishment. Such local apprenticeship committee shall be composed of an equal number of employer and employee representatives, chosen from names submitted by the respective local employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the committee shall be appointed from persons known to represent the interests of employers and of employees, respectively. The duties of a local apprenticeship committee shall be: To work in an advisory capacity with employers and employees in matters regarding schedule of operations, application of wage rates, and working conditions for apprentices; to adjust apprenticeship disputes, subject to the approval of the council; and to cooperate with school authorities in regard to the education of apprentices in accordance with standards established by the council.

History.—§7, ch. 23934, 1947; §1, ch. 63-153.

446.081 Limitation.—Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees setting up higher apprenticeship standards.

No person shall institute any action for the enforcement of any apprentice agreement, or for damages for the breach of any apprentice agreement, made under this chapter, unless he shall first have exhausted all administrative remedies provided by this section.

Any person aggrieved by any determination or act of the council or the Florida industrial commission may appeal therefrom to the industrial commission, which commission shall hold a hearing thereon, after due notice to the interested parties. The decision of the commission as to the facts shall be conclusive if supported by the evidence and all orders and decisions of the commission shall be prima facie lawful and reasonable. Any party to an apprentice agreement aggrieved by an order or decision of the commission may appeal to the courts on questions of law. The decision of the commission shall be conclusive if such appeal therefrom shall not be filed within thirty days after the date of such order or decision.

History.—§8, ch. 23934, 1947; §5, ch. 28037, 1953; §1, ch. 63-153.

446.091 On-the-job training program.—All provisions of this chapter relating to apprenticeship, including but not limited to programs, agreements, standards, administration, procedures, definitions, expenditures, local committees, council, powers and duties, limitations, grievances, and functions of the apprenticeship department of the Florida industrial commission, shall be appropriately adapted and made applicable to a program of on-the-job training hereby authorized for persons other than apprentices.

History.—§2, ch. 63-153.

CHAPTER 447

LABOR ORGANIZATIONS

447.01 Regulating labor unions; state policy.—

(1) Because of the activities of labor unions affecting the economic conditions of the country and the state, entering as they do into practically every business and industrial enterprise, it is the sense of the legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth.

History.—§1, ch. 21968, 1943.
cf.—§447.15, Railway workers excepted.

447.02 Definitions.—The following terms, when used in this chapter, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment.

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in

(a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or

(b) in soliciting or receiving from any employer any right or privilege for employees.

History.—§2, ch. 21968, 1943.

447.03 Employees' right of self-organization.—Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

History.—§3, ch. 21968, 1943.

447.04 Business agents; licenses, permits, etc.—

(1) No person shall be granted a license or a permit to act as a business agent in the state:

(a) Who has not been a citizen of and has not resided in the United States for a period of more than five years next prior to making application for such license or permit;

(b) Who has been convicted of a felony and has not had his civil rights restored.

(c) Who is not a person of good moral character; and,

(2) Every person desiring to act as a business agent in the state shall, before doing so, obtain a license or permit by filing an application under oath therefor with the secretary of state, accompanied by a fee of one dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority so to do. The secretary of state shall hold such application on file for a period of thirty days, during which time any person may file objections to the issuing of such license or permit.

The secretary of state may also conduct an independent investigation of the applicant and if objections are filed, he may hold or cause to be held a hearing in accordance with rules and regulations prescribed by the hereinafter named board; the objectors and the applicant shall be permitted to attend said hearing and present evidence.

(3) After the expiration of the thirty-day period, regardless of whether or not any objections have been filed, the secretary of state shall submit the application, together with all information that he may have, including but not limited to, any objections that may have been filed to such application, any information that may have been obtained pursuant to an independent investigation and the results of any hearing on the application, to a board to be composed of the governor as chairman, the secretary of state, and the state superintendent of public instruction. If a majority of the board shall from a review of the information furnished to it by the secretary of state, find that the applicant is qualified, pursuant to the terms of this chapter, then the board shall by resolution, authorize and direct the secretary of state to

issue such license or permit, and said license or permit shall run for the calendar year for which issued, unless sooner surrendered, suspended, or revoked.

(4) License and permits may be renewed by the secretary of state on a form prescribed by him; however, if any such license or permit has been surrendered, suspended, or revoked during the year, then such applicant must go through the same formalities as a new applicant.

History.—§4, ch. 21968, 1943; sub. §(3), §1, ch. 26762, 1951; (2), (3) §§1, 2, ch. 61-120; (1) §1, (4) n. §2, ch. 63-139.

447.05 Initiation fees; limitation.—Labor unions or labor organizations shall not charge an initiation fee in excess of the sum of fifteen dollars; provided, that initiation fees in effect on January 1st, 1940, may be continued.

History.—§5, ch. 21968, 1943.

447.06 Registration of labor organizations required.—

(1) Every labor organization operating in the state shall make a report in writing to the secretary of state annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the secretary of state may prescribe, and shall show the following facts:

(a) The name of the labor organization;

(b) The location of its office;

(c) The name and address of the president, secretary, treasurer and business agent.

(2) At the time of filing such report it shall be the duty of every such labor organization to pay the secretary of state an annual fee therefor in the sum of one dollar.

History.—§6, ch. 21968, 1943.

447.07 Records and accounts required to be kept.—It shall be the duty of any and all labor organizations in this state to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor organization shall be entitled at all reasonable times to inspect the books, records and accounts of such labor organization.

History.—§7, ch. 21968, 1943.

447.08 Rights of members in armed forces.—Any employee who is a member of any labor organization who, because of services with the armed forces of the United States, during time of war or national emergency, has been unable to pay any dues, assessments or sums levied by any labor organization, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any labor organization to which he belonged.

History.—§8, ch. 21968, 1943.

447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this chapter, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or bylaws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between or within labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in §447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

History.—§9, ch. 21968, 1943.

447.10 Attorney general; duties.—An action may be commenced by the attorney general of the state on complaint of any interested party, for the suspension or revocation of the license of any business agent for the violation of any of the provisions of this chapter. Said action shall be commenced only in the circuit court of the county of residence of such business agent or of the county in which such violations occurred. Such action shall be heard by the court without

a jury and the rules of civil procedure shall apply in such proceedings. The court may suspend such license for such time as in its judgment is deemed best, or may revoke such license.

History.—§10, ch. 21968, 1943; am. §2, ch. 29737, 1955.

447.11 Actions and suits; labor organizations as parties.—Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this state. All process, pleadings and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only, of such labor organization.

History.—§11, ch. 21968, 1943.
cf.—§47.33, Process, service.

447.12 Fees for registration with secretary of state.—All fees collected by the secretary of state hereunder shall be paid to the state treasurer and credited to the general fund.

History.—§12, ch. 21968, 1943.

447.13 Right to strike preserved.—Except as specifically provided in this chapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech.

History.—§13, ch. 21968, 1943.
cf.—§§453.05, 453.13, Work stoppage on public utilities.

447.14 Penalties.—Any person or labor organization who shall violate any of the provisions of this chapter shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

History.—§14, ch. 21968, 1943.

447.15 Federal regulations recognized.—All railway labor organizations and members thereof shall be exempt from all of the provisions of this chapter as long as they are regulated by act of congress.

History.—§15, ch. 21968, 1943.

CHAPTER 448

GENERAL LABOR REGULATIONS

448.01 Ten hours of labor a legal day's work; extra pay.—Ten hours of labor shall be a legal day's work, and when any person employed to perform manual labor of any kind by the day, week, month or year renders ten hours of labor, he shall be considered to have performed a legal day's work, unless a written contract has been signed by the person so employed and the employer, requiring a less or greater number of hours of labor to be performed daily.

Unless such written contract has been made, the person employed shall be entitled to extra pay for all work performed by the requirement of his employer in excess of ten hours' labor daily.

History.—§§1-3, ch. 1988, 1874; RS 2117, 2118; GS 2641, 2642; RGS 4016, 4017; CGL 5939, 5940.
cf.—§450.111, Hours of work in child labor law.

448.03 Threatening to discharge employee to compel him to trade with any particular firm or person; penalty.—Any person or persons, firm, joint stock company, association or corporation organized, chartered or incorporated by and under the laws of this state, either as owner or lessee, having persons in their service as employees, who shall discharge any employee or threaten to discharge any employee in their service for trading or dealing, or for not trading or dealing as a customer or patron with any particular merchant or other person or class of persons in any business calling, or shall notify any employee either by general or special notice, directly or indirectly, secretly or openly given, not to trade or deal as a customer or patron with any particular merchant or person or class of persons in any business or calling, under penalty of being discharged from the service of such person, firm, joint stock company, corporation or association shall be punished by fine not exceeding one thousand dollars or imprisonment not exceeding one year.

History.—§§1, 2, ch. 5015, 1901; GS 3233; RGS 5066; CGL 7168.
cf.—§775.06, Alternative punishment.

448.04 Penalty for officer or agent violating the preceding section.—Any person acting as an officer or agent of any firm, joint stock company, association or corporation of the kind and character as described in §448.03 or for any one of them, who makes or executes any notice, order or threat of the kind therein mentioned and forbidden, shall be fined not more than five hundred dollars or imprisoned not longer than six months.

History.—§2, ch. 5015, 1901; GS 3234; RGS 5067; CGL 7169.
cf.—§775.06, Alternative punishment.

448.05 Seats to be furnished for employees in stores; penalty.—If any merchant, storekeeper, employer of male or female clerks, salesmen, cash boys or cash girls, or other assistants, in mercantile or other business pursuits, requiring such employees to stand or walk during their active duties, neglect to furnish at his own cost or expense suitable chairs, stools or sliding seats attached to the counters or walls, for the use of such employees when not engaged in their active work, and not required to be on their feet in the proper performance of their several duties; or refuse to permit their said employees to make reasonable use of said seats during business hours, for purposes of necessary rest, and when such use will not interfere with humane or reasonable requirements of their employment, he shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars, or imprisonment not exceeding sixty days.

History.—§1, ch. 4762, 1899; GS 3235; RGS 5068; CGL 7170.
cf.—§775.06, Alternative punishment.

448.06 Labor problems; mediation and conciliation service; purpose; appointment of mediator and other personnel; appropriation.—

(1) There is hereby created and established a voluntary mediation and conciliation service, the objective of which is the prevention and amicable settlement of labor problems. Such service shall be under the jurisdiction of the governor who is authorized to appoint, prescribe the duties, title, and fix the salary of one full-time mediator or conciliator and such additional personnel as, in the discretion of the governor, may be required.

(2) The governor, by and through the mediation and conciliation service, is hereby authorized and directed to promote, assist, and encourage the maintenance of mutually satisfactory employer-employee relationships within the state, and, upon requests of any bona fide party to a labor dispute or in the event of an existing or imminent work stoppage, to proffer services and assistance to both parties in an effort to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues which precipitated or culminated in or which threaten to precipitate or culminate in such labor dispute.

(3) The governor, by and through the mediation and conciliation service and with the cooperation of other departments under his jurisdiction, shall gather and analyze statistical information relating to labor and industrial relations within the state and in comparison

with other states, and make reports and recommendations biennially to the legislature.

(4) No employee of the mediation and conciliation service, or any other person authorized by the governor to engage in the performance of duties prescribed by this section, shall be compelled to disclose to any administrative or judicial tribunal any information relating to or acquired from private employers, employees, or their representatives in the course of official conciliation and mediation activities under the provisions of this section, nor shall any reports, minutes, written communications or other documents or copies of documents, and the above-named employees pertaining to such private information be subject to subpoena; and all reports, minutes, written communications, oral conversations, other documents or copies of documents, and the above-named employees, and any other information obtained directly or indirectly in the performance of this service of mediation or conciliation shall be deemed privileged matter and subject to the complete immunities thereby.

(5) The governor shall include in his legislative budget request the estimated amounts needed for the purpose of effectively carrying out the provisions of this section and the legislature shall appropriate such amounts as it deems necessary for this purpose. All appropriations for this purpose shall be used at the direction and discretion of the governor.

History.—§§1-4, 6, ch. 57-306; (5) a. by §1, ch. 61-29.

CHAPTER 449

PRIVATE EMPLOYMENT AGENCIES

*449.01 **Definitions.**—When appearing in this law or in any rule or regulation adopted pursuant thereto the following words shall mean:

(1) Private employment agency—any person, firm or corporation, who for hire or for profit, shall undertake to secure employment or help, or through the medium of a card, circular, pamphlet, or other medium whatsoever, or through the display of a sign or bulletin, or by any other holding out to the public, offers to secure employment or help, or give information as to where employment or help may be secured.

(2) General employment agency—the business of conducting an agency, bureau, office or any place restricted to the purpose of procuring, offering, promising or attempting to provide employment for persons who want employment in any occupation except in the theatrical or entertainment field.

(3) Model agency—the business of conducting an agency, bureau, office or any other place restricted to the purpose of procuring, offering, promising or attempting to provide engagements for models who demonstrate or display a product, such exhibitions not to be in the entertainment or theatrical field or to include vocal participation by the model.

(4) Nurses registry—any business restricted to the conducting of an agency, bureau, office or any other place for the purpose of procuring, offering, promising or attempting to provide employment or engagements for nurses of any kind; or any place used as a lodging house for nurses, the keeper of which receives telephone calls or messages of any kind relative to the employment of such nurses and transmits such messages or calls to a nurse lodging in his or her house.

(5) Domestic help agency—any business restricted to the conducting of any agency, bureau, office or any other place for the purpose of procuring, offering, promising or attempting to provide employment by placement of domestic help in private homes.

(6) Baby sitter agency—any business restricted to the conducting of an agency, bureau, office or any other place for the purpose of placement of baby sitters in private homes.

(7) Theatrical employment agency—any business restricted to the conducting of an agency, bureau, office or other place for the purpose of procuring, offering, promising or attempting to provide engagements for persons who want employment in, including but not limited to, the following occupations: circus, vaudeville, theatrical and other entertainment type performances, or of giving information as to where such engagement may be procured or provided, whether such business is conducted in a building, on the street, or elsewhere.

(8) Agent—any partner in a partnership, member of a firm, or officer of a corporation, whose partnership, firm or corporation holds a private employment agency license. Also any individual who is the sole owner of a private employment agency.

(9) Agency employee—manager, placement clerk, interview clerk, or solicitor of a private employment agency.

(10) Fee—in addition to its ordinary and accepted meaning, means money or promise to pay money. The term fee means and includes the excess of money received by any private employment agent over what he has paid for transportation, transfer of baggage, or lodging for any applicant for employment. The term fee as used in this chapter also means and includes the difference between the amount of money received by any person, who furnishes employees or performers for any entertainment, exhibition or performance, and the amount paid by the said person receiving said amount of money to the employees or performers whom he hires to give such entertainment, exhibition or performance.

(11) Privilege—the furnishing of food, supplies, tools, or shelter to contract laborers, commonly known as commissary privileges.

(12) Theatrical engagement—any engage-

ment or employment of a person as an actor, performer, or entertainer in a circus, vaudeville, theatrical or any other entertainment exhibition or performance.

(13) Emergency engagement—any engagement that is to be performed within twenty-four hours of the time such application was made by an employer.

(14) Permanent employment—any employment or engagement not specified as temporary.

(15) Temporary employment—any employment or engagement specified and agreed upon by all parties involved as temporary at the time of acceptance.

(16) Commission—the secretary of state, or any duly authorized deputy, inspector, or agent thereof.

History.—§1, ch. 24080, 1947; (8) §1, ch. 61-421; §1, ch. 63-205.
*Note.—Effective January 1, 1964.

***449.02 Duties of the commission; authority to issue and revoke license; issuance of rules and regulations.—**

(1) The commission is hereby vested with the power, jurisdiction and authority to issue and revoke licenses to employment agencies, agents or agency employees, to deny such applicants a license, to suspend the license for a reasonable period, or assess a civil penalty against any licensee in an amount not to exceed the annual license fee, when it is satisfied that said party has:

(a) Obtained license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the commission;

(b) Violated any of the provisions of this chapter or any lawful rules or regulations of the commission;

(c) Been guilty of a crime against the laws of this or any other state, or government involving moral turpitude or dishonest dealings;

(d) Made, printed, published, distributed, or caused, authorized, or knowingly permitted the making, printing, publication or distribution of false statements, descriptions, or promises of such a character as to reasonably induce any person to act to his damage or injury, where such statements, descriptions, or promises purport to be made or to be performed by the employment agent, if the agent then knew, or by the exercise of reasonable care and inquiry, could have known, of the falsity of said statements, descriptions or promises;

(e) Knowingly committed, or been a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relying upon the work, representation, or conduct of the employment agent shall act or have acted to his injury or damage.

(f) Failed or refused upon demand, to disclose any information within his knowledge, or to produce any document, book or record in his possession for inspection to the commission or any authorized agent thereof, acting within the jurisdiction or by authority of law.

(g) Established his agency in, or in connection with any place where intoxicating liquors are sold; or, in or in connection with any place where gambling is permitted; or, in, or in connection with any place of amusement kept for immoral purposes.

(h) Charged, collected or received a greater compensation for any service performed by him than is specified in his schedule of fees, charges and commissions previously filed with the commission.

(2) The secretary of state shall have the power, jurisdiction and authority to promulgate reasonable rules and regulations for his own government and in the exercise of his powers hereunder and for the conduct of the business of employment agencies, not in conflict with the constitution and laws of the United States or of this state and may amend same at his pleasure.

History.—§2, ch. 24080, 1947; §1, ch. 25265, 1949; sub §(9) a. by §10, ch. 26484, 1951; sub §(6) am. §1, ch. 29943, 1955; (1) §2, ch. 61-421; §2, ch. 63-205.
*Note.—Effective January 1, 1964.

***449.021 License requirements.**—No person, firm or corporation shall open, keep or carry on any employment agency in the state unless he shall first procure a license therefor from the commission. Each person, partner, or in the case of corporations, each corporate officer must qualify for separately and be licensed as an agent for carrying on the business of a private employment agency as provided by this chapter. Provided, however, that theatrical agencies, model agencies, nurses registry and baby sitter agencies will not be required to have agents' licenses and domestic help agencies owned by an individual and which have no agency employees will not be required to have an agent's license and further provided that where a partnership consists of a husband and wife, said husband and wife are considered as one for licensing purposes hereunder and one agent fee shall cover both partners.

History.—§3, ch. 63-205.
*Note.—Effective January 1, 1964.

***449.022 License; fees; renewals.—**

(1) All licenses issued to private employment agencies shall be of one of the following categories: general employment agency; model agency; nurses registry; domestic help agency; baby sitter agency; or theatrical agency. Agencies licensed for each particular category shall be confined to the activities as set forth in the definitions set out in §449.01.

(2) The annual license fee for each agency shall be as follows: general employment agency, one hundred dollars; model agency, one hundred dollars; nurses registry, one hundred dollars; domestic help agency, one hundred dollars; baby sitter agency, fifty dollars; theatrical employment agency, one hundred dollars. The annual license fee for an agent is one hundred dollars. The annual license fee must accompany the application for an agency. Provided, however, that charitable agencies operated exclusively by and for the benefit of any religious, charitable or benevolent organization shall be entitled to license without paying fees

therefor, provided all other requirements are met.

(3) All licenses issued by the commission shall expire on December 31, of the year in which said licenses are issued. Every person actively engaged in business as an employment agency in the state who fails to renew such license by the expiration date thereof, shall be automatically suspended from the right to engage in such business for which he was previously licensed, until said license is renewed. License for the next succeeding year shall be issued upon written request on the form prescribed by the commission, and it shall be accompanied by the required fee. When made in proper form, such request shall not be denied or unreasonably delayed.

History.—§4, ch. 63-205.
*Note.—Effective January 1, 1964.

***449.023 Qualification for agent and agency license.—**

(1) All agency and agent licensees shall be competent, honest, truthful, trustworthy, of good character and bear a reputation for fair dealing. Each such person must also be a citizen of the United States and have had three years experience as an employment clerk in this state or the equivalent thereof in related fields, which experience must have been continuous and immediately preceding the date of such application or in lieu of the required experience must have been a previously licensed owner or operator of an employment agency in this state.

(2) In addition to the foregoing qualifications, each application shall show whether or not the applicant, any member of the applying partnership, or any officer of an applying corporation is financially interested in any other business of like nature and if so, specifying such interest or interests.

History.—§5, ch. 63-205.
*Note.—Effective January 1, 1964.

***449.024 Agency employee licenses; qualifications; fees.—**

(1) Every person shall, before being employed as a manager, placement clerk, interview clerk, or solicitor, hereinafter called agency employees, by any private employment agency, make application to the commission for a license as such. All who receive such licenses shall be honest, trustworthy, of good character and bear a reputation for fair dealing. No such person shall be employed by any private employment agency before application is made for license. If the commission declines to issue license or revokes it after issuance, the employment of such person shall be terminated. Every person licensed as a manager shall have had, in addition to the qualifications of this subsection, one year's experience as an agency employee, or the equivalent thereof in related fields.

(2) Every private employment agency shall be under the direct management of a manager or licensed agent.

(3) Annual fee for the manager's license shall be fifty dollars and for other agency employees ten dollars.

(4) Each agency shall upon the employment or termination of employment of an agency employee report it immediately to the commission. During the period of employment of any licensed agency employee, the license of said employee shall be on the premises and readily accessible.

History.—§6, ch 63-205.
*Note.—Effective January 1, 1964.

***449.025 Fees to be charged by agencies; rates; display.—**

(1) Each applicant for an agency license shall file with the application a schedule for fees, charges and commissions which he intends to charge and collect for his services, which must be approved by the commission before license is issued. Such schedule of fees, charges and commissions may thereafter be changed only by filing with the commission an amended or supplemental schedule, showing such changes at least fifteen days before the change is to become effective. Such schedule of fees to be charged shall be posted in a conspicuous place in each room of such agency and such schedule of fees shall be printed in not less than a 30-point bold faced type, except that agencies which use written contracts containing fee schedules shall not be required to post such schedules.

History.—§7, ch. 63-205.
*Note.—Effective January 1, 1964.

449.03 Bond required with application for license.—There shall be filed with each original application for agency license a bond in the form of a surety, by a reputable company engaged in the bonding business, authorized to do business in the state, in due form to the governor of the state, for the penal sum of three thousand dollars with one or more sureties, to be approved by the commission, and conditioned that the applicant conform to and not violate any of the duties, terms, conditions, provisions or requirements of this chapter. If any person shall be aggrieved by the misconduct of any such licensed agency, such person may maintain an action in his own name upon the bond of said employment agency, in any court having jurisdiction of the amount claimed. All such claims shall be assignable, and the assignee shall be entitled to the same upon the bond of such licensed agency or otherwise, as the person aggrieved would have been entitled to if such claim had not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist.

History.—§3, ch. 24080, 1947.
Am. §2, ch. 25265, 1949.

449.04 Records required to be kept.—It shall be the duty of every such licensed agency to keep on file all applications of every accepted applicant for employment, name and address of applicant to whom employment is offered or promised, name and address of the person

to whom the applicant is sent for employment, the amount of the fee received, and the number of the receipt. No such licensed agency, or its employees, shall knowingly make any false entry in applicant files or receipt files. Each individual card or document in said files shall be preserved and not destroyed for a period of three years from date of last entry thereon. Every employment agent shall keep true and accurate work records containing such information as this chapter provides and as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require monthly reports from each licensed agency, stating number of applicants and number of placements handled for the month. Such number of placements shall be broken down in the following classifications: clerical, industrial, hotel and restaurant, and domestic. Forms for such reports shall be furnished by the commission. The commission shall furnish each licensed agency a statistical report combining the above information from all agencies with same information from files of the Florida state employment services.

History.—§4, ch. 24080, 1947.
Am. §3, ch. 25265, 1949.

449.05 Registration fees, when permitted; investigation; revocation of permit; referral.—

(1) No such licensed agency shall charge a registration fee without having first obtained a permit to charge such registration fee from the commission. Any such licensed person desiring to charge such registration fee shall make application in writing to the commission, and shall set out in the application the type of applicants from whom it is intended to accept a registration fee, the amount of the fee to be charged, and shall furnish any other information on the subject that the commission may deem necessary to enable it to determine whether permit shall be granted.

(2) The commission may make investigation, upon receipt of the application, as to the truthfulness of said application and the necessity of the charge of a registration fee; and if it is shown that the applicant's method of doing business is of such a nature that a permit to charge a registration fee is necessary, and that the record of the applicant's past method of charging a registration fee has been reasonable and fair, then the commission may grant a permit to such applicant, which permit shall remain in force until revoked for cause. No permit shall be granted until after ten days from the date of filing of the application.

*(3) When a permit is granted such licensed agency may charge a registration fee not to exceed two dollars. In all cases a complete record of all such registration fees and reference of applicants of all such registration fees and references of applicants shall be kept on file. For such registration fee a receipt shall be given to said applicant for help or employment, and shall state therein the name of such applicant, date and amount of payment, the character of position or help applied for, and the name and address of such agency. If no position has been furnished by said licensed agency to the said applicant, then said registration fee shall be returned to the said applicant on demand after thirty days and within six months from date of the receipt thereof, less the amount that has been actually expended by said licensed agency in checking the references of said applicant, and an itemized amount of such expenditures shall be presented to said applicant on request at the time of returning the unused portion of such registration fee.

(4) Any such permit granted by the commission may be revoked by it, in the same manner as prescribed herein for the revocation of licenses.

*(5) No such licensed agency shall, as a condition to registering or obtaining employment for any applicant, require such applicant to subscribe to any publication or to any post card service or advertisement. Each licensed agency shall be permitted to accept an advance fee in the form of a deposit. All such advance deposit fees taken, shall be deposited in the escrow account. No funds are to be withdrawn from the escrow account by the agency before the date of the applicant's acceptance of employment. Whenever an applicant fails to secure or refuses to accept a position furnished by the agency no fee shall have been earned, and any advance fee on deposit with the escrow agent shall be refunded in full to the applicant within three business days after request. If an applicant accepts a position through the efforts of the licensed agency and fails to report for work at the prescribed time, or quits, then said applicant shall owe the licensed agency the full placement fee for the said job and shall forfeit the total amount deposited with the licensed agency. In the event the applicant has an advance fee on deposit with the licensed agency of an amount exceeding the total fee of said position, then such overpayment of fee shall be refunded to the applicant within three days after request.

(6) Each applicant sent to an employer for an interview shall be furnished with a referral card containing the following information: The name and address of the employer doing the interviewing, the position for which the applicant is being interviewed, the salary offered, who is paying the cost of transportation for the interview, and a space must be provided whereby the interviewer can sign his or her name, after noting thereon whether the applicant has been engaged.

(7) In addition to the receipt herein provided to be given for a registration fee, it shall be the duty of such licensed agency to give to every applicant for employment or help from whom other fee or fees shall be received, an additional receipt in which shall be stated the name of the applicant, the amount of the fee, date of payment. All such receipts shall be in duplicate, numbered consecutively, shall contain the name and address of such agency. The duplicate receipt shall be kept on file in the

agency for at least one year from date thereof.

*(8) If the employer pays the fee, and the employee fails to remain in the position for the period of fourteen days, such licensee shall refund to the employer all fees, less an amount equal to twenty-five per cent of the total fee, within three days after said licensed agency has been notified of the employee's failure to remain in the employment.

*(9) If the applicant is discharged at any time within fourteen calendar days for any reason other than intoxication, dishonesty, unexcused tardiness, unexcused absenteeism, insubordination, misrepresentation of abilities, education or skills, or otherwise fails to remain in the position for a period of fourteen calendar days through no fault of his own, such licensed agency shall refund to the employee all fees paid to said agency, less an amount equal to twenty-five per cent of the total fee. All refunds shall be in cash or negotiable check and shall be made within three days of the time such licensed agency has been notified of the employee's failure to remain in the employment.

History.—§5, ch. 24080, 1947; §4, ch. 25265, 1949; §8, ch. 63-205.
*Note.—These subsections are effective January 1, 1964.

449.06 Attempts to induce employees to leave employment or to obtain their discharge. —No such licensed agent shall by himself or by his employees, solicit, persuade or induce any employee to leave any employment in which said licensed agency or his agent has placed said employee; nor shall any such licensed agent, or any of his employees, solicit, persuade or induce any employer to discharge any employee; nor shall any such licensed agent or his employees divide, or offer to divide, or share, directly or indirectly, any fee, charge or compensation received or to be received from any employee, with any employer or person in any way connected with the business thereof.

History.—§6, ch. 24080, 1947.
Am. §5, ch. 25265, 1949.

449.07 Contract or railroad laborers; statements required.—

(1) Whenever such licensed agent, or anyone acting for him agrees to send one or more persons to work as contract or railroad laborers, outside the city in which such agency is located, the said licensed agency shall give to each of such laborers, in a language with which such laborers are familiar, a statement containing the following items: "Name and nature of the work to be performed," "Wages offered," "Destination of the person employed," "Terms of transportation and probable duration of the employment," and duplicate of such a statement shall be kept on file in the office of such licensed agency sending out such laborers.

(2) No such licensed agency or his employees shall send any applicant to any place where a strike, a lock-out or other labor dispute is in active progress, without first notifying the applicant of such conditions, and shall, in addition thereto, enter a complete statement of such facts upon the receipt given to such applicant.

History.—§7, ch. 24080, 1947.
Am. §6, ch. 25265, 1949.

449.08 Theatrical employment agency; regulation, etc.—

(1) Any such licensed agency conducting a theatrical employment agency, before making any engagement except an emergency engagement for an employee with any employer, shall prepare and file in such agency a written statement verified by such licensed agent, setting forth how long said employer has been engaged in the theatrical business, whether or not such employer, while financially interested in a theatrical business, has failed to pay salaries, or "left stranded" any company, group or employees during the two years preceding the date of application; and further, shall set forth the names of at least two persons as references. If such employer is a corporation, such statement shall set forth the names of the officers and directors thereof, the length of time such corporation or any of its officers have been engaged in the theatrical business, and the amount of the paid up capital stock.

(2) If the employer conducts a cabaret or night club, the agent shall include in such statement the name and address of the owner or owners, and whether they have failed to pay salaries to employees at any time within the past two years. If any allegation in such written verified statement is made upon information or belief, the person verifying this statement shall set forth the sources of his information or belief. Such statements so on file shall be kept for at least one year and exhibited to every employee whose services are sought by any such employers.

(3) If any cabaret or night club employs entertainers through any source other than from a Florida licensed theatrical employment agency, said cabaret or night club shall file with the commission a sworn statement containing the information required above to be filed in said agency, together with a certified copy of the contract for such entertainment. The commission may, if it believes there is a doubt as to the financial stability of such employer or that there is a possibility of leaving stranded any entertainer, require a bond approved by the commission to assure the payment of salaries, performance of contract and compliance with this chapter.

(4) Every such licensed agency conducting a theatrical employment agency who shall procure for or offer to an applicant a theatrical engagement, or any kind of employment as an entertainer, shall have executed in quadruplicate a contract containing the name and address of the applicant, the name and address of the employer and that of the employment agency acting for such employer, in employing or furnishing such applicant for employment, the character of the entertainment to be given, or services to be rendered, the number of performances to be given per day or per week, by whom the transportation, if any, is to be

paid, and if it is to be paid by the applicant, either the cost of the transportation between the places where said entertainment or services are to be given or rendered, or the average cost of such transportation. Said contract shall state from whom said applicant is to receive his or her salary, the amount of salary promised, and the gross commissions or fees to be paid by said applicant and to whom such gross commissions or fees are to be paid. The original contract shall be given to the employer, the duplicate contract shall be given to the employee, the triplicate contract shall be kept on file in the office of the agency for a period of one year, and the fourth copy filed with the commission.

(5) No bond shall be required from any employer to guarantee the payment of salaries or performance of contract by any agency, union or theatre guild, except that it be approved by the commission, made payable to the commission and deposited with the commission.

History.—§8, ch. 24080, 1947.
Am. §7, ch. 25265, 1949.

449.09 Nurses registry; requirements.—Every such licensed person conducting a nurses' registry shall cause every applicant for employment to fill out an application form giving the following information: The name and address and qualifications of such applicant, the names and places of the hospitals wherein the applicant has studied or has been employed, the length of time of service therein, or other experience in nursing, if not in a hospital, and whether such applicant is a graduate, trained, certified, registered, undergraduate or practical nurse or a trained attendant. There shall be stated on such form the number and date of the certificate issued to such nurse or trained attendant. Such application form shall be kept on file in the office of the registry and shall be open to the inspection of the commission.

Every such licensed person conducting a nurses' registry shall give to every applicant, to whom a position is offered a card or printed paper in which shall be stated the amount of the fee, or commissions to be charged by such licensed person for the services in obtaining the position for said applicant for employment.

History.—§9, ch. 24080, 1947.

449.10 Moral requirements; penalties.—No such licensed person shall send or cause to be sent any female help, servants, inmate, or performer, to enter any questionable place, or place of bad repute, house of ill-fame or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution or gambling house, the character of which such licensed person knows either actually or by repute.

No such licensed person shall permit questionable characters, prostitutes, gamblers, intoxicated persons, or procurers to frequent such agency.

No such licensed person shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatsoever, excepting, however, employment may be given minors where such employment does not violate statutes affecting child labor law. For the violation of any of the provisions of this section, the penalty shall be a fine of not less than fifty dollars and not more than five hundred dollars or imprisonment in the county jail for a period of not more than ninety days or both, at the discretion of the court, in addition to the revocation of such person's license.

History.—§10, ch. 24080, 1947.
cf.—Ch. 450, Child labor law.

449.11 Collection and deposit of moneys; appropriation.—All moneys required to be paid under this chapter shall be collected by the secretary of state and deposited in the general revenue fund. The legislature shall appropriate such amounts as it deems necessary for the purpose of administering the provisions of this chapter.

History.—§11, ch. 24080, 1947.
Am. §82, ch. 26869, 1951; §1, ch. 61-37; §3, ch. 61-421.

449.13 Revocation of license; procedure; jurisdiction, etc.—No license shall be revoked by the commission unless due notice is given to the licensee, holding such license and the said licensee is given an opportunity for public hearing as provided by this section.

When a written complaint is filed with the commission against a licensed employment agency, charging said licensee with any act prohibited by this chapter, the commission shall conduct an investigation and if from such investigation it shall appear to the commission that there is ground for revocation of license, a day shall be set by the commission for public hearing to determine whether or not the license of the accused shall be revoked. The hearing shall be heard before a deputy commissioner appointed by the commission who shall transmit to the accused by registered mail a notice setting forth the charge or charges that will be heard before the deputy commissioner, and the date and place at which the hearing will be held, which date shall not be less than thirty days after mailing such notice. The accused licensee may appear before the deputy commissioner at such time and place, in person or by counsel, and dispute or disprove the said charge or charges. For the purpose of such hearing, the deputy commissioner shall have the power to require the production of books, papers, or other documents, and may issue subpoenas to compel the defendants or witnesses to testify, produce such books, papers, or other documents as may be, in the opinion of the deputy commissioner, relevant to the issues involved; said subpoenas to be served by duly authorized agent of the commission or by the sheriff of the county where the witnesses reside or may be found; such witnesses shall be entitled to the same per diem and mileage as witnesses appearing in the circuit courts of the state, which shall be paid by the commission. The deputy commissioner shall administer oaths or affirmations to witnesses appearing before

him. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers, or other documents, required by the commission or deputy commissioners, the deputy commissioner may present his petition to the circuit court of the county where any such person is served with a subpoena, or where he resides, setting forth the facts, and shall deposit with said court the per diem and mileage to secure the attendance of such witness; whereupon, the court shall issue a rule nisi to such person, requiring him to obey forthwith the subpoena issued by the commission, or show cause why he fails to obey the same; and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and, upon refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

The hearing shall be held by a deputy commissioner, and stenographically reported, who shall enter his order revoking the license of the licensee, or denying the charges upon which the hearing was held, within twenty days after the conclusion of the hearing. The order of the deputy commissioner shall be filed in the office of the commission at Tallahassee, and a copy of such order shall be sent by registered mail to the licensee, addressed to the licensee at the address shown on his application for license.

The order rendered by the deputy commissioner shall become final seven days after same was filed in the office of the commission at Tallahassee, unless within said time any interested party may make and file with the commission an application for review thereof by the commission. As soon as practicable after receiving such application, the deputy commissioner shall have prepared a transcript of the testimony adduced at the hearing before him, to which he shall attach his certificate, and shall return the same, together with the file, to the commission. The commissioner shall consider the matter upon the record as prepared and certified by the deputy commissioner, and shall thereafter affirm, reverse or modify said order, or remand to a deputy commissioner for further proceedings. The order of the commissioner shall be filed in the office of the commission and shall become final unless either party shall file in the appropriate district court of appeal a petition for the issuance of a writ of certiorari in the manner and within the time provided by the Florida appellate rules.

History.—§13, ch. 24080, 1947; §4, ch. 61-421; §31, ch. 63-512.

449.14 Additional remedy to control unlawful practice.—As an alternative, supplemental and additional remedy, in cases of unlawful practices, the commission may, notwithstanding the procedure prescribed in §449.13, apply directly to the circuit court of the county wherein the person proceeded against resides, or where any of the unlawful practices, as set out in this chapter, are being committed, for an injunction restraining such person from operating as an employment agent. The court may, in its discretion, grant a temporary injunction restraining the defendant from operating as an employment agency pending the outcome of said cause, and upon final hearing, permanently enjoin him from further operation as an employment agent. The commission shall not be required to give any bond in any proceeding hereunder.

History.—§14, ch. 24080, 1947.

449.15 When application license may be denied.—The commission may deny any application for license for applicant's failure to meet any qualification or requirement prescribed in this chapter, or for any cause which, if applicant were already licensed hereunder, would be ground for revocation of such license.

Upon denial of any application, the commission shall promptly notify the applicant by registered mail, setting forth in said notice the ground or grounds on which such application was denied. Denial of the application shall be final unless, within twenty days from date of mailing notice of denial, applicant files with the commission his appeal from such denial and requests public hearing. Upon receipt of such appeal and request for hearing, the commission shall set a date therefor, and appoint a deputy commissioner to conduct said hearing, after which the matter shall proceed as hereinbefore provided for revocation of licenses. At any time before denial of an application becomes final, the commission may rescind its denial, and issue the license applied for.

No fee shall be refunded to any applicant until after denial of application becomes final by reason of applicant's right to appeal having expired. Refunds shall be made without interest.

History.—§15, ch. 24080, 1947.

***449.16 Penalties.—**

(1) Any person violating any of the provisions of this chapter without intent to defraud shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding $500.00 or by imprisonment in the county jail for a period not exceeding 6 months, or by both such fine and imprisonment, in the discretion of the court.

(2) Any person violating any of the proisions of this chapter by scheme, trick, false advertising, false statements of any kind, or by wilful misrepresentation causes an applicant to be sent or directed to any fictitious job or position, or so induces an applicant to register for employment and act to his disadvantage, shall upon conviction be deemed guilty of a felony and shall be punishable by a fine of not more than $1,000.00 or imprisonment in the state prison for a term of not more than 2 years or by both such fine and imprisonment in the discretion of the court. The penalties herein provided shall extend to the person or persons, firm or corporation causing, directing or permitting such activity as well as to the actual violators.

History.—§16, ch. 24080, 1947; §10, ch. 63-205.

*Note.—Effective January 1, 1964.

CHAPTER 450

CHILD LABOR

450.011 Exemptions.—Except as provided in §§450.061 and 450.111, no provision of this chapter shall apply to any minor employed or engaged in domestic or farm work in connection with his own home and directly for his parents, when the public schools are in session; and except as provided in §450.061, no provision of this chapter shall apply to a minor employed or engaged in domestic service in private homes and farm work during the hours when the public schools are not in session. The term farm work shall include all labor performed upon farms whether in producing, harvesting, packing or processing of agricultural products, citrus groves, cattle or livestock raising without regard to the person for whom said work is performed and without regard to whether said work is performed for the owner or tenant of said farm or for any other person. No provision of this chapter shall apply to minors employed as pages in the Florida state legislature.

History.—§2, ch. 6488, 1913; RGS 4019; CGL 5942; §2, ch. 20955, 1941; am. §1, ch. 21979, 1943; am. §3, ch. 21996, 1943; formerly §450.02, renumbered by §1, ch. 28240, 1953. §1, ch. 57-224; §1, ch. 61-182.

450.021 Minimum age; general. — Except as provided in §§450.011 and 450.031, no person under twelve years of age shall be employed, permitted or suffered to work in any gainful occupation at any time; and except as provided in §450.111, no person under sixteen years of age shall be employed, permitted or suffered to work in any gainful occupation during the hours when the public schools are in session, whether such person's disabilities of nonage have been removed by marriage or otherwise.

History.—§3, ch. 6488, 1913; RGS 4020; CGL 5943; §3, ch. 20955, 1941; §4, ch. 21996, 1943; material contained herein was formerly §450.03, revised and renumbered by §1, ch. 28240, 1953.
Am. §2, ch. 57-224.

450.031 Street trades. — No boy under ten years of age and no girl under sixteen years of age shall engage in the selling, offering for sale, soliciting for, collecting for, displaying or distributing any newspapers, magazines or periodicals, or polishing shoes on any street or other public place or from house to house. No boy under sixteen years of age shall engage in the occupations specified in this section during the hours when public schools are in session, except as prescribed in §450.111. No boy under sixteen years of age shall engage in the occupations specified in this section between the hours of eight p. m. and five a. m. throughout the year.

History.—Ch. 5686, 1907; §1, ch. 6488, 1913; RGS 4018; CGL 5941; §1, ch. 20955, 1941; am. §2, ch. 21996, 1943.
Am. §3, ch. 57-224.

450.041 Messengers.—No girl under sixteen years of age shall be employed, permitted, or suffered to work as a messenger for the distribution, transmission, or delivery of goods or messages.

History.—§11, ch. 6488, 1913; RGS 4028; CGL 5951; §9, ch. 20955, 1941; this section is identical with old §450.06, renumbered by §1. ch. 28240, 1953; §4, ch. 57-224; §2, ch. 61-182.

450.061 Hazardous occupations prohibited.—

(1) No minor under sixteen years of age, whether such person's disabilities of nonage have been removed by marriage or otherwise, shall be employed, permitted or suffered to work in the following occupations:

(a) In connection with power-driven machinery, except power mowers with cutting blades twenty-four inches or less;

(b) Mines or quarries;

(c) The manufacture, transportation or use of explosive or highly inflammable substances;

(d) Sawmills or in logging operations;

(e) On any scaffolding;

(f) In heavy work in the building trades;

(g) In the operation of a motor vehicle, except a motor-scooter which he is licensed to operate;

(h) In oiling, cleaning or wiping machinery or shafting or applying belts to pulleys;

(i) In repairing of elevators or other hoisting apparatus;

(j) In operating meat grinding machines, dough brakes, or mixing machines in bakeries, or cracker-making machinery;

(k) In the operation of emery or polishing wheels;

(l) In the operation of punch presses or stamping machines;

(m) In the manufacture of paints, colors, white lead, dangerous or poisonous dyes or in preparing compositions in which dangerous leads or acids are used;

(n) In the operation of power-driven laundry or dry cleaning machinery; or any similar power-driven machinery;

(o) At spray painting.

(p) Spraying of insecticides or other toxic substances determined to be poisonous to

human beings through skin contact or inhalation;

(q) Alligator wrestling work in connection with snake pits, or similar hazardous activities.

(r) The manufacture, transportation or use of radioactive materials.

(2) No minor under eighteen years of age, whether such person's disabilities of nonage have been removed by marriage or otherwise, shall be employed, permitted or suffered to work in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor, as such places of employment or occupations may be determined and declared by the Florida industrial commission to be hazardous and injurious to the life, health, safety or welfare of such minor, after public hearing thereon and after such notice as the Florida industrial commission may by regulation prescribe.

History.—§ § 14, 15, ch. 6488, 1913; RGS 4030, 4031; CGL 5953, 5954; § § 12, 13, ch. 20955, 1941; §7, ch. 21996, 1943; sub. § § (1) and (2) are identical with old §450.08, sub. §(3) same as old §450.09, renumbered by §1, ch. 28240, 1953, (1)(p) N. by §5, ch. 57-224; (1) §4, (3) r. §5, ch. 61-182; (1) (r) n. §1, ch. 63-82.

450.071 Employment in pool rooms, etc.—No person under twenty-one years of age, whether such person's disabilities of nonage have been removed by marriage or otherwise, shall be employed, permitted or suffered to work in, about, or in connection with, any poolroom, billiard room, brewery, saloon, barroom, or any place where alcoholic beverages are manufactured or sold; provided, however, this section shall not apply to professional entertainers between the ages of eighteen and twenty-one years who are not in school or to drug stores or grocery stores which have obtained a license to sell beer and wine, and where such sales are made for consumption off the premises only; and provided, further, this section shall not prohibit the employment of bellboys, elevator boys and others under the age of twenty-one years in hotels where such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises.

History.—§8, ch. 20955, 1941; am. §12, ch. 21996, 1943. Formerly §450.23, renumbered by §1, ch. 28240, 1953.

450.081 Hours of work in certain occupations.—

(1) No minor under sixteen years of age shall be employed, permitted or suffered to work in any gainful occupation for more than six consecutive days in any one week or more than forty hours in any one week or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or suffered to work before 6:30 A. M., or after 8.00 P. M., except that minors who have reached the age of fourteen may work until 10:00 P. M. when no school is scheduled for the following day; nor shall any minor between sixteen and eighteen years of age be so employed, permitted or suffered to work before 5:00 A.M., or after 10:00 P.M., provided, however, that the industrial commission may in its discretion extend the hours of employment of minors between sixteen and eighteen years of age if after investigation the commission is satisfied that the employment in which the minor is to be employed is not detrimental to his health or welfare; and provided further that minors between fourteen and eighteen years of age may be employed in a concert, theatrical performance, television appearance, style show, engage in sports contests, the making of motion pictures and modeling up to 12:00 midnight, without the approval of the commission, and minors under fourteen years of age may be so employed with the approval of the commission. On any day when school is in session no minor under sixteen years of age shall be gainfully employed for more than three hours unless there is no session of school on the following day.

(2) No minor under eighteen shall be employed, permitted or suffered to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period and for the purposes of this law no period of less than thirty minutes shall be deemed to interrupt a continuous period of work.

(3) The presence of any minor in any place of employment during working hours shall be prima facie evidence of his employment therein.

(4) This section shall not apply to the work of minors in domestic service in private house, farm work, or the sale or distribution of newspapers, magazines or periodicals.

History.—§9, ch. 6488, 1913; RGS 4026; CGL 5949; §7, ch. 20955, 1941; §1, ch. 23806, 1947; §11, ch. 25035, 1949; this section is identical with old §450.05, renumbered by §1, ch. 28240, 1953; (1) by §6, ch. 57-224; §24, ch. 57-1; (1) a. by §6, ch. 61-182.

450.091 Rest rooms, toilet facilities, dressing rooms, seats, etc.—

(1) Suitable and proper rest rooms and toilet facilities shall be provided in all establishments where any person under eighteen years of age is employed, and such facilities shall be properly screened and ventilated and kept at all times in a clean condition; and if girls under eighteen years of age be employed in any establishments, the toilet facilities shall have separate approaches and be kept separate and apart from those used by men. All such facilities shall be kept free from obscene writing and marking. A dressing room shall be provided for such girls when the nature of their work is such as to require a change of clothing.

(2) Every person, firm, or corporation, association, individual or partnership employing girls under eighteen years of age in any establishment shall provide seats for the use of the girls so employed; and shall permit the use of such seats by the girls when they are not necessarily engaged in the active duties for which they are employed.

(3) The walls and ceiling of each room in every establishment where any person under eighteen years of age is employed shall be limewashed or painted, when, in the opinion of the Florida industrial commission, it shall be con-

ducive to the health or cleanliness of the persons working therein.

History.—§ § 16-18, ch. 6488; RGS 4032-4034; CGL 5955-5957; § § 14-16, ch. 20955, 1941; §8, ch. 21996, 1943; §7, ch. 24337, 1947; sub. § § (1)-(3) are identical with old § § 450.10-450.12, renumbered by §1, ch. 28240, 1953; (1) by §7, ch. 57-224.

450.101 Copies of chapter to be posted in certain places.—

(1) Every employer shall post and keep conspicuously posted in or about the premises wherein any minor under sixteen years of age is employed, permitted or suffered to work, a printed abstract of this law and a list of occupations prohibited to minors under sixteen years of age, to be furnished by the Florida industrial commission, and a schedule of hours showing the maximum number of hours minors under sixteen years of age shall be required or permitted to work during each day of the week, the total hours per week, the time of commencing and stopping work each day and the amount of time allowed for daily meal periods. If more than one schedule of hours is in operation at a particular place of employment, the posted schedule shall contain the names of minors under sixteen years of age working on each shift and shall clearly indicate the hours required of each minor under this age, or group of such minors. The schedule shall be on a form approved and furnished by the Florida industrial commission and shall remain the property of said commission. The employment of a minor under sixteen years of age for a longer time in any day or at any other time than as stated in said schedule shall be deemed a violation of §450.081. The presence of any minor under sixteen years of age in any place of employment at other hours than stated in the schedule applying to him shall constitute prima facie evidence of violation of said §450.081.

(2) Every employer shall keep a time record in a form approved by the Florida industrial commission which shall state the name and address of each minor under eighteen years of age employed, the number of hours worked by said minor on each day of the week, the hours of beginning and ending such work, the hours of beginning and ending meal periods, and the amount of wages paid. This record shall be kept on file for at least four years after the entry of the record and shall be open to the inspection of the Florida industrial commission or its agents.

History.—§20, ch. 6488, 1913; §2, ch. 6918, 1915; RGS 4036; CGL 5959; §17, ch. 20955, 1941; am. §9, ch. 21996, 1943.
Formerly §450.14, renumbered by §1, ch. 28240, 1953.

450.111 Employment certificates.—

(1) No minor between fourteen and sixteen years of age shall be employed, permitted or suffered to work in any gainful occupation during the hours when the public schools are in session, unless the person, firm, corporation, association, individual or partnership employing such minor shall procure and keep on file at the place of the minor's employment, an employment certificate which shall be issued as provided by §232.07; provided, that such employment certificates shall be required to be issued only in triplicate, one copy to be sent to the employer, one copy to be sent, within one week thereafter, to the Florida industrial commission, or to such other person in similar capacity who is or may be designated by law to receive such certificate, and one copy to be filed in the office of the county superintendent.

(2) No minor between twelve and sixteen years of age shall be employed, permitted or suffered to work in any gainful occupation, except in domestic service in private homes, in farm work, or in the occupations specified in §450.031 during the hours when the public schools are not in session, unless the person, firm, corporation, association, individual or partnership employing such minor shall procure and keep on file at the place of the minor's employment, a special certificate of employment during vacation or out-of-school hours which shall be issued as provided, in §232.07, for the issuance of employment certificates; provided, that with reference to the issuance of said special certificate of employment,

(a) the county superintendent or an attendance assistant or principal of a school authorized by the county superintendent in writing to do so, shall have authority to issue such certificate which shall differ in form and color from employment and age certificates and which shall be required to be issued in triplicate as prescribed above for employment certificates;

(b) all requirements regarding the number of years of school work to be completed shall be waived; and

(c) the state board of education shall have authority to waive or regulate the requirements for health certificates.

(3) No minor between sixteen and eighteen years of age shall be employed, permitted or suffered to work in any gainful occupation, except in domestic service in private homes, in farm work, or in the occupation specified in §450.031, unless the person, firm, corporation, association, individual or partnership employing such minor shall procure and keep on file at the place of the minor's employment an age certificate as provided in §232.08. Said employer shall, during the period of the minor's employment, keep the employment certificate, special certificate of employment during vacation or out-of-school hours, or age certificate on file at the place of employment and accessible to the Florida industrial commission, its agent, or to any attendance assistant, or to any other person authorized to enforce the provisions of laws relating to the issuance of such certificates.

(4) When any minor between twelve and sixteen years of age who is entitled to an employment certificate or special certificate of employment during vacation or out-of-school hours as provided in this section, or any minor between sixteen and twenty-one years of age, is barred from available employment by any other provision of this chapter, and it is shown to

the satisfaction of the commission that it is necessary for such minor to work in such employment to support or assist in supporting himself or his family in order to avoid extreme hardship, or it is recommended by a juvenile court having jurisdiction of such minor that it is for the best interest of the minor to work in such employment, the commission may, subject to such conditions, limitations, and restrictions as it may determine appropriate, waive any provision of this chapter which may be necessary in order to permit such minor to work in such employment; provided that no such waiver may be granted to permit any person to work in any place of employment or at any occupation which the commission deems would be hazardous or injurious to the life, health, safety, morals or welfare of such person, and provided further that no such waiver may be granted to permit any person under sixteen years of age to work in any employment prohibited under the provisions of §450.071. The commission shall by regulation prescribe the manner of making application for such waiver, the procedure for consideration and determination thereof, and the form and content of certificates of waiver, one copy of which shall be sent to the county superintendent of the county in which the minor has or will obtain his employment certificate, special certificate of employment, or age certificate, as required by law.

History.—§4, ch. 6488, 1913; RGS 4021; CGL 5944; §4, ch. 20955, 1941; am. §5, ch. 21996, 1943; am. §7, ch. 22000, 1943; am. §7, ch. 24337, 1947; (1) by §8, (4) by §9, ch. 57-224.

Formerly §450.04, renumbered by §1, ch. 28240, 1953; sub. §(4) comp. §1, ch. 28249, 1953.

450.121 Enforcement of child labor law.—

(1) The Florida industrial commission shall administer this chapter. It shall employ such help as shall be necessary to effectuate the purposes of this chapter, all of whom shall be employed in accordance with the merit system of the commission.

(2) Wherever the words "state labor inspector" are used in statutes relating to administration of child labor laws, the words "Florida industrial commission" shall be considered as having been substituted therefor.

(3) It shall be the duty of the Florida industrial commission and its agents and all sheriffs or other law enforcement officers of the state or of any municipality of the state to enforce the provisions of this law, to make complaints against persons violating its provisions and to prosecute violations of the same. The said Florida industrial commission and its agents shall have authority to enter and inspect at any time any place or establishment covered by this law and to have access to employment certificates, special certificates of employment during vacation or out-of-school hours, and age certificates kept on file by the employer and such other records as may aid in the enforcement of this law. Attendance assistants employed pursuant to §232.17, shall report to the Florida industrial commission all violations of the child labor law that may come to their knowledge.

(4) It shall be the duty of any city judge or magistrate of any court in the state to issue warrants and try cases made within the limit of any city over which such city judge or magistrate has jurisdiction in connection with the violation of this law.

(5) Grand juries, and county solicitors of criminal courts of record where such courts exist, shall have inquisitorial powers to investigate violations of this chapter; also shall county judges and judges of the circuit courts of the state specially charge the grand jury at the beginning of each term of the court to investigate violations of this chapter.

History.—§13, ch. 6488, 1913; RGS 4029, CGL 5952; § § 6, 8, 11, ch. 20955, 1941; § § 1, 6, 11, 12, ch. 21996, 1943; sub. §(2) formerly 450.24(2), sub. §(3) formerly § § 450.07(1) and 450.22; sub. §(4) formerly §450.07(2), sub. §(5) formerly §450.13, revised and renumbered by §1, ch. 28240, 1953.

450.141 Employing minor children in violation of law; penalty.—Whoever violates any provisions of this law, or employs or permits or suffers any minor to be employed or to work in violation of this law, or of any order issued under the provisions of this law, or obstructs persons authorized under this law in the inspection of places of employment, and whoever, having under his control any minor, permits him to be employed or to work in violation of this law, shall for such offense be guilty of a misdemeanor, and upon conviction, be subject to a fine of not exceeding five hundred dollars or imprisonment in the county jail with or without hard labor not exceeding six months or by both such fine and imprisonment, at the discretion of the court. Each day during which any violation of this law continues shall constitute a separate and distinct offense, and the employment of any minor in violation of the law shall, with respect to each minor so employed, constitute a separate and distinct offense.

History.—§12, ch. 6488, 1913; RGS 5751; CGL 7979; §10, ch. 20955, 1941; formerly §450.18, renumbered by §1, ch. 28240, 1953.

450.151 Hiring and employing; penalty.—Whoever takes, receives, hires, employs, uses, exhibits or in any manner or under any pretense sells, apprentices, gives away, lets out or otherwise disposes of to any person any child under the age of fourteen years for or in the vocation, occupation, service or purpose of singing, playing on musical instruments, rope or wire walking. dancing, begging or peddling, or as a contortionist, rider, acrobat, or for or in any obscene, indecent or immoral purpose, exhibition or practice, or for or in any business, exhibition or vocation injurious to the health or dangerous to the life or limbs of such child, or causes or procures, or encourages any such child to engage therein, or causes or permits any such child to suffer, or inflicts upon it unjustifiable physical pain or mental suffering, or willfully causes or permits the life of any such child to be endangered or its health to be injured, or such child to be placed in such situation that its life may be

endangered or its health injured, or has in custody any such child for any of the purposes aforesaid, shall be fined not more than five hundred dollars, or imprisoned not more than six months. Nothing contained in this section shall apply to or affect the employment or use of any such child as a singer or musician in any church, school or academy, or at any amateur concert or entertainment, or in learning the science or practice of music and social dancing.

History.—§2, ch. 4971, 1901; GS 3237; RGS 5070; CGL 7172; formerly §450.19, renumbered by §1, ch. 28240, 1953.

450.161 Chapter not to affect vocational education of children; other exceptions.—Nothing in this chapter shall prevent minors of any age from receiving vocational education furnished by the United States, this state, or any county or other political subdivision of this state and duly approved by the state superintendent of public instruction or other duly constituted authority, nor any apprentice indentured under a plan approved by the Florida committee for apprentice training, or to prevent the part-time employment of any minor over sixteen years of age when such employment is authorized as an integral part of, or supplement to, such a course in vocational education and is authorized by regulations of the county board of public instruction of the county in which such minor is employed.

History.—§24, ch. 6488, 1913; RGS 4040; CGL 5962; §19, ch. 20955, 1941; am. §10, ch. 21996, 1943; formerly §450.17, renumbered by §1, ch. 28240, 1953; §7, ch. 61-182.

CHAPTER 452

BONDS OF EMPLOYEES OF COMMON CARRIERS

452.01 Common carrier not to require employee to furnish surety bond of certain company.—No common carrier authorized to do business in this state, when requiring of an employee that he give it a bond or undertaking of any nature whatsoever, shall require such employee to have such bond or undertaking executed as a surety by any particular person, or by any one or more of any number of such persons, named by such common carrier; and no such common carrier shall reject any such bond or undertaking for any reason other than the financial insufficiency of such bond or undertaking.

History.—§1, ch. 6519, 1913; RGS 4041; CGL 5963.
cf.—§1.01(3) "Person" defined.

452.02 Foreign corporations as surety.—No common carrier authorized to do business in this state, when requiring of any employee that he give it a bond or undertaking of any nature whatsoever, shall require as surety thereon any person not a resident of this state; nor shall such common carrier accept as such surety any company, corporation, or association, unless the same is a corporation duly organized under the laws of Florida, or who shall have designated an agent residing within this state upon whom service of legal process against it may be had as provided by law for foreign corporations doing business in this state, and shall also have in this state a general office where it shall require that every such bond or undertaking shall be approved, and canceled, and where a complete record thereof shall be kept.

History.—§2, ch. 6519, 1913; RGS 4042; CGL 5964.

452.03 Bond to cover definite term; cancellation; proviso.—Every bond or undertaking of any nature whatsoever given by an employee of any common carrier authorized to do business in this state shall be made to cover a definite term; and no such bond or undertaking shall be canceled without the consent of all parties thereto, except for a breach of one or more of the conditions thereof. Any such employee who shall have given any such bond or undertaking, may, upon breach of any of the conditions thereof by the other party thereto, cancel the same by giving the surety or sureties thereon and the common carrier for the benefit of whom the same shall have been made, at least ten days' notice in writing, setting out in full the reason for canceling the same, said notice to be signed by such employee and sworn to by him in this state before any officer authorized to administer oaths. Any such notice to a company, corporation or association may be served by leaving the same with any person upon whom service of legal process upon such company, corporation, or association may be had. Any surety of any such bond or undertaking may upon the breach of any of the conditions thereof, by the common carrier and employee for whom the same shall have been made, cancel the same by giving such employee at least ten days' notice in writing, setting out in full the reason for canceling the same, the said notice to be signed by an agent or manager of such surety, then a resident of this state and then authorized to approve or disapprove similar bonds or undertakings for such surety, and to be sworn to by the person signing the same in this state before an officer authorized to administer oaths; provided, that nothing herein shall affect any right of action accruing to any person upon the breach of a contract.

History.—§3, ch. 6519, 1913; RGS 4043; CGL 5965.

452.04 Bonds violating chapter void.—Any bond, contract or undertaking made in violation of the provisions of this chapter shall be void.

History.—§4, ch. 6519, 1913; RGS 4044; CGL 5966.

452.05 Violation of regulations as to employment bonds; penalty.—Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail for a period of not less than thirty days, nor more than one year.

History.—§4, ch. 6519, 1913; RGS 5672; CGL 7877.
cf.—§775.06 Alternative punishment.

CHAPTER 453

PUBLIC UTILITY ARBITRATION LAW

(Chapter 453 held invalid in 65 So. 2d 22.)

453.01 Declaration of policy.—That it is hereby declared to be the public policy of the State of Florida that it is necessary and essential in the public interest to facilitate the prompt, peaceful and just settlement of labor disputes between public utility employers and their employees which cause or threaten to cause an interruption in the supply of services necessary to the health, safety and well-being of the citizens of Florida, and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions of employment through collective bargaining between public utility employers and their employees, and to provide settlement procedures for labor disputes between public utility employers and their employees in cases where the collective bargaining process has reached an impasse and stalemate, and as a result thereof the parties are unable to effect such settlement and which labor disputes, if not settled, are likely to cause interruption of the supply of a public utility service on which the community so affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service.

History.—§1, ch. 23911, 1947.
cf.—Ch. 447, Labor organizations.

453.02 Definitions.—

(1) The term "public utility employer" means an employer engaged in the business of rendering electric power, light, heat, gas, water, communication or transportation services to the public in this state.

(2) The term "collective bargaining" means collective bargaining of or similar to the kind provided for by the federal law known as the national labor relations act and as interpreted by decisions of the supreme court of the United States arising under said last mentioned act.

History.—§2, ch. 23911, 1947.
cf.—§453.17, Publicly owned utilities excepted.

453.03 Duty to make effort to settle labor disputes.—It shall be the duty of public utility employers and their employees in public utility operations to exert every reasonable effort to settle such labor disputes by the making of agreements through collective bargaining between the parties, and by the maintaining thereof when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate.

History.—§3, ch. 23911, 1947.

453.04 Petition for and appointment of conciliator.—If in any case of a labor dispute between a public utility employer and its employees, the collective bargaining process reaches an impasse and stalemate, with the result that the employer and the employees are unable to effect a settlement thereof, then either party to the dispute may petition the governor of the State of Florida to appoint a conciliator. The party filing such a petition shall serve a true copy thereof upon the other party or parties to such labor dispute. Service shall be made by delivering such a copy (a) in the case of public utility employer, to one of its officers or a member of its collective bargaining committee and (b) in the case of a labor organization, a labor union or a group of employees in the process of organizing, to one of the officers, business agents, organizers or collective bargaining committeemen of such organization, union or group. In case service cannot be so made within twenty-four hours after the time of the actual receipt of the petition by the governor, then such service shall be effected by mailing (registered mail—return receipt requested) such a copy to the last known principal post office address or box of the party entitled to receive the same. In event such acceptance or delivery of such mailing is refused then such service shall be fully and sufficiently effected by the immediate posting of a true copy of the petition on the bulletin board of at least one major place of employment of employees involved in such labor dispute. The party effecting such service shall make and file with the governor a certificate setting forth the time and date of such service and the manner in which it was so effected. Upon the filing of such petition, the governor shall consider the same, and if he deems advisable shall order a

hearing thereon, and if in his opinion the collective bargaining process, notwithstanding good faith efforts on part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of the supply of a service on which the community affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service, the governor shall appoint a conciliator to attempt to effect the settlement of such dispute. Such conciliator shall be allowed reasonable compensation for his services and for his necessary expenses, in an amount to be fixed by the governor, such compensation and expenses to be shared equally by the parties to the dispute.

History.—§4, ch. 23911, 1947.

453.05 Work interruption; prohibited.—The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of such dispute. From and after the filing of a petition with the governor as provided for in §453.04 hereof, and until and unless the governor shall determine that the failure to settle the dispute with respect to which such petition relates would not cause severe hardship to be inflicted on a substantial number of persons, there shall be no interruption of work and no strikes or slowdowns by the employees, and there shall be no lockout or other work stoppage by the employer, until such time as all procedure provided for by this chapter has been exhausted or during the effective period of any order issued by a board of arbitration pursuant to the provisions of this chapter.

History.—§5, ch. 23911, 1947.
cf.—§447.13, Right to strike preserved.

453.06 Inability to effect settlement; appointment of board of arbitration; compensation and expenses.—If the conciliator so named is unable to effect a settlement of such dispute within a thirty day period after his appointment, he shall report such fact to the governor; and the governor may allow such conciliator up to an additional fifteen days in which to attempt to effect a settlement of such dispute and make report to the governor; and the governor, if he believes that a continuation of the dispute will cause or is likely to cause the interruption of the supply of a service on which the community so affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service, shall appoint a board of arbitration to hear and determine such dispute. The board of arbitration shall consist of one public member chosen by the governor, and one member designated in writing by each of the parties to the dispute. If either party to the dispute shall fail or refuse to designate its member within one week after appointment of the public member, the governor shall appoint such member in the same manner as the public member is appointed. A new board shall be chosen by the governor for each separate dispute; but the same board may hear any number of issues or grievances which are involved at the same time in any dispute between the same employer and his employees. The public member of such board of arbitration shall be allowed reasonable compensation for his services and shall be reimbursed for traveling expenses as provided in §112.061, in an amount to be fixed by the governor, and such compensation of such board of arbitration shall be shared equally by the parties to the dispute.

History.—§6, ch. 23911, 1947; §19, ch. 63-400.

453.07 Arbitration board; hearings.—The board of arbitration shall promptly hold hearings and shall have the power to administer oaths and compel the attendance of witnesses and the furnishing by the parties of such information as may be necessary to a determination of the issue or issues in dispute. Both parties to the dispute shall have the opportunity to be present at the hearing, both personally and by counsel, and to present such oral and documentary evidence as the board shall deem relevant to the issue or issues in controversy.

History.—§7, ch. 23911, 1947.

453.08 Finding and order of board.—It shall be the duty of the board to make written findings of fact, and to promulgate a written decision and order upon the issue or issues presented in each case. In making such findings the board shall consider only, and be bound only, by the evidence submitted. When a valid contract is in effect defining the rights, duties and liabilities of the parties with respect to any matter in dispute, the board shall have power only to determine the proper interpretation and application of the contract provisions which are involved. Where wage rates or other conditions of employment under a proposed new or proposed amended contract are in dispute, the board shall establish rates of pay and conditions of employment which are comparable to the prevailing wage rates paid and conditions of employment maintained by the same or similar public utility employers, if any, in the same labor market area, and if none, in adjoining labor market areas within the state, and if none, in adjoining labor market areas in states bordering on this state, and which in addition thereto bear a generally comparable relationship to wage rates paid and conditions of employment maintained by all other employers in the same labor market area. The board shall determine in each case, based upon the evidence presented and received by the board, what constitutes in that case the labor market area involved. The board may establish separate schedules of wage rates and separate conditions of employment in each labor market area. In establishing wage rates the board shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including (without limiting the generality of the foregoing) vacations, holiday, and other excused time, and all benefits received, including insurance and pensions, and the con-

tinuity and stability of employment by the employees.

History.—§8, ch. 23911, 1947.

453.09 Time within which to make findings; majority decision; recording; finality of order.—The board of arbitration shall hand down its findings, decision and order (hereinafter referred to as its order) within sixty days after its appointment; provided, however, that the governor may for good cause extend said period for not to exceed an additional thirty days. If all three members of the board do not agree, the order of the majority shall constitute the order of the board. The board shall furnish to each of the parties a copy of its order. A certified copy thereof shall be filed in the office of the clerk of the circuit court of the county wherein the dispute arose or in the office of the clerk of the circuit court of any county where the employer operates or maintains an office or place of business. Unless such order is reversed upon a petition for review filed pursuant to the provisions of §453.10, such order, together with such agreements as the parties may themselves have reached, shall become binding upon, and shall control the relationship between, the parties from the date such order is filed with the clerk of the circuit court, as aforesaid, and shall continue effective for one year from that date, but such order may be changed by mutual consent or agreement of the parties. No order of the board relating to wages or rates of pay shall be retroactive to a date before the date of the termination of any contract which may have existed between the parties, or, if there was no such contract, to a date before the day on which the governor appointed a conciliator in such dispute.

History.—§9, ch. 23911, 1947.

453.10 Review of order; by circuit court.—Either party to the dispute may within fifteen days from the date such order is filed with the clerk of the court petition the circuit court of any county, in which the employer operates or has an office or place of business, for a review of such order on the ground (a) that the parties were not given reasonable opportunity to be heard, or (b) that the board of arbitration exceeded its powers, or (c) that the order is unreasonable in that it is not supported by the evidence, or (d) that the order was procured by fraud, collusion, or other unlawful means or methods. A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge, as provided by law in other civil cases. The judge of the circuit court, without the intervention of a jury, shall hear the evidence adduced by both parties with respect to the issue raised by such petition and may reverse said order only if he finds that (a) one of the parties was not given reasonable opportunity to be heard, or (b) that the board of arbitration exceeds its powers, or (c) that the order is unreasonable in that it is not supported by the evidence, or (d) that the order was procured by fraud, collusion or other unlawful means or methods. The decision of the judge of the circuit court shall be final, unless an appeal is taken to the supreme court as hereinafter provided. If the court reverses said order for one of the reasons stated herein, and no appeal is taken to the supreme court, the clerk of said court shall certify the court's decision to the governor, who may either attempt further conciliation or may appoint another board of arbitration, as hereinabove provided for, in the event that the parties do not prefer first to engage in further collective bargaining in an attempt to settle such dispute.

History.—§10, ch. 23911, 1947.

453.11 Appeal to supreme court.—Any interested party may appeal to the supreme court from the decision of the judge of the circuit court within the same period of time and following the same procedure as used in appeals from the order of the board of arbitration to the circuit court. The supreme court shall give precedence to the hearing of such appeals because of the public interest involved. If the supreme court reverses said order, then its order shall be certified to the governor in the same manner as above provided in case of reversal by the circuit court.

History.—§10, ch. 23911, 1947.

453.12 Penalty for violation by an individual.—Any violation of this chapter by any member of a group of employees acting in concert, or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor, punishable upon conviction by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than twelve months, or both.

History.—§11, ch. 23911, 1947.

453.13 Penalty for lockout strike or work stoppage.—Any lockout engaged in by any utility, or any strike or work stoppage engaged in by any labor organization or labor union or any concerted or simultaneous action on the part of a substantial number of the members of any labor organization or labor union, which shall result in an interruption in or suspension of operation of any utility in violation of this chapter, shall subject such utility, or labor organization or labor union to a penalty not to exceed ten thousand dollars per day for each day that such interruption or suspension of operation shall continue. Such penalty shall be to the state and recoverable by it in any appropriate legal action. All legal proceedings under this section against corporations or unincorporated bodies to recover any such penalty or penalties may be instituted and conducted according to the provisions of general law applicable to suits or actions against such corporations or bodies.

History.—§12, ch. 23911, 1947.

cf.—§453.17, Inapplicable to publicly owned utilities.
§447.13, Right to strike.

453.14 Action for injunction.—Any person

adversely affected by reason of any violation of the provisions of this chapter may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this chapter.

History.—§13, ch. 23911, 1947.

453.15 Rights of immunities of individual employees; intent of law.—Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, or to make illegal the quitting of his labor or service or the withdrawal from his place of employment unless done in concert or by agreement with others. No court shall have power to issue any process to compel an individual employee to render labor or service or to remain at his place of employment without his consent. It is the intent of this chapter only to forbid employees to leave their employment in concert or to cause a work slowdown or stoppage in concert, and to forbid an employer to lock out his employees, in any case where the resultant interruption of public service would cause hardship to a substantial number of persons.

History.—§14, ch. 23911, 1947.

453.16 National railway labor act not affected.—Nothing in this chapter shall apply to any utility to which the national railway labor act is applicable.

History.—§15, ch. 23911, 1947.

453.17 Publicly owned and operated utilities excepted.—Nothing in this chapter shall apply to any utility owned and operated by a municipality, county or other governmental unit.

History.—§15a, ch, 23911, 1947.

453.18 Short title.—This chapter may be cited as "Public utility arbitration law."

History.—§19, ch. 23911, 1947.

TITLE XXX

REGULATION OF PROFESSIONS AND VOCATIONS

CHAPTER 454

ATTORNEYS AT LAW

454.01 Practicing attorneys. — All persons heretofore admitted to practice law in the supreme court or any circuit court of this state, according to the provisions of law or the rules of court existing at the time of such admission and all persons admitted to practice under the provisions of chapter 10175, acts of 1925, or under these statutes or any subsequent law of the state shall be deemed to be practicing attorneys of this state.

History.—§1, ch. 10175, 1925; CGL 4179.

454.021 Attorneys; admission to practice law; supreme court to govern and regulate.—

(1) Admissions of attorneys and counselors to practice law in the state is hereby declared to be a judicial function.

(2) The supreme court of Florida, being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state.

History.—§§1, 2 and 7, ch. 29796, 1955; (3) r. by §10, ch. 61-530.

454.022 State board of bar examiners; disposition of funds, records and equipment.—

(1) The state board of law examiners shall deliver to the supreme court of Florida all records, equipment and funds on hand on the effective date of this law.

(2) All moneys held by any state officer for the credit or account of the state board of law examiners on the effective date of this law, shall be paid over by said officer or board to the supreme court.

History.—Comp. §§4, 5, ch. 29796, 1955.

454.023 Costs in disbarment proceedings.— In any disbarment or disciplinary proceedings under the rules of the supreme court costs shall be levied against and paid by the unsuccessful party thereto.

History.—Comp. §1, ch. 29958, 1955.

454.11 Powers of attorneys.—Every attorney duly admitted or authorized to practice in this state shall have the right to appear before any court of the state, or any public board, committee, or officer in the interest of any client, and may appear as amicus curiae when so permitted. All attorneys shall be deemed officers of the court for the administration of justice, and amenable to the rules and discipline of the court in all matters of order or procedure not in conflict with the constitution or laws of this state.

History.—§11, ch. 10175, 1925; CGL 4189; am. §7, ch. 22858, 1945.

454.17 Attorneys may administer oaths in open court.—Attorneys authorized to practice law in this state may administer oaths in open court, in the presence of the presiding judge or justice thereof, and any person swearing falsely under an oath so administered shall be liable to the penalty prescribed for perjury.

History.—§17, ch. 10175, 1925; CGL 4195.

454.18 Officers not allowed to practice.—No sheriff, or clerk of any court, or deputy of either, shall practice in this state, nor shall any person not of good moral character, or who has been convicted of an infamous crime be entitled to practice. But no person shall be denied the right to practice on account of sex, race, or color. And any person, whether an attorney or not, or whether within the exceptions mentioned above or not, may conduct his own cause in any court of this state, or before any public board, committee, or officer, subject to the lawful rules and discipline of such court, board, committee or officer.

History.—§18, ch. 10175, 1925; CGL 4196.

454.19 Certain partnerships prohibited.—No judge of a court of this state who is permitted by the constitution and laws to practice law, shall form any partnership with the prosecut-

ing attorney of such court, or become a partner in any firm in which he is a partner. No attorney who may be a law partner with any judge of any state or municipal court who is permitted by law to practice law, shall be allowed to practice before the court of which his partner is judge.

History.—§19, ch. 10175, 1925; CGL 4197.

454.20 Attorneys not to be sureties.—No attorney shall become surety on the official bond of any state, county, or municipal officer of this state, nor surety on any bond of a client in judicial proceedings.

History.—§20, ch. 10175, 1925; CGL 4198.

454.23 Penalties.—Any person other than those entitled to practice on June 25th, 1925, who shall practice law or assume or hold himself out to the public as qualified to practice in this state, without first having obtained his certificate from the state board of law examiners as required by this chapter, and any person entitled to practice then or thereafter who shall violate any provisions of this chapter, shall be deemed guilty of a penal offense and, upon conviction, be fined not more than one thousand dollars or imprisoned in the county jail, with or without hard labor, for not more than twelve months.

History.—§21, ch. 10175, 1925; CGL 8133.
cf.—§775.06, Alternative punishment.

454.31 Practice while disbarred or suspended prohibited.—Any person who has been disbarred and who has not been lawfully reinstated or is under suspension from the practice of law by any circuit court of the state or by the supreme court of the state who shall either directly or indirectly practice law in any manner or hold himself out as an attorney at law or qualified to practice law shall be deemed guilty of a penal offense, and upon conviction be fined not more than one thousand dollars, or imprisoned in the county jail either with or without hard labor for not more than twelve months.

History.—§1, ch. 18006, 1937; CGL 1940 Supp. 8133(2).
cf.—§775.06, Alternative punishment.

454.32 Aiding or assisting disbarred or suspended attorney prohibited.—Any attorney at law licensed to practice in the courts of the state who either directly or indirectly aids or assists any person in carrying on the practice of law, either directly or indirectly in any manner whatsoever who has been disbarred or is under the suspension, as provided in §454.31 from the practice of law, shall be deemed guilty of a penal offense, and upon conviction shall be fined not more than one thousand dollars, or imprisoned in the county jail, either with or without hard labor, for not more than twelve months, and shall also be subject to disbarment.

History.—§2, ch. 18006, 1937; CGL 1940 Supp. 8133(3).
cf.—§775.06, Alternative punishment.

CHAPTER 455

ADMINISTRATIVE BOARDS, GENERALLY

455.01 Administrative boards defined.—The term "administrative board" as defined in this title relates to minor regulatory boards created by the state regulating the following: Board of accountancy, ch. 473; board of architecture, ch. 467; barbers' sanitary commission, ch. 476; board of basic sciences examiners, ch. 456; beauty culture board, ch. 477; board of chiropody examiners, ch. 461; board of chiropractic examiners, ch. 460; board of dental examiners, ch. 466; board of engineer examiners, ch. 471; board of funeral directors and embalmers, ch. 470; board of law examiners, ch. 454; board of massage, ch. 480; board of medical examiners, ch. 458; board of medical technology, ch. 483; milk commission, ch. 501; board of naturopathic examiners, ch. 462; board of nurses registration and nurses education, ch. 464; board of dispensing opticians, ch. 484; board of optometry, ch. 463; board of osteopathic examiners, ch. 459; board of pharmacy, ch. 465; real estate commission, ch. 475; land surveyors, ch. 472; board of veterinary examiners, ch. 474; and such other minor regulatory boards as may be created by legislative act.

History.—§1, ch. 21885, 1943; am. §1, ch. 28215, 1953.
Note.—Formerly §485.01.

455.011 Administrative boards; examination of applicants; preservation of records.—Each of the administrative boards defined in §455.01, which shall require an examination of an applicant as a condition precedent to the issuing of a license or other authority to practice the profession regulated by said board, shall conduct such examination in such manner that the applicant shall be known by number only until such examination is completed and the proper grade determined. An accurate record of such examination shall be made and said record, together with all examination papers shall be filed with the secretary-treasurer or the presiding officer of said board, if said board does not have a secretary-treasurer, and shall be kept for reference and inspection for a period of not less than two years immediately following said examination. Said boards shall make a record of the grade of each applicant on each subject covered by said examination and said grade shall be a part of said examination papers to be preserved for two years along with the other record of said examination.

History.—§1, ch. 61-47.

455.02 Members of armed forces in good standing with administrative boards.—Any member of the armed forces of the United States now or hereafter on active duty who, at the time of his becoming such a member was in good standing with any administrative board of the state and was entitled to practice or engage in his profession or vocation in the state, shall be kept in good standing by such administrative board, without registering, paying dues or fees or performing any other act on his part to be performed, as long as he is a member of the armed forces of the United States on active duty and for a period of six months after his discharge from active duty as a member of the armed forces of the United States.

History.—§2, ch. 21885, 1943.
Note.—Formerly §485.02.

455.03 Dispensing with examination of war veterans whose business, occupation or profession was interrupted by military service.—No examination or test to determine qualifications or eligibility shall be required of any veteran of the military services of the United States under any statute of the state, or any rule or regulation of any governmental agency, state, county or municipal, as a condition precedent to the right of such veteran to engage again in this state in any business, or pursue any occupation or profession, which such veteran was required to terminate, suspend or abandon by reason of his enlistment or draft into any branch of the military service of the United States subsequent to the enactment by the United States of the selective service act; and upon payment of current license fees and taxes imposed by law upon persons engaged in such business, occupation or profession, there shall be delivered to such veterans upon application therefor, the necessary permits, certificates and licenses to resume and engage in the business, occupation or profession in which such veteran was lawfully engaged prior to his abandonment or discontinuance thereof by reason of such military service; provided, that persons dishonorably discharged from such military service shall not be entitled to the benefits of this section.

History.—§1, ch. 22914, 1945.
Note.—Formerly §485.03.

455.04 Enforcement of law relating to public health; practice of medicine, etc.—The responsibility for the enforcement of the laws relating

to public health and the practice of medicine, surgery, chiropractic, naturopathy, nursing and midwifery shall rest upon all law enforcement officers of the state and the counties thereof and upon the state board of health acting through its duly appointed agents.

History.—§1, ch 23016, 1945.
Note.—Formerly §485.04.

455.05 Certificate by administrative board as evidence.—

(1) A certificate by the board of medical examiners, board of osteopathic medical examiners, board of chiropractic examiners, board of naturopathic examiners, board of optometry, board of examiners for nurses, board of pharmacy or board of dental examiners, of this state, or by any officer or member thereof, or by any secretary or assistant secretary thereof, bearing the seal of such board (when said board has a seal), certifying that the records of the said board evidence, or fail to evidence, the issuance of any license or other authority to practice medicine, osteopathy, chiropractic, naturopathy, optometry, nursing, pharmacy, or dentistry in this state, to a named person, shall be prima facie evidence of such fact and the authority, or want of authority, of such person to practice in this state under the authority of chapters 458, 459, 460, 462, 463, 464, 465 or 466, or any amendment or amendments thereof or thereto.

(2) Such certificates shall be admissible in all courts and in all administrative boards, commissions and agencies, of this state, and when received in evidence such certificates may be impeached only by positive documentary evidence or the testimony of not less than two witnesses.

History.—Comp. §§1, 2, ch. 26550, 1951.
cf.—Chapter 92, Evidence other than by deposition.

455.06 Liability insurance; authority of counties, state agencies and certain political subdivisions to purchase.—

(1) The public officers in charge, or governing bodies as the case may be, of every county, county board of public instruction, governmental unit, department, board or bureau of the state, including tax or other districts, political subdivisions and public and quasi-public corporations, other than incorporated cities and towns, of the several counties and the state, all hereinafter referred to as political subdivisions, which political subdivisions in the performance of their necessary functions own or lease and operate motor vehicles upon the public highways or streets of the cities and towns of the state or elsewhere, or own or lease and operate watercraft or aircraft, or own or lease buildings or properties or perform operations in the state or elsewhere are hereby authorized in their discretion, to secure and provide for such respective political subdivisions, insurance to cover liability for damages on account of bodily or personal injury, or death resulting therefrom, to any person, or to cover liability for damage to the property of any person or both, arising from or in connection with the operation of any such motor vehicles, watercraft or aircraft, or from the ownership or operation of any such buildings or property or any other such operations, whether from accident or occurrence; and to pay the premiums therefor from any general funds appropriated or made available for the necessary and regular expense of operations of such respective political subdivisions, without the necessity of specific appropriation or specification of expense with respect thereto. Provided, that in those instances where by general law provision has been made for the public officer in charge or governing body of any such political subdivision to provide such insurance, this section shall not be construed to impair any such previous acts but shall be construed as cumulative thereto.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of any insurance contract providing said coverage that the insurer shall not be entitled to the benefit of the defense of governmental immunity of any such political subdivisions of the state in any suit instituted against any such political subdivision as herein provided, or in any suit brought against the insurer to enforce collection under such an insurance contract; and that the immunity of said political subdivision against any liability described in subsection (1) hereof as to which such insurance coverage has been provided, and suit in connection therewith, are waived to the extent and only to the extent of such insurance coverage; provided, however, no attempt shall be made in the trial of any action against a political subdivision to suggest the existence of any insurance which covers the whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

History.—§§1-3, ch. 28220, 1953; (1) by §1, ch. 57-176; (1) by §1, ch. 59-342; (3) r. §1, ch. 59-76; (1) §1, ch. 63-499.

CHAPTER 456

FLORIDA BASIC SCIENCE LAW—HYPNOSIS

PART I FLORIDA BASIC SCIENCE LAW

PART II HYPNOSIS

PART I

FLORIDA BASIC SCIENCE LAW

456.01 Short title of part I of this chapter.—Part I of this chapter shall be known as the "Florida Basic Science Law."

History.—§1, ch. 19281, 1939; CGL 1940 Supp. 4151(539).
cf.—§458.16 Furnishing copies of mental or physical examination reports.

456.02 Definitions of terms used in part I of this chapter.—For the purposes of part I of this chapter:

(1) The term, "Basic Sciences," means the following subjects: anatomy; physiology; chemistry; pathology; bacteriology.

(2) The healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(3) A license is a certificate issued to a person authorizing him to practice the healing art.

History.—§2, ch. 19281, 1939; CGL 1940 Supp. 4151(540).
cf.—§1.01 General definitions.

456.03 Certificate of proficiency in the basic sciences a prerequisite qualification for examination for license to practice the healing art.—No person shall be eligible for examination or permitted to take an examination for a license to practice the healing art or any branch thereof or be granted any such license unless and until he has presented to the licensing board or other authority empowered to issue such license, a certificate of proficiency in the basic sciences as provided in part I of this chapter. This requirement shall be in addition to all other requirements now or hereafter in effect with respect to the issuance of such license.

History.—§4, ch. 19281, 1939; CGL 1940 Supp. 4151(542).

456.04 Persons exempted from operation of part I of this chapter.—Part I of this chapter shall not be construed as applying to dentists, pharmacists, nurses, optometrists, chiropodists and christian scientists practicing within the limits of their respective callings; nor to persons licensed to practice the healing art or any branch thereof in the state on September 10, 1939, nor to persons specifically permitted by law to practice without licenses who practice each within the limits of the privileges thus granted them.

History.—§5, ch. 19281, 1939; CGL 1940 Supp. 4151(543).

456.05 Prior laws not affected; certificates under part I of this chapter to be accepted in lieu of examinations.—No provision of part I of this chapter shall be construed as repealing any statutory provision in force on June 12, 1939, with reference to the requirements governing the issuing of a license to practice the healing art, or any branch thereof, but any board authorized to issue licenses to practice the healing art, or any branch thereof, shall accept certificates of proficiency issued by the Florida board of examiners in the basic sciences in lieu of examining applicants in such sciences.

History.—§23, ch. 19281, 1939; CGL 1940 Supp. 4151(557).

456.06 Board of examiners in the basic sciences; subjects of examinations.—There is established a board of examiners in the basic sciences to consist of five members authorized and directed to conduct written examination

of all persons who shall desire to apply for a license to practice the healing art. Said examination shall cover the five following basic sciences, viz: anatomy; physiology; chemistry; pathology; bacteriology.

History.—§3, ch. 19281, 1939; CGL 1940 Supp. 4151(541). cf.—Ch. 483 Medical technology.

456.07 Board of examiners in the basic sciences; terms; qualifications.—The governor shall appoint a board of examiners in the basic sciences, referred to in this chapter as the "board", consisting of five members learned in the basic sciences from the faculties of the universities and colleges in Florida having four years' college courses, who shall be appointed one for two years, and two for three years and two for four years from the date of their respective appointments. On the expiration of the term of any member the governor shall fill the vacancy or vacancies by appointment for a term of four years; on the death or resignation or removal of any member the governor shall fill the vacancy by appointment for the unexpired portion of the term. Every member shall serve until his successor is appointed and qualified. Not more than two members of the board shall be appointed from the faculties of any one of the universities or colleges described herein.

History.—§6, ch. 19281, 1939; CGL 1940 Supp. 4151(544).

456.08 Powers and duties of board.—The board may elect officers from its members, adopt a seal and make such rules, in addition to the rules specified in part I of this chapter, as it deems expedient to carry part I of this chapter into effect. The board shall elect a chairman and secretary from among its members. The secretary of the board, who is to handle all the funds received by the board, must execute a bond in adequate amount and with good and sufficient surety, payable to the state and conditioned for the faithful performance of the duties of his office.

History.—§7, ch. 19281, 1939; CGL 1940 Supp. 4151(545). cf.—Duties relating to physical therapy practice, ch. 486.

456.09 Place of examination.—The chairman of the board shall arrange the place in which to conduct the examination held by said board which shall be at one of the universities or colleges represented by members of the board.

History.—§9, ch. 19281, 1939; CGL 1940 Supp. 4151(547).

456.10 Qualifications of applicant for certificate of proficiency in basic sciences.—No person shall be eligible for examination for a certificate of proficiency in the basic sciences until he shall have furnished satisfactory evidence to the board that he is a citizen of the United States, is of good moral character and is a graduate of an accredited high school, or possesses the educational qualifications equivalent to those required for graduation by all accredited high schools, such educational qualifications to be determined by the board.

History.—§12, ch. 19281, 1939; CGL 1940 Supp. 4151(550).

456.11 Application for examination. — Any person desiring to take the examination for a certificate of proficiency in the basic sciences shall make application to the board, at least fifteen days before the examination on a form provided by the board. Such application must be accompanied by the examination fee and such proof as is necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the board and shall be signed and verified by oath of the applicant. Provided that said application should not contain questions to be answered by said applicant which will disclose the professional school he may have attended or what system of treating the sick he intends to pursue.

History.—§13, ch. 19281, 1939; CGL 1940 Supp. 4151(551).

456.12 Notice of examination.—The board shall give public notice of the time and place of all examinations to be held under this chapter and such notice shall be given in such manner as the board may deem expedient and in ample time to allow all candidates to comply with the provisions of part I of this chapter.

History.—§14, ch. 19281, 1939; CGL 1940 Supp. 4151(552).

456.13 Examinations; time; place, subjects and manner of giving; re-examination. — The board shall meet at a place selected by the chairman and there conduct examinations in the basic sciences twice a year, at a time to be selected by the board, the examinations to be held approximately six months apart. Every examination shall be conducted in writing in English in such manner that the applicant shall be known by number only until such examination papers are read and the proper grade determined. The examination shall be of such a nature as to constitute a reasonable test as to whether the person so examined has such knowledge of the elementary principles of the basic sciences as should be attained upon the completion of a course of study of the following subjects for the number of hours specified: anatomy, four hundred hours; physiology, two hundred hours; chemistry, two hundred hours; pathology, one hundred sixty hours; bacteriology, one hundred hours. The board shall establish rules for conducting all examinations, grading of examinations and passing upon the educational qualifications of applicants as shown by such examinations.

If the applicant receives a credit of seventy-five per cent or more in each of the basic sciences, he shall be considered as having passed the examination. If the applicant receives less than seventy-five per cent in one subject and receives seventy-five per cent or more in each of the remaining subjects, he shall be allowed a re-examination at the examination next ensuing, on application and the payment of the prescribed fee, and he shall be required to be re-examined only in the subject in which he received a rating less than seventy-five per cent. If the applicant receives less than seventy-five per cent in more than one subject, he shall not be re-examined unless he presents proof, satisfactory to the board,

of additional study in the basic sciences sufficient to justify re-examination. No part of the preparation of questions, the actual giving of the examinations or the grading of papers may in any way be delegated to any person other than a member of the board, or otherwise performed by any person not a member of the board.

Three members of the board shall constitute a quorum for conducting examinations.

History.—§§15, 16, ch. 19281, 1939; CGL 1940 Supp. 4151(545), 4151(553).

456.14 Certificates issued to successful examinees; recourse of unsuccessful examinees.—The board shall issue a certificate of proficiency in the basic sciences to each of the successful applicants after examinations as provided in part I of this chapter. All examination papers and the answers thereto, together with the grading thereof, shall be saved for a period of two years, and unsuccessful applicants shall be entitled to photostatic copies thereof, upon payment of the expense of same, upon filing petition for review in the circuit court of the county where the examination was held. Any unsuccessful applicant who may feel aggrieved by reason of the conduct or action of the board in denying him a certificate of proficiency may file a petition for the issuance of a writ of certiorari in the circuit court of the county where the examination was held. The proceedings to review shall be governed by the Florida appellate rules.

History.—§17, ch. 19281, 1939; CGL 1940 Supp. 4151(554); §1, ch. 63-509.

456.15 Form of certificate.—Each certificate of proficiency in the basic sciences shall be in the form prescribed by the board, under the name and seal of the board and signed by its chairman and secretary.

History.—§18, ch. 19281, 1939; CGL 1940 Supp. 4151(555).

456.16 Examination fee.—The fee for examination or any re-examination by the board shall be ten dollars; all fees shall be paid to the secretary of the board by the applicant at the time of filing application.

History.—§11, ch. 19281, 1939; CGL 1940 Supp. 4151(549).

456.17 Disposition of fees; expenses.—All moneys collected by the board from fees prescribed or authorized to be charged by part I of this chapter, shall be received and accounted for by the secretary of the board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. Members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. All expenses of the board in connection with the provisions of part I of this chapter shall be paid from the moneys collected under the provisions of part I of this chapter. All bills and expenses shall be paid by the comptroller upon requisition of the secretary of the board approved by the chairman of the board.

History.—§10, ch. 19281, 1939; CGL 1940 Supp. 4151(548). §85, ch. 26869, 1951; am. §3, ch. 28215, 1953; §2, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§455.03 Dispensing with examination of veterans.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

456.18 Secretary to keep records of board.—The secretary shall keep a correct record of the proceedings of the board which shall be prima facie evidence of all matters contained therein; he shall also keep the questions submitted in the examination of any applicant and the applicant's answers thereto, and upon the granting of a certificate, shall so certify to the secretary of state, the various boards of examiners in the healing arts, and the state board of health.

History.—§8, ch. 19281, 1939; CGL 1940 Supp. 4151(546).

456.19 Certain certificates and licenses void.—Any basic science certificate of proficiency and any license to practice the healing art or any branch thereof, issued contrary to this chapter, is void. Any licensing board which has issued a license on the basis of a void basic science certificate shall revoke or cancel that license. The procedure for such revocation or cancellation shall be in accordance with the provisions of the law under which such license was issued, authorizing the cancellation or revocation of licenses generally. The certificate issued to any person by the state board of examiners in the basic sciences shall be revoked automatically by the revocation of his license to practice the healing art or any branch thereof.

History.—§20, ch. 19281, 1939; CGL 1940 Supp. 4151(556).

456.20 Procuring license fraudulently; penalty.—Any person who obtains or attempts to obtain a license to practice the healing art or any branch thereof from any board or officer authorized to issue any such license, without presenting to said board or officer a valid certificate issued to the applicant by the state board of examiners in the basic sciences, as in part I of this chapter required, shall be fined not more than five hundred dollars or imprisoned not more than one year.

History.—§21, ch. 19281, 1939; CGL 1940 Supp. 7849(4).
cf.—§775.06 Alternative punishment.

456.21 Penalty for knowingly issuing license without proper certificate.—Any person who knowingly issues or participates in the issue of a license to practice the healing art or any branch thereof (1) to any person who has not presented to the licensing board a valid certificate from the state board of examiners in the basic sciences or (2) to any person who has presented to such licensing board a certificate obtained from the state board of examiners in the basic sciences by dishonesty or fraud, or any forged or counterfeit certificate, shall be fined not more than

five hundred dollars or imprisoned not more than one year.

History.—§22, ch. 19281, 1939; CGL 1940 Supp. 7849(5). cf.—§775.06 Alternative punishment.

456.22 Penalty for violations of part I of this chapter.—Any person who shall practice the healing art or any branch thereof without first having obtained a certificate of proficiency in the basic sciences, or who shall violate or participate in the violation of any of the provisions of part I of this chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year.

The attorney general and the several county solicitors or state attorneys, where there is no county solicitor, shall prosecute violations of part I of this chapter.

History.—§19, ch. 19281, 1939; CGL 1940 Supp. 7849(3). cf.—§775.06 Alternative punishment.

PART II

HYPNOSIS

456.30 Short title. — This part II of this chapter shall be known as the hypnosis law.

History.—§2, ch. 61-506.

456.31 Legislative intent.—It is recognized that hypnosis has attained a significant place as another technique in the treatment of human injury, disease and illness, both mental and physical; that the utilization of hypnotic techniques for therapeutic purposes should be restricted to certain practitioners of the healing arts who are qualified by professional training to fulfill the necessary criteria required for diagnosis and treatment of human illness, disease or injury within the scope of their own particular field of competence; or that such hypnotic techniques should be employed by qualified individuals who work under the direction, supervision or prescription of such practitioners.

It is the intent of the legislature to provide for certain practitioners of the healing arts, such as a trained and qualified dentist, to use hypnosis for hypnoanesthesia or for the allaying of anxiety in relation to dental work; however, under no circumstances shall it be legal or proper for the dentist, or the individual to whom the dentist may refer the patient, to use hypnosis for the treatment of the neurotic difficulties of a patient. The same applies to the optometrist, chiropodist, chiropractor, osteopath or physician of medicine.

It is, therefore, the intent and purpose of part II of this chapter to regulate the practice of hypnosis for therapeutic purposes by providing that such hypnotic techniques shall be used only by certain practitioners of the healing arts within the limits and framework of their own particular field of competence; or by qualified persons to whom a patient may be referred, in which event the referring practitioner of the healing arts shall be responsible, severally or jointly, for any injury or damages resulting to the patient because of either his own incompetence, or the incompetence of the person to whom the patient was referred.

History.—§1, ch. 61-506.

456.32 Definitions.—In construing part II of this chapter, the words, phrases or terms, unless the context otherwise indicates, shall have the following meanings:

(1) "Hypnosis" shall mean hypnosis, hypnotism, mesmerism, post-hypnotic suggestion, or any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the person's mind to suggestion or direction is increased or is intended to be increased, where such a condition is used or intended to be used in the treatment of any human ill, disease, injury, or for any other therapeutic purpose.

(2) "Healing arts" shall mean the practice of medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, chiropody, podiatry and optometry.

(3) "Practitioner of the healing arts" shall mean a person licensed under the laws of the state to practice medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, chiropody, podiatry or optometry within the scope of his professional training and competence and within the purview of the statutes applicable to his respective profession, and who may refer a patient for treatment by a qualified person, who shall employ hypnotic techniques under the supervision, direction, prescription and responsibility of such referring practitioner.

(4) "Qualified person" shall mean a person deemed by the referring practitioner to be qualified by both professional training and experience to be competent to employ hypnotic technique for therapeutic purposes, under supervision, direction or prescription.

History.—§3, ch. 61-506.

456.33 Hypnosis, unlawful to practice.—It shall be unlawful for any person to engage in the practice of hypnosis for therapeutic purposes unless such person is a practitioner of one of the healing arts, as herein defined, or acts under the supervision, direction, prescription and responsibility of such a person.

History.—§4, ch. 61-506.

456.34 Penalties.—

(1) MISDEMEANOR. — Any person who shall violate the provisions of part II of this

chapter shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(2) REVOCATION OF LICENSE.—A violation of any of the provisions of part II of this chapter by any person licensed to practice any branch of the healing arts in this state shall constitute grounds for revocation of license and action may be taken by the respective boards in accordance with the applicable statutes.

(3) CIVIL LIABILITY.—Any person who shall be damaged or injured by any practitioner of the healing arts, or by any person to whom such a practitioner may refer a patient for treatment, may bring suit against the practitioner either severally, or jointly, with the person to whom the referral was made.

(4) CONSTRUCTION IN RELATION TO OTHER LAWS.—No civil or criminal remedy for any wrongful action shall be excluded or impaired by the provisions of part II of this chapter.

History.—§5, ch. 61-506.

CHAPTER 458

MEDICAL PRACTICE ACT

458.001 Purpose. — Recognizing that the practice of medicine is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary by the legislature in the interest of public health, safety and welfare to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of medicine and from unprofessional conduct by persons licensed to practice medicine.

History.—§1, ch. 61-243.

458.002 Short title.—This chapter may be cited as the medical practice act.

History.—§1, ch. 61-243.

458.01 Board of medical examiners; qualifications.—A board is established known by the name and style of the state board of medical examiners; said board shall be composed of ten practicing physicians of integrity and ability, who shall be residents of and duly licensed to practice medicine in this state, and who shall have graduated from reputable medical schools and have been engaged in the active practice of their profession within this state for at least a period of five years, but none of them shall be connected in any way with any medical college; said board shall perform such duties and possess and exercise such powers relative to the protection of the public health and the control and regulation of the practice of medicine in the state as is prescribed and conferred upon it in this chapter.

History.—§2, ch. 8415, 1921; CGL 3404.
cf.—Duties relating to physical therapy practice, ch. 486.

458.02 How board constituted.—The governor shall appoint ten physicians who shall possess the qualifications specified in §458.01 to constitute the members of the board of medical examiners.

Said members shall be so classified by the governor that the term of office of two shall expire in one, three in two, two in three and three in four years from the date of appointment. Annually thereafter at the end of said terms the governor shall appoint members who shall serve for a term of four years. The governor shall have power to remove from office members of the board for neglect of duty required by this law, for incompetency or for unprofessional conduct. Any vacancy which may occur in said board in consequence of death, resignation, removal from the state or from other cause shall be filled for the unexpired term by the governor in the same manner. A majority of the board shall constitute a quorum.

History.—§3, ch. 8415, 1921; CGL 3405; §1, ch. 20927, 1941. Am. §1, ch. 29867, 1955.

458.03 Oath of members of board.—Immediately and before entering upon the duties of said office the members of the board of medical examiners shall take the constitutional oath of office and shall file the same in the office of the secretary of state; and there shall thereupon issue to said member a certificate of his appointment.

History.—§4, ch. 8415, 1921; CGL 3406.
cf.—§2, Art. XVI, Florida constitution, constitutional oath of office.

458.04 Organization of board; meetings.—(1) Immediately after the appointment and qualification of its members, the board of medical examiners shall meet and organize. Said board shall elect a president, vice-president, secretary and treasurer from its membership. The office of secretary and treasurer may be held by one person. Members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. The secretary shall be

paid an annual salary of twelve hundred dollars.

(2) Said board shall hold two regular meetings each year at some convenient place in the state and on such date as the board may select, of which meetings notice shall be given by publication thereof once a week for four successive weeks in a newspaper of general circulation throughout the state. Special or call meetings may be held at the discretion of the president. Said board shall adopt a seal, which must be affixed to all licenses issued by it. The board shall from time to time adopt such rules and regulations as it may deem necessary for the performance of its duties, and shall examine and pass upon the qualifications of applicants for the practice of medicine in this state as provided in this chapter.

History.—§5, ch. 8415, 1921; §1, ch. 12285, 1927; CGL 3407; §4, ch. 28215, 1953; §2, ch. 29867, 1955; §2, ch. 61-243; §3, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds, etc.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.
§455.03 Dispensing with examination of veterans.

458.041 Assistant secretary; employment, compensation.—

(1) The state board of medical examiners may appoint or employ an assistant secretary or secretaries, and such other personnel, including but not limited to an executive director and investigators, as may be necessary to assist the board in doing and performing any and all of the powers, duties and obligations set forth in this act. Such personnel need not be licensed physicians or members of the said board. The assistant secretary or secretaries shall act as deputies to and under the secretary of the said board and shall be authorized to do and perform any and all of the powers, duties and obligations of the said secretary of the board as may be assigned by the secretary or the board.

(2) The compensation to the assistant secretaries and other personnel of the board of medical examiners shall be fixed by the said board and paid in the usual manner.

History.—§§1, 2, ch. 26554, 1951; §3, ch. 61-243.

458.05 Application for license; qualifications of applicant.—

(1) Any person wishing to practice medicine in this state, who has not heretofore been registered or licensed so to do, shall, before practicing in this state, make application to the board upon such form and in such manner as shall be adopted and prescribed by it, and obtain a license. Unless such person shall have obtained a license as aforesaid, it shall be unlawful for him to practice medicine in this state, and if he shall so practice medicine, he shall be deemed to have violated the provisions of this chapter.

(2) The board shall admit to examination any candidate who pays the fee provided for in this chapter and submits evidence verified by oath, satisfactory to the board, that such applicant:

(a) Is more than twenty-one years of age and a citizen of the United States;

(b) Is of good moral character;

(c) Is a graduate of a medical school or college maintaining a standard and reputability approved by the board pursuant to §458.08.

(d) Has completed at least one year of approved internship or at least five years of private practice.

(3) Notwithstanding the provisions of subsection (2)(c), graduates of foreign medical schools, except approved schools in Canada, who are otherwise qualified and whose medical credentials have been evaluated by the educational counsel for foreign medical graduates and who have passed the American medical qualification examination for foreign medical graduates, may be accepted for the examinations in Florida.

History.—§6, ch. 8415, 1921; §2, ch. 12285, 1927; CGL 3408; §1, ch. 26549, 1951; §3, ch. 29867, 1955; (2) (d), (3) n. by §4, ch. 61-243.

cf.—§458.13, Practice of medicine defined.
§458.15(2), Penalty for practicing without license.
§§456.02-456.04, Certificate of proficiency in basic sciences; exceptions.

458.06 Recording of license; registration.—

(1) Every license to practice medicine shall, before the licensee begins practice thereunder, be recorded in a book for that purpose in the office of the clerk of the circuit court of the county in which he resides, or in which such practice is intended to be carried on, or with the clerk of the circuit court in Leon county, with the name, residence, place and date of birth and source, number and date of his license to practice. Before registering each licensee shall file, such file to be kept in a bound volume in the office of the clerk of the circuit court, an affidavit of the above facts and also that he is the person named in such license and had before receiving the same complied with all the requirements as to examination required by law; that no money was paid for such license except the regular fee paid by all applicants therefor, that no fraud, misrepresentation or mistake in any material regard was employed by any one or occurred in order that such license should be granted. The clerk's fee for recording such license and affidavit shall be the same as for recording a deed; provided, however, that the clerk of the circuit court shall not accept for recording, and shall not record any such license to practice medicine dated after the effective date of this law unless the same shall be presented to him for recording on or before the expiration of sixty days after the date of such license, or the date of the recertification thereof by the board of medical examiners; provided, further, that no license to practice medicine dated prior to the effective date of this law may be recorded by the clerk of the circuit court unless the same shall be presented to him for recording on or before the expiration of six months from and after the effective date of this law, or within sixty days after the date of recertification

thereof by the board of medical examiners. The circuit court clerk of each county shall make report to the secretary of the board of medical examiners on the thirty-first day of December of each year of all certificates registered by him.

(2) Every person now lawfully engaged in the practice of medicine and every person hereafter duly licensed to practice medicine, shall, on or before January first of each year, apply to the secretary of the state board of medical examiners for a certificate of registration upon a blank form to be furnished by such secretary and shall pay at such time a fee of ten dollars. The license of any physician who fails or neglects to register by January 1 of any year, as required herein, shall automatically be suspended until such time as such physician shall register and shall pay the regular annual fee plus a delinquency fee of ten dollars for each year or fraction thereof that he failed to register.

(3) A physician in making his first registration hereunder shall write or cause to be written upon the application blank so furnished by the secretary of the state board of medical examiners, his full name, post office and residence address, the date and number of his license and such other facts for the identification of the applicant as a licensed practitioner of medicine as may be deemed necessary, and shall duly execute and verify the same before an officer authorized to take acknowledgments of deeds and shall file the same with the secretary of the board. Registration subsequent to the first registration need not be upon sworn application, unless the board, in a particular case, for reasons satisfactory to it, may require that application be under oath.

(4) The secretary of the state board of medical examiners on or before October 1 of each year, after the first registration, shall mail or cause to be mailed to each registered physician, a blank form of application for registration addressed to the last known post office address of such physician. The form of such application shall be such as to contain space for the insertion by the applicant of the information required by the provisions of this chapter.

(5) The secretary of the state board of medical examiners shall issue to any duly licensed physician in this state upon his application therefor in accordance with the provisions hereof, a certificate of registration under the seal of the board for the year ensuing and ending December 31.

(6) Each licensed physician shall conspicuously display his proper registration certificate in his office at all times.

(7) Annual registration of persons licensed to practice medicine pursuant to this chapter shall be made with the state board of health as provided in §381.401.

History.—§7, ch. 8415, 1921; §3, ch. 12285, 1927; CGL 3409; §1, ch. 22059, 1943; §1, ch. 26772, 1951; §5, ch. 61-243; (2) §2, ch. 61-129; (7) n. §29, ch. 63-572.

458.08 Board to pass upon medical colleges, schools, hospitals, etc.—

(1) The board of medical examiners may pass upon the good standing and reputability of any medical school or college and determine those which maintain a standard of training sufficient to admit their graduates to the medical examinations given by the said board.

(2) The said board may also pass upon the good standing and reputability of any hospital and determine those which maintain a standard of training sufficient to be recognized by the board when considering medical examinations given by the said board.

(3) In determining the good standing and reputation of medical schools and colleges, and of hospitals, as aforesaid, the board may investigate and make a personal inspection thereof, or delegate to one or more of its members or any other duly qualified person or persons, the power and authority to make such investigation for the board and report their conclusions to the board. The board may, if satisfied of the correctness of the same upon investigation, adopt inspections of medical schools and colleges and hospitals made by, or under the authority of, the American medical association or other nationwide groups.

History.—§9, ch. 8415, 1921; CGL 3411; §1, ch. 26548, 1951.

458.09 Examination of applicants.—The examination of applicants for license to practice medicine shall be made by the board of medical examiners according to the methods deemed by it to be the most practical and expeditious to test the applicants' qualifications. The board shall require the examination to be in writing. Each applicant shall be designated by a number instead of by name so that his identity shall not be disclosed to the members of the board until after the examination papers are graded. Examinations shall be in selected categories to appropriately include the various fields of the practice of medicine and surgery, including the recognized branches or specialties and also including clinical applications of the basic sciences. Subjects in which examinations are to be given will be available six months before the examinations are given.

History.—§10, ch. 8415, 1921; CGL 3412; §4, ch. 29867, 1955; §6, ch. 61-243.

458.10 Fees.—

(1) There shall be paid to the secretary and treasurer of the board of medical examiners by each applicant for license by examination a fee of fifty dollars, which shall accompany the application. No part of any fee is returnable under any circumstances, nor shall this chapter be construed as affecting or changing laws in reference to license tax to be paid by physicians and surgeons.

(2) All moneys received by the board of medical examiners under the provisions of this chapter shall be deposited and expended pursuant to the provisions of §215.37. All expendi-

tures shall be paid upon presentation of vouchers approved by the president and secretary and treasurer of said board.

History.—§11, ch. 8415, 1921; §4, ch. 12285, 1927; CGL 3413; §1, ch. 26553, 1951; §86, ch. 26869, 1951; am. §5, ch. 28215, 1953; §7, ch. 61-243; §3, ch. 61-514.

458.11 Powers of board; prosecutions.—The board of medical examiners may administer oaths, summon witnesses and take testimony in all matters relating to its duties. Said board shall issue license to practice medicine to all persons who shall furnish satisfactory evidence of attainments and qualifications under the provisions of this chapter, and the rules and regulations under the provisions of this chapter, and the rules and regulations of the board. Such license shall be signed by the president and attested by the secretary-treasurer of the board under its adopted seal, and it shall give absolute authority to the person to whom it is issued to practice medicine in this state. Every unrevoked license and indorsement of recordation made as provided in this chapter shall be presumptive evidence in all courts and places that the person therein named is legally licensed to practice medicine. The secretary-treasurer, under the direction of the board, personally or by deputy, shall aid the prosecuting attorneys of the state in the enforcement of this chapter and in the prosecution of persons charged with violation of its provisions.

History.—§12, ch. 8415, 1921; CGL 8414.

458.12 Revocation, suspension, annulment or denial of license.—

(1) The board shall have authority to discipline the holder of a license or other authority to practice medicine in this state, and each applicant for license, whose default has been entered or who has been heard and found guilty by the board, of any of the following:

(a) Fraud in the practice of medicine, or fraud or deceit in his admission to the practice of medicine;

(b) Conviction of a felony in the courts of this or any other state, territory or country. The conviction of any offense in another state, territory or country, which if committed in this state would be deemed a felony shall be held to be a felony under this section without regard to its designation in such other state, territory or country;

(c) Engaging in the practice of medicine under a false or assumed name, or the impersonation of another practitioner of a like, similar or different name;

(d) Addiction to the habitual use of intoxicating liquors, narcotics or stimulations to such an extent as to incapacitate him from the performance of his professional obligations and duties;

(e) Untrue, fraudulent, misleading or deceptive advertising; advertising that he is able to treat or cure diseases by any secret method, procedure, treatment or medicine; or that he is able to cure a manifestly incurable disease;

(f) Obtaining a fee, or other things of value, on representation that a manifestly incurable disease can be permanently cured;

(g) Causing the publication or circulation of an advertisement of any medicine whereby the monthly periods of women can be regulated, or the menses, if suspended, can be reestablished;

(h) Causing the publication or circulation of fraudulent advertisement relative to any disease of the sexual organs;

(i) The procuring, aiding or abetting in procuring of criminal abortion;

(j) Is guilty of immoral or unprofessional conduct;

(k) Maintains a professional connection or association with any other person who continues to violate the provisions of this chapter, or the rules and regulations of the board duly made pursuant thereto, after ten days' notice in writing by the board;

(l) Has been adjudged insane by a court of competent jurisdiction (within or without this state). Where a person has been so adjudicated he shall be deemed disqualified to practice medicine in this state so long as such adjudication shall remain in full force and effect and the disabilities of such person have not been judicially restored; unless the board shall, after a full hearing, order otherwise.

(2) In disciplining any person for violating the provisions of this section, or any other statute or law of this state or any other state relating to the practice of medicine, the board may:

(a) Suspend the imposition of judgment and penalties;

(b) Impose judgment and penalties, but suspend enforcement thereof and place the licensee on probation;

(c) Suspend or limit his right to practice in this state for a period of time not exceeding two years;

(d) Revoke his license; which license may be reinstated by the board upon sufficient showing that an error was made as to evidence or to correct an injustice;

(e) Take such other action, in relation to disciplining him, as the board in its discretion may deem proper; and

(f) Withhold any license, when the same has not been delivered, either permanently or for a period of time.

(3) The board shall have the right and power, in proper cases, to grant rehearings, if applied for within thirty days, upon questions of fact determined by the board.

History.—§13, ch. 8415, 1921; §5, ch. 12285, 1927; CGL 3415; §1, ch. 26552, 1951; (2) (d) a. by §8, ch. 61-243.

cf.—§1.01(3), "Person" defined.

§458.15, Penalties for specific acts.

458.121 Procedure for revocation, suspension, etc.—

(1) Any person, including the board or any member thereof, may prefer charges against any licensee or applicant for license. Such charges shall be in writing and shall be sworn to by the person making them, when not made by the board as a body. They shall be preferred by delivering them, together with ten copies thereof, to the secretary of the board, who, forthwith, shall furnish each member of the board with a copy of said charges.

(2) All charges, unless dismissed by the board as being unfounded or trivial, shall be heard and disposed of by the board within four months after the date upon which they were preferred, except as to cases hereinafter noted.

(3) The time and place of said hearing shall be fixed by the board, and a copy of the charges, together with notice of the time and place of the hearing, shall be served upon the person against whom preferred, either personally or by registered mail with return receipt demanded, addressed to the said person at his last known address as the same appears on the records of the board, at least twenty days before the time fixed for the hearing.

(4) Where personal service cannot be made as aforesaid, or where registered notice is returned undelivered, the secretary of the board shall cause a short, simple notice to the licensee to be published for four consecutive weeks (four publications being sufficient) in a newspaper published in the county wherein the licensee's last known address appears as shown on the records of the board, or, if no newspaper be published in said county, then said notice may be published in a newspaper published in an adjoining county. If said address appears in some state, territory or country other than this state, then said notice may be published in Leon county.

(5) Said notices shall contain the name of the licensee, of applicant, his last known address, the serial number of his license, if any, under which he is authorized to practice in this state, the time of the preferring of the charges, the date set for the hearing of said charges, the nature of the charges, and the place where said hearing will be held.

(6) Due proof of service or of publication shall be filed with the secretary of the board and shall be recorded by him in the minutes of the board. The board, for good cause shown, may continue any hearing from time to time and in proper cases to a time beyond the aforesaid four months' period. At any hearing the accused shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him and to testify and produce witnesses in his defense.

(7) Notwithstanding any provision of this section, where charges preferred against a licensee involve any one of the offenses set forth in §458.12(1)(a), (b), (d), (i) and (l), in the opinion of the president, vice-president and secretary and treasurer, the evidence in support of the charges is clear, competent and unequivocal, the subject's license may be temporarily suspended by the board pending a full hearing as herein provided, provided said full hearing is held within sixty days from the temporary suspension of the subject's license. Such suspension shall be without prejudice to the licensee at such full hearing.

History.—§2, ch. 26552, 1951; (7) n. by §9, ch. 61-243.

458.122 Conduct of hearing, witnesses, evidence, etc.—

(1) For the purpose of such hearing, the board shall have the power, under the hand of the president, vice-president or secretary, and the seal of the board, to require the production of books, papers or other documents and may issue subpoenas to compel the defendants or witnesses to testify and produce such books, papers or other documents in their possession as may be in the opinion of the board, relevant to any hearing before it; said subpoenas to be served by the sheriff of the county where the witness resides or may be found. Such witnesses shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state, which shall be paid by said board. Any member of the board may administer oaths or affirmation to witnesses appearing before the board. Subpoenas may be so issued for and in behalf of the defendant.

(2) If any person shall refuse to obey any subpoenas so issued or shall refuse to testify or produce any books, papers or other documents required by the board, the board may present its petition to the circuit court of the county where any such person is served with the subpoena or where he resides, setting forth the facts, and shall deposit with said court, when such subpoena is issued in its behalf, the per diem and mileage to secure the attendance of such witness (the defendant may make like deposits), whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

(3) If at such hearing the board shall be satisfied, from the evidence and proofs submitted, that the accused has been guilty of any of the charges mentioned in §458.12 hereof it shall thereupon, without further notice, take such action upon the charges and impose such penalties as it may be advised under said §458.12. The records of the board shall reflect

the action of the board upon the charges.

(4) The board shall preserve a record of such proceedings in a similar manner as records in court proceedings are kept and preserved in the circuit courts of this state.

History.—Comp. §2, ch. 26552, 1951.
cf.—§90.14 Compensation of witnesses in various courts.

458.123 Review of orders of the board by the circuit courts; procedure and venue.—

(1) The final order of the board in proceedings for the suspension or revocation of licenses shall be subject to review by the circuit courts of Leon county, of the county wherein the licensee has recorded his license and has his principal professional office or of the county wherein the books and records of the board are kept.

(2) All other final orders of the board shall be subject to review in the same courts.

(3) All such reviews shall be obtained by filing a petition for the issuance of a writ of certiorari with the appropriate circuit court in the manner provided by the Florida appellate rules.

(4) Any interested party may appeal from the decision of the circuit court to the district court of appeal, first district, in the manner and within the time provided by the Florida appellate rules.

History.—§2, ch. 26552, 1951; §2, ch. 63-509.

458.13 Definition of practice of medicine; limitations, exceptions, etc.—

(1) Any person, except as hereinafter provided, shall be deemed to be practicing medicine within the purview of this chapter, who holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, or who shall offer or undertake, by any means or method, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition.

(2) This chapter shall not be construed as applying to:

(a) Any osteopath, chiropractor, chiropodist, naturopath, optometrist, nurse, pharmacist, dentist, or midwife, duly and legally licensed by their respective state boards, when practicing their profession within the purview of the statutes applicable to their respective professions.

(b) Any lawfully qualified physician, of some other state or country, when meeting legally registered and qualified physicians of this state in consultation.

(c) Any physician duly qualified to practice in any county of this state called to attend isolated cases in another county of this state, although not residing or habitually practicing in such other county.

(d) Any person furnishing medical assistance in case of emergency.

(e) The domestic administration of recognized family remedies.

(f) The practice of the religious tenets of any church in this state.

(g) Any person or manufacturer who, without the use of drugs or medicine, mechanically fits or sells lenses, artificial eyes, limbs or other apparatus or appliances, or is engaged in the mechanical examination of eyes for the purpose of constructing or adjusting spectacles, eyeglasses or lenses.

(h) Commissioned medical officers of the armed forces of the United States, and of the public health service of the United States, while on active duty for the United States.

(i) Any person while actually serving, without salary or professional fees, on the resident medical staff of hospitals in this state; subject, however, to the limitations contained in subsection (3) hereof.

(j) Any person employed as a physician in a state institution.

(3) Every person practicing as a resident physician, assistant resident physician, house physician or intern in this state, shall register with the state board of medical examiners showing the date upon which he started to practice as aforesaid within this state. Every hospital employing a resident physician, assistant resident physician, house physician or intern shall, on January 1 and July 1 of each year, furnish the state board of medical examiners with a list of their said employees and such other information as the board may direct. Unless previously authorized by the board no person may be employed as a house physician or act as a resident physician, assistant resident physician or an intern in a hospital of this state for more than two years without a license, except that resident physicians, assistant resident physicians and interns in approved training programs shall be exempt from this limitation. Any person violating this subsection shall be deemed guilty of a misdemeanor.

History.—§14, ch. 8415, 1921; §6, ch. 12285, 1927; CGL 3416; §1, ch. 26551, 1951; §5, ch. 29867, 1955; (2) (j) n. (3) a. by §10, ch. 61-243.

458.14 Sign at entrance of office to show branch of medical or healing art practiced; penalty.—Every person licensed under the laws of the state to practice medicine, surgery, osteopathic medicine, chiropractic, naturopathy, chiropody, pediatry or any other kind or branch of the medical or material healing art, whenever actively engaged in the practice of same, or whenever holding himself out as a practitioner of same, shall cause to be placed and kept in a conspicuous place at each entrance to his office or usual place of business, words or proper abbreviations, in intelligible lettering not less than two and one-half inches in height and one inch in width clearly denoting the particular kind or branch of the medical or material healing art he is licensed to practice under the laws of the state.

Any person convicted of a violation of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment

in the county jail for a period of not more than six months.

History.—§§1, 2, ch. 18063, 1937; CGL 1940 Supp. 8416(1), 7704(1).
cf.—§775.06, Alternative punishment.

458.15 Specific acts as violations of chapter and penalties therefor.—

(1) It shall be unlawful for any person to:

(a) Sell or fraudulently obtain or furnish any medical diploma, license, record or registration, or aid or abet in the same; or

(b) Practice medicine under cover of any diploma, license, record or registration illegally or fraudulently obtained or secured, or issued unlawfully on fraudulent representation; or

(c) Advertise to practice medicine under a name other than his own or under an assumed name; or

(d) Falsely impersonate another practitioner of a like or different name;

And such act shall constitute a felony for which any person upon conviction shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not more than five years.

(2) It shall be unlawful for any person not holding a lawfully issued license then in full force and effect, authorizing him to practice medicine to:

(a) Practice or advertise to practice medicine;

(b) Use in connection with his name any designation tending to imply or designate him as a practitioner of medicine;

(c) Use the title "doctor," or any abbreviation thereof in connection with his name, or with any trade name in the conduct of any occupation or profession, involving or pertaining to the public health, or the diagnosis or treatment of any human disease, pain, injury, deformity or physical condition unless duly licensed by a board created under the laws of the state; and such act shall constitute a felony for which any person upon conviction shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not more than five years.

History.—§15, ch. 8415, 1921; §7, ch. 12285, 1927; CGL 7704; §1, ch. 23005, 1945; §7, ch. 24337, 1947; (1) r. by §11, ch. 61-243; following subsections renumbered.
cf.—§775.06, Alternative punishment.
§455.04, Who has duty of enforcement.

458.16 Mental or physical examinations by doctors or other practitioners of healing sciences; copies of reports to be furnished.—Any doctor or other practitioner of any of the healing sciences making a physical or mental examination of, or administering treatment to any person, shall upon request of such person, his guardian, curator or personal representative in the event of his death, furnish copies of all reports made of such examination or treatment. Such reports shall not be furnished to any person other than the patient, his guardian, curator, or personal representative, except upon the written authorization of the patient; provided, however, that nothing herein shall prevent the furnishing of such reports without such written authorization, to any person, firm or corporation who with the patient's consent shall have procured or furnished such examination or treatment, and where compulsory physical examination is made pursuant to §768.09, or court rule copies of the medical report shall be furnished both the defendant and the plaintiff.

History.—Comp. §1, ch. 26684, 1951.

458.17 Transitory provisions.—

(1) Every license, permit, or order of the board in force immediately prior to the effective date of this law and existing or issued under any law herein repealed is valid until its original expiration date, if any, unless earlier terminated, revoked or suspended in accordance with the provisions of this law.

(2) All rules and regulations adopted by the board and in effect immediately prior to the effective date of this law, which are not in direct conflict with any provision of this law, shall remain in full force and effect unless and until repealed, modified or amended by the board.

(3) All persons who were members of the state board of medical examiners immediately prior to the effective date of this act shall serve as members of the board provided for herein until the expiration of the term to which each such person was appointed.

(4) This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.

History.—§12, ch. 61-243.

CHAPTER 459

OSTEOPATHIC PHYSICIANS

459.01 Definition "osteopathic medicine."—The term "osteopathic medicine" as used in this chapter is the name of that system or school of medicine which is taught and practiced in the standard colleges of osteopathy and surgery as set forth in this chapter.

History.—§1, ch. 12287, 1927; CGL 3417.
cf.—§458.16 Furnishing copies of mental or physical examination reports.

459.02 License required.—It is unlawful for any person to practice osteopathic medicine and surgery without a license.

History.—§2, ch. 12287, 1927; CGL 3418.
cf.—§458.14, Lettering at entrance to office required showing branch of medical or healing art practiced.
§459.18, Penalty provided.

459.03 Chapter not applicable to practice of medicine, surgery and chiropractic.—The practice of medicine, surgery and chiropractic by duly licensed practitioners under the laws of this state, shall in no way be affected by the provisions of this chapter.

History.—§3, ch. 12287, 1927; CGL 3419.
cf.—Ch. 458, Regulating physicians.
Ch. 460, Regulating practice of chiropractic.

459.04 New license or certificate issued to former holders.—The holder of a license or certificate heretofore issued under the laws of this state authorizing the practice of osteopathy shall present to the board said license or certificate and a new license or certificate under this chapter shall be issued to the holder thereof.

History.—§4, ch. 12287, 1927; CGL 3420.

459.05 State board of osteopathic medical examiners; organization; quorum; powers and duties.—The state board of osteopathic examiners shall be composed of six members of whom the governor shall appoint or re-appoint two examiners each year who shall be regularly licensed osteopathic physicians in good standing in this state, and who have been so engaged for a period of at least two years immediately prior to their appointment, and who shall serve for a term of three years from the termination of the now existing terms. But each examiner shall continue in office until his successor is appointed. Annually, on the first Tuesday in October, the board shall meet in annual meeting and elect a chairman, vice-chairman, secretary and treasurer as officers for the ensuing year. A majority of the board shall constitute a quorum. The said examiners shall be known as and constitute the state board of osteopathic medical examiners, referred to in this chapter as the board. The board shall have and use a common seal and have all the rights and powers to make and adopt all necessary rules and regulations and by-laws relating to the enforcement of the provisions of this chapter and not inconsistent herewith. Examination shall be made at least twice a year, at the time and place fixed by the board, of which examination all applicants shall be notified in writing.

History.—§5, ch. 12287, 1927; CGL 3421.
Am. §87, ch. 26869, 1951.

459.06 Requirements for applicant for examination.—Each applicant for the examination provided in this chapter shall comply with the following requirements:

(1) Make application for examination on blank forms prepared and furnished by the state board of osteopathic medical examiners.

(2) Submit evidence verified on oath and satisfactory to the board that applicant is twenty-one years of age or over.

(3) Be of good moral character.

(4) Be a citizen of the United States.

(5) Be a graduate of a legally incorporated college of osteopathy and surgery maintaining a standard satisfactory to the board.

(6) Must have had two years of pre-professional education if matriculated in a college of osteopathy on or after 1948. If he has been

graduated from a college of osteopathy subsequent to 1948, he must have served a resident internship of not less than twelve months in a hospital in Florida approved for this purpose by the state board of osteopathic medical examiners, or if resident internship shall have been served for such period in a hospital elsewhere, such hospital must also have been approved by this board.

(7) Must have a certificate of proficiency from the Florida board of examiners in the basic sciences.

(8) Pay, in advance to the board, fees as follows:

(a) For examination of an osteopathic physician and surgeon $25.00
(b) For issuance of license 25.00
(c) For the license of one applying therefor under the provisions of §459.11 hereof 25.00

All fees collected, including renewal fees as provided in §459.19, shall be deposited pursuant to the provisions of §215.37.

History.—§6, ch. 12287, 1927; CGL 3422; §88, ch. 26869, 1951; §1, ch. 28162, §6, ch. 28215, 1953; §4, ch. 61-514.
cf.—§456.03, Certificate of proficiency in the basic sciences.

459.07 Standards of professional education for osteopaths.—Standards of professional education are fixed as follows:

To practice as an osteopathic physician and surgeon:

The applicant shall be a graduate of a professional school or college of osteopathy which requires as a prerequisite to graduation a four years' course of nine months each, covering the standard curriculum, as defined in §459.08, and giving instructions in all the subjects necessary to educate a thoroughly competent general osteopathic physician and surgeon, including obstetrics and surgery, and embodying instructions in anesthetics, antiseptics, germicides, parasiticides, narcotics, and antidotes, to teach principles of surgery and surgical diagnosis leading to the degree of osteopathic physician or doctor of osteopathy.

Physicians and surgeons of the osteopathic school of medicine are to have all rights and to be of equal rank and grade as the physicians and surgeons of the other three schools of medicine designated as allopathic, homeopathic and eclectic. Provided, however, that no osteopathic physician licensed under this chapter shall practice major surgery who has not had a four year course in an accredited osteopathic school or college, or equivalent thereof.

History.—§7, ch. 12287, 1927; CGL 3423; §1, ch. 57-241.

459.08 College of osteopathy defined.—The term standard college of osteopathy is defined as follows: A legally chartered osteopathic college requiring before granting the degree of doctor of osteopathy, an actual attendance at such osteopathic college of at least thirty-six months or four terms of nine months each, its course of study to include the subjects as follows:

Anatomy (descriptive, regional, applied, surgical and dissection).
Embryology.
Chemistry (advanced to include organic and physiological chemistry and toxicology).
Histology.
Physiology.
Bacteriology.
Hygiene.
Hydrotherapy.
X-radiance and electrical diagnosis.
Dietetics.
Practice of osteopathic medicine:
(1) Principles of osteopathy.
(2) Practice of osteopathic medicine: therapeutics, to include diseases of nervous system, alimentary tract, heart and vascular system, genito-urinary diseases, ductless glands and metabolism, respiratory tract, bone, and joint diseases.
(3) Corrective gymnastics, physiotherapy.
(4) Acute and infectious diseases, pediatrics, dermatology, syphilis, psychiatry, diagnosis (physical, laboratory and differential), clinical surgery.
Eye, ear, nose and throat.
Gynecology.
Obstetrics.
Professional ethics and efficiency.
Medical jurisprudence.
And all such other subjects as may be required and taught by standard colleges of osteopathy and surgery.

History.—§8, ch. 12287, 1927; CGL 3424.

459.081 Board to determine whether osteopathic hospitals, colleges, maintain satisfactory standards.—

(1) The state board of osteopathic medical examiners may pass upon the good standing and reputability of any osteopathic school or college and determine those which maintain a standard of training sufficient to admit their graduates to the examinations given by the said board.

(2) The said board may also pass upon the good standing and reputability of any osteopathic hospital and determine those which maintain a standard of training sufficient to be recognized by the board when considering examinations given by the said board.

(3) In determining the good standing and reputation of osteopathic schools and colleges, and of hospitals, as aforesaid, the board may investigate and make a personal inspection thereof, or delegate to one or more of its members or any other duly qualified person or persons, the power and authority to make such investigation for the board and report their conclusions to the board. The board may, if satisfied of the correctness of the same upon investigation, adopt inspections of osteopathic schools and colleges and hospitals made by, or under the authority of, the American osteopathic association or other nationwide groups.

History.—Comp. §1-3, ch. 28295, 1953.

459.09 Examination of osteopathic physicians and surgeons.—The examination of those who desire to practice as osteopathic physicians

and surgeons shall embrace those general subjects and topics as set forth in the regulations of the state board of osteopathic medical examiners, pursuant to §459.08, as found by that board to be taught in standard colleges of osteopathy; and a knowledge of which subjects is commonly and generally required of candidates for the degree of doctor of osteopathy at such colleges.

History.—§9, ch. 12287, 1927; CGL 3425; am. §2, ch. 28162, 1953. Am. §2, ch. 57-241.

459.10 License to issue to applicant passing examination.—Each applicant who successfully passed the examination shall be entitled to a license, which carries with it the title doctor and physician with rights as defined in §459.07.

History.—§10, ch. 12287, 1927; CGL 3426.

459.11 Board may issue license to United States army, navy and public health service osteopaths.—The state board of osteopathic medical examiners may issue a license without examination to an osteopathic physician who is a graduate of a standard college of osteopathy and who has passed an examination for admission into the medical corps of the United States army, United States navy, or the United States public health service; provided:

(1) The applicant is of good moral character;

(2) The requirements to practice in the state, territory, country or province in which the applicant is already licensed be equal to those of this state;

(3) The applicant shall be required to pay the same fees as licentiates by examination.

The board shall not issue a license without examination except as hereinbefore in this section provided.

History.—§11, ch. 12287, 1927; CGL 3427.

459.12 License to be displayed.—Every holder of a license shall display it in a conspicuous place in his principal office, place of business or employment.

History.—§12, ch. 12287, 1927; CGL 3428.

cf.—§458.14, Lettering at entrance to office required showing branch of medical or healing art practiced.
§459.17, Requiring registration certificate to be displayed.

459.13 Privileges and obligations of osteopaths.—Osteopathic physicians and surgeons shall observe and be subject to all state and municipal regulations relative to reporting births and deaths and all matters pertaining to the public health, with equal rights and obligations as physicians of other schools of medicine, and such reports shall be accepted by the officers of the departments to which the same are made.

Osteopathic physicians and surgeons licensed under this chapter shall have the same rights as physicians and surgeons of other schools of medicine with respect to the treatment of cases or holding of offices in public institutions.

It is the intent and purpose of this chapter to grant to osteopathic physicians and surgeons the right to practice as taught and practiced in the standard colleges of osteopathy.

History.—§13, ch. 12287, 1927; CGL 3429.

459.14 Refusal and revocation of license.—The board may either refuse to issue or may suspend or revoke any license for any one or any combination of the following causes:

(1) Conviction of a felony, as shown by a certified copy of the record of the court of conviction.

(2) The obtaining of, or an attempt to obtain a license, or practice in the profession, or money or any other things of value, by fraudulent misrepresentations.

(3) Gross malpractice.

(4) Continued practice by a person knowingly having an infectious or contagious disease.

(5) Advertising by means of knowingly false or deceptive statements.

(6) Advertising, practicing, or attempting to practice under a name other than one's own.

(7) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine, or other habit forming drugs.

The board may neither refuse to issue, nor to renew, nor suspend, nor revoke any license, however, for any of these causes, unless the person accused has been given at least twenty days' notice in writing of the charge against him and a public hearing by the board.

The board may compel the attendance of witnesses and the production of relevant books and papers for the investigation of matters that may come before them and the presiding officer of said board may administer the requisite oaths and such board shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

History.—§14, ch. 12287, 1927; CGL 3430.

459.15 Board to keep records.—The board shall keep a record, which shall be open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of license to practice osteopathic medicine. This record shall also contain the name, place of business and residence, and the date and number of the license of every registered osteopathic physician.

History.—§16, ch. 12287, 1927; CGL 3431.

459.16 Certificate to be recorded.—The certification provided for in this chapter shall, before the person to whom it is granted is entitled to practice by virtue thereof, be recorded in the office of the clerk of the circuit court in the county in which such practitioner may reside or sojourn in a book to be kept by the clerk for that purpose, and when so recorded, the clerk shall certify thereon, under his official seal, the fact and date of such record, and shall return such certificate to the person to whom the same was granted, and shall be entitled, for such service, to collect from the holder of such certificate, the legal fee for recording.

History.—§17, ch. 12287, 1927; CGL 3432.

459.17 Registration of osteopaths; state board of health.—Annual registrations of persons licensed to practice osteopathic medicine

pursuant to this chapter shall be made with the state board of health as provided in §381.401.

History.—§18, ch. 12287, 1927; CGL 3433; am. §7, ch. 22858, 1945; §3, ch. 61-129.

459.18 Penalty for violations.—Each of the following acts constitutes a misdemeanor, punishable upon conviction by a fine of not less than twenty-five dollars nor more than two hundred dollars.

(1) The practice of osteopathic medicine or an attempt to practice osteopathic medicine without a license.

(2) The obtaining of, or an attempt to obtain a license, or practicing the profession for money or any other thing of value, by fraudulent misrepresentation.

(3) The making of any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(4) Advertising, practicing or attempting to practice under a name other than one's own.

History.—§15, ch. 12287, 1927; CGL 7706.

cf.—§458.14, What sign at office entrance shall show.

459.19 Renewal of licenses to practice osteopathic medicine.—

(1) Each license holder under chapter 459 shall be required annually to attend a two-day refresher educational program approved by the state board of osteopathic medical examiners,

(2) The board shall approve refresher training fulfilling the following qualifications:

(a) At least two days of five hours each duration; and

(b) Presenting professional refresher training in various branches of the healing art, as practiced by physicians and surgeons holding the degree of doctor of osteopathy.

(3) Each license holder shall renew his certificate annually in the following manner:

(a) By furnishing to the board satisfactory evidence of having completed an approved refresher course of education; and

(b) By payment of a renewal fee of ten dollars.

(4) License holders shall be excused from the educational requirements of this section in any year in which no educational program meeting the requirements of this section is conducted within the state.

(5) The educational program conducted annually in Florida by the Florida osteopathic medical association may be a sufficient educational program to meet the educational program of this law.

(6) The board shall notify each license holder by mail, at least thirty days prior to January 1 of each year, of the necessity of renewing his license.

History.—§1, ch. 19066, 1939; CGL 1940 Supp; 3434(1); §1, ch. 20629, 1941; §3, ch. 57-241; (3)(a) by §13, ch. 59-1.

459.20 Suspension of licenses and payment of restoration fee.—

(1) The failure of the holder of a license to renew his license shall operate, without notice, as an automatic suspension of the rights and privileges granted by the issuance of the license.

(2) A license suspended for failure to make an annual renewal may be reinstated by the board upon compliance of the license holder with the following:

(a) Presentation to the board of satisfactory evidence of refresher educational training of the standard required by §459.19 in the year in which application for reinstatement of the license is made; and

(b) Payment of all fees that would have been paid had the license holder maintained his license in good standing, plus a special reinstatement fee of ten dollars.

History.—§2, ch. 20629, 1941; §4, ch. 57-241.

459.21 Compensation and expenses. — The expenses of the administration of this chapter shall be confined to the usual and customary office expenditures consisting of stenographic services, supplies, printing and postage. The secretary and treasurer of said board shall receive such reasonable compensation as shall be fixed by said board by resolution regularly adopted. Each member of the board shall receive twenty-five dollars per day, or any part of a day, while attending official board meetings and in addition shall receive per diem and mileage as provided in §112.061, from place of his residence to place of meeting and return. All expenditures shall be pursuant to the provisions of §215.37 and shall be paid upon presentation of vouchers approved by the chairman and secretary of said board.

History.—§3, ch. 20629, 1941; §89, ch. 26869, 1951; am. §3, ch. 28162, 1953; §4, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

§455.03 Dispensing with examination of veterans.

459.221 Prohibited practice by hospital residents and interns; temporary certificates.—

(1) It shall be unlawful for any person who holds a degree of doctor of osteopathy conferred by a standard college of osteopathy, but who does not hold a license to practice osteopathic medicine under chapter 459, to serve as a resident or as an intern in an osteopathic hospital, unless such person has registered with the state board of osteopathic medical examiners and has received from the board a temporary certificate evidencing the right of such a person to undertake the residency or internship.

Such a temporary certificate may not be issued for a period in excess of one year, but may be renewed by the board from time to time.

(2) No person shall hold a certificate or certificates under this law for an aggregate of more than four years.

(3) Every osteopathic hospital having a resident or intern training program shall furnish, in January and July of each year, to the board a list of all residents and interns who have served in the hospital during the six

months' period preceding the month in which the list is required to be furnished to the board.

(4) The term "osteopathic hospital," as used in this law, is defined to mean a hospital in Florida approved by the board for residency and internship training, and the board is authorized to pass upon those hospitals which maintain a standard of residency training sufficient to be recognized by the board for that purpose.

(5) The board may revoke or refuse to issue any temporary certificate, without advance notice, for any cause which would be a ground for its revocation or refusal to issue a license to practice osteopathic medicine, as well as on the following grounds:

(a) Omission of the name of a certificate holder from the list of interns and residents required by subsection (3) to be furnished to the board by the hospital served by the certificate holder;

(b) Any violation of §459.02, it being the intent and purpose of this law to authorize persons holding certificates hereunder to engage only in bona fide hospital training programs at osteopathic hospitals.

(6) It is hereby constituted a misdemeanor for any osteopathic hospital, and also for the superintendent, administrator and other person or persons having administrative authority in an osteopathic hospital:

(a) To employ the services in the hospital of any person as an intern or as a resident, unless such person is the holder of a valid certificate under the law, or the holder of a license to practice osteopathic medicine under chapter 459, and

(b) To fail to furnish to the board the list required by subsection (3).

History.—Comp. §5, ch. 57-241.

CHAPTER 460

CHIROPRACTIC

460.001 Legislative intent and purpose.—It is hereby declared that the practice of chiropractic is a privilege which is subordinate to the authority of the legislature to enact reasonable laws to regulate the practice thereof to protect the public health. The practice of chiropractic is declared to be a matter in the interest of public health, safety and welfare; that to merit confidence of the public and to protect the public from being misled by incompetent, unscrupulous practitioners, the legislature has enacted laws that will insure that only such chiropractic physicians who are qualified shall be granted the privilege to practice.

In the exercise of the fundamental power of the legislature to control the treatment of disease, it is not necessary that all the regulations be uniform and the same with respect to all methods and systems of practice. Among the primary methods for regulating the practice of chiropractic are:

(1) To make it unlawful for the practioner to practice without a license;

(2) To prescribe certain qualifications with which he must comply before obtaining said license;

(3) To provide a procedure for disciplinary proceedings to be conducted on specified grounds of misconduct;

(4) To provide for penalties to be imposed in case a licensee is found guilty; and

(5) To provide for a judicial review of the order of discipline.

It is recognized that the legislature has the authority to enact laws to control the practice of chiropractic including the power to create an administrative board such as the Florida state board of chiropractic examiners; and that the

legislature may lawfully delegate to such a board the authority to determine that the qualifications for granting a license or the procedure for refusing or revoking a license is in keeping with the intent and purpose of the statutory law. The legislature is not creating and delegating powers of discretion to such board to act arbitrarily; such powers are granted for the board to act with reason, free from fraud, corruption or oppression; and if the board shall abuse the powers and discretion so vested in it, the aggrieved person shall have a remedy which shall not be against the delegation of such authority but for the improper exercise of it. The legislature may prescribe policies or standards to guide the discretion of such an administrative board, and delegate to it the authority to make rules and regulations which may assist it in administering legislative policy. It is declared that a delegation by the legislature of such discretion and rule-making authority to such board is not a delegation of the police powers of the state, but a means of enforcing such powers.

This chapter is enacted as an exercise of the police powers of the state in the interest of the public health, safety and welfare of the people of Florida.

History.—§1, ch. 63-295.

460.01 Florida state board of chiropractic examiners; qualifications.—There is hereby created the Florida state board of chiropractic examiners, hereinafter referred to as the board. The said board shall be composed of three chiropractic physicians of integrity, ability and good professional standing, who have graduated from an approved chiropractic college, and who are residents of the state and have engaged in the practice of their profession in this state for a period of at least five consecutive years immediately prior to their appointment. The said board shall perform such duties and exercise such powers relative to the protection of the public health and the regulation of the practice of chiropractic as are prescribed and conferred upon it by this chapter.

History.—§§1, 2, ch. 9330, 1923; CGL 3435, 3436; §1, ch. 25401, 1949; §2, ch. 63-295.

460.02 Board, appointed by the governor, terms.—

(1) The governor shall appoint three chiropractic physicians who shall possess the qualifications specified in §460.01 to constitute the Florida state board of chiropractic examiners.

(2) The term of office of the members of the board shall be for three years from the termination of the now existing terms. Thereafter, the governor shall appoint or reappoint each member for a term of three years.

(3) Any vacancy in the membership of the board shall be filled by appointment by the governor for the unexpired term.

(4) The board of directors of the Florida chiropractic association, inc., shall recommend to the governor for appointment to the board the name or names of chiropractors that it feels are qualified to serve on the board. In making this recommendation the association shall be guided by the provisions of subsection (1).

History.—§3, ch. 9330, 1923; CGL 3437; §3, ch. 63-295.

460.03 Suspension of members of board.—The governor may suspend any member of the board for misfeasance, malfeasance, gross inefficiency or misconduct, or upon any of the constitutional grounds upon which officers may be suspended by the governor of this state.

History.—§25, ch. 9330, 1923; CGL 3459.

460.031 Oath of members of the board.—Immediately and before entering upon the duties of said office the members of the board shall take the constitutional oath of office and shall file the same in the office of the secretary of state; and thereupon there shall be issued to said member a certificate of his appointment.

History.—§4, ch. 63-295.

460.04 Board organization meetings; quorum; seal.—

(1) The board shall meet annually within the first sixty days of its fiscal year at such time as may be agreed upon by a majority of the members at which meeting it shall elect from its membership a president, a vice-president and a secretary-treasurer.

(2) The secretary shall notify all members of the board at least thirty days in advance of each meeting except in an emergency, in which case forty-eight hours notice shall be deemed sufficient.

(3) Two members shall constitute a quorum at any meeting of the board.

(4) The board shall adopt a seal which shall be affixed to all certificates issued by the board and to such other papers requiring the same.

History.—§4, ch. 9330, 1923; CGL 3438; §5, ch. 63-295.

460.06 Board duties, rights, privileges and powers.—

(1) The board is authorized to adopt and from time to time revise such rules and regulations governing the practice of chiropractic as are necessary to enable it to carry into effect the provisions, mechanics and procedures in keeping with the purpose of the chapter and the legislative delegations of administrative authority and discretion to implement, interpret and administer the intent and purpose of the statutory law.

(2) The board shall hold two regular sessions for examinations each year at some convenient place in the state and on such dates as the board may select, of which meetings notice shall be given by publication thereof once a week for four successive weeks in a newspaper of general circulation throughout the state.

(3) Special or called meetings may be held at the discretion of the president and the secretary-treasurer.

(4) The board shall pass upon the qualifications of applicants for a license to practice chiropractic. It shall examine, license and renew the license of duly qualified applicants. Said license shall be signed by the president

and attested by the secretary-treasurer under its adopted seal.

(5) The board shall conduct proceedings or hearings upon charges calling for discipline of a licensee or applicant relative to the issuance, reissuance, renewal, revocation and suspension of licenses under this chapter.

(6) The board may take testimony on any matter under its jurisdiction and any member thereof may administer oaths.

(7) The board shall have the power to issue summonses and subpoenas for any witness and subpoenas duces tecum in connection with any matter within the jurisdiction of the board, under its seal, and signed by either the president or the secretary-treasurer of the board.

(8) The board shall cause the prosecution of all persons violating the provisions of this chapter or rules and regulations adopted pursuant thereto and shall have power to incur necessary expenses therefor.

(9) The board is authorized to employ such personnel and incur such expense as may be necessary for the performance of its duties and the enforcement of this chapter.

History.—§6, ch. 9330, 1923; CGL 3440; §1, ch. 57-215; §6, ch. 63-295.

460.07 Applicants for license to practice chiropractic; qualifications.—

(1) Any person who makes application to the board for a license to practice as a chiropractic physician after June 3, 1963, shall file with the board a written statement, under oath, that said applicant does subscribe to and will uphold the principles incorporated in the constitution of the United States and shall submit to the board written evidence that the applicant:

(a) Is twenty-one years of age or over;

(b) Is a citizen of the United States; or has filed his declaration of intention to become a citizen;

(c) Is of good moral character;

(d) Is in good physical and mental health;

(e) Is a graduate of an accredited chiropractic college maintaining a standard and reputability approved by the board;

(f) Has a certificate of proficiency from the Florida board of basic science examiners.

(2) Applications shall be completed and signed in applicant's own handwriting and shall recite his professional educational qualifications, what collateral branches he has studied, the length of time he has been engaged in the practice of chiropractic, if any; the application shall be accompanied by a certified transcript from the chiropractic college in which his professional training and studies were pursued, stating the dates of matriculation, graduation and the number of months and hours in attendance.

(3) All applications shall be completed in accordance with the rules of the board. The board may require applicants to submit such other proof as is deemed reasonable and necessary to show the eligibility of the candidate to take such examination.

(4) That any license to any applicant to practice as a chiropractic physician in this state shall be granted only on proof of an applicant's physical fitness and qualifications to administer to the physical and mental ailments of the people and assist in alleviating human pain and suffering.

(5) The board may grant a license without a written examination to an applicant that holds a national board of chiropractic examiners certificate who meets the requirements of this chapter and who has satisfactorily passed an oral interview and a practical examination and has paid an additional fee of fifty dollars.

History.—§8, ch. 9330, 1923; CGL 3442; §1, ch. 17764, 1937; §1, ch. 22732, 1945; §2, ch. 25401, 1949; §2, ch. 57-215; §7, ch. 63-295.

cf.—§456.01 et seq., Requirement of certificate in basic sciences.

§460.26, Penalty for practicing without license.

460.071 Application for examination; time for filing.—Any person desiring to take the examination for a license to practice chiropractic shall make application to the board at least thirty days before the examination.

History.—§8, ch. 63-295.

460.072 Notice of examination.—The board shall give public notice of the time and place of all examinations and such other notice shall be given to the applicants in such manner as the board may deem expedient and in ample time to allow all applicants to comply with the chapter and the rules and regulations adopted pursuant thereto.

History.—§8, ch. 63-295.

460.073 Board to prescribe forms; adopt rules.—The board is hereby authorized and empowered to prescribe such forms as are necessary to implement this section, and to adopt such rules and regulations in regard to the qualifications of the applicants for examination as it from time to time may deem necessary and proper.

History.—§8, ch. 63-295.

460.08 Fee for examination; time for paying, etc.—

(1) Each applicant applying for a license to practice chiropractic shall pay a fee of fifty dollars to the secretary-treasurer of the board. A fee of twenty-five dollars shall be paid for a second examination.

(2) Payment of the fee shall be made by the applicant upon the filing of the application.

(3) Such fees shall not be returned to the applicant under any circumstances, regardless of whether the applicant is accepted for examination, fails the examination, withdraws his application, or is issued a license.

(4) This section shall not be construed as affecting any of the laws in reference to other license taxes, paid by chiropractic physicians and such proof as the board may require to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the board.

History.—§9, ch. 9330, 1923; CGL 3443; §9, ch. 63-295.

cf.—§456.01 et seq., Requirement of certificate in basic sciences.

460.09 Examination of applicants; subjects; etc.—

(1) The examination of applicants for license to practice chiropractic shall be made according to the methods deemed by the board to be the most practical and expeditious to test the applicant's ability and qualifications.

(2) The board shall require the applicant to take, in English, written and oral examinations in such subjects as may be determined by the board, to include a practical examination to be given at the discretion of the board; provided, however, that such examination shall be in subjects which shall appropriately include the various fields or specialties in the practice of chiropractic.

(3) Examination papers shall be designated by number, and not by name of applicant, so that the identity of the applicant will not be disclosed to members of the board until after the examination papers are graded.

(4) Subjects in which examinations are to be given will be available approximately six months before the date of such examination.

(5) The minimum passing grade shall be established by the board.

(6) The board shall issue a license to practice chiropractic as a chiropractic physician to each of the successful applicants taking the examinations.

History.—§10, ch. 9330, 1923; CGL 3444; §10, ch. 63-295.

460.11 Definition; principles and practice; practitioners, chiropractic analysis, chiropractic physicians.—

(1) For all purposes chiropractic is defined to be a non-combative principle and practice consisting of the science of the adjustment, manipulation and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease, are adjusted, manipulated or treated thus restoring the normal flow of nerve impulse which produce normal function and consequent health.

(2) Any chiropractic physician who has complied with the provisions of this chapter may:

(a) Examine, analyze and diagnose the human living body and its diseases by the use of any physical, chemical, electrical, or thermal method, and use the x-ray for diagnosing, and may use any other general method of examination for diagnosis and analysis taught in any school of chiropractic recognized and approved by the Florida state board of chiropractic examiners.

(b) Chiropractic physicians may adjust, manipulate, or treat the human body by manual, mechanical, electrical or natural methods, or by the use of physical means, physiotherapy (including light, heat, water or exercise) or by the oral administration of foods and food concentrates, food extracts, and may apply first aid and hygiene, but chiropractic physicians are expressly prohibited from prescribing or administering to any person any medicine or drug or from performing any surgery except as hereinabove stated or from practicing obstetrics.

(c) No chiropractic physician shall in any advertisement in any publication or media in the state advertise the prices for which his services are available. The advertisement of free services or consulation shall be deemed to be in violation of this section.

(d) Chiropractic physicians shall have the privileges of services from the state board of health laboratories.

(3) The term "chiropractic" or "doctor of chiropractic" or "chiropractor" shall be synonomous with "chiropractic physicians" and each term shall be construed to mean a practitioner of chiropractic as the same has been hereinabove defined. Chiropractic physicians may analyze and diagnose the physical conditions of the human body to determine the abnormal functions of the human organism, and to determine such functions as are abnormally expressed, and the cause of such abnormal expression.

(4) Any chiropractic physician who has complied with the provisions of this chapter is authorized to analyze and diagnose abnormal bodily functions, and to adjust the physical representative of the primary cause of disease as is herein defined and provided, and as an incident to the care of the sick, chiropractic physicians may advise and instruct patients in all matters pertaining to hygiene and sanitary measures as taught and approved by recognized chiropractic schools and colleges.

History.—§12, ch. 9330, 1923; CGL 3446; §8, ch. 17764, 1937; §§1-3, ch. 20871, 1941; §3, ch. 57-215.

cf.—§458.16 Furnishing copies of mental or physical examination report.

460.12 Tax collector to issue occupational license, conditions.—

(1) No occupational license, state, county or city, shall be issued to any chiropractic physician unless he shall present to such tax collector a valid current license duly issued by the board.

(2) All certificates to practice chiropractic in the state shall expire on September 30 following the issuing thereof, except that any holder of any such certificate may have the same renewed from year to year by the payment of an annual fee as hereinafter provided.

History.—§13, ch. 9330, 1923; CGL 3447; §4, ch. 17764, 1937; §11, ch. 63-295.

460.13 Record of certificates; grounds for suspension and revocation of certificates; procedure.—

(1) All certificates issued by the Florida state board of chiropractic examiners shall be in such form as the board may prescribe. Before any certificate is issued by said board, it shall be numbered and recorded in a book kept for that purpose by the secretary-treasurer, and the

number of certificate shall be noted thereon. Such record shall be open to public inspection, and in all actions or proceedings in any court, a transcript, or any part thereof, certified to by the secretary-treasurer under the seal of the board to be a true copy, shall be entitled to admission in evidence.

(2) The board may at any time inquire into the identity of any person claiming to hold a certificate to practice chiropractic in the state, and after due service of a notice in writing, require him to prove to the satisfaction of said board that he is the person authorized to practice chiropractic under the certificate by virtue of which he claims the privilege to practice chiropractic in this state. When the board finds that a person claiming to be the holder of a certificate to practice chiropratic in this state is not in fact the person to whom the certificate was issued, it shall reduce its findings to writing and file them in its office. Such findings shall be prima facie evidence that the person mentioned therein is falsely impersonating the person to whom a certificate to practice chiropractic in said state was issued of a like or different name.

(3) The board, pursuant to the procedure prescribed in this act, shall have the authority to discipline any applicant for license, or the holder of a license to practice as a chiropractic physician, who is found guilty by the board of one or more of the following:

(a) That fraud or deceit was used in securing such certificates;

(b) That the holder thereof no longer possesses a good moral character;

(c) That he has been convicted of a violation of any law involving moral turpitude;

(d) That he solicits patients through an agent;

(e) That he is addicted to the habitual use of intoxicating liquors, narcotics, stimulants or other habit-forming drugs to such an extent as to incapacitate him from the performance of his professional obligations and duties;

(f) Making any untrue, false, fraudulent, misleading, deceptive, extravagant or grossly improbable claims or statements concerning the science or practice of chiropractic;

(g) That he, in his capacity as a chiropractic physician, has:

1. Caused the publication, broadcast, circulation or public display of any advertisement in violation of any of the rules and regulations of the board governing the size, shape, content, material, construction or method of distribution of any form of advertising; or

2. Advertised the price for which his services are available, or advertised free service or consultation; or

3. Caused to be advertised by any means whatsoever any advertisement which does not contain any assertion or statement which would identify himself as a chiropractic physician or identify such chiropractic clinic or hospital or related institution in which he practices and of which he is owner in whole or in part as a chiropractic institution;

(h) That he is in any way guilty of any deception, misrepresentation or fraud in the practice of chiropractic;

(i) That he permits any person or persons to set up in his office what is commonly called and termed traveling clinic and permits any person or persons to practice chiropractic under color of said holder's certificate or to counsel or advise persons concerning the cure or treatment of any disease or body ailment;

(j) That he has been adjudged insane by a court of competent jurisdiction (within or without this state), or undergone mental incompetency or deterioration to the extent that the board may determine that he is not qualified to practice chiropractic;

(k) That he has, except as provided in §460.262, prescribed or administered to any person any medicine or drug or performed any surgery or have practiced obstetrics.

(l) Conviction of a felony in the courts of this state or any other state, territory or country, which, if committed in this state, would be deemed a felony. And, in the interest of public health and the general safety and welfare of the public:

1. The record of conviction in a court of competent jurisdiction shall be suffcient evidence for disciplinary action to be taken as may be deemed proper by the board. For the purposes of this chapter a conviction shall be deemed to be a conviction which has been upheld by the highest appellate court having jurisdiction, or a conviction upon which the time for filing an appeal has passed, and

2. A record of conviction upon charges which involve the unlawful practice of chiropractic the board may take temporary disciplinary action, based upon such record of conviction, without any other testimony, even though an appeal for review by a higher court may be pending.

(m) That he is guilty of unprofessional conduct which is defined to mean: Any conduct which is reasonably likely to deceive or defraud the public; sharing office space with any person illegally practicing any of the healing arts; the employing either directly or indirectly of any unlicensed chiropractic physician whose license has been suspended; or the violation of the code of ethics or any provisions thereof adopted by the board.

(n) That he has violated any of the provisions of this chapter, or any of the rules and regulations of the board.

(4) Upon receipt of such charges, the board upon an affirmative vote of two of its members may suspend the certificate of the person against whom such charges have been preferred. Immediately, but not more than ten days after such suspension, the holder of such certificate so suspended shall be notified thereof in writing and shall also be furnished with a copy of said charges and notified in writing of the time and place for the hearing of said charges by the board, which notice of the time and place shall not be more than twenty days from the date of said suspension. Further time

may be granted by the board for said hearing upon application of the accused. Said notice and copy of said charges may be sent by registered mail, postage prepaid to the last known residence or address of the accused, as shown from the files of the board, which shall be construed as sufficient notice to the accused of the suspension of his certificate, and of the time and place of the hearing by said board of the charges so preferred. The board may hold special meetings for the hearing of said charges.

(5) Subpoenas for witnesses, whose evidence is deemed material to any investigation or hearing authorized by this section, may be issued by the board or its president and under the seal of the board, commanding such witnesses to be or appear before the board, at a time and place to be therein named, and to bring such books, records, and documents as may be specified, or to submit such books, records, and documents to inspection; and such subpoenas may be served by any sheriff or deputy.

(6) Where any witness who has been served with a subpoena (a) fails or refuses to be or appear at the time and place named, or (b) fails or refuses to answer any lawful question propounded or produce the books, records, or documents required, or (c) who shall be guilty of disorderly or contumacious conduct at the hearing, the facts shall be made known to a circuit judge of the county, who shall forthwith issue an attachment for such witness, and cause him to be brought before said judge. Upon appearance, if the witness shall fail to purge himself of such failure, refusal or conduct, the judge shall proceed further as in cases of contempt of court; and said witness shall pay the costs of said attachment.

(7) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, but no witness shall be required to attend a hearing more than one hundred miles from the county seat of the county wherein he resides, without his consent.

(8) Witnesses who testify under subpoena shall be entitled to the same protection and immunities as are witnesses in judicial proceedings.

(9) At said hearing the accused may cross-examine witnesses against him, and produce witnesses in his behalf and appear personally or by counsel. The board shall keep a record of said hearing, the testimony so taken and its findings on said charges. If the board by a unanimous affirmative vote shall sustain said charges, it may revoke said certificate of the accused, and in which event the board shall thereupon give written notice in the same manner as provided for the giving of said notice of suspension, to the said holder of said certificate, which has been revoked by said board.

(10) Whereupon the holder of said certificate which has been revoked shall have the right within sixty days to have the order of revocation reviewed by certiorari by the circuit court of the county wherein the holder of the certificate revoked resides. In the event the holder of said certificate, which has been so revoked shall not within sixty days appeal from the decision of the board, in the manner aforesaid, then the action of the board in revoking said certificate shall be final.

(11) The action of the board shall be recorded in the same manner as certificates are recorded, and the name of the person whose certificate is so revoked shall be stricken from the list of certificate holders, and he shall be disqualified from practicing chiropractic in the state.

History.—§14, ch. 9330, 1923; CGL 3448; §3, ch. 25401, 1949; (3), §1, ch. 26928, 1951; (3) §4, ch. 57-215; (3) §12, ch. 63-295; (10) §3, ch. 63-509.

cf.—§90.14 Compensation of witnesses in various courts.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

460.131 Hearing guaranteed.—The board shall not refuse to renew, or deny or suspend, revoke, limit or condition a license right, authority or privilege, without first giving the respondent possessing, enjoying or applying for same, an opportunity to be heard before any action is taken by the board, except as provided in §460.139, or as otherwise may be provided by law.

History.—§13, ch. 63-295.

460.132 Location of hearing; respondent's witnesses.—The time and place of any hearing shall be fixed by the board. If the board shall fix the place of the hearing at any place other than the county of the respondent's residence, the board shall pay the per diem and mileage of the respondent and his witnesses as provided in this act.

History.—§13, ch. 63-295.

460.133 Procedure for revocation, suspension, or other disciplinary action, etc.—

(1) WHO MAY INITIATE PROCEEDINGS.—

(a) The board, including any member thereof or any person or persons may prefer charges against any licensee or applicant for license. Such charges shall be in writing and shall be affirmed or sworn to by the person or persons making them; such affidavit shall be based upon knowledge and belief.

(b) The charges, unless preferred by the board as a body, shall be preferred by delivering a written copy of them to the secretary of the board, who shall furnish all members of the board with a copy.

(c) That if the charges are preferred by only one member of the board, he shall be disqualified to sit as a board member at the hearing to judge the respondent.

(d) All charges may be investigated by the board or its agents and unless dismissed by a majority vote of the board as being unfounded or trivial, they shall be heard and disposed of by the board within a reasonable time after the date upon which they were preferred, except as hereinafter provided.

(2) COMPLAINT AND ORDER TO SHOW CAUSE.—To determine whether a right, au-

thority, license or privilege should be denied, renewed, revoked, suspended, limited, conditioned or other disciplinary action imposed, such proceeding shall be initiated by serving upon the applicant or licensee a copy of a complaint and order to show cause at least twenty days prior to the date stated therein for the hearing to be held.

(3) WHAT THE COMPLAINT AND ORDER TO SHOW CAUSE SHALL CONTAIN.—The complaint and order to show cause shall be in writing and shall include but not be limited to the following:

(a) It shall state the name of the applicant, or licensee; his last known address; the serial number of his license, if any, under which he is authorized to practice in this state;

(b) The nature of the charges, which shall set forth in ordinary and concise language the respondent's acts, both of omission and commission, which, if true, would constitute one or more of the grounds upon which disciplinary action may be taken;

(c) A statement specifying the law or rules alleged to have been violated;

(d) A statement to inform the respondent that he may, but need not be represented by counsel; that he is entitled to the issuance of subpoenas to compel the attendance of witnesses, the production of books, documents or other evidence or things relevant to the matter to be heard;

(e) The date and time set for the hearing of said charges; the place where the hearing is to be held;

(f) The date of the signing of the complaint and order to show cause.

The complaint and order to show cause shall be signed by the chairman and secretary of the board.

(4) SERVICE OF PROCESS, TWENTY DAYS PRIOR TO HEARING.—

(a) A copy of the said complaint and order to show cause shall be served upon the person against whom preferred, either personally or by registered mail with return receipt demanded, addressed to the said person at his last known address as the same appears on the records of the board, at least twenty days before the time fixed for the hearing.

(b) Where personal service cannot be made as aforesaid, or where registered letter is returned undelivered, the secretary of the board may cause a short, simple notice (similar as to the form of notice published in divorce cases) to the licensee to be published for two consecutive weeks (two publications being sufficient) in a newspaper published in the county of the licensee's last known address. If no newspaper is published in said county, the said notice may be published in a newspaper having a general circulation in such county.

(c) If the address of the respondent appears in some state, territory or county other than this state, the secretary of the board shall mail a copy of the complaint and order to show cause or an order entered by the board pursuant to the provisions of §460.139, to his last known out of state address.

(d) Due proof of service or of publication shall be filed with the secretary of the board and shall be recorded by him in the minutes of the board.

(5) CONTINUANCE.—The board shall have the discretion to continue any hearing for good cause shown, from time to time, and in proper cases to allow the time deemed necessary to carry out the provisions of this chapter.

(6) DEPOSITIONS.—The testimony of any material witness residing within or without the state may be taken by deposition in the manner and for the purposes provided by the Florida rules of civil procedure.

History.—§13, ch. 63-295.

460.134 Subpoena power of the board; failure to answer.—

(1) For the purpose of such a proceeding or hearing, the board shall have the power under the hand of the chairman or secretary, and the seal of the board, to issue subpoenas to compel the attendance of witnesses to testify and to produce such books, papers or other documents as may be, in the opinion of the board, relevant to any hearing before it; said subpoenas to be served by the sheriff of the county where the witness resides or may be found.

(2) The board, upon request, shall issue such subpoenas on behalf of the respondent for whom the hearing is being held.

(3) If any person who has been served with a witness subpoena, fails or refuses to obey such subpoena by not appearing at the time and place named therein, or fails or refuses to testify or answer any lawful questions propounded; or fails or refuses to produce the books, records or other documents requested and required by the board; or shall be guilty of disorderly or contumacious conduct at the hearing, the board may make known such facts to the circuit judge of the county, who shall issue, according to his discretion, either an attachment for such witness and cause him to be brought immediately before the court; or the said judge shall issue its rule nisi to such witness requiring him to obey forthwith the subpoena issued by the board or show cause why he fails to obey the said subpoena.

(4) If upon such appearance, the witness shall fail to purge himself of such failure, refusal or conduct, by failing to show sufficient cause for failure to obey the subpoena, the judge shall forthwith direct such witness to obey the same; and upon his refusal to comply, the judge shall proceed, as in other contempt of court cases, to adjudge the witness in contempt of court. Said witness shall be punished as the court may direct and he shall pay the cost of the court proceeding.

History.—§13, ch. 63-295.

460.135 Conduct of hearing, witnesses, evidence, etc.—

(1) The board shall not be bound by strict

rules of procedure or by the laws of evidence in the conduct of proceedings, but the determination shall be based upon sufficient legal evidence to sustain it.

(2) The proceeding at the hearing may be reported and transcribed by a court reporter.

(3) Oral evidence shall be taken only upon oath or affirmation administered by any member of the board.

(4) Every party, including the respondent to a disciplinary hearing shall have the right:

(a) To call and examine witnesses.

(b) To introduce documentary evidence relevant to the issues of the case.

History.—§13, ch. 63-295.

460.136 Findings of fact and the order of the board.—

(1) After the hearing the board shall consider all the evidence offered and shall decide the issues based upon such evidence. The decision shall be reduced to writing and may be stated in the language of the pleadings or by reference thereto.

(2) If the decision is for the respondent, the board shall dismiss the proceedings and it shall be so stated in the order entered in the matter.

(3) If, at the conclusion of the hearing, the board shall determine from the evidence and proofs submitted, that the respondent is guilty of the charge or charges set forth in the complaint and order to show cause, it* may take such action and impose such penalties under the provisions of §460.139, as it may deem justified and proper, and in keeping with its findings of fact and decision of guilt.

(4) The records of the board shall reflect the action of the board upon the charges.

(5) Immediately upon the entry of the final order by the board, the original of such order shall be filed with the secretary of state. A copy thereof shall be delivered to the respondent personally, and his counsel, if any, or sent to them by registered mail.

(6) An order adverse to the respondent shall become effective thirty days after filing unless a rehearing is granted within that time.

(7) An order in the respondent's favor shall become effective immediately upon the rendition thereof.

History.—§13, ch. 63-295.
*Law reads "if."

460.137 Rehearing.—The board shall have the discretion to grant a rehearing, if applied for within thirty days after receipt of the order by respondent, upon questions of fact to be determined by the board.

History.—§13, ch. 63-295.

460.138 Disciplinary action authorized; revocation, suspension, annulment, denial of license, etc.—The board shall have authority to enter an order to discipline any person who, after proper hearing, has been found guilty by the board of a violation of one or more provisions of chapter 460 or any rule and regulation of the board adopted pursuant thereto. The board, based upon the evidence and its finding of fact, may enter its final order, which may include one of the following provisions:

(1) Suspend, or limit the right to practice in this state, for a period to be determined by the board;

(2) Revoke the license to practice chiropractic. Following revocation of such license, the licensee may be relicensed at the discretion of the board with or without examination;

(3) Refuse to issue or renew a license;

(4) Suspend the imposition of judgment and penalties;

(5) Impose judgment and penalties, but suspend enforcement thereof and place the licensee or applicant for license on probation;

(6) Take such other action in relation to disciplining as the board in its discretion may deem proper and in the interest of the public health;

(7) Withhold any license, when the same has not been delivered, either permanently or for a period of time.

History.—§13, ch. 63-295.

460.139 Disciplinary action prior to hearing; conditions.—

(1) The board, without first having a hearing, and subject to the provisions of subsection (4), may temporarily suspend the certificate to practice chiropractic, deny or refuse to renew a license to applicants in the following circumstances and conditions:

(a) Persons convicted of a felony in a court of competent jurisdiction and who are in prison serving the sentence imposed by the said court;

(b) Persons adjudged incompetent by court of competent jurisdiction;

(c) Persons residing or domiciled out of the state when there is before the board evidence, which, if true, would warrant denial, withholding or suspension of license, or other disciplinary action.

(2) Any action taken by the board under subsection (1) shall be reflected by an order in writing setting forth the specific section under which the action has been taken. The original of such order shall be filed with the secretary of state. A copy thereof shall be delivered to the person against whom action has been taken, or his custodian, guardian or legally designated representative either by registered mail or by personal delivery to any of the aforementioned parties.

(3) Such order shall be accompanied with a complaint and order to show cause which shall set forth the grounds for suspending, denying, withholding or refusing to renew the license of the person.

(4) Within thirty days after the delivery of the said order, such person or his custodian, guardian or representative shall notify the secretary of the board, in writing, of whether such person desires an immediate hearing or whether such person desires a hearing upon:

(a) Release from prison;

(b) An adjudication of competence;

(c) Establishment of residence or domicile in state;

provided that an additional request for hearing is made within six months after conditions (a), (b) or (c).

(5) The order of the board shall set forth in substance the provisions of subsection (4). In addition it shall be stated in said order that it shall not be final until such time as the person affected has had a hearing before the board with the opportunity to make an appearance and present evidence.

History.—§13, ch. 63-295.

460.14 Issue and reissue of license.—

(1) The board may, by unanimous vote at any time after the refusal or suspension of a license for good and sufficient reason, issue a license to the person affected, conferring upon him all the rights and privileges pertaining to a chiropractic physician.

(2) Any person to whom such license may be issued shall pay therefor the same fee as upon the issuance of the original license as set in §460.08(1).

(3) Before such license is issued the board shall publish in a newspaper of general circulation, once each week for two consecutive weeks, notice of the application before the board for such issue or reissue of license, so that opportunity is afforded to any person to show cause to the board why such application should not be acted upon.

History.—§15, ch. 9330, 1923; CGL 3449; §14, ch. 63-295.

460.141 License to be displayed.—Each person to whom a license is issued by the board shall keep such license conspicuously displayed in his office or place of business, and shall, whenever required, exhibit said license to any member or authorized representative of the board.

History.—§15, ch. 63-295.

460.15 License to be recorded with the clerk of the circuit court.—All licenses issued by the board shall be recorded in the office of the clerk of the circuit court of the county in which the applicant practices. The date of recording shall be indicated thereon. Said clerk shall keep a permanent record of same and shall receive a fee of one dollar for each license so recorded.

History.—§16, ch. 9330, 1923; CGL 3450; am. §7, ch. 22858, 1945; §16, ch. 63-295.
cf.—§460.28, Requiring registration with state board of health.

460.17 Annual statement of board.—The secretary-treasurer of the Florida state board of chiropractic examiners shall, within thirty days after the adjournment of the regular meeting of said board in January of each year render a true and correct sworn statement of account to the comptroller of this state showing all funds collected or received by the board.

History.—§18, ch. 9330, 1923; CGL 3452; §92, ch. 26869, 1951.

460.19 Secretary-treasurer to keep records.—The secretary-treasurer of the board shall keep complete records of its proceedings especially with relation to the issuance, refusal, renewal, suspension and revocation of license to practice chiropractic. Such records shall be open to public inspection at reasonable times.

History.—§20, ch. 9330, 1923; CGL 3454; §17, ch. 63-295.

460.20 Bond of secretary-treasurer.—The secretary-treasurer of the Florida state board of chiropractic examiners shall give bond, to be approved and kept by the comptroller, in an amount to be established annually by the board, payable to the governor of Florida, and his successors in office, and conditioned for the faithful performance of his duties, and for the true and accurate accounting and payment of all funds received by him under the provisions of this chapter to the state treasurer as provided in this chapter.

History.—§21, ch. 9330, 1923; CGL 3455; §18, ch. 63-295.

460.21 Disposition of fees; compensation of board members; expenses.—

(1) All fees received under this chapter shall be paid to the secretary-treasurer, who shall forthwith deposit the same with the state treasurer in the state agencies fund to the credit of the Florida state board of chiropractic examiners.

(2) The expenses of the administration of this chapter shall be paid out of such funds received as fees, or otherwise appropriated by the legislature.

(3) Reasonable office expenses, costs for administration of the law and performance of duties imposed thereby may be approved by the board.

(4) Each member of the board shall be reimbursed for his transportation expenses for traveling to and from the place of his professional office to such place as he is required to go in pursuance of his duties as a board member and shall be allowed per diem as provided in §112.061; and in addition thereto, each member shall be entitled to recompense of ten dollars for each day, or part of day spent so traveling and attending such necessary meetings or board business.

(5) The compensation of the board, and all the expense incurred in connection with the administration of this law shall be paid upon requisition of the secretary-treasurer approved by the president as provided by law for payment of other state expenses.

History.—§22, ch. 9330, 1923; CGL 3456; §94, ch. 26869, 1951; §9, ch. 28215, 1953; §5, ch. 61-514; §19, ch. 63-295.

460.211 Board may accept funds for scholarships, etc.—The board is authorized and empowered to accept any federal, state, county or private funds, grants, or appropriations which shall be used to award scholarships to qualified persons to study chiropractic in an approved chiropractic college; and any supplies or equipment which may be made available to the board for hospital facilities, goods and services.

History.—§20, ch. 63-295.

460.22 Board may approve chiropractic colleges, etc.—

(1) The board may approve any chiroprac-

tic college which maintains standards of training and reputability sufficient to admit their graduates to the examinations given by the board.

(2) In determining the standard of training and reputation of chiropractic colleges, the board may investigate and make a personal inspection thereof, or delegate to one or more of its members or any other duly qualified person or persons, the power and authority to make such investigation and report their conclusions to the board. The board may adopt reports of such colleges made by or under the authority of a national association or associations.

History.—§23, ch. 9330, 1923; CGL 3457; §21, ch. 63-295.

460.23 Chiropractors subject to state and municipal regulations.—All licensed chiropractors shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death certificates and comply with all laws pertaining to public health, reporting to the proper authority as other practitioners are required to do.

History.—§24, ch. 9330, 1923; CGL 3458.

460.24 Chapter not applicable to other healing practices.—Nothing in this chapter shall be construed to apply to or in any manner interfere with any other method or science of healing in this state, the person practicing such other method or science of healing having been theretofore licensed to so practice under any law of this state.

History.—§27, ch. 9330, 1923; CGL 3460.

460.25 Duty of officers to enforce this chapter.—The several county prosecuting attorneys or state attorneys shall prosecute all persons charged with the violation of any of the provisions of this chapter, or rules and regulations of the board and the secretary-treasurer of the board or other person either employed or designated by the board shall assist said prosecuting attorneys or state attorneys by furnishing them evidence of violations of this chapter whenever the board comes into possession of same. The board may employ an attorney at law to assist the prosecuting attorneys in all prosecutions under this chapter or may employ an attorney at law to prosecute violations of this chapter independent of such prosecuting attorneys.

History.—§28, ch. 9330, 1923; CGL 3461; §22, ch. 63-295.

460.26 Penalties for violations of chapter.—It shall be a misdemeanor to violate any of the provisions of this chapter or the rules and regulations of the board adopted pursuant thereto, and upon conviction the person shall be punished as provided by law. The violations set forth herein whereby the board can discipline the holder of a license issued under chapter 460 are specifically made a misdemeanor and shall be prosecuted and upon conviction shall be punished according to law.

History.—§26, ch. 9330, 1923; CGL 7707; §23, ch. 63-295.
cf.—§458.14, What sign at office entrance shall show.
§455.04, Who has duty of enforcement.
§775.06, Alternative punishment.

460.261 Injunctions; when authorized.—The board may institute legal proceedings to enjoin the violation of the provisions of this law or rules and regulations in any court of competent jurisdiction, and such court may grant a temporary or permanent injunction restraining the violation thereof.

History.—§24, ch. 63-285.

460.262 Exemptions; exceptions.—

(1) This chapter shall not be construed to apply to:

(a) Any physician of medicine, known as M.D., osteopath, chiropodist, naturopath, optometrist, nurse, pharmacist, dentist or midwife who are duly licensed by their respective state boards, and are practicing their professions within the purview of the statutes applicable to their respective professions;

(b) Any person furnishing medical assistance in case of an emergency;

(c) The domestic administration of family remedies;

(d) The practice of the religious tenets of any church;

(e) Any unlicensed chiropractic physician employed as a chiropractic physician in a state institution, provided such person is qualified for licensure by the board in all respects (except as to citizenship) and shall work under the supervision of a licensed chiropractic physician.

Such person is exempt from the licensing provisions of this chapter and from the provisions of the basic science law for a period of three years; however, the exemption as provided in this subsection is subject to the limitation contained in subsection (2) hereof.

(2) Every chiropractic physician without a license, employed in a state institution shall register with the state board of chiropractic physicians and the state board of health, showing the date upon which he started to work. No state institution may employ any such person unless expressly authorized by the board.

History.—§24, ch. 63-295.

460.27 Renewal of license required, fee, etc.—

(1) All persons who are now or may hereafter be regularly licensed to practice chiropractic in the state shall, on or before January 1, annually hereafter renew same and pay a renewal fee each year to the board, not to exceed twenty-five dollars as fixed annually by the board.

(2) In addition to the payment of such renewal fee, each licensee so applying for license renewal shall furnish to said board satisfactory evidence that he has attended the two-day educational program as conducted by the Florida chiropractic association, inc., or its

equivalent as approved by the board, in the twelve months preceding each renewal date. Satisfactory evidence of attendance on postgraduate study of a type and character and at an educational session or at an institution approved by the board shall be considered equivalent.

(3) Licenses may be renewed by the board at its discretion and the applicant excused from paying the renewal fee or attending the annual educational program or both in any of the following instances:

(a) The applicant submits an affidavit to the board evidencing that he, for good cause assigned, suffered a hardship which prevented the applicant from renewing the license or attending the educational program at the proper time;

(b) In the event of an unusual emergency;

(c) For other good and sufficient reason.

(4) The secretary of the board shall send a written notice to every person holding a valid license to practice chiropractic at least thirty days prior to January 1 in each year, directed to the last known address of such licensee, and shall enclose with such notice blank forms as prescribed by the board for application for annual license renewal.

(5) Every person failing to renew his license within thirty days after the same is due shall automatically forfeit his license to practice chiropractic in the state, but he may have his license reinstated upon the payment of a restoration fee of fifty dollars for each delinquent year or any part thereof in addition to the renewal fee as provided in subsection (1), and upon presentation of satisfactory evidence of postgraduate study of a standard approved by the board.

(6) The board shall have the right, for good cause shown, to adopt and prescribe the type and character of the postgraduate study to be done by any chiropractor in order to comply with the requirements of this chapter.

History.—§1, ch. 20360, 1941; §1, ch. 25400, 1949; §24, ch. 57-1; §1, ch. 59-63; §25, ch. 63-295.

460.28 Registration of chiropractors; state board of health.—Annual registration of persons licensed to practice chiropractic pursuant to this chapter shall be made with the state board of health as provided in §381.401.

History.—§1, ch. 23111, 1945; §4, ch. 61-129.

460.29 Chiropractic hospitals must obtain licenses; definitions; exceptions.—

(1) No person, partnership, association or corporation, shall establish, conduct or maintain in the state a chiropractic hospital, sanatorium or related institution for the hospitalization and care of the sick or injured without first obtaining a license in the manner hereinafter provided.

(2) Chiropractic hospitals, sanatoriums, or other related institutions within the meaning of §§460.29-460.39, is defined as the reception place, building, agency in which any accommodation is maintained, furnished or offered for the hospitalization of the sick or injured, by chiropractic methods.

(3) Hospitalization within the meaning of §§460.29-460.39, is defined as the reception and care of any person for a continued period longer than twenty-four hours, for the purpose of giving advice, diagnosis or treatment bearing on the physical or mental health of such persons.

(4) Nothing in §§460.29-460.39 shall apply to hotels or other similar places that furnish only board or room, or either, to their guests.

(5) Nothing in §§460.29-460.39 shall authorize any person, partnership, association or corporation to engage in the practice of the healing art, or the practice of chiropractic as defined by law.

History.—Comp. §1, ch. 26929, 1951.
cf.—§460.11 Chiropractic defined.

460.30 Existing hospitals; conditions precedent to issuance of license.—

(1) No person, partnership, association or corporation may continue to operate an existing chiropractic hospital, sanatorium or related institution, or open a chiropractic hospital, sanatorium or related institution, after October 1, 1951, unless such operation shall have been approved by the national council of chiropractic hospitals and sanatoriums, and regularly licensed by the Florida state board of chiropractic examiners as provided hereinafter.

(2) Before a license shall be issued under §§460.29-460.39, the person applying shall submit evidence satisfactory to the Florida state chiropractic board of examiners that he is not less than twenty-one years of age and of reputable and responsible character; in the event the applicant is an association or corporation, like evidence shall be submitted as to the members thereof and the persons in charge. All applicants shall in addition, submit satisfactory evidence of their ability to comply with the minimum standards of this law and all regulations adopted thereunder.

History.—Comp. §2, ch. 26929, 1951.

460.31 Application for licenses.—Any person, partnership, association or corporation desiring a license hereunder shall file with the Florida state chiropractic board of examiners a verified application containing the name of the applicant desiring the license; whether such person so applying is twenty-one years of age; the type of institution to be operated; the location thereof; the name of the person (persons) in charge thereof, and if they have met the minimum standards set by the national council of chiropractic hospitals and sanatoriums and such other information as the Florida state board of chiropractic examiners may require. Application on behalf of corporation or association shall be made by any two officers thereof or by its managing agents.

History.—Comp. §3, ch. 26929, 1951.

460.32 Licenses; fees; expiration date; etc. —The application for a license to operate a chiropractic hospital, sanatorium or related institution within the meaning of §§460.29-460.39 shall be accompanied by a fee of $50.00. No such fee shall be refunded. All such licenses issued by the Florida state board of chiropractic examiners under §§460.29-460.39 shall expire on the thirty-first day of December each year after this law takes effect, shall be on a form prescribed by said department, shall not be transferred, or assignable, shall be issued only for the premises named in the application, shall be posted in a conspicuous place on the licensed premises and may be renewed from year to year upon application, investigation by the state board of chiropractic examiners and payment of a license fee, as in the case of procurement of an original license.

History.—Comp. §4, ch. 26929, 1951.

460.33 Issuance of license; suspension; revocation; hearing, etc.—

(1) The state board of chiropractic examiners is hereby authorized to issue licenses to operate chiropractic hospitals and sanatoriums or other related institutions as herein defined, which, after inspection are to comply with the provisions of §§460.29-460.39, and any regulations adopted by said state board of examiners. All decisions of this board may be reviewed by certiorari in the circuit court in the county in which such institution is located or contemplated.

(2) The state board of chiropractic examiners is hereby authorized to suspend or revoke a license issued hereunder, on any of the following grounds:

(a) Violation of any of the provisions of §§460.29-460.39 or the rules and regulations issued pursuant thereto.

(b) Permitting, aiding or abetting the commission of any illegal act in such institution.

Provided that before any such license issued hereunder is suspended or revoked, thirty days written notice shall be given the holder thereof stating the place and the date set for hearing of the complaint. The holder of such license shall be furnished with a copy of said complaint and be entitled to be represented by legal counsel at such hearing. Such notice shall be given by the state board of chiropractic examiners by registered mail.

(3) If a license is revoked as herein provided, a new application for license may be considered by the state board of chiropractic examiners when, and after, the conditions upon which revocation was based, have been corrected and evidence of this fact has been satisfactorily furnished. A new license may then be granted after proper inspection has been made and all provisions of §§460.29-460.39 and rules and regulations hereunder as heretofore and hereinafter provided have been complied with.

History.—§6, ch. 26929, 1951; (1) §24, ch. 57-1; (1) §3, ch. 63-509.

460.34 Inspections.—Every building, institution or establishment for which a license has been issued under this law, shall be periodically inspected by sanitary engineers and firemen who shall report as to safety of the institution to the state board of chiropractic examiners which board shall also inspect the institution under the rules and regulations to be established by said board of examiners. No institution of any kind licensed pursuant to the provisions of §§460.29-460.39 shall be required to be licensed or inspected under the laws of this state relating to hotels, restaurants or lodging houses.

History.—Comp. §5, ch. 26929, 1951.

460.35 Standards established. — The state board of chiropractic examiners shall have the power to establish standards under §§460.29-460.39 which it finds necessary and in public interests and, in like manner, it may rescind, amend or modify such regulations from time to time as may be in the public interest, insofar as such action is not in conflict with any of the provisions of §§460.29-460.39.

History.—Comp. §7, ch. 26929, 1951.

460.36 Advisory committee; members, terms, duties.—The state board of chiropractic examiners shall request the governor to appoint an advisory committee consisting of the executive director of the public welfare board, one chiropractic hospital superintendent, and one interested in chiropractic hospitals. One member to serve for three years, one for two, and one to serve for one year from the date of their appointment or until their successors are duly appointed. Following this first appointment, the term of office shall be for three years. This advisory committee to act in an advisory capacity to the state board of chiropractic examiners in dealing with matters pertaining to the particular problems of chiropractic hospitals and sanatoriums, and other related institutions.

History.—Comp. §8, ch. 26929, 1951.

460.37 Information of board confidential.—Information received by the state board of chiropractic examiners through inspections and authorized under §§460.29-460.39 shall be confidential and shall not be disclosed except in a proceeding involving the question of licensure.

History.—Comp. §9, ch. 26929, 1951.

460.38 Acceptance of federal aid. — The state board of chiropractic examiners is hereby authorized and empowered for, and on behalf of the chiropractic profession and their patients in the state to accept any federal funds or grants through appropriate channels, appropriation from the states or counties of the United States, and any supplies and equipment which may be made available to this state for hospital facilities, goods and services.

History.—Comp. §11, ch. 26929, 1951.

460.39 Penalties for violations of §§460.29-460.38.—Any person, partnership, association or corporation, establishing, conducting, managing or operating any chiropractic hospital or sanatorium within the meaning of this law, without first obtaining a license therefor as herein provided, or who shall violate any provision of §§460.29-460.38 or regulation thereunder, shall be guilty of misdemeanor, and upon conviction thereof, be punished by a fine not to exceed one hundred dollars and a like amount for any subsequent offense.

History.—Comp. §10, ch. 26929, 1951.

CHAPTER 461

CHIROPODY

461.01 Definition of chiropody.—Chiropody means the diagnosis, medical, surgical, palliative and mechanical treatment of ailments of the human foot or leg, except the amputation thereof; and shall include the use and prescription of local anesthetics.

The definition of the word "Chiropody" in this section is identical with the word "Podiatry" and for all such purposes, they shall be considered one and the same.

History.—§1, ch. 15911, 1933; CGL 1936 Supp. 4151(124), 4151(127); §1, ch. 19173, 1939.
cf.—§458.16 Furnishing copies of mental or physical examination report.

461.02 Unlawful to practice chiropody without license; application.—It is unlawful for any person to profess to be a chiropodist or to practice or assume the duties incident to chiropody without first obtaining from the state board of chiropody examiners, a chiropody license. All persons before being licensed to practice chiropody in the state, shall make a signed and sworn to application upon a blank form authorized and furnished by the state board of chiropody examiners, to the secretary-treasurer of said board of chiropody examiners, which license shall be granted to such applicants after they shall have furnished satisfactory proof of being at least twenty-one years of age and of good moral character, but only upon compliance with the conditions provided in this chapter.

History.—§§2, 3, ch. 15911, 1933; CGL 1936 Supp. 4151(125), 4151(126).
cf.—§456.04, Excepted from requirement of certificate of proficiency in basic sciences.
§461.12, Penalty for practice without license.

461.03 Requisites for examination; subjects; minimum passing grade; fees.—Any person who shall furnish to the board of chiropody examiners satisfactory proof that he or she is twenty-one years of age or more, a bona fide citizen of the United States, and of good moral character, and shall make oath that he or she has not been convicted of any offense that would constitute a felony either in Florida or in any other state or country; and shall present a diploma from a chiropody or podiatry college which requires for graduation at the time of his or her entrance a course of study of at least three separate calendar years until 1953, after which time a diploma from a chiropody or podiatry school requiring for graduation a course of study of at least four separate calendar years at the time of his or her entrance, only will be acceptable; said schools or colleges to be approved by the board of chiropody examiners; and be required to pass an examination to be conducted by said board in the studies of anatomy, chemistry, dermatology, materia medica, pathology, physiology, surgery and clinical or orthopedic podiatry, limited in scope to the treatment of the foot and leg; minimum requirements for license shall be a general average in said examination of seventy-five percent in all subjects, and not less than fifty percent in any one subject; and shall pay an examination fee of fifty dollars, which fee shall accompany the application to the secretary-treasurer of the board of chiropody examiners. Any applicant failing to pass these requirements shall be entitled to a re-examination upon the payment of an additional fee of ten dollars, but two such re-examinations shall exhaust the privilege under the original application. Every person who has successfully passed the examination provided for herein, and to whom a license has been issued, shall be entitled to practice the profession of chiropody in the state upon causing his or her name to be registered at the office of the state board of health at Jacksonville, and upon registering with the secretary of the state board of chiropody examiners; and further, that such person must present in person certificates from the above mentioned officials showing registration as aforesaid, before an occupational license may be applied for or procured from any city, state or county official having jurisdiction of the issuance of occupational licenses.

Any person who attempts to procure or does procure an occupational license in violation of

the provisions of this section shall be subject to the penalty provided for in §461.12.

History.—§4, ch. 15911, 1933; CGL 1936 Supp. 4151(127); §1, ch. 19173, 1939; §1, ch. 25188, 1949.

461.04 Chapter not applicable to licensed physicians and surgeons, etc.—This chapter shall not apply to the other licensed medical practitioners in the state whose own governing statutes permit them to also treat the foot and leg nor shall it apply to medical practitioners of the army, navy and public health service when in actual performance of official duties; neither shall this chapter prohibit the manufacture, advertising or sale of proprietary foot appliances or remedies, or the manufacture, advertising or sale of corrective shoes.

History.—§5, ch. 15911, 1933; CGL 1936 Supp. 4151(128); §1, ch. 19304, 1939; §1, ch. 24104, 1947; §1, ch. 25279, 1949; §1, ch. 61-131.

cf.—Ch. 458, Regulating physicians.

461.05 Board of chiropody examiners; terms.—For the purpose of carrying out the provisions of this chapter the governor shall appoint a board of chiropody examiners, to consist of three chiropodists actively engaged in the full time practice of their profession in the state, and the secretary of the state board of medical examiners, who shall act as ex officio executive officer of said board of chiropody examiners. Members of the board of chiropody examiners shall be appointed for a term of three years from the termination of their now existing terms. All members of said board shall be members of the Florida podiatry association in good standing at the time of their appointment, and during their membership on said board; and shall be citizens of the state. Any board member who fails to abide by the requirements of this section may have his or her license revoked in the manner prescribed in §§461.08, 461.09 and 461.10.

History.—§6, ch. 15911, 1933; CGL 1936 Supp. 4151(129). Am. §2, ch. 25188, 1949.

cf.—§461.14, Eligibility for membership.

461.06 Removal of members of board of chiropody examiners; officers of board; meetings.—The governor may remove from office members of the board of chiropody examiners for neglect of duties as required by this chapter, or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board of chiropody examiners or by his resignation, or death, all such appointees to be practicing chiropodists in the state.

The board of chiropody examiners shall within two weeks after their appointment meet at some convenient place in the state and shall then elect a president from their own members and a secretary-treasurer. The secretary-treasurer shall give to the governor of the state a penal bond in the sum of one thousand dollars with sufficient sureties to be approved by the governor for the faithful discharge of his duties. The board of chiropody examiners shall hold one annual examination in each year; said examination to be held on the second Monday in June of each year at such place or places as may be designated by the board of chiropody examiners.

History.—§8, ch. 15911, 1933; CGL 1936 Supp. 4151(131); §2, ch. 19173, 1939.

461.07 License; recording; displayed conspicuously; renewal; fees.—Every license shall be conspicuously displayed at the place of practice, and must be recorded in the office of the clerk of the circuit court in the county wherein the licensee practices, within thirty days of its issue. A renewal license fee of fifteen dollars shall be paid on January first annually to the secretary-treasurer of the board of chiropody examiners, and if not paid within three months from such date, such license shall be revoked, and shall be reinstated only upon original application and examination as provided by law. Every renewal certificate shall be displayed in connection with original license. All licensees shall be designated as licensed chiropodists, and shall not bear any title or abbreviation thereof without the designation "chiropodist, diseases of foot and leg," thus indicating a limitation of professional qualifications to treat human ailments.

History.—§7, ch. 15911, 1933; CGL 1936 Supp. 4151(130). Am. §1, ch. 25356, 1949.

461.08 Revocation of license; preferment of charges; appeal.—

(1) The license or registration of a practitioner of chiropody may be revoked, suspended or annulled, or such practitioner reprimanded, upon the following grounds:

(a) That the chiropodist is guilty of fraud in the practice of chiropody, or of fraud or deceit in his admission to the practice of chiropody.

(b) That the chiropodist has been convicted in a court of competent jurisdiction of a felony. The conviction of a felony shall be the conviction of any offense which if committed within the state would constitute a felony under the laws thereof.

(c) That the chiropodist is engaged in the practice of chiropody under a false or assumed or commercial name, or the impersonation of another practitioner of a like or different name.

(d) That the chiropodist is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate him for the performance of his professional duties.

(e) That the chiropodist is guilty of untrue, fraudulent, misleading or deceptive advertising; or advertising that he can cure diseases by any secret medicine, or that he can cure a manifestly incurable disease.

(f) That the chiropodist has obtained a fee upon representation that a manifestly incurable disease can be permanently cured.

(g) That the chiropodist is grossly ignorant or incompetent, or guilty of wilful negligence in the practice of chiropody, or has been guilty of employing, allowing or permitting any unlicensed person or persons to perform any work in his office which under the provisions of this chapter can be legally done only by a

person or persons holding a license to practice chiropody; or of practicing deceit or fraud upon the public, or upon individual patients, in obtaining or attempting to obtain practice; or of false notice, advertising, publication, or circulation of false claims, or fraudulent or misleading statements of his art, skill or knowledge or of methods of treatment or practice; or shall be guilty of any offense involving moral turpitude, or of advertising professional services in a superior manner, or of advertising by means of a large and glaring display, light signs, or signs containing as a part thereof the representation of a foot, leg, or any portion thereof; or of employing or making use of advertising, advertising solicitors, or free publicity by press agents; or of advertising any free chiropody or free examinations; or of advertising to guarantee any chiropody services or the painless performance of any chiropody operation.

(2) The charges above set forth may be preferred by any person or corporation; or the board may on its own motion direct the executive officer to prefer said charges. An accusation may be filed with the secretary and treasurer of the board charging any licensed chiropodist with any of the offenses above enumerated, such accusation to be in writing and verified under oath; and upon consideration thereof the board may in its discretion and upon sufficient proof of the charges, revoke the license of the practioner so charged.

(3) Any licensed chiropodist whose license is suspended or revoked by the board of chiropody examiners under the provisions of chapter 461, may have the order of the board reviewed by certiorari to the circuit court of the county in which said chiropodist resides or has his place of business, provided that the petition for certiorari shall be filed within sixty days from the effective date of the board's order of revocation, suspension or cancellation and any such application not instituted and filed within said sixty days shall forever thereafter be barred.

History.—§3, sub §12, ch. 19173, 1939; CGL 1940 Supp. 4151 (131a); §3, ch. 25188, 1949; (3) by §1, ch. 57-110.
cf.—§1.01(3), "Person" defined.

461.09 Hearing of charges against accused; form of notice.—Whenever such accusation as provided for in §461.08 is filed, the board shall set a day for a hearing and the secretary-treasurer of the board shall transmit to the accused a true copy of any and all charges filed with him relating to such accusations, and shall notify in writing the accused that on the day fixed for the hearing, which day shall not be less than ten days from the date of such notice, he may appear or show cause, if any, why his license to practice chiropody, in the state, should not be revoked. For the purpose of such hearing, the board may require by subpoena the attendance of witnesses, to administer oaths and hear testimony, either oral or documentary, for and against the accused and said accused shall have the right at said hearing to cross-examine the witnesses, to produce witnesses in his defense and to appear personally or by counsel. The notice provided for in this section shall be substantially in the following form:

To _____

Florida: You are hereby notified that charges have been filed with the secretary-treasurer of the Florida state board of chiropody examiners against you as a practicing chiropodist, in the State of Florida, a true copy of such charges being attached hereto, and that the said board has fixed the_____ day of_____ _____, A. D., 19____, at the hour of_____ o'clock, _____, in_____ Florida, for a hearing on such charges, at which time you are hereby notified to appear before said board and show cause, if any you can, why your license to practice chiropody in the State of Florida should not be revoked. At the same time and place, the board will hear testimony, either oral or documentary, both for and against you, relating to such charges.

Dated at_____, Florida.

_____
Secretary-Treasurer of the Florida Board of Chiropody Examiners.

Such notice shall be sent to the accused by registered mail, directed to his last known mailing address, and the post office registration receipt therefor, or the post office registration receipt signed by the accused, or his agent, shall be prima facie evidence of such notice.

History.—§3, sub-§13, ch. 19173, 1939; CGL 1940 Supp. 4151(131b).
cf.—§461.03 Requirements for licensing.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

461.10 Power of board to revoke licenses; review by circuit court; reissue of license.—The board of chiropody examiners may, upon satisfactory proof made that any licentiate has been guilty of any of the charges against him, suspend such licentiate from the practice of chiropody and call in the license of said licentiate upon a two thirds majority vote of the board; provided, however, that such suspended chiropodist may have the proceedings of said board reviewed by certiorari by the circuit court of the circuit in which said license is recorded. The petition for review of the person whose license has been revoked, shall be filed within sixty days after such revocation. Appeals from any decision of the circuit court may be taken to the appropriate district court of appeal in the same manner and subject to like conditions as appeals in chancery are taken. In the event that any such license shall be revoked or registration annulled under the provisions of this chapter, the board shall forthwith transmit to the clerk of the circuit court or courts in which said accused is registered as a chiropodist, a certificate under its seal, certifying that such registration has been annulled, and such clerk shall, upon receipt of such certificate, file the same and forthwith mark such registration annulled.

Any person who shall practice after his license has been revoked and registration annulled, shall be deemed to have practiced chiropody without a license. However, at any time after six months from the date of said conviction, said board may, by a majority vote, issue a new license, or grant a license to the person affected, restoring, or conferring all the rights and privileges of and pertaining to the practice of chiropody; the fee therefor shall be the same as upon the issuance of the original license.

History.—§3, sub-§14, ch. 19173, 1939; CGL 1940 Supp. 4151 (131c); §2, ch. 57-110; §4, ch. 63-509.
cf.—§461.16, Power to enjoin violations.
§461.17, Additional causes for revocation.
§461.03 Requisites for examination; subjects; minimum passing grade; fees.

461.11 Records to be kept by secretary-treasurer of board.—The secretary-treasurer of the board shall keep a record book in which shall be entered the names of all persons to whom licenses have been granted under this chapter, the license number, and the dates of granting such licenses and other matters of record, and the book so provided and kept shall be deemed a book of records, and a transcript of any record therein, or a certificate that there is not entered therein the name and license number of, or date of granting such license to, a person charged with a violation of any of the provisions of this chapter, certified under the hand of the secretary-treasurer and the seal of the board, shall be admitted as evidence in any of the courts of this state. The original books, records and papers of the board shall be kept at the office of the secretary-treasurer of said board, which office shall be at such place as may be designated by the board. The secretary-treasurer shall furnish to any person making application therefor, a copy of any part thereof, certified by him as secretary-treasurer, upon payment of a fee of twenty-five cents per hundred words so copied, the fee to belong to the secretary-treasurer.

History.—§3, sub-§15, ch. 19173, 1939; CGL 1940 Supp. 4151(131d).

461.12 Penalty for violations of chapter.—(1) Any licensed chiropodist who fails or neglects to register by January first of any year as required by the provisions of this chapter shall upon conviction be punished by a fine of not more than fifty dollars.

Any person who shall:

(a) Sell, or fraudulently obtain or furnish any chiropody diploma, license, record or registration, or aid or abet in the same; or

(b) Practice chiropody under cover of any diploma, license, record or registration illegally or fraudulently obtained or secured, or issued unlawfully on fraudulent representation; or

(c) Advertise to practice chiropody under a name other than his own or under an assumed name; or

(d) Falsely impersonate another practitioner of a like or different name; and,

(2) Any person who, not being then lawfully licensed and authorized to practice chiropody in this state, shall:

(a) Practice or advertise to practice chiropody;

(b) Use in connection with his name any designation tending to imply or designate him as a practitioner of chiropody; and,

(c) Use the title "Doctor", or any abbreviation thereof in connection with his name, or with any trade name in the conduct of any occupation or profession, involving or pertaining to the public health, or the diagnosis or treatment of any human diseases, pain, injury, deformity or physical condition unless duly licensed by a board created under the laws of the state; and,

(3) Any person who during the time his license to practice chiropody shall be suspended or revoked, shall practice chiropody, shall upon conviction be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months.

History.—§4, sub-§16, ch. 19173, 1939; CGL 1940 Supp. 7724(1a).
cf.—§458.14, What sign at office entrance shall show.
§455.04, Who has duty of enforcement.
§775.06, Alternative punishment.

461.13 Compensation and expenses of members of state board of chiropody examiners.—The expense with reference to the administration of this chapter shall be confined to usual office expenditures for stenographic services, supplies, printing, and postage. Each member of said board of chiropody examiners shall be paid ten dollars per day, or part of a day, and per diem and mileage as provided in §112.061, from place of residence to place of meeting and return, while attending official meetings in the discharge of their duties. The board shall pay necessary stenographic and secretarial help and the secretary-treasurer of said board may be paid an additional annual salary up to, but not exceeding, three hundred dollars per annum as the board shall deem necessary.

History.—§2, ch. 24104, 1947; am. §10, ch. 28215, 1953.
cf.—§112.061 Traveling expenses of state officers and employees.

461.14 Eligibility for membership on the state board of chiropody examiners.—At the time of appointment to membership on the state board of chiropody examiners, each person shall have been a bona fide resident of the state and a practicing chiropodist in the state for at least six years continuously next preceding the time of his appointment.

History.—§2, ch. 24104, 1947.

461.15 Disposition of fees.—All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the president and secretary-treasurer of said board.

History.—§2, ch. 24104, 1947; §95, ch. 26869, 1951; am. §11, ch. 28215, 1953; §6, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.
§455.03 Dispensing with examination of veterans.

461.16 Procedure by injunction.—In addition to remedies previously provided for by this chapter for the enforcement thereof, the state board of chiropody examiners is hereby authorized to proceed in any of the courts of the state by injunction to restrain any continued violations of this chapter, or any provision hereof.

History.—§2, ch. 24104, 1947.

461.17 Power to revoke license.—In addition to such powers as have heretofore been granted to said board, the state board of chiropody examiners shall have power to revoke or annul any certificate of registration granted by it, or issued as a renewal or reissue, if the person to whom issued, after due notice and hearing as provided by this chapter, shall be found guilty by the board of gross immoral conduct in the practice of his profession as a chiropodist; or be afflicted with a contagious disease; or found guilty of unprofessional conduct; or found guilty of violation of any of the rules and regulations or orders promulgated by said board. "Unprofessional conduct" for the purpose of this chapter shall mean any conduct of a character likely to deceive or defraud the public, including among other things, price advertising, billboard advertising, use of direct advertising, whether printed, radio, display, or any similar nature; or act in violation of the "code of ethics" of the Florida podiatry association; it being the purpose of this chapter that a chiropodist shall be respected for his professional skill rather than his ability to advertise.

History.—§2, ch. 24104, 1947.

461.18 Right to employ counsel.—The state board of chiropody examiners may employ counsel or legal assistance when necessary to prosecute violations of any of the provisions of this chapter; and it shall also be the duty of the several state and county prosecuting attorneys of this state to prosecute all persons charged with the violation of any of the provisions hereof. Said board may employ an attorney at law to assist such prosecuting attorneys in any and all prosecutions hereunder; or it may employ an attorney at law to prosecute violations of this chapter independent of such prosecuting attorneys.

History.—§2, ch. 24104, 1947.

461.19 Registration with state board of health; unauthorized peddling of remedies.—It shall be unlawful for any person to peddle, demonstrate, offer claims for, direct the use of, apply, or prescribe medicinal remedies or appliances for the feet, when such person is not registered with the state board of health as provided in §381.401, and with the secretary of the state board of chiropody examiners; and further, that any such person must present in person certificates from the above authorities showing registration as aforesaid before an occupational license may be applied for or procured from any city, state or county official having jurisdiction over the issuance of occupational licenses. Any person who attempts to or does procure an occupational license in violation of the provisions of this section shall be subject to the penalty provided for in §461.12. This chapter, however, shall not prohibit the manufacture, advertising or simple sale of corrective shoes, arch supports, or similar appliances or foot remedies.

History.—§2, ch. 24104, 1947; §2, ch. 25279, 1949; §5, ch. 61-129.

CHAPTER 462*

NATUROPATHY

462.01 Naturopathy defined.—For the purpose of this law natureopathy and naturopathy shall be construed as synonymous terms and are hereby defined to mean the use and practice of psychological, mechanical and material health sciences to aid in purifying, cleansing and normalizing human tissues for the preservation or restoration of health, according to the fundamental principles of anatomy, physiology and applied psychology, as may be required. Naturopathic practice employs, among other agencies, phytotherapy, dietetics, psychotherapy, suggesto-therapy, hydrotherapy, zone therapy, biochemistry, external applications, electrotherapy, mechanotherapy, mechanical and electrical appliances, hygiene, first aid, sanitation and heliotherapy; provided, however, that nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery or chiropractic, nor shall the provisions of this law in any manner apply to or affect the practice of osteopathy, chiropractic, Christian science, or any other treatment authorized and provided for by law for the cure or prevention of disease and ailments.

History.—§1, ch. 12286, 1927; CGL 3469; am. §1, ch. 21707, 1943.
cf.—§458.16 Furnishing copies of mental or physical examination report.

462.02 State board of naturopathic examiners.—A board is created known as the state board of naturopathic examiners. Said board shall be composed of three practicing naturopathic physicians, of integrity and ability, who shall be residents of this state, and who shall have graduated from a reputable naturopathic school, and shall have been engaged in the active practice of their profession within this state for at least one year prior to their appointments, but none of them shall be connected in any way with or have any interest in any naturopathic school or college.

The said members shall be appointed by the governor for terms of four years from the termination of the now existing terms. Upon the expiration of the term of office of each member of said board, or whenever a vacancy shall occur thereon, the governor shall appoint a naturopathic physician to fill such vacancy. The members of said board shall hold office until their successors are appointed and qualified.

The board shall perform such duties and be vested with and exercise such powers relative to the protection of the public health and the control and regulation of the practice of naturopathy in the state as shall in this chapter be prescribed and conferred upon it.

History.—§§2, 3, ch. 12286, 1927; CGL 3470, 3471.

462.022 Abolition of licensing power of board.—On July 1, 1959, the licensing powers of the state board of naturopathic examiners as provided by law are hereby abolished. Only those naturopathic physicians that are presently practicing and licensed, and have been residents for two years in this state prior to enactment of this law may renew their licenses. This law does not affect any other functions of the state board of naturopathic examiners.

History.—§1, ch. 59-164.

462.03 Oath of members of board.

entering upon the duties of the office, the members of the board of naturopathic examiners shall take the constitutional oath of office and shall file the same in the office of the secretary of state; and there shall thereupon issue to him a commission pursuant to his appointment.

History.—§4, ch. 12286, 1927; CGL 3472.

462.04 Organization, meetings; powers and duties of board.—Immediately after the appointment and qualification of its members, the board of naturopathic examiners shall meet and organize. Said board shall elect a president, vice-president and secretary-treasurer from its membership. Said board shall hold two regular meetings each year, one in June and one in November, at some convenient place in the state, and on such date as the board may determine. Notice of such meetings shall be

*Ch. 57-129 amending and repealing various sections of ch. 462 declared unconstitutional (108 So. 2d 889); therefore ch. 462, F.S. 1955 together with ch. 59-164 is law now regulating the practice of naturopathy (AGO 59-37).

given by publication thereof once a week for four successive weeks in one or more newspapers of general circulation through the state.

Special or call meetings may be held at such times and places and upon such notice as the majority of the board may determine. Said board shall adopt a seal which must be affixed to all licenses issued by it. The board shall, from time to time, adopt such rules and regulations not inconsistent with this chapter as it may deem necessary for the performance of its duties, and shall examine and pass upon the qualifications of applicants for the practice of naturopathy in this state as provided in this chapter. A majority of the members of said board shall constitute a quorum for the transaction of business. The secretary shall keep a record of all official actions and proceedings of the board, and said records shall be prima facie evidence of matters therein contained.

History.—§5, ch. 12286, 1927; CGL 3473.
cf.—§462.13, Additional duties of board.

462.05 Application for license; examination and admission fee.—It shall be unlawful for any person to practice naturopathy in the state until he shall first receive a license so to do from "the Florida state board of naturopathic examiners," and to this end he shall make application in writing to the secretary of the board, at least two weeks before any regular meeting of the board, or any special meeting that may be called for that purpose, in such form as the board may require for such examination and license. The said applicant shall furnish evidence, satisfactory to the board, that he is more than twenty-one years of age; that he is a citizen of the United States, and that he is of good moral character; that he has completed a high school course and taken a four-year course, of nine months each, or more, in a reputable, chartered school or college of naturopathy, wherein the curriculum of study included instruction in the following branches, namely: Anatomy, physiology, histology, pathology, hygiene and sanitation, chemistry, diagnosis, symptomatology, nonsurgical gynecology, midwifery, jurisprudence, first aid, philosophy and the science and practice of naturopathy. All examinations in said enumerated branches shall be in writing, but the applicant shall also be required to give a practical demonstration showing his knowledge and efficiency in such branches, as may be deemed necessary and practicable by the board. In the conduct of written examinations each applicant shall be designated by a number, instead of by his name, so that his identity shall not be disclosed to the members of the board until after the examination papers are graded. A license or certificate shall then be issued under the seal of the board, countersigned by members of the board, and authenticated by its secretary, to each applicant who shall pass said written examinations by a rating of seventy-five per cent on the questions provided in each of the subjects named, and who shall also have satisfied the members of said board by such practical demonstration as may be required of his fitness to practice naturopathy as defined by this law. All applications for examination and license shall be accompanied by a fee of twenty-five dollars to be paid to the secretary-treasurer, and such fee shall not be returned to the applicant in the event of failure on examination; provided, however, that said applicant may at the next regular meeting of the board, or at any special meeting of the board called for that purpose, again take the examination without the payment of an additional fee. Said board shall convene within sixty days after its appointment for the purpose of passing on the qualifications of the applicants practicing prior to the passage of this law. No license shall be issued to an applicant unless the applicant passes a satisfactory examination.

History.—§6, ch. 12286, 1927; CGL 3474; am. §2, ch. 21707, 1943.
cf.—§456.03, Requirement of certificate of proficiency in basic sciences.
§462.17(2), Penalty for practicing without license.

462.06 Temporary license.—The board of naturopathic examiners may in its discretion issue a temporary license to an applicant, whose qualifications and moral fitness to practice naturopathy may be made to appear to the satisfaction of the board, and said temporary license shall have the same force and effect as a permanent license until the next regular or special meeting of the board for examinations, and only until then, when said license shall become void. A temporary license shall not be recorded.

History.—§7, ch. 12286, 1927; CGL 3475.

462.07 Examination fee; not applicable to physicians and surgeons.—There shall be paid to the secretary-treasurer of the board of naturopathic examiners by each applicant for license by examination a fee of twenty-five dollars, which shall accompany the application. The said fee shall be charged for issuing a temporary license, which shall include the fee for examination for permanent license. No part of any fee is returnable under any circumstances or condition, nor shall this chapter be construed as affecting or changing laws in reference to license tax to be paid by physicians and surgeans.

History.—§8, ch. 12286, 1927; CGL 3476.

462.08 Registration fee.—An annual fee of ten dollars shall be paid by every person licensed to practice naturopathy within this state on or before May 1 of each year after a license is issued to such person, for a renewal of such license. The secretary-treasurer of the board of naturopathic examiners shall, at least thirty days before May 1 of each year, send to all persons licensed to practice naturopathy in this state a notice of the fact that such renewal will be due on or before May 1. Mailing by secretary-treasurer of such notice by depositing it in the United States mail with proper postage attached and addressed to the last known address of such license holder shall constitute proper notice. Nothing in this section shall be construed to

require that license renewals shall be recorded in the office of the clerk of the circuit court.

History.—§9, ch. 12286, 1927; CGL 3477; §3, ch. 21707, 1943; §1, ch. 63-374.

462.09 Disposition of fees; report; bond of secretary-treasurer; compensation of board members.—All fees received under this chapter shall be paid to the secretary-treasurer. The secretary-treasurer shall be required to give a good and sufficient bond in such amount and upon such terms and conditions as the board may require, said bond to be approved by the board. Members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. All moneys received by the board under this chapter shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers signed by the secretary-treasurer and approved by the president of the board. The secretary-treasurer shall, on the first Tuesday of October of every year, file with the governor of the state a report of all receipts and disbursements of said board for the preceding fiscal year.

History.—§10, ch. 12286, 1927; CGL 3478; §96, ch. 26869, 1951; am. §12, ch. 28215, 1953; §7, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

462.10 Recording of licenses.—All licenses issued as provided in this chapter shall be recorded in the office of the clerk of the circuit court of the county in which applicant practices, and the date of recording of same shall be indicated thereon. Said clerk shall keep a permanent record of the same, and shall receive a fee of one dollar for each license so recorded.

History.—§11, ch. 12286, 1927; CGL 3479.
cf.—§462.20, Registration with state board of health required.

462.11 Naturopaths to observe regulations.—Doctors of naturopathy shall observe and be subject to all state, county and municipal regulations in regard to the control of contagious and infectious diseases, the reporting of births and deaths, and to any and all other matters pertaining to the public health in the same manner as is required of other practitioners of the healing art.

History.—§12, ch. 12286, 1927; CGL 3480.

462.12 Board to pass upon naturopathic schools.—The board of naturopathic examiners may pass upon the good standing and reputability of any naturopathic school or college, and in determining the reputability of any naturopathic school or college, the right to investigate and make a personal inspection of the same is authorized.

History.—§14, ch. 12286, 1927; CGL 3482.

462.13 Additional powers and duties of board.—The state board of naturopathic examiners and its officers may administer oaths, summon witnesses, and take testimony in all matters relating to its duties. Said board shall issue a license to practice naturopathy to all persons who shall furnish satisfactory evidence of attainments and qualifications under the provisions of this chapter, and the rules and regulations of the board. Such license shall be signed by the president, and attested by the secretary-treasurer of the board under its adopted seal, and it shall give absolute authority to the person to whom it is issued to practice naturopathy in this state. Every unrevoked license and indorsement of recordation made as provided in this chapter shall be presumptive evidence in all courts and places that the person therein named is legally licensed to practice naturopathy. The board shall aid the prosecuting attorneys of the state in the enforcement of this chapter.

History.—§15, ch. 12286, 1927; CGL 3483.

462.14 Revocation of license.—The license or registration of a practitioner of naturopathy may be revoked, suspended or annulled, or such practitioner may be reprimanded, upon the following grounds:

(1) That he is guilty of fraud or deceit in the practice of naturopathy; or in his admission to the practice of naturopathy;

(2) That he has been convicted of a felony. The conviction of a felony shall be the conviction of any offense which, if committed within the state, would constitute a felony under the laws of this state;

(3) That he is engaged in the practice of naturopathy under a false or assumed name, or the impersonation of another practitioner of a like or different name;

(4) That he is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate him from the performance of his professional duties;

(5) That he is guilty of untrue, fraudulent, misleading or deceptive advertising;

(6) Causing the publication or circulation of an advertisement of any modality by means whereby the monthly period of women can be regulated; or the menses, if suppressed, can be established;

(7) The procuring or aiding or abetting in procuring a criminal abortion.

History.—§16, ch. 12286, 1927; CGL 3484.
cf.—§462.17, Penalty provided subsection (3).

462.15 Proceeding for revocation of license; review by circuit court.—Proceedings for the revocation of a license or the annulment of registration shall be begun by filing written charges against the accused. These charges may be preferred by any person or the board may, on its own motion, direct the executive officer of said board to prefer said charges. Said charges shall be filed with the secretary-treasurer of said board.

Upon the filing of said charges the time and place for the hearing of same shall be fixed by said board as soon as convenient, and a

copy thereof, together with notice of the time and place when they will be heard and determined, shall be served upon the accused at least ten days before the date actually fixed for said hearing. At said hearing the accused shall have the right to cross-examine the witnesses against him, and to produce witnesses in his defense, and to appear personally or by counsel.

Said board may, upon satisfactory proof made that any licentiate has been guilty of any of the charges against him, suspend such licentiate from the practice of naturopathy, and call in the license of said licentiate upon a majority vote of the board; provided, however, that such suspended naturopathic physician may have the proceedings of said board reviewed by certiorari in the circuit court of the circuit in which said license is recorded. The petition for review of the person whose license has been revoked shall be filed within sixty days after such revocation.

Appeals from any decision of the circuit court may be taken to the appropriate district court of appeal in the same manner and subject to like conditions as appeals in chancery are taken. In the event that any such license shall be revoked or registration annulled under the provisions of this chapter, the board shall forthwith transmit to the clerk of the circuit court in which said accused is registered as a naturopathic physician, a certificate, under its seal, certifying that such registration has been annulled and that such clerk shall, upon receipt of such certificate, file the same and forthwith mark such registration annulled.

History.—§17, ch. 12286, 1927; CGL 3485; §5, ch. 63-509.

462.16 Reissue of license.—Any person who shall practice naturopathy after his license has been revoked and registration annulled, shall be deemed to have practiced naturopathy without a license; provided, however, at any time after six months after the date of said conviction, said board, by a majority vote may issue a new license, or grant a license to the person affected, restoring to or conferring upon him all the rights and privileges of and pertaining to the practice of naturopathy as defined and regulated by this chapter. The fee therefor shall be the same as upon the issuance of the original license.

History.—§18, ch. 12286, 1927; CGL 3486.

462.17 Penalty for offenses relating to naturopathy.—

(1) Any person who shall:

(a) Sell, or fraudulently obtain or furnish any naturopathic diploma, license, record, or registration, or aid or abet in the same; or

(b) Practice naturopathy under the cover of any diploma, license, record or registration illegally or fraudulently obtained or secured, or issued unlawfully or upon fraudulent representations; or

(c) Advertise to practice naturopathy under a name other than his own or under an assumed name; or

(d) Falsely impersonate another practitioner of a like or different name; and

(2) Any person who, not being then lawfully licensed and authorized to practice naturopathy in this state shall:

(a) Practice or advertise to practice naturopathy;

(b) Use in connection with his name any designation tending to imply or to designate him as a practitioner of naturopathy; and

(c) Any person who shall practice naturopathy during the time his license is suspended or revoked.

(3) Shall upon conviction be punished by a fine of not more than one thousand dollars, or imprisonment for not more than five years.

History.—§19, ch. 12286, 1927; CGL 7726.
cf.—§775.06, Alternative punishment.
§455.04, Who has duty of enforcement.
§458.14, What sign at office entrance shall show.

462.18 Educational requirements.—

(1) At the time each licensee shall renew his or her license as otherwise provided in this chapter each licensee, beginning with the license renewal due the first of May, 1944, in addition to the payment of the regular renewal fee, shall furnish to the state board of naturopathic examiners satisfactory evidence that, in the year preceding each such application for such renewal, he or she has attended the two-day educational program as promulgated and conducted by the Florida naturopathic physicians association, inc., or, as a substitute therefor, the equivalent of said program as approved by said board. The secretary of the state board of naturopathic examiners shall send a written notice to this effect to every person holding a valid license to practice naturopathy within this state at least thirty days prior to the first day of May in each year, directed to the last known address of such licensee and shall enclose with such notice proper blank forms for application for annual license renewal. All of the details and requirements of the aforesaid educational program shall be adopted and prescribed by the state board of naturopathic examiners. In the event of national emergencies, or for sufficient reason, the Florida state board of naturopathic examiners shall have the power to excuse the naturopathic physicians as a group or as individuals from taking this postgraduate course.

(2) The determination of whether a substitute annual educational program is necessary shall be solely within the discretion of the board.

(3) The fee to be charged for any such annual educational program shall not exceed the sum of seventy-five dollars.

History.—§4, ch. 21707, 1943; §1, ch. 63-414.

462.19 Restoration of expired licenses.—In every instance where any person holding a license to practice naturopathy in this state shall fail to renew such license, as herein provided, then, in that event, such license shall thereupon

terminate and end and be of no further force or effect. However, the state board of naturopathic examiners shall restore such license upon payment to the board by such former license holder of a restoration fee of thirty dollars for each and every year such license has been delinquent and also upon such former license holder furnishing to such board evidence satisfactory to a majority of the board members that the applicant for reinstatement has completed postgraduate study of a reasonable standard approved by the board.

History.—§5, ch. 21707, 1943.

462.20 Registration with state board of health by naturopaths.—Annual registration of persons licensed to practice naturopathy pursuant to this chapter shall be made with the state board of health as provided in §381.401.

History.—§6, ch. 21707, 1943; §6, ch. 61-129.

462.21 Florida basic science law unaffected by this law.—Nothing in this chapter shall be construed or interpreted as changing, modifying or repealing any of the provisions of chapter 456, "Florida basic science law," and the provisions of said chapter and the provisions of this law shall be construed, interpreted, considered and enforced as separate laws and independent each of the other.

History.—§7, ch. 21707, 1943.

CHAPTER 463

OPTOMETRY

463.01 Optometry and optometrist defined.—The practice of optometry is declared a profession, and, for the purpose of this chapter, is defined as follows, viz: to be the diagnosis of the human eye and its appendages, and the employment of any objective or subjective means or methods for the purpose of determining the refractive powers of the human eyes, or any visual, muscular, neurological or anatomic anomalies of the human eyes and their appendages, and the prescribing and employment of lenses, prisms, frames, mountings, orthoptic exercises, light frequencies and any other means or methods for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages. An optometrist is one who practices optometry in accordance with the provisions of this chapter.

History.—§1, ch. 14778, 1931; §1, ch. 19031, 1939; CGL 1940 Supp. 3487(1); am. §1, ch. 21792, 1943; am. §1, ch. 23982, 1947.

cf.—§458.16 Furnishing copies of mental or physical examination report.

463.02 Florida state board of optometry.—The practice of optometry and the enforcement of this law shall be under the supervision of a board to be known as the "Florida state board of optometry." There is hereby created the "Florida state board of optometry," which said board shall supervise the practice of optometry and enforce the provisions of this law, and which said board shall be composed of five optometrists, each of whom shall be a resident of the state, who has been engaged in the practice of optometry in said state for not less than four years preceding the time of his appointment. The members of said board shall be appointed by the governor of the state, and selected from the duly qualified and registered optometrists in the state and recommended by the Florida optometric association, and each such appointee shall hold office for a period of four years, or until his successor is appointed and qualified. The present members of the board now in existence shall continue in office until the expiration of their terms. The governor is also empowered to fill vacancies for the unexpired terms and shall appoint only optometrists duly qualified and registered and recommended in accordance with the provisions of this chapter.

History.—§2, ch. 14778, 1931; §2, ch. 19031, 1939; CGL 1940 Supp. 3487(2); am. §2, ch. 23982, 1947.

463.03 Officers of board; meetings; notice.—The Florida state board of optometry shall elect annually one of its members as president, one as vice-president, and one as secretary-treasurer, and shall hold regular meetings at least once each year at such time and place as the board may determine; special meetings may be called and held at such time and place as may be designated by the majority of the members of said board, and a special meeting shall be called within a reasonable time after requested in writing by five qualified applicants for examination, who have complied with the provisions of this chapter with reference to applications. At least thirty days' notice of any regular meeting shall be given by one publication in a newspaper of general circulation throughout the state.

History.—§3, ch. 14778, 1931; §3, ch. 19031, 1939; CGL 1940 Supp. 3487(3).

463.04 Quorum required for board meetings.—Three members of the board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for their meeting, those present may adjourn from day to day, or to some designated day until a quorum is present.

History.—§4, ch. 14778, 1931; §4, ch. 19031, 1939; CGL 1940 Supp. 3487(4).

463.05 Powers and duties of board; employees.—Said board shall have the power and it shall be its duty to enforce this law and to prosecute all violations of this law, and to make

rules and regulations not inconsistent with the provisions of this law, governing the practice of optometry, and to make such other rules and regulations to carry out the provisions of this law as it may consider necessary to the proper performance of its duties. Said board may take testimony concerning any matter within its jurisdiction, and each member thereof may administer oaths for that purpose. Said board shall have the power to issue summons and subpoenas for any witness and subpoenas duces tecum in connection with any matter within the jurisdiction of the board under its seal and signed by the secretary of the board, and directed to the sheriff of any county where such witness resides, or is to be found, which shall be served and returned in the same manner as subpoenas in civil actions in circuit courts are served and returned. It shall be the duty of said board to examine thoroughly every applicant desiring to practice optometry in this state, and if a majority of said board shall be satisfied that said person is competent and possesses proper moral character and the knowledge essential to such practice, they shall grant said person a certificate to that effect, signed by a majority of the members of said board, and enter the name of such certificate holder on their records as a registered optometrist. The secretary shall keep a full report of the proceedings of the board, which report shall at all reasonable times be open to public inspection. The board shall also adopt a common seal to be affixed to its official documents. Said board may employ a legal advisor or counsel and such investigators or other employees as may be deemed necessary to effectually carry out the provisions of this law. Traveling expenses of such employees shall be reimbursed as provided in §112.061. The secretary of said board shall furnish a complete copy of the optometry law, and all rules and regulations of the state board and any amendments thereof, to every registered optometrist in the state.

History.—§5, ch. 14778, 1931; §5, ch. 19031, 1939; CGL 1940 Supp. 3487(5); §2, ch. 21792, 1943; §19, ch. 63-400.
cf.—§47.10 Return of process.
§47.12 et seq., Service of process.

463.06 Secretary of board; salary; bond.—The secretary of the board shall be paid a salary not to exceed two thousand dollars per year and shall be reimbursed for traveling expenses as provided in §112.061. Before assuming the duties of his office he shall execute a bond to the state to be approved by the board, in the sum of two thousand dollars conditioned for the faithful discharge of the duties of his office. The premium for such bond shall be paid from the funds realized from the fees provided for in this chapter. Such bond, with the approval of the board, and oath of office indorsed thereon, shall be deposited with the secretary of state and kept in his office.

History.—§6, ch. 14778, 1931; §6, ch. 19031, 1939; CGL 1940 Supp. 3487(6); §3, ch. 29846, 1955; §19, ch. 63-400.
cf.—§113.07 Bonds of officials.

463.07 Certificate to be displayed.—Each person to whom a certificate is issued by renewal, upon examination, or by reissue by the board, shall keep said certificate conspicuously displayed in his office or place of business, and shall, whenever required, exhibit said certificate to any member or authorized representative of said board. It is unlawful for any licensing agency, either state, county, or municipal, to issue an occupational license tax to practice optometry unless the applicant therefor shall first exhibit to such official a current certificate issued by the Florida state board of optometry showing that the applicant is qualified in all regards to practice optometry in accordance with the terms of this chapter.

History.—§7, ch. 14778, 1931; §7, ch. 19031, 1939; CGL 1940 Supp. 3487(7).

463.08 License required; physicians not affected.—It shall be unlawful for anyone to practice optometry in the state without first procuring a certificate of registration and license as a registered optometrist in accordance with the provisions of this law. However, the terms and provisions of this law shall not require those now holding certificates of registration and license as registered optometrists to further be examined; and provided, that the terms and provisions of this law shall not apply to physicians duly licensed to practice under the laws of the state.

History.—§8, ch. 14778, 1931; §8, ch. 19031, 1939; CGL 1940 Supp. 3487(8); am. §3, ch. 21792, 1943.
cf.—Ch. 458, Regulating physicians.
§463.20, Penalty for practicing without license.

463.09 Qualifications of applicants.—No person shall be eligible for examination unless such person is at least eighteen years old, a citizen of the United States, and of good moral character, possesses an education of at least four years attendance and graduation from a school or schools of optometry having a requirement of attendance courses of study of at least four years, consisting of not less than one thousand hours each year. The educational requirements provided for in this section shall not apply to any optometrist now registered within the state.

History.—§9, ch. 14778, 1931; §9, ch. 19031, 1939; CGL 1940 Supp. 3487(9); am. §4, ch. 21792, 1943.
cf.—§456.01 et seq., Requirement of certificate of proficiency in basic sciences.

463.10 Time of making application; fees.—Any person resident of Florida desiring to be examined by said board must fill out and take oath to the truth of an application at least thirty days prior to the holding of an examination. Any person not a resident of Florida desiring to be examined by said board must fill out such application furnished by the board, said application to be furnished by the board on written request, being made at least sixty days prior to the holding of an examination. Before taking such examination the applicant shall pay for the use of said board in defraying the legitimate expenses thereof, the sum of fifty dollars if a resident of Florida, and the sum of one hundred dollars if a nonresident of Florida, and if such person shall successfully pass such examination, he shall then pay for the use of said board aforesaid.

the further sum of fifty dollars, upon the issuance to him of a certificate signed by a majority of the members of said board.

History.—§10, ch. 14778, 1931; §10, ch. 19031, 1939; CGL 1940 Supp. 3487(10); §5, ch. 21792, 1943; §1, ch. 29846, 1955.

463.11 Revocation of certificate; reinstatement.—Any certificate of registration granted by the Florida state board of optometry, or issued as a renewal or by reissue, may be revoked by said board, if the person to whom issued, after at least thirty days notice of a time and place of hearing before said board and an opportunity to be heard, shall be found guilty by the board of gross immoral conduct in the practice of his profession as an optometrist, or has been convicted of a felony, or is addicted to habitual intemperance in the use of intoxicating stimulants, beverages or narcotic drugs, or is found to have become incompetent as an optometrist, or afflicted with contagious disease, or is found guilty of unprofessional conduct, or has secured his certificate of registration through deceit or fraud, or is found guilty of the violation of any of the provisions of this chapter, or any rules or regulations, or orders promulgated by the board.

"Unprofessional conduct" for the purpose of this chapter is defined to mean any conduct of a character likely to deceive or defraud the public, including among other things free examination advertising, price advertising, billboard advertising, use of any advertising either directly or indirectly, whether printed, radio, display, or of any nature which seeks to solicit practice on any installment payment or price plan; the lending of his certificate or license by any registered optometrist to any person; the employment of "cappers" or "steerers" to obtain business, "splitters", or dividing a fee with any person; the obtaining of any fee or compensation by fraud or misrepresentation; the employing either directly or indirectly any suspended or unlicensed optometrist to perform any work covered by this chapter; and the advertising by any means whatsoever of treatments or advice in which untruthful, improbable, misleading, or impossible statements are made, and shall apply to all persons, including optometrists.

It is unlawful for any person licensed to practice optometry under the provisions of this chapter to advertise, practice, or attempt to practice under a name other than his own except as an associate of, or an assistant to, an optometrist licensed under the laws of the state. It is likewise unlawful for any corporation, lay body, organization, group, or lay individual to engage, or undertake to engage in, the practice of optometry through means of engaging the services, upon a salary, commission, or lease basis, or by other means or inducement, any person licensed to practice optometry in the state.

Likewise it is unlawful for any optometrist licensed under the provisions of this chapter to undertake to engage in the practice of optometry with any organization, group or lay individual; excepting that this shall not prohibit the employment by, or the forming of partnerships between optometrists duly licensed in the state, and further excepting any registered optometrist now engaged in the practice of optometry with a corporation, lay body, organization, group or lay individual, providing that upon the termination of his present contract or agreement he shall be prohibited from engaging with any other corporation, lay body, organization, group or lay individual. Provided further, that after one year, upon application and proof that the disqualification has ceased, the board may at its discretion reinstate such an optometrist.

No optometrist shall practice optometry in any temporary offices, apart from a regularly established office under the penalty of revocation of certificate of registration; provided, however, that a registered optometrist may establish a branch office in accordance with the provisions of this chapter if such branch office be duly equipped with the instruments necessary to make complete optometric examination as may be determined by said board, and provided further that such branch office is in personal and direct charge of a registered optometrist.

History.—§11, ch. 14778, 1931; §11, ch. 19031, 1939; CGL 1940 Supp. 3487(11).
cf.—§463.19, Additional methods of enforcement.
§463.20, Penalty for violation.

463.12 Optometrist's testimony accepted as expert in trials.—Testimony by any optometrist registered in the state at any trial or hearing held in the state under the laws of the state relative to the diagnosis of the human eye and and its appendages or any visual, muscular, neurological or anatomic anomalies of the human eyes and their appendages of any person shall be considered qualified expert evidence and testimony in any such trial or hearing. Certificates of ocular and visual diagnosis, acuity and efficiency issued by any registered optometrist of this state shall be accepted as qualified evidence of the ocular and visual diagnosis, acuity and efficiency of the persons to whom said certificates shall relate.

Any agency of the state or county, or any commission, clinic, or board administering relief, social security, health insurance or health service under the laws of the state shall accept the services of optometrists registered in this state for the purposes of diagnosing and correcting any and all visual, muscular, neurological and anatomic anomalies of the human eyes and their appendages of any persons under the jurisdiction of said agency, clinic, commission, or board administering such relief, social security, health insurance or health service, on the same basis, and on a parity with any other person authorized by law to render similar professional service, when such services are needed, and shall pay for such services in the same way as other professions may be paid for similar services.

History.—§12, ch. 14778, 1931; §12, ch. 19031, 1939; CGL 1940 Supp. 3487(12); am. §7, ch. 22858, 1945.

463.13 Recording of certificates.—All certificates to practice optometry issued heretofore under the laws of this state, and all certificates issued under this chapter shall be recorded in the office of the clerk of the circuit court of the county in which the said optometrist practices, in a book to be kept by the clerk for that purpose before the person to whom such certificate is granted shall be entitled to practice by virtue thereof, and when so recorded the clerk shall certify thereon, under his official seal, the fact and date of such record, and shall return such certificate to the person to whom the same was granted, and shall be entitled for such service to collect from the holder thereof the usual legal fee for recording, as provided by law. A failure on the part of the holder to comply with any of the foregoing provisions, for six months after commencing practice of optometry in this state, shall cause the certificate to become void.

History.—§13, ch. 14778, 1931; §13, ch. 19031, 1939; CGL 1940 Supp. 3487(13).

463.14 Unlawful securement of patronage; unlawful advertising, etc.—

(1) It is unlawful for any person, firm or corporation to offer any gift or premium or discount in any form or manner in conjunction with the practice of optometry in order to secure patronage, or to advertise either directly or indirectly by any means whatsoever any definite or indefinite price or credit terms on prescriptive or corrective lenses, frames, complete prescriptive or corrective glasses or any optometric service; to advertise in any manner that will tend to mislead or deceive the public; to solicit optometric patronage by advertising that he or some other person or group of persons possess better qualifications or are best trained to perform the service or to render any optometric service pursuant to such advertising.

(2) This section is passed in the interest of public health, safety and welfare, and its provisions shall be liberally construed to carry out its objects and purposes.

History.—§14, ch. 14778, 1931; §14, ch. 19031, 1939; CGL 1940 Supp. 3487(14); am. §§1, 2, ch. 23155, 1945.

463.15 Peddling spectacles, eyeglasses, etc., unlawful.—The peddling of spectacles, eyeglasses or lenses from house to house, or on the streets or highways is unlawful, notwithstanding any law providing for licensing peddlers.

History.—§15, ch. 14778, 1931; §1, ch. 16091, 1933; §15, ch. 19031, 1939; CGL 1940 Supp. 3487(15).

463.16 Sale of spectacles, goggles, sunglasses, etc., not affected.—Nothing in this chapter shall be construed to prevent the sale of toy glasses, goggles, or sunglasses, consisting of plano white (or plano colored) or plano tinted glasses, or ready-made nonprescription glasses.

History.—§16, ch. 14778, 1931; §16, ch. 19031, 1939; CGL 1940 Supp. 3487(16); am. §6, ch. 21792, 1943.

463.17 Fees for renewal and reissue of certificates.—Annually, on or before February 15 of each and every year, each and every registered optometrist shall pay to the secretary of the board a sum to be fixed annually by the state board of optometry, not to exceed fifty dollars, as a renewal of registration fee. Should any registered optometrist fail to pay said fee or fees after a return card from a notice of such fee being due and sent by registered mail to the last known address of said registered optometrist as shown by the records of the board, shall have been received by the secretary of the board duly signed by said optometrist to whom addressed, or agent, or a registered letter containing such notice shall be returned to the secretary of the board after being refused by the optometrist to whom sent, or his agent, then the certificate of registration of said optometrist shall be void; provided, that he or she first be given a hearing upon thirty days notice and granted opportunity to appear in person or by counsel, and any further attempt to practice optometry shall be punishable in the same way as provided in this chapter for misdemeanors; provided, however, that any certificate of registration that has become void for nonpayment of renewal registration fees may be reissued upon payment to said board by said optometrist of the renewal fee, together with the sum of twenty-five dollars for reissuing said certificate. Upon any certificate of registration becoming void as herein provided it shall be unlawful for such optometrist to practice in this state unless and until said certificate is reissued as herein provided. Any renewals of registration certificates shall each bear date of January 1 of the year of issue and shall expire on December 31 of that year. The board may also collect a fee of ten dollars for a duplicate certificate of registration or a renewal certificate of registration when it shall appear to the board that the original has been lost or destroyed. An optometrist who retires from the actual practice of optometry in the state or who is engaged in the military service of the United States shall, after one year, only be required to pay to the board the sum of one dollar per year, as a renewal registration fee, in lieu of any other sum fixed by law.

History.—§18, ch. 14778, 1931; §18, ch. 19031, 1939; CGL 1940 Supp. 3487(17); §7, ch. 21792, 1943; §2, ch. 29846, 1955.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

463.18 Disposition of moneys; salaries; report of secretary-treasurer.—All members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. No additional salary or other fees whatsoever shall be paid any member, except the secretary-treasurer. The salary of the secretary-treasurer shall be fixed by the board annually at its regular meeting as provided in §463.06. All moneys received by said board under the provisions of this chapter shall be deposited and expended pursuant to the provisions of §215.37.

All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the president and secretary-treasurer of said board. The secretary-treasurer of said board shall make an annual report to the governor of the state on or before the tenth day of June of each year, which report shall contain an account of all moneys received and disbursed in pursuance of the provisions of this chapter for the preceding year.

History.—§19, ch. 14778, 1931; §19, ch. 19031, 1939; CGL 1940 supp. 3487(18); §8, ch. 21792, 1943; §97, ch. 26869, 1951; §13, ch. 28215, 1953; §8, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.
§455.03 Dispensing with examination of veterans.

463.19 Means of enforcing provisions of chapter.—In addition to the remedies provided for by this chapter for the enforcement thereof, the Florida state board of optometry may proceed in any of the courts of this state by injunction to restrain any continued violation of this chapter. Each state's attorney, county prosecuting attorney, and the attorney general shall assist in the enforcement of the provisions of this chapter upon request of the Florida state board of optometry; provided, that nothing in this chapter shall be construed to limit the jurisdiction of the circuit courts of this state to require a reasonable and proper enforcement hereof.

History.—§21, ch. 14778, 1931; §§20, 20a, ch. 19031, 1939; CGL 1940 Supp. 3487(19), 3487(20).

cf.—§455.04, Who has duty of enforcement.

463.20 Penalty for violation of chapter; second offense.—Any person who shall hold himself out to the public as a practitioner of optometry, or who shall engage in the practice of optometry without first complying with the provisions of this chapter, or who shall violate any of the provisions of any section of this chapter, or shall be guilty of unprofessional conduct as defined in this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months in the county jail; and upon conviction of a second offense shall be subject to a fine of not less than five hundred dollars, nor more than one thousand dollars and imprisonment for not less than six months, nor more than one year in the discretion of the court.

History.—§17, ch. 14778, 1931; §17, ch. 19031, 1939; CGL 1940 Supp. 7705(1).

cf.—§775.06, Alternative punishment.

463.201 Scholarships provided.—There is hereby created five optometry scholarships to be administered by the Florida state board of optometry which shall be awarded each fiscal year, beginning July 1, 1961, to persons recommended by the Florida state board of optometry for the study of optometry leading to the attainment of the degree of doctor of optometry, or equivalent degree.

History.—§1, ch. 61-298.

463.21 Eligibility.—To be eligible to receive a scholarship an applicant must:

(1) Be a citizen and resident of Florida for not less than five years prior to the date of his application.

(2) Meet the requirements and academic standards for admission to a fully accredited optometric college approved by said Florida state board of optometry.

(3) Attend a fully accredited optometric college approved by the Florida state board of optometry.

History.—§2, ch. 61-298.

463.22 Awarding scholarships.—

(1) Preference in the granting of the scholarships provided for herein shall be given to those applicants with the highest weighted scholastic averages in approved undergraduate colleges, provided they are persons of high integrity and character; and provided further that such applicants shall be found to have such qualities and attributes as shall give reasonable assurance of pursuing to completion the course of study for the attainment of the degree of doctor of optometry or equivalent degree.

(2) If there are not ten qualified applicants for the scholarships in any biennium, the scholarships not granted shall revert to the general revenue fund.

History.—§3, ch. 61-298.

463.23 Amount and use of scholarships.—The scholarships provided for herein shall cover the students' tuition, books, laboratory fees and equipment and other fees, supplies, board, room rent and other necessary and reasonable expenses of attending optometry school. In no event, however, shall a scholarship amount to more than one thousand dollars in value in any one year, nor more than four thousand dollars in value in its entirety.

History.—§4, ch. 61-298.

463.24 Agreement required; method of repayment.—Each recipient of a scholarship loan under this act shall execute, as principal, a promissory note under seal, which shall be endorsed by his parents, provided the parents are married and living together, or by the parent having custody of the recipient, or the guardian of the recipient, or by some other responsible citizen if recipient is under twenty-one years of age, as surety, and shall deliver said note to the state board of optometry. Each note shall be made payable to the state of Florida in the amount of the quarterly or semiannual payment on a scholarship, and shall bear interest at the rate of five per cent per annum from the date of termination of studies or graduation.

Prior to the award of a scholarship loan provided under this act, the recipient thereof must agree in writing to enter upon the practice of optometry in a community or locality in this state designated by the Florida state board of optometry immediately upon receipt of license to practice, and to continue in such practice during consecutive years for a period

equal to one year for each year scholarship assistance was received.

At the expiration of each year of practice of optometry in a community or locality designated by the Florida state board of optometry, the recipient of a scholarship loan shall be eligible to have the principal and interest of notes equal to one year of scholarship grant cancelled and returned to him. Notes shall be cancelled in order beginning with the oldest note. The scholarship recipient must furnish satisfactory proof of practice at the end of each year to the state board of optometry on forms, prescribed by the board. In the event the recipient of a scholarship loan fails to complete the required studies for the degree of doctor of optometry or equivalent degree or to practice optometry as provided in this act all notes and the interest thereon shall become due and payable. The attorney general shall institute proceedings in the name of the state for the purpose of recovering any amount due the state under this act from any scholarship recipient. Any expense incurred by the state in enforcing collection of any such scholarship loan notes shall be borne by the signer of the note and the endorsers thereof and shall be added to the amount of the principal of said note or notes.

History.—§5, ch. 61-298.

463.25 Selection of localities.—The Florida state board of optometry shall determine the localities and communities within the state which do not have practicing therein an optometrist, or a sufficient number of optometrists, to meet the minimum needs of the inhabitants of such locality or community for the necessary services of an optometrist; and shall compile a list of such communities and localities. From such list, the Florida state board of optometry shall designate the communities or localities within which a scholarship recipient shall agree to practice optometry pursuant to the provisions of this act.

History.—§6, ch. 61-298.

463.26 Supplementary rules and regulations.—The state board of optometry shall have the authority to make reasonable rules and regulations for the carrying out of the provisions of this act.

History.—§7, ch. 61-298.

463.27 Disposition of funds repaid.—Any sums recovered from or paid by recipients of the scholarships provided for herein shall be paid into the general revenue fund of the state.

History.—§8, ch. 61-298.
cf.—§282.01(14) Miscellaneous appropriations.

CHAPTER 464

NURSING

464.011 Purpose.—In order to safeguard life and health, any person practicing or offering to practice nursing for hire or gain in this state shall hereafter be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided. After July 1, 1952 it shall be unlawful for any person to practice or to offer to practice nursing for hire or gain unless such person has been duly licensed and registered under the provisions of this chapter.

History.—Comp. §1, ch. 26797, 1951.

464.021 Definitions.—When used in this chapter:

(1) "Board" means the Florida state board of nursing.

(2) "Practice of professional nursing."—For the purposes of this chapter the phrase "practice of professional nursing" shall mean the performance of any nursing services or acts requiring the observation, care and counsel of the ill, injured or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a licensed physician or dentist; requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical and social science.

(3) "Practice of practical nursing."—For the purposes of this chapter the phrase "practice of practical nursing" shall mean the performance of nursing acts in the care of the ill, injured, or infirm under the direction of a licensed physician or a licensed dentist, or a registered professional nurse; provided, however, that all such acts do not require the specialized skill, judgment, and knowledge required in professional nursing.

(4) "Registered nurse" means a person who is licensed to practice professional nursing as defined in subsection (2) and as hereinafter provided.

(5) A "licensed practical nurse" means a person who is licensed to practice practical nursing as defined in subsection (3) and as hereinafter provided.

(6) The term "accredited school" means a school of nursing or a nursing department or division of a university or college or a school for the training of practical nurses accredited as hereinafter provided.

History.—§2, ch. 26797, 1951; §1, ch. 57-186.

464.031 Florida state board of nursing; members; appointment; term; removal.—

(1) There is hereby created the Florida state board of nursing, hereinafter referred to as the board. The board shall consist of five registered nurses and two licensed practical nurses, to be appointed by the governor for a term of four years; provided, however, that the present members of the state board of examiners for nurses shall serve as members of the board created by this chapter until the expiration of their respective terms or until their successors shall have been appointed and qualified. Any vacancy occurring in the membership of the board for any cause shall be filled by appointment by the governor for the unexpired term.

(2) On and/or before July 1st of each year and at any time there is a vacancy to be filled by the appointment of a registered nurse, the Florida state nurses' association shall recommend to the governor a list of its membership qualified for appointment to the board in the number of not less than twice the vacancies to be filled.

(3) On and/or before July 1st of each year and at any time there is a vacancy to be filled by the appointment of a licensed practical nurse, the licensed practical nurse association of Florida shall recommend to the governor a list of its membership qualified for appointment to the board in a number of not less than twice the vacancy to be filled.

(4) The governor may remove any member from the board for misfeasance or malfeasance in office.

History.—§3, ch. 26797, 1951; (1) by §1, ch. 57-186.

464.041 Same; qualifications.—

(1) The registered nurse members of the board shall be citizens of the United States and residents of this state; shall have completed an approved four years' high school course of study; shall have graduated from an

accredited school of nursing; and shall have had two years of college work qualifying said registered nurse member of the board for a bachelor degree in nursing education; each registered nurse member of the board shall have been graduated from a different school of nursing; shall be licensed as a registered nurse in this state; shall have had at least five years' experience in nursing following graduation, with at least two years' executive or teaching experience in nursing education and shall have been actively engaged in the practice of nursing the two years immediately preceding the date of appointment.

(2) The licensed practical nurse member of this board shall be a citizen of the United States and a resident of this state; shall have completed an approved four years' high school course of study; shall be licensed as a practical nurse in this state; shall have had at least four years' experience in practical nursing in this state and shall have been actively engaged in the practice of practical nursing the two years immediately preceding the date of appointment. After July 1, 1955 the licensed practical nurse member of this board shall have graduated from a state accredited school of practical nursing.

(3) Before entering upon the discharge of official duties, each member of the board shall take and subscribe to such oath of office as the laws of the state of Florida prescribe.

History.—Comp. §3, ch. 26797, 1951.

464.051 Same; duties, rights, privileges.— (1) The board shall meet annually before June 30th at which time it shall elect from its membership a president and a secretary who shall serve as treasurer. Three members of the board, including one officer, shall constitute a quorum for the transaction of all business. It shall hold such other meetings during the year as may be necessary for the transaction of its business.

(2) The board is authorized to employ an educational director and/or such other personnel as may be necessary for the performance of its duties and the enforcement of this chapter.

(3) The board is authorized to adopt and, from time to time, revise such rules and regulations not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions, mechanics and procedure of this chapter. The board shall prescribe curricula and standards for schools of nursing and courses preparing persons for licensure as a registered nurse under this act. The board shall prescribe curricula and standards for schools and courses preparing persons for licensure as practical nurses under this chapter. It shall provide for surveys of such schools and courses at such time as it may deem necessary. It shall accredit such schools and courses as meet the requirements of this act and of the board. It shall evaluate and approve courses for affiliation. It shall examine, license and renew the license of duly qualified applicants. It shall conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license. It shall have power to issue subpoenas, and compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings. It shall cause the prosecution of all persons violating this chapter and shall have power to incur necessary expenses therefor. It shall keep a record of all its proceedings and make an annual report to the governor.

(4) The salary of the secretary-treasurer, educational director and other personnel shall be fixed by the board and said secretary-treasurer and educational director shall be allowed traveling expenses and per diem when on official business, as provided for state employees in §112.061. Reasonable office expenses, costs for administration of the law and performance of duties imposed thereby may be approved by the board. The members of the board shall receive such salaries as the board may from time to time fix, not exceeding twelve dollars per day for each day actually engaged in attendance of business or meetings of the board, and shall be allowed traveling expenses and per diem as provided for other state employees and public officials in §112.061. All the aforesaid salaries and expenses of the board, together with expenses for the promotion of nursing education and standards of nursing care in this state, through surveys, institutes, conferences or such other means as may result in improved nursing service in this state, shall be paid pursuant to the provisions of §215.37, upon vouchers signed by the secretary-treasurer and approved by the president of the board.

History.—§3, ch. 26797, 1951; sub §(4), am. §1, ch. 29622, 1955. §9, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.
§455.03 Dispensing with examination of veterans.

464.061 Qualifications of applicant. — Any person who makes application to the board for a license to practice as a registered nurse after the effective date of this chapter, shall file with the board a written statement under oath that said applicant does subscribe to and will uphold the principles incorporated in the constitution of the United States and shall submit to the board written evidence, verified by oath, that the applicant:

(1) Is nineteen years of age;

(2) Is a citizen of the United States or has legally declared intention of becoming a citizen;

(3) Is of good moral character;

(4) Is in good physical and mental health;

(5) Has completed at least an approved four year high school course of study or the equivalent thereof as determined by the board and shall meet such other preliminary qualifications as the board may prescribe;

(6) Has completed the prescribed curriculum in a state accredited school of professional nursing and holds a diploma therefrom.

History.—Comp. §4, ch. 26797, 1951.

464.071 License.—

(1) The applicant shall be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral or practical examination. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a registered nurse.

(2) The board shall issue a license to practice nursing as a registered nurse without examination, to an applicant who has been duly licensed or registered as a registered nurse under the laws of another state, territory or foreign country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state.

(3) The applicant applying for a license to practice as a registered nurse shall pay a fee of $20.00 to the board. Payment of the fee shall be made by the applicant upon filing of application for a license. Such fee shall not be returned to the applicant regardless of whether or not the applicant is licensed, accepted for examination, fails examination or desires to withdraw the application for license.

History.—§4, ch. 26797, 1951; sub §(3), am. §2, ch. 29622, 1955. (3) a. by §1, ch. 57-186; (3) a. by §9, ch. 61-514.

464.081 Title and abbreviations.—Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N." No other person shall practice or advertise as or assume the titles of registered, certified, trained or graduate nurse or to use abbreviations of "R.N.," "C.N.," "T.N.," "G.N.," or any other words, letters, signs or figures to indicate that the person using same is a registered nurse.

History.—Comp. §4, ch. 26797, 1951.

464.091 Nurses registered under previous laws.—Any person holding a license or certificate of registration to practice nursing as a registered professional nurse issued by the Florida state board of nursing valid on July 1, 1955, shall be deemed to be licensed as a registered nurse under the provisions of this chapter.

History.—§4, ch. 26797, 1951; §3, ch. 29622, 1955; §1, ch. 57-186.

464.111 Practical nurse; qualifications of applicant.—Any person who makes application to the board for a license to practice as a licensed practical nurse after the effective date of this act, shall file with the board a written statement under oath that said applicant does subscribe to and will uphold the principles incorporated in the constitution of the United States and shall submit to the board written evidence, verified by oath, that the applicant:

(1) Is eighteen years of age;

(2) Is a citizen of the United States, or has legally declared intention of becoming a citizen;

(3) Is of good moral character;

(4) Is in good physical and mental health;

(5) Has completed at least two years of high school or its equivalent;

(6) (a) Has completed a course of study in practical nursing in an accredited school, or

(b) Has completed at least one and one-half years of study in an accredited professional school of nursing; provided, that in the discretion of the board, the said study completed in the professional school of nursing shall be equivalent to the approved course of study required in practical nursing schools.

History.—§5, ch. 26797, 1951; sub §(6), am. §4, ch. 29622, 1955; (1) by §2, ch. 57-186.

464.121 Same; license.—

(1) The applicant shall be required to pass a written examination, including oral and written tests, and practical demonstrations conducted by the board. Upon successfully passing such examination, the board shall issue license to the applicant, to practice as a licensed practical nurse.

(2) The board may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse or a person entitled to perform similar services under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board the applicant meets the requirements for licensed practical nurse in this state.

(3) The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of $15.00 to the board. Payment of the fee shall be made by the applicant upon filing of application for a license. Such fee shall not be returned to the applicant regardless of whether or not the applicant is licensed, accepted for examination, fails examination or desires to withdraw the application for license.

(4) Any person who hold a license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and abbreviation "L.P.N.". No other person shall assume such title or use such abbreviation or any other words, letters, signs or figures to indicate that the person using the same is a licensed practical nurse.

History.—§5, ch. 26797, 1951; sub §(3), am. §5, ch. 29622, 1955; (3) a. by §1, ch. 57-186; (3) a. by §9, ch. 61-514.

464.131 Same; persons licensed under prior laws.—Any person holding a license or certificate of registration to practice nursing as a licensed practical nurse issued by the Florida state board of nursing which is valid on July 1, 1955, shall be deemed to be licensed as a practical nurse under the provision of this chapter.

History.—§5, ch. 26797, 1951; §6, ch. 29622, 1955; §1, ch. 57-186.

464.151 Renewal of license.—

(1) (a) Each person who holds a license issued under the provisions of this chapter which permits such a person to practice as a registered professional nurse or to practice as a licensed practical nurse shall renew the same every two years except as hereinafter provided. On or before December 1 of each odd-numbered year, the board shall mail an application for renewal of license to every person holding a current license. The applicant shall fill in the application blank and return it to the board with a renewal fee of four dollars before the next January 1. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the two-year period beginning January 1 of the even-numbered year and expiring December 31 of the next succeeding odd-numbered year. Such certificate of renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the certificate of renewal. Forms of applications and certificates shall be determined by the board; provided however, that an original license issued under the provisions of this chapter shall not be valid for a period longer than the year in which it is issued and shall be renewed as set forth in this section, except as original license issued in an even year may be renewed the first time for a one-year license period for the sum of $2.00. The purpose of this proviso is to arrange, as much as possible, for all licenses to bear the same expiration date and be renewable at the same time.

(b) Failure to renew said license by April 1 of each even-numbered year, as provided in this chapter, shall automatically suspend the license of the licensee failing to renew, except as hereinafter specifically provided in this section and in §464.21.

(c) An inactive or nonresident nurse, duly licensed under the provisions of this chapter, upon written request shall be placed on an inactive list without cost. Any such nurse placed on the inactive list may renew his or her license upon payment of $4.00 renewal fee, and shall not be required to pay the fee required of those allowing their licenses to lapse.

(d) Any licensee who allows said license to lapse by failing to renew the license as provided herein may be reinstated by the board upon satisfactory explanation for such failure to renew said license and upon the payment of a fee of $20.00 for a registered nurse and $15.00 for a licensed practical nurse.

(2) Any person practicing nursing either as a registered nurse or as a licensed practical nurse during the time said license has lapsed or while said license is suspended as hereinabove provided shall be considered an illegal practitioner and shall be subject to the penalties provided herein for the violation of this chapter.

History.—§6, ch, 26797, 1951; sub §(1), am. §7, ch. 29622, 1955.

464.152 Statement or endorsement issued by board to another state.—The board shall charge a fee of $3.00 for the issuance, to another state, of a statement or endorsement evidencing the licensure of a licensee of this state under this chapter.

History.—Comp. §8, ch. 29622, 1955.

464.171 Disposition of fees.—All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board. Such moneys shall be deposited pursuant to the provisions of §215.37.

History.—§7, ch. 26797, 1951; (1) a., (3) r. by §14, ch. 28215, 1953; r. by §10, ch. 29622, 1955; reenacted and amended by §9, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

464.18 Requirements of schools of nursing; application for accreditation.—

(1) An institution desiring to conduct a school of professional nursing shall apply to the board and submit evidence that:

(a) It is prepared to carry out a minimum curriculum of organized instruction and clinical experience in nursing in conformity to the provisions of this chapter and the regulations of the board. Such instruction and experience may be secured in one or more institutions or agencies approved by the board; and that

(b) It is prepared to meet other standards established by this law and by the board.

(2) Requirements for schools of practical nurses:

Any institution which desires to conduct a school for the training of practical nurses shall apply to the board and submit evidence that it is prepared to give a program approved by the board of not less than twelve months which shall meet the standards prescribed by this chapter and by the board for the training of practical nurses.

History.—Comp. §8, ch. 26797, 1951.

464.19 Survey of schools for professional nurses.—

(1) A survey of the institution or institutions of which the school is a part and of institutions affiliating with the school shall be made by the educational director or the secretary-treasurer of the board. The surveyor shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for an accredited school of professional nursing are met, it shall approve the school as an accredited school of professional nursing.

(2) From time to time as deemed necessary by the board, it shall be the duty of the board through its educational director or secretary-treasurer, to survey all schools of nursing in this state. Written reports of such surveys shall be submitted to the board. If the board determines that any accredited school of nursing is not maintaining the standards required by the statutes and by the board, notice thereof in writing specifying the defect or defects shall

immediately be given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed after a hearing from the list of accredited schools of professional nursing.

History.—Comp. §8, ch. 26797, 1951.

464.20 Survey of schools for practical nurses.—A survey of the institution which is planning to train or is training practical nurses shall be made by the educational director or secretary-treasurer of the board. The surveyor shall submit a written report of the survey to the board. If, in the opinion of the board the requirements for an accredited school for the training of practical nurses are met, it shall approve the school for the training of practical nurses. From time to time, as deemed necessary by the board, it shall be the duty of the educational director or secretary-treasurer of the board to survey all programs for the training of practical nurses in this state. Written reports of such surveys shall be made and submitted to the board. If the board determines that any accredited program for the training of the practical nurses is not maintaining the standards required by the statutes and the board, notice thereof in writing specifying the defect or defects shall be immediately given to the institution conducting the program. If defects are not corrected within a reasonable time, they shall be removed after a hearing from the list of accredited schools for practical nurses.

History.—Comp. §8, ch. 26797, 1951.

464.21 Disciplinary proceedings.—

(1) GROUNDS FOR DISCIPLINE.—

The board shall have the authority to deny a license to any applicant, or discipline the holder of a license or other authority to practice nursing in the state, whose default has been entered or who has been heard and found guilty by the board of any of the following:

(a) Fraud in the practice of nursing, or is guilty of fraud or deceit in the procuring or attempting to procure a license to practice nursing as a registered professional nurse or as a licensed practical nurse;

(b) Immoral or unprofessional conduct;

(c) Habitual intemperance or addiction to the use of narcotics or other habit-forming drugs;

(d) Circulating untrue, fraudulent, misleading or deceptive advertising;

(e) Unfitness or incompetency;

(f) Wilfully or repeatedly violating any of the provisions of this chapter or laws of this state involving moral turpitude;

(g) Conviction of a felony in the courts of this or any other state, territory or country. Conviction of any offense in another state, territory or country which, if committed in this state, would be deemed a felony. In the interest of public health, the record of conviction in a court of competent jurisdiction shall be sufficient evidence for disciplinary action to be taken by the board, regardless of whether or not an appeal of such conviction has been taken or is pending. The board may take disciplinary action pending such an appeal.

(2) The board, without first having a hearing, may deny or refuse to renew a license to the following:

(a) Persons in prison or adjudged incompetent.

(b) Persons residing or domiciled out of the state, when evidence before the board would warrant suspension of license or other disciplinary action. Such persons shall be entitled to a hearing before the board at its main office or at a time and place designated by the board. After receiving a request for such a hearing the board shall allow the applicant at least twenty days notice of hearing unless otherwise agreed upon by the applicant and the board.

(3) REVOCATION, SUSPENSION, ANNULMENT, DENIAL OF LICENSE, ETC.—In disciplining any person convicted of a charge of violating the provisions of this chapter or any other statute or law of this state relating to the practice of nursing, the board may:

(a) Suspend the imposition of judgment and penalties;

(b) Impose judgment and penalties, but suspend enforcement thereof and place the licensee or applicant for license on probation;

(c) Suspend or limit the right to practice in this state for a period to be determined by the board;

(d) Revoke the license to practice nursing in this state. Following revocation of such license, the licensee may be relicensed at the discretion of the board with examination;

(e) Refuse to issue or renew a license;

(f) Take such other action in relation to disciplining as the board in its discretion may deem proper and in the interest of the public health.

(4) PROCEDURE FOR REVOCATION, SUSPENSION, ETC.—

(a) Any person including the board or any member thereof may prefer charges against any licensee or applicant for license. Such charges shall be in writing and shall be sworn to by the person or persons making them. The charges, unless made by the board, shall be preferred by delivering them to the secretary of the board, who shall furnish all members of the board with a copy.

(b) All charges, unless dismissed by the board as being unfounded or trivial, shall be heard and disposed of by the board within a reasonable time after the date upon which they were preferred, except as hereinafter provided.

(c) The time and place of said hearing shall be fixed by the board, and a copy of the charges, together with notice of the time and place of the hearing, shall be served upon the

person against whom preferred, either personally or by registered mail with return receipt demanded, addressed to the said person at his last known address as the same appears on the records of the board, at least twenty days before the time fixed for the hearing.

(d) Where personal service cannot be made as aforesaid, or where registered notice is returned undelivered, the secretary of the board shall cause a short, simple notice to the licensee to be published for four consecutive weeks (four publications being sufficient) in a newspaper published in the county of the licensee's last known address or, if no newspaper be published in said county, the said notice may be published in a newspaper published in an adjoining county. If said address appears in some state, territory or country other than this state, then said notice may be published in Leon county.

(e) Said notices shall contain the name of the licensee or of the applicant, his last known address, the serial number of his license, if any, under which he is authorized to practice in this state, the time of the preferring of the charges, the date set for the hearing of said charges, the nature of the charges, and the place where said hearing will be held.

(f) Due proof of service or of publication shall be filed with the secretary of the board and shall be recorded by him in the minutes of the board. The board for good cause shown may continue any hearing from time to time and in proper cases to a time deemed necessary to carry out the provisions of this chapter.

(5) CONDUCT OF HEARING, WITNESSES, EVIDENCE, ETC.—

(a) For the purpose of such hearing, the board shall have the power, under the hand of the president or secretary, and the seal of the board, to require the production of books, papers or other documents and may issue subpoenas to compel the defendants or witnesses to testify and produce such books, papers or other documents in their possession as may be in the opinion of the board, relevant to any hearing before it; said subpoenas to be served by the sheriff of the county where the witness resides or may be found. Such witnesses shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state, which shall be paid by said board. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. Subpoenas may be so issued for and in behalf of the defendant.

(b) If any person shall refuse to obey any subpoenas so issued or shall refuse to testify or produce any books, papers, or other documents required by the board, the board may present its petition to the circuit court of the county where any such person is served with the subpoena or where he resides setting forth the facts, and shall deposit with said court, when such subpoena is issued in its behalf, the per diem and mileage to secure the attendance of such witness (the defendant may make like deposits), whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith subpoena issued by the board, or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoenas, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

(c) If at such hearing the board shall be satisfied, from the evidence and proofs submitted, that the accused has been guilty of any of the charges mentioned in §464.21 it shall thereupon, without further notice, take such action upon the charges and impose such penalties as it may be advised under chapter 464. The records of the board shall reflect the action of the board upon the charges.

1. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of proceedings, but the determination shall be based upon sufficient legal evidence to sustain it.

2. At the hearing the accused shall have the right to appear either personally or by counsel, or both, to procure witnesses and evidence in his or her behalf, to cross-examine witnesses and to have subpoenas issued by the board. If the accused is found guilty of the charge or charges the board may refuse to issue a license to the applicant or may revoke, suspend or otherwise discipline said licensee.

(6) REVIEW OF ORDERS OF BOARD; PROCEDURE, VENUE, ETC.—

(a) The final order of the board in such proceedings shall be subject to review by the circuit court of Leon county.

(b) All other orders of the board shall be subject to review in the same court.

(c) Review shall be obtained by filing a petition for certiorari in said circuit court in the manner and within the time provided by the Florida appellate rules.

(d) Any interested party may appeal from such orders of the circuit court in the same manner and with the same procedure as is provided by law for the appeal from final decrees of the circuit court in equity cases.

History.—§9, ch. 26797, 1951; §3, ch. 57-186; (6) (c) §6, ch. 63-509.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

464.22 Exceptions.—No provisions of this law shall be construed as prohibiting nursing by friends or members of the family, with or without compensation, or as prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers as long as they do not practice nursing within the meaning of this chapter, or as prohibiting nursing assistance in the case of an emergency; nor shall it be construed as prohibiting the practice of nursing by students enrolled in accredited schools of professional nursing

or in schools of training for practical nurses, nor by graduates of such accredited schools or courses, pending the results of the licensing examinations scheduled by the board following such graduation, provided they practice under supervision of a registered nurse; nor shall it be construed to prohibit the rendition of services by auxiliary workers acting under the adequate supervision of a registered nurse or a licensed physician, or a licensed dentist; nor shall it be construed to apply to any nurse practicing in accordance with the practice and principles of the body known as the Church of Christ Scientist nor shall any regulation of the board apply to any sanitarium, nursing home, or rest home conducted in accordance with the practices and principles of the body known as the Church of Christ Scientist nor shall it be construed as prohibiting the practice of any legally qualified nurse or licensed attendant of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of official duties. A registered nurse or licensed practical nurse currently licensed in another state shall be permitted to perform nursing services for a period of thirty days pending licensure in Florida providing, however, the nurse, upon employment, has furnished the employer with satisfactory evidence of current licensure in another state, and provided also, such nurse furnishes evidence to the prospective employer of having submitted proper application and fees to the board for license prior to employment.

History.—§10, ch. 26797, 1951; §9, ch. 29622, 1955; §4, ch. 57-186.

464.24 **Penalties for violations.**—It shall be a misdemeanor for any person, including firms, associations or corporations to:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license or record or aid or abet in the sale or procurement thereof.

(2) Practice nursing as defined by this chapter under cover of any diploma or license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation.

(3) Practice professional or practical nursing as defined by this chapter (or rule or regulation of the board) unless duly licensed to do so under the provisions of this chapter.

(4) Use in connection with his or her name any designation tending to imply that he or she is a registered professional nurse or a licensed practical nurse unless duly licensed so to practice under provisions of this chapter.

(5) Practice nursing as defined by this chapter during the time his or her license issued under the provisions of this chapter shall be suspended or revoked.

(6) Conduct a nursing education program for the preparation of professional or practical nurses unless the program has been accredited by the board.

(7) Or otherwise violate any provisions of this chapter; any violation of chapter 464 shall be punishable by a fine of not more than $300.00 or by imprisonment for not more than 3 months or by both fine and imprisonment in the discretion of the trial court, provided, however, the following shall apply:

(a) For a first offense, punishable by fine not to exceed $100.00 or imprisonment.

(b) Second offense, by fine not to exceed $300.00 or imprisonment.

(c) Third offense, by imprisonment or fine, or both, and license to be suspended for a period to be determined by the court.

History.—§12, ch. 26797, 1951; (3), (5)-(7) by §6, ch. 57-186.

CHAPTER 465
PHARMACISTS

465.011 Short title.—This chapter shall be known as the "Florida pharmacy act."

History.—Comp. §1, ch. 28150, 1953.

465.021 Scope.—

(1) This chapter shall be construed to be in the interest of public health and shall not be construed to prohibit the sale by merchants of home remedies, or of those preparations commonly known as patents or proprietary preparations where such are sold only in original or unbroken packages.

(2) Nothing in this chapter shall be construed to prevent a legally licensed physician under the laws of the state from practicing, dispensing, compounding for or giving any medicines or drugs to his patients in the regular course of his practice as a physician provided that such compounding, preparing and dispensing be done by the physician himself. Further that orders for drugs and medical supplies when written on the medical record of a hospital patient shall not be construed to be a prescription as defined in this law.

History.—§1, ch. 28150, 1953; (2) by §1, ch. 57-141.

465.031 Definitions.—

(1) The term "retail drug establishment" shall be held to include every store, shop, office, hospital, sanitarium, clinic, dispensary, or other place:

(a) Where medicinal drugs are dispensed or where prescriptions are filled, compounded or dispensed; or

(b) Which has upon it or displayed within it, or affixed to or used in connection with it, a sign bearing the word or words "pharmacy," "pharmacist," "apothecary," "drug store," "druggist," "drugs," "medicines," "medicine store," "prescriptions," "prescription shop," or any word or words or symbols of similar or like import; or

(c) With respect to which the above words are used in any advertisement; or

(d) Where the characteristic show bottles or globes filled with colored liquids or otherwise colored, are exhibited; provided that nothing herein shall be construed to require the registration, as a retail drug establishment, of the office of a physician and surgeon licensed by this state.

(2) The term "prescription" shall be held to mean and include an order for drugs or medical supplies written or signed or transmitted by word of mouth, telephone, telegraph or other means of communication by a duly licensed physician, dentist, veterinarian or other practitioner, licensed by the law to administer such drugs or medical supplies intended to be filled, compounded or dispensed by another person.

(3) The term "pharmacist" shall mean and include a person who possesses the necessary educational and technological background sufficient to be licensed, and is licensed, under this chapter and who actively engages in the practice of the profession of pharmacy.

(4) The term "practice of the profession of pharmacy" shall mean the compounding, dispensing, or advising concerning contents and therapeutic values and uses, of any medicinal drug, whether pursuant to prescriptions, or in the absence and entirely independent of such prescriptions or orders or otherwise whatsoever, or any other act, service, operation or transaction incidental to or forming a part of any of the foregoing acts requiring, involving or employing the science or art of any branch of the pharmaceutical profession, study or training.

(5) The term "medicinal drugs" or "drugs" shall mean "drug" as defined by the Florida food, drug and cosmetic law, but shall not include patent or proprietary preparations as hereafter defined.

(6) The term "patents or proprietary preparations" shall mean a medicine in its unbroken original package which is sold to the public by or under the authority of the manufacturer, or primary distributor thereof, and which is not misbranded under the provisions of the Florida food, drug and cosmetic law.

(7) The term "dispense" shall mean the transfer of possession of a medicinal drug to the ultimate consumer thereof, or to one who represents that it is his intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user. The administration in a hospital of medicinal drugs to a hospital patient or the administration of medicinal drugs by a physician to his patient, shall not be considered dispensing.

(8) The word "person" shall include an individual, corporation, association, partnership, trust, syndicate, joint venture, or any other legal entity.

(9) The term pharmacy "intern" shall mean a person who is currently registered in and attending a duly accredited and recognized college or school of pharmacy or who is a graduate of such school or college of pharmacy and who is duly and properly registered with the Florida board of pharmacy as provided for under its rules and regulations.

Provided however, that any person who, at the time this act becomes law, is regularly employed in a retail drug establishment operating under a permit issued pursuant to this act and who is licensed to practice pharmacy in any other state shall for the purposes of this act be considered an intern subject to all laws and rules and regulations of the state board of pharmacy governing interns.

History.—§1, ch. 28150, 1953; (3) n. by §2, ch. 57-141; (1), (3), (4)-(7) n. §1, ch. 61-338; (8) n. §1, ch. 63-424; (9) n. §1, ch. 63-425.

465.041 Board of pharmacy; membership; appointment; oath; officers; bond; salary; summons and subpoenas.—

(1) There shall exist and be maintained within this state a board of pharmacy to be known as the "Florida board of pharmacy" with duties and powers as hereinafter defined and provided.

(2) The said Florida board of pharmacy shall consist of five members, and the now existing members of the board of pharmacy for the state shall continue in office as members of the Florida board of pharmacy until their respective terms expire or are otherwise terminated, the vacancies as they occur to be filled in keeping with the requirements of subsections (4) and (5) of this section.

(3) Only registered pharmacists who have been licensed in this state for at least five years and are actively engaged in retail pharmacy shall be eligible for appointment to the said board of pharmacy.

(4) The governor shall appoint members of the Florida board of pharmacy for terms of four years. Appointments shall be so made that one member of the board shall assume office each year for three years and so that on the fourth year two members shall begin their terms. If it shall be necessary to establish the cycle of terms hereby intended, appointments may be made for terms of so many years, or parts of years, less than four years as to make one term expire on each of three years out of four and the other two terms expire on one year of the same four year period. When the cycle of terms is established, all apointments to fill vacancies created by other than expiration of a term shall be for the unexpired term, and all terms shall expire on December 31 of the last year of the term.

(5) On or before December first of each year, the Florida state pharmaceutical association shall from among its membership, nominate three candidates who shall meet the requirements as provided in subsection (3) for the next occurring vacancy on the said board of pharmacy, and from among the nominees when regularly submitted and certified by the president and the secretary of the association, the governor may make his appointment for the vacancy or vacancies occurring in the board. Each appointee to the said board of pharmacy shall, before entering upon the discharge of his official duties, take the oath of office prescribed by the constitution for all officers of this state.

(6) The said board of pharmacy shall organize by electing a president and a vice-president, both of whom shall be elected annually from its members, and a secretary who may or may not be a member of the board who is a registered pharmacist in good standing in this state.

(7) The said board of pharmacy shall have the right to employ agents, an attorney, clerical help and others for the proper conduct of the office and for such other purposes as may be deemed necessary.

(8) The president of the said board of pharmacy shall preside at all meetings and in his absence or inability to preside, the vice-president shall so act and in their absence or inability to preside, the remaining member who was first appointed to the board shall so act.

(9) The secretary of the board of pharmacy shall be the executive officer in charge of the board's office. He shall make, keep, and be in charge of all records and record books required to be kept by the board, shall attend to the correspondence of the board, shall mail to each applicant for registration by examination a notice stating whether or not said applicant has satisfactorily passed the examination, and shall perform such other duties as the board may require, in keeping with the office of secretary. He shall receive and receipt for all fees collected under this chapter, and also collect, receive and receipt for all fines imposed under this act.

(10) The secretary of the board shall furnish a bond, the amount of such bond to be fixed by the board, conditional upon the faithful performance and discharge of the duties of the office according to law.

(11) The secretary shall receive a salary to be fixed by the board and he shall be reimbursed for traveling expenses as provided in §112.061.

(12) The president and the secretary shall be empowered to administer oaths in connection with duties of the board.

(13) The board shall have the power to issue summons and subpoenas for any witness and subpoenas duces tecum in connection with any matter within the jurisdiction of the board under its seal and signed by any member of the board.

History.—§1, ch. 28150, 1953; (11) §19, ch. 63-400; (13) n. §2, ch. 63-424.

465.051 Meetings of the board of pharmacy; expenses of members.—The said board of pharmacy shall hold meetings for the examination of applicants for registration and for the transaction of such other business as may legally come before it, at least twice in each calendar year and shall hold such additional meetings as may be deemed necessary by the president of the board. Three members shall constitute a quorum for the transaction of business. Due notice of all meetings shall be given at least thirty days in advance of said meetings. Publication of the time and place of meetings in the journal of the Florida state pharmaceutical association or in any newspaper, magazine, or other periodical in general circulation to Florida pharmacists or written notice by the secretary to the members of the board and to others who have filed with the secretary of the board a written request for notice, of the time and place of meetings shall constitute due notice. Each member of the board shall be reimbursed for traveling expenses as provided in §112.061.

History.—§1, ch. 28150, 1953; §19, ch. 63-400.

465.061 Application for examination and registration.—All applications for examination and registration as a pharmacist shall be made on a form to be supplied by the board of pharmacy and shall be filed with the secretary of said board at least thirty days before any meeting of the board at which examinations are to be held. The application of a person who has been a bona fide resident of Florida for more than one year prior to the filing of such application shall be accompanied by an examination fee of thirty-five dollars. The application of any other person shall be accompanied by an examination fee of fifty dollars. No examination fee shall be refundable.

History.—§1, ch. 28150, 1953; §24, ch. 57-1; §1, ch. 61-344.

465.071 Qualifications of applicants for examination.—

(1) The board of pharmacy shall examine by written and practical laboratory examinations under such rules and regulations as the board may prescribe, every person who shall have:

(a) applied for examination and registration in accordance with §465.061, and shall have paid the fee required by said section, and

(b) submitted proof satisfactory to the board that he is not less than twenty-one years of age, a citizen of the United States, of good moral character, and he is a recipient of a degree from a school or college of pharmacy financially supported by the state or from a school or college of pharmacy in the United States or any of its territories or possessions including the District of Columbia, which school or college of pharmacy required the applicant to complete not less than four academic years of higher educational training consisting of not less than three thousand hours of instruction in cultural, foundation, and professional courses for the degree in pharmacy and which courses and school or college of pharmacy have been found by the Florida board of pharmacy to satisfactorily supply the cultural, foundation, and professional education necessary in training a pharmacist for the protection of public health; and

(c) submitted proof satisfactory to the board that he has been employed subsequent to his sixteenth birthday as an intern to a registered pharmacist in a retail drug store or in the pharmacy of a hospital with an out-patient department, and had been duly registered as an intern by the board of pharmacy as provided by its rules and regulations before being so employed, and while so employed as an intern was engaged in the compounding of prescriptions and the sale and distribution of drugs and medical supplies, for a total of not less than two thousand eighty hours, of which not less than one thousand forty hours occurred after such applicant was granted his degree from said school of pharmacy or college of pharmacy, and

(d) shall have met such additional requirements as to age, education, experience and moral character as the board may have prescribed; for the purpose of carrying into effect the provision of this section.

(2) The board may permit an applicant, who has satisfied all requirements of subsection (1) and of the board except those relating to age or experience, to take such written examinations as may be given by the board, but no applicant shall be allowed to take a practical laboratory examination until such applicant has satisfied all the requirements of subsection (1) and of the board and the successful passing of the written examination shall confer no rights or privileges upon the applicant in connection with the practice of pharmacy in this state.

(3) Provided, that any student enrolled in the university of Florida and registered as a resident in the college of pharmacy prior to June 15, 1953, and had voluntarily withdrawn before that date, having reentered the university, may be granted permission to take the state board examination in pharmacy, without fulfilling the citizenship qualifications provided in §465.071(1)(b), having met all other qualifications, and upon successful completion of said examination shall be duly licensed.

History.—§1, ch. 28150, 1953; (1) (b) by §24, ch. 57-1; (3)n. §1, ch. 59-463; (1) (c) §2, ch. 63-425.

465.072 Only pharmacists to display certain signs, practice pharmacy, etc.; exceptions.—It is unlawful for anyone, except a registered pharmacist, or the owner of a registered retail drug establishment under this chapter,

who shall conform to the rules and regulations of the board of pharmacy, to take, use or exhibit the title "pharmacist," "druggist," "drug store," "pharmacy," or any other sign, display declaration or symbol that would tend to lead the public to believe that such person was engaged in the business of selling, compounding or dispensing any medicinal drugs, or to have charge of, engage in or carry on, for himself or for another the dispensing, compounding or sale of any medicinal drugs, anywhere within the state, and no registered pharmacist shall have personal supervision of more than one pharmacy or drug store at the same time; and, except as prescribed by the provisions of this chapter, it shall not be lawful for any person to practice as a registered pharmacist or advertise or represent himself by any title, sign, display, or declaration or otherwise to be such; or to engage in, conduct, carry on, or to be employed in the dispensing, compounding, or retailing of any medicinal drugs, within this state; provided, that this section shall not be construed as precluding any person from owning a drug store or pharmacy if all the dispensing, compounding and retailing of medicinal drugs, in the same shall be constantly under the immediate supervision and direction of a registered pharmacist.

History.—§1, ch. 61-339.

465.081 License; reciprocal licensure renewal.—

(1) If a majority of the members of the Florida board of pharmacy shall be satisfied that an applicant for registration is of good moral character and is competent to practice as a pharmacist as determined by examination of such applicant and that such applicant has satisfied the requirements of §§ 465.061 and 465.071 and, if such applicant once held a license but said license was revoked or suspended by the board, that such applicant has complied with the terms and conditions set forth by the board in the order revoking or suspending the license of such person, the board shall license such person as a pharmacist and shall issue to such person a registration certificate.

(2) Notwithstanding the provisions of subsection (1), the board of pharmacy may in its discretion register as a pharmacist, with or without examination as it sees fit, any person who is duly registered by examination in some other state; provided, that the said person shall produce evidence satisfactory to the board that he has the age, moral character, education and experience as demanded of applicants for registration by examination under the provisions of this act and rules and regulations promulgated hereunder; and further provided, that the state in which said person is registered shall under like conditions, grant reciprocal registration as pharmacist to pharmacists duly registered by examination in this state. The board shall in no event register a person applying under this subsection until such person shall have resided in this state for one year following his application for registration hereunder.

History.—Comp. §1, ch. 28150, 1953.

465.091 Expiration; renewal fee.—

(1) All certificates of registration issued by the Florida board of pharmacy shall expire on the twentieth day of June following the date of issuance of same, and on the twentieth day of June thereafter unless registration has been renewed in accordance with the provisions of this section.

(2) Every registered pharmacist shall pay to the secretary of the board annually, on or before the twentieth day of June, a renewal fee of ten dollars.

(3) The payment of the renewal fee shall entitle the registrant to renewal of certificate. If the renewal fee for any pharmacist's certificate be unpaid by the twentieth of June of any year, the holder thereof may be reinstated as a registered pharmacist only upon payment of a penalty of five dollars and all lapsed fees; provided that actual retirement from the profession by any registered pharmacist for a period not exceeding five years shall not deprive him of the right to renew the registration upon payment of lapsed fees.

History.—§1, ch. 28150, 1953; (2) a. by §1, ch. 61-225.

465.101 Authority to revoke or suspend licenses.—

(1) The board of pharmacy may revoke or suspend the license and registration certificate of any registered pharmacist, after giving such pharmacist reasonable notice and an opportunity to be heard, who shall have:

(a) obtained a license or registration certificate by misrepresentation or fraud or through a mistake of the board of pharmacy, or

(b) attempted to procure, or shall have procured, a license or registration certificate for any other person by making or causing to be made any false representation, or

(c) permitted any person not licensed as a pharmacist in this state, or not registered as an intern in this state, or a registered intern who is not acting under the direct and immediate personal supervision of a licensed pharmacist, to fill, compound or dispense any prescriptions in a retail drug establishment owned and operated by said pharmacist; or

(d) become unfit or incompetent to practice pharmacy by reason of

1. habitual intoxication, or

2. the habitual use of narcotic or habit-forming drugs, or

3. insanity, or

4. any abnormal physical or mental condition which threatens the safety of persons to whom he might sell or dispense prescriptions, drugs or medical supplies or for whom he might manufacture, prepare or package or supervise the manufacturing, preparation or packaging of prescriptions, drugs or medical supplies, or

(e) violated any of the requirements of this chapter or of chapter 500, known as the Florida food, drug and cosmetic law or of §§301 through 392 of title 21, United States code, known as the federal food, drug and cosmetic act, or of chapter 398, known as the uniform narcotics

law, or of chapter 404, known as the Florida barbiturate law.

(f) maintained or operated a device upon which, or by means of which, gaming or gambling is permitted, or sets up, promotes, or conducts any lottery for money, or carries on any bookmaking, or knowingly permits any of said violations to be carried on in a place of business over which he has direct or indirect control, charge or management or

(g) been convicted in any of the courts of this state, the United States or any other state, of a felony or of any other crime involving moral turpitude, or

(h) used in the compounding of a prescription, or furnished upon prescription, an ingredient or article different in any manner from the ingredient or article prescribed.

(2) A person whose license or registration certificate has been revoked or suspended by the board shall not be entitled to apply for examination or registration and shall not be licensed or issued a registration certificate until and unless the board is satisfied that such person has complied with all the terms and conditions set forth by the board in its order revoking or suspending the license of such person.

(3) In lieu of the suspension or revocation of licenses or permits the board of pharmacy after notice and hearing may impose a civil penalty against any licensee for violation of this chapter or any rule or regulation promulgated by the board. No penalty so imposed shall exceed $1,000.00 for each count or separate offense and all penalties imposed and collected shall be deposited with the state treasurer to the credit of the general revenue fund.

History.—§1, ch. 28150, 1953; (1) (c) §3, ch. 63-425; (1) (e), (3) n. §3, ch. 63-424.

465.102 Registration of pharmacy interns.—The board shall have the authority upon presentation of satisfactory credentials and under such rules and regulations as the board may prescribe, to register pharmacy interns, as defined in §465.031. The board shall have the power to revoke the registration of any such intern after notice and hearing for good cause, including grounds enumerated in this chapter for revocation of pharmacists licenses.

History.—§4, ch. 63-425.

465.111 Minimum equipment for retail drug establishments. — The Florida board of pharmacy shall prescribe the minimum of such professional and technical equipment which a retail drug establishment shall at all times possess to fill prescriptions properly and said retail drug establishments shall also at all times possess the latest revisions of the United States pharmacopoeia and the national formulary and all supplements to each of them.

History.—Comp. §1, ch. 28150, 1953.

465.121 Registration of retail drug establishments; fees.—

(1) On the first Monday of July of each and every year, all owners and proprietors of retail drug establishments in the state, shall register their retail drug establishments with the state board of health, on a printed or typewritten form, or forms, showing the name of the retail drug establishment to be registered; the name and address of the owner, or owners, and the manager thereof, if there be one; and the names of all registered pharmacists employed in such retail drug establishment, together with the certificate date and number of such registered pharmacist.

(2) A fee of ten dollars shall be charged by and paid to the state board of health by the owner, or owners or proprietor of each such retail drug establishment, upon each annual registration of such retail drug establishment, said fee so charged to be deposited with the state treasurer into the general revenue fund.

(3) The state board of health, in order to enforce the provisions of this law and the provisions of all other laws of the state and such rules and regulations of the Florida board of pharmacy as said board may promulgate relating to the regulation of the practice of pharmacy or the operation or management of retail drug establishments in the state, may appoint one or more registered pharmacists in the state, who shall be known as drug inspectors of the state board of health, who shall be under the jurisdiction and immediate supervision and control of the state board of health, at and for a yearly salary to be fixed by the state board of health, who shall see that the provisions of this and all other laws of the state regulating the practice of pharmacy and the operation and management of retail drug establishments in the state are strictly and properly complied with, by making regular and periodical and unannounced inspections of all retail drug establishments in the state, and the drug inspectors of the state shall promptly and diligently report to the state board of health and the Florida board of pharmacy all violations of the provisions of this or any other law regulating and governing the practice of pharmacy or the operation and management of retail drug establishments in the state, provided, that nothing in this section shall be construed or deemed to apply to the examination and registration of applicants before the board of pharmacy.

(4) The expenses of the state board of health incurred in the enforcement of the provisions of this law shall be paid from moneys appropriated for that purpose. The state board of health shall include a sufficient amount in its legislative budget request to properly enforce the provisions of this law.

History.—§1, ch. 28150, 1953; (3) by §24, ch. 57-1; (2) a., (4) n. by §1, ch. 61-35.

465.131 Authority to inspect.—The Florida board of pharmacy and its duly authorized agents, members and employees and the bureau of narcotics of the State board of health and its duly authorized agents, members and employees shall have the power to inspect in a lawful manner at all reasonable hours any retail drug establishment or other place in the state in which drugs or medical supplies are manufactured, packed, packaged, made, stored,

sold, offered for sale, exposed for sale or kept for sale for the purpose: (1) of determining if any of the provisions of this chapter, or any regulation promulgated under its authority, is being violated, and (2) to secure samples or specimens of any drug or medical supply after paying or offering to pay for such sample or specimen, (3) to secure such other evidence as may be needed for prosecution under this chapter.

History.—Comp. §1, ch. 28150, 1953.

465.14 Authority to make rules and regulations.—The Florida board of pharmacy is authorized to make such rules and regulations not inconsistent with law, as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety and welfare of the public, and the board is authorized to prescribe by regulation additional requirements as to age, education, experience and moral character for licensure as a pharmacist to those required by §465.071(1).

History.—§1, ch. 28150, 1953; §1, ch. 61-342.

465.15 Report to governor and state pharmaceutical association.—The board shall make a written report annually to the governor of the state and to the Florida state pharmaceutical association, of its proceedings and its receipts and disbursements under this act during the previous year, including also the names of all registrants licensed to practice under this act during the previous year.

History.—Comp. §1, ch. 28150, 1953.

465.16 Records are prima facie evidence.—The books, registers, and records of the board as made and kept by the secretary or under his supervision, subject to the direction of the board, shall be prima facie evidence of the matter therein recorded, in any court of law.

History.—Comp. §1, ch. 28150, 1953.

465.171 Disposition of fees; expenditures.—All moneys received by the board under this chapter shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the president and secretary of said board.

History.—§10, ch. 61-514; similar to former section 465.17.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

465.18 Violations and penalties.—Any person who:

(1) owns, operates, maintains, opens, establishes, conducts, or has charge of, either alone or with another person or persons, a retail drug establishment which is not registered with the board of pharmacy under the provisions of this chapter, or

(2) owns, operates, maintains, opens, establishes, conducts, or has charge of, either alone or with another person or persons, a retail drug establishment in which a person not licensed as a pharmacist in this state, or not registered as an intern in this state, or an intern who is not acting under the direct and immediate personal supervision of a licensed pharmacist, fills, compounds or dispenses any prescription, or

(3) owns, operates, maintains, opens, establishes, conducts, or has charge of, either alone or with other persons or another person, a retail drug establishment that does not possess the minimum equipment and publications stated in §465.111 prescribed by the board under authority of said section, or

(4) makes a false or fraudulent statement, either for himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board, or

(5) is not licensed as a pharmacist in this state, or is not registered as an intern in this state; or an intern not acting under the direct and immediate personal supervision of a licensed pharmacist, who fills, compounds or dispenses prescriptions or who dispenses medicinal drugs, shall upon conviction for each violation, be fined a sum not to exceed $1,000.00 or be imprisoned for a period not to exceed 6 months, or shall be both so fined and imprisoned. In any warrant, information or indictment it shall not be necessary to negative any exceptions and the burden of any exception shall be upon the defendant.

History.—§1, ch. 28150, 1953; (5) §1, ch. 61-340; (1) §4, ch. 63-424; (2), (5) §5, ch. 63-425.

465.19 Relief by injunction.—The board of pharmacy or the state board of health may, in its discretion, in lieu of or in addition to the remedy set forth in the preceeding section, apply to a court having competent jurisdiction over the parties and subject matter for a writ of injunction to restrain repetitious violations of the provision of this chapter.

History.—Comp. §1, ch. 28150, 1953.

465.20 Declaratory judgment on validity of rules; review.—

(1) Any affected party may obtain a judicial declaration as to the validity, meaning or application of any rule or regulation adopted by the board by bringing an action for declaratory judgment in the circuit court of the county of which such person resides or in which the executive offices of the board are maintained.

(2) Any person aggrieved by any order or decision rendered by the board of pharmacy after notice and hearing shall be entitled to a review thereof by certiorari by the circuit court in the county in which such person resides or in which the executive offices of the board are maintained in the manner and within the time provided by the Florida appellate rules. The final order of the circuit court in such proceeding shall be subject to appeal to the district court of appeal.

History.—§1, ch. 28150, 1953; §5, ch. 63-424; §7, ch. 63-509.

465.21 Retail drug establishments; permits.—

(1) As a prerequisite to operating a retail drug establishment, all owners and proprietors of retail drug establishments in this state, shall secure from the state board of pharmacy a permit for each such retail drug establish-

ment. Application for such permit shall be made on a printed or typewritten form or forms to be furnished by the board of pharmacy showing the name and address of the retail drug establishment for which a permit is sought; the name and address of the owner, or owners, and the manager thereof, if there be one; and the names of all registered pharmacists employed in such retail drug establishment, together with the certificate date and number of each such registered pharmacist. At the time of filing each such original application, the applicant shall pay to the state board of pharmacy a fee of fifty dollars. If such application is in proper form, and the retail drug establishment for which a permit is sought complies with the laws of this state, and the rules and regulations of the state board of pharmacy, the state board of pharmacy shall issue to the applicant a permit for the operation of such retail drug establishment.

(2) During the month of January of each year, the owners and proprietors of each retail drug establishment for which a permit has been secured, shall, on forms to be provided by the state board of pharmacy, make application for renewal of such permit. At the time of filing such application for renewal, the applicant shall pay to the state board of pharmacy a fee of five dollars.

(3) Upon the change of ownership or location of a retail drug establishment, the owner or proprietor shall, on forms provided by the state board of pharmacy, apply for an amendment to the permit of such retail drug establishment to show the new ownership or location of such retail drug establishment. At the time of filing such application for amendment, the applicant shall pay to the state board of pharmacy a fee of twenty-five dollars.

(4) The original application for permit by the owner or proprietor of a retail drug establishment in existence on January 1, 1962, shall be accompanied by an application fee of five dollars in lieu of the fee provided by subsection (1).

(5) The purpose of this act is to protect the health and safety of the public and shall be construed to effect that end. Businesses engaged in the sale of sundries or patent medicines but not dispensing prescriptions, are specifically exempted from the provisions of this act.

History.—§§1-6, ch. 61-343; (5) r. §8, ch. 63-424.

465.22 Authority to revoke or suspend retail drug establishment permits.—

(1) The board of pharmacy may revoke or suspend the permit of any retail drug establishment after giving such permittee reasonable notice and an opportunity to be heard, who shall have:

(a) Obtained a permit by misrepresentation or fraud or through a mistake of the board of pharmacy, or

(b) Attempted to procure, or shall have procured, a permit for any other person by making or causing to be made, any false representation, or

(c) Violated any of the requirements of this chapter as they relate to retail drug establishments or violated any of the rules and regulations of the board of pharmacy as they relate to retail drug establishments.

(2) If a retail drug establishment permit be revoked or suspended, the owner, manager, or proprietor shall cease to operate said establishment as a retail drug establishment as of the effective date of such suspension or revocation until such time as said establishment is again registered with the board of pharmacy and possesses a retail drug establishment permit for said establishment as prescribed by this chapter. In the event of such revocation or suspension the owner, manager or proprietor shall remove from the premises all signs and symbols identifying said premises as a retail drug establishment. The period of such suspension shall be prescribed by the board of pharmacy, provided that no such suspension shall exceed six months in duration. In the event that said permit be revoked, the person owning or operating said establishment shall not be entitled to make application for a permit to operate a retail drug establishment for a period of one year from the date of such revocation.

History.—§6, ch. 63-424.

CHAPTER 466

DENTISTRY, DENTAL HYGIENE AND DENTAL LABORATORIES

466.01 Objects and purposes of chapter.—The practice of dentistry in the state is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the state. All provisions of this chapter relating to the practice of dentistry and dental hygiene and to the registration of dental laboratories shall be liberally construed to carry out these objects and purposes.

History.—§1, ch. 20240, 1941; §1, ch. 57-181.

466.02 Persons entitled to practice dentistry.—It shall be unlawful for any person to practice dentistry or dental hygiene in the state, except:

(1) Those who are now duly licensed and registered dentists, pursuant to law;

(2) Those who are now duly licensed and registered dental hygienists, pursuant to law;

(3) Those who may hereafter be duly licensed

and registered as dentists or dental hygienists, pursuant to the provisions of this chapter.

History.—§1, ch. 14708, 1931; §1, ch. 16971, 16973, 1935; CGL 1936 Supp. 3534(1); §2, ch. 20240, 1941.
cf.—§458.16 Furnishing copies of mental or physical examination reports.
cf.—§466.04, Practicing dentistry defined.

466.03 Persons exempt from operation of chapter.—Nothing in this chapter shall apply to the following practices, acts, and operations:

(1) To the practice of his profession and to surgical procedures involving the oral cavity by a physician or surgeon licensed as such under the laws of this state; or,

(2) To the giving by a qualified anaesthetist or registered nurse of an anaesthetic for a dental operation under the direct supervision of a licensed dentist; or,

(3) The practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, air force, marines, navy, public health service, coast guard, or veterans' administration; or,

(4) The practice of dentistry by licensed dentists of other states or countries at meetings of the Florida state dental society or components thereof, or other like dental organizations approved by the board, while appearing as clinicians.

(5) To the filling of work orders of a licensed and registered dentist as hereinafter provided by any person or persons, association, corporation, or other entity, for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for the regulation of natural teeth, provided that such persons, association, corporation, or other entity, shall have complied with the provisions of this chapter respecting registration of dental laboratories and shall not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth or for the regulation of natural teeth.

(6) Students in Florida schools of dentistry and dental hygiene approved by the board, while performing regularly assigned work under the curriculum of such schools.

(7) Instructors in Florida schools of dentistry or dental hygiene approved by the board while performing regularly assigned duties under the curriculum of such schools.

History.—§3, ch. 20240, 1941; (5) by §2, ch. 57-181; (1), (3), (5) a., (6) and (7) n. by §1, ch. 61-471.

466.04 What constitutes practicing dentistry.—Any person shall be deemed to be practicing dentistry who performs, or attempts or professes to perform, any dental operation or oral surgery or dental service of any kind, gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid, directly or indirectly, to himself or to any other person or agency; or who is a proprietor of a place where dental operations, oral surgery, or dental services are performed; or who directly or indirectly, by any means or method, takes an impression of the human tooth, teeth, or jaws; or supplies artificial substitutes for the natural teeth, or who furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance, or any other structure to be worn in the human mouth, except on the written work order of a duly licensed and registered dentist; or who places such appliance or structure in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentists upon whose work order the work was performed; or who professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth, or who diagnoses, or professes to diagnose, prescribe for, or professes to prescribe for, treats, or professes to treat, disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure, or who extracts, or attempts to extract, human teeth, or corrects, or attempts to correct, malformations of teeth or of the jaws; or who repairs or fills cavities in the human teeth; or who uses a roentgen or x-ray machine for the purpose of exposing dental x-ray films or roentgenograms, except under the direction of a dentist licensed in this state, or who gives, or professes to give interpretations or readings of dental x-rays or roentgenograms; or who administers an anesthetic of any nature in connection with a dental operation, except as provided for in §466.03-(2), or who uses the words dentist, dental surgeon, oral surgeon, or the letters D.D.S., D.M.D., or any other words, letters, title or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws or adjacent structures; or who states, or professes, or permits to be stated or professed by any means or method whatsoever that he can perform, or will attempt to perform dental operations, or render a diagnosis connected therewith.

History.—§2, ch. 14708, 1931; CGL 1936 Supp. 3534(2); §4, ch. 20240, 1941; §2, ch. 61-471.

466.05 Proprietor defined.—The term proprietor as used in this chapter shall be deemed to include any person who:

(1) Employs dentists or dental hygienists in the operation of a dental office, or,

(2) Places in possession of a dentist or dental hygienist or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment or offices; or,

(3) Retains the ownership or control of dental equipment or material or office and makes the same available in any manner for the use by dentists or dental hygienists or other agents; provided, however, that nothing in this sub-

section shall apply to bona fide sales of dental equipment or material secured by a chattel mortgage or retain title agreement. A licensee of dentistry who enters into any of the above described arrangements with an unlicensed proprietor may have his or her license certificate suspended or revoked by the board.

History.—§5, ch. 20240, 1941.

466.06 Florida state board of dental examiners; terms of office.—

(1) For the purposes of this chapter, the state shall be divided into five geographical districts, which districts shall be designated and comprised of the counties named below:

(a) Northeast district: The northeast district shall be composed of the following counties: Jefferson, Madison, Hamilton, Suwannee, Lafayette, Columbia, Baker, Nassau, Duval, Bradford, Clay, St. Johns, Putnam, Union, Dixie, Flagler and Taylor counties.

(b) Central district: The central district shall be composed of the following counties: Alachua, Levy, Marion, Citrus, Sumter, Lake, Seminole, Orange, Volusia, Brevard and Gilchrist counties.

(c) West coast district: The west coast district shall be composed of the following counties: Hernando, Pasco, Hillsborough, Polk, Manatee, DeSoto, Glades, Charlotte, Hardee, Pinellas, Lee, Highlands, Hendry, Osceola, Collier and Sarasota counties.

(d) East coast district: The east coast district shall be composed of the following counties: St. Lucie, Okeechobee, Palm Beach, Broward, Dade, Monroe, Indian River and Martin counties.

(e) Northwest district: The northwest district shall be composed of the following counties: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Liberty, Franklin, Gadsden, Leon, Wakulla and Gulf counties.

(2) The Florida board of dental examiners as created by the laws of Florida is hereby continued as the agency of the state for the regulation of the practice of dentistry in the state and to carry out the purposes of this chapter, and is referred to herein as the board. Such board shall be composed of seven members, each member to be appointed by the governor. At no time shall less than one member of the board, nor more than two members thereof be appointed from any one geographical district of the state as above defined. The Florida state dental society may recommend from its membership not more than two nominees for each vacancy that exists or shall exist on the board by reason of expiration of term or otherwise and certify such nomination to the governor, who may make his appointment therefrom. The terms of the existing board members shall not be disturbed by this section as amended. Such term is to be for four years beginning February 1 of the year in which a vacancy occurs as the result of the expiration of a term and until a successor is appointed.

(3) Should a vacancy occur in any board membership before the expiration of the term thereof, the governor shall fill such vacancy by appointment for the remainder of the four year term, and until a successor is appointed. Nominations to fill any such vacancy may be made by the executive council of the Florida state dental society. Nothing in this section shall prevent any member from serving more than one term.

History.—§3, ch. 14708, 1931; CGL 1936 Supp. 3534(3); §6, ch. 20240, 1941; §1, ch. 29882, 1955; (2), (3) a. by §3, ch. 61-471.

466.07 Qualifications of members of board.— No person shall be appointed to the board who is not a qualified elector under the laws of Florida and who has not been engaged in the practice of dentistry in Florida for at least ten years next preceding his appointment. No person shall be eligible for appointment to the board who has been convicted of a violation of any of the provisions of this or any prior dental practice laws, or has been convicted of a felony.

History. — §4, ch. 14708, 1931; CGL 1936 Supp. 3534(4); §7, ch. 20240. 1941; §2, ch. 29882, 1955.

466.08 Organization, powers, duties, etc., of board.—The board shall exercise, subject to the provisions of this chapter, the following powers and duties:

(1) The board shall organize annually by electing one of its members as chairman, one as vice chairman, and one as secretary-treasurer. It shall adopt such rules for its government as it may deem proper and shall adopt and use a corporate seal. The board shall meet at least once a year, and oftener if necessary, at such times and places as it may from time to time designate.

(2) Conduct examinations to ascertain the qualifications and fitness of applicants for licenses to practice dentistry and for licenses to practice dental hygiene.

(3) Prescribe rules and regulations for examination of candidates.

(4) Formulate rules and regulations by which dental schools and colleges shall be approved.

(5) Conduct hearings on proceedings to revoke or suspend, and revoke or suspend, a license, license certificate, renewal certificate or dental laboratory registration certificate granted under the authority of this chapter or previous laws, when evidence has been presented showing violation of any of the provisions of this chapter by the holder of such license, license certificate, renewal certificate, or laboratory registration certificate.

(6) Conduct proceedings relative to the issuance or reissuance of licenses, license certificates, renewal certificates or dental laboratory registration certificates which have been revoked or suspended by board order.

(7) Grant licenses, issue license certificates, renewal certificates or dental laboratory registration certificates in conformity with this chapter to such applicants as have been found qualified.

(8) Issue permits for dental internes, insti-

tutional dentists and nonprofit corporations in conformity with this chapter to such applicants as have been found qualified.

(9) Make such rules and regulations as are necessary to carry out and make effective the provisions of this chapter.

History.—§5, ch. 14708, 1931; CGL 1936 Supp. 3534(5); §8, ch. 20240, 1941; (5)-(7) a., (8) n. and former (8) renumbered (9) by §4, ch. 61-471.

466.09 Definitions.—For the purposes of this chapter, the following terms are defined as:

(1) License—The grant of authority by the board to any person to engage in the practice of dentistry or dental hygiene. Such license shall be a privilege personal to the licensee, and may be revoked or suspended by the board for violation of any of the provisions of this chapter.

(2) License certificate — The documentary evidence under seal of the board that said board has granted authority to the licensee to practice dentistry or dental hygiene in this state.

(3) Renewal certificate — The documentary evidence that the board has renewed the authority of the licensee to practice dentistry or dental hygiene in this state.

(4) Conditional renewal certificate — The documentary evidence that the board has renewed the authority of the licensee to practice dentistry or dental hygiene in this state subject to such conditions as may be provided by this chapter.

(5) Laboratory registration certificate — The documentary evidence that a dental laboratory has registered under the provisions of this chapter.

(6) Gender—Wherever the masculine gender is used in this chapter it shall include the feminine gender.

History.—§9, ch. 20240, 1941; (4), (5) n. by §3, ch. 57-181; (6) n. by §5, ch. 61-471.

466.10 Quorum of board.—A majority of the members of the board shall constitute a quorum for the transaction of business, but should less than a quorum be present on the day appointed for a meeting, those present may adjourn from day to day or from time to time, until a quorum is present.

History.—§6, ch. 14708, 1931; CGL 1936 Supp. 3534(6); §10, ch. 20240, 1941.

466.11 Power of board to administer oaths; issue subpoenas, service; penalty for refusing to obey subpoena or order.—The chairman, and in his absence, the vice-chairman, and in the latter's absence, the secretary-treasurer, shall have the power to administer oaths, take affirmations of witnesses, issue subpoenas and send for persons or papers, and to compel the attendance of witnesses, the production of all necessary papers, books, records, documentary evidence and materials, in any hearing, investigation, accusation or other matter coming before the board. The sheriffs of the several counties of the state or other officers authorized to serve process shall serve any subpoena or other order issued by said officer or officers of said board, and shall receive for such services the fees provided for like service to be paid on certification of such officer from any funds in the hands of the board. If any person refuses to obey any subpoena, process or order issued by said board, the said board may certify this fact to the circuit court of the judicial circuit wherein such proceeding is being held and it shall be the duty of the court to require such person to appear before it and show cause why he should not be adjudged in contempt, and, if upon hearing, the court shall find such person to be in contempt, the court shall deal with such person as provided in §466.42.

History.—§7, ch. 14708, 1931; CGL 1936 Supp. 3534(7), 7712(1); §11, ch. 20240, 1941; §6, ch. 61-471.
cf.—§30.23 Fees of sheriffs and constables.

466.12 Assistant secretary-treasurer of board; duties.—The secretary-treasurer of the board, with the consent of the board, shall have the power to employ at his pleasure one or more persons as assistant secretary-treasurers, who need not be members of the board nor practicing dentists. The assistant secretary-treasurers shall, in the name of the secretary-treasurer, be qualified to perform any of the duties of the secretary-treasurer in matters pertaining to the gathering of evidence in any violation of any of the provisions of this chapter, swearing out warrants, appearing before courts in prosecutions, and any other matters pertaining to the enforcement of the provisions of this chapter, but said assistant secretary-treasurer shall not be entitled to receive any witness or other fees out of the fine and forfeiture fund of any county on account of his testifying as a witness or any other services rendered by him under this chapter.

History.—§8, ch. 14708, 1931; CGL 1936 Supp. 3534(8); §12, ch. 20240, 1941; §4, ch. 57-181.

466.13 Applicants to file applications under oath.—Every person who desires to practice dentistry within the state shall file with the secretary-treasurer of the board his written application for a license, and furnish satisfactory proof that he is at least twenty-one years of age and of good moral character, a citizen of the United States, and that he is a graduate of an accredited dental school or college as defined by the council on dental education of the American dental association, or is a graduate of a dental school or college approved by the board. Such application must be upon the form prescribed and furnished by the board and verified by the oath of the applicant, accompanied by the required fee and a recent unmounted, autographed photograph of the applicant. Graduates of foreign dental colleges or schools not approved by the board shall have first graduated in dentistry in an accredited or approved dental college or school in the United States before being eligible for the examination. The board may deny examination of a candidate who has been found mentally or physically unqualified. The board is hereby authorized and empowered to adopt such further rules in regard to the qualifications of applicants for examination, not in conflict with

this section, as it from time to time may deem necessary and proper.

History.—§9, ch. 14708, 1931; CGL 1936 Supp. 3534(9); §13, ch. 20240, 1941; §7, ch. 61-471.

466.14 Examinations; license certificates.—

(1) When the board finds the application and accompanying proof submitted by any person pursuant to §466.13, satisfactory, it shall notify the applicant to appear before it for an examination at a time and place to be fixed by it. The examination shall be oral, written, theoretical, practical, clinical and of such a character as to thoroughly test the qualifications of the applicant to practice dentistry and may be taken from but not limited to the following subjects: pathology, radiology, bacteriology, treatment planning, clinical dentistry, operative dentistry, prosthetics, crown and bridge technique, orthodontics, materials in dentistry, diet and nutrition, oral hygiene and prophylaxis, preventive medicine, periodontics, anesthesia, oral surgery, oral medicine, principles of medicine, materia medica and pharmacology, anatomy, physiology, histology, chemistry, embryology and dental history and such subdivisions of these general subjects as relate to the practice of dentistry.

(2) All examination papers shall be filed with the secretary-treasurer of the board and kept for reference and inspection for a period of not less than two years. Examination papers while so retained shall be open to inspection only to board members, the applicant himself, or by some person properly appointed by such applicant to examine same, or pursuant to an order of a court of competent jurisdiction in a proceeding where the question of the contents of any such paper or papers is involved. The said board shall make a record of the examination grade of each applicant which shall be preserved for the two year period as a part of his examination paper.

(3) Should the applicant make a passing grade on his examination, he shall be granted a license by the board, and a license certificate signed by a majority of the board, including the chairman and the secretary-treasurer, bearing the seal of the said board, shall be issued, which certificate, when duly recorded as provided in this chapter, shall be evidence of his or her right to practice dentistry in this state; provided, such licensee complies with the further provisions of §466.15.

History.—§10, ch. 14708, 1931; CGL 1936 Supp. 3534(10); §14, ch. 20240, 1941; §8, ch. 61-471.

466.15 Recording of certificates. — Every person granted a license to practice dentistry or dental hygiene in this state by the board as herein provided shall personally cause his license certificate to be recorded in the office of the clerk of the circuit court of the county in which he desires to practice before beginning the practice of dentistry or dental hygiene in said county, and shall within sixty days of the date of the issuance of the license certificate notify the secretary-treasurer of the board that this section has been complied with, giving the name of the county in which said license certificate was recorded. Any person receiving a license from the board, whether or not intending to immediately engage in the practice of dentistry or dental hygiene in this state, shall cause his license certificate to be recorded in the office of the clerk of the circuit court in one of the counties of this state and notify the secretary-treasurer of the board of such recordation within sixty days of the issuance of the license certificate.

History.—§11, ch. 14708, 1931; CGL 1936 Supp. 3534(11); §15, ch. 20240, 1941; §9, ch. 61-471.

466.16 Certificates to be displayed.—Every practitioner of dentistry or dental hygiene within the meaning of this chapter shall post and keep conspicuously displayed his name, license certificate and renewal certificate in the office wherein he practices, in plain sight of his patients, and if there is more than one dentist or dental hygienist practicing or employed in any office the manager or proprietor of such office shall post and display, or cause to be posted and displayed, in like manner the name, license certificate and renewal certificate of each dentist or dental hygienist so practicing or employed therein. Any dentist or dental hygienist who practices in more than one office shall be required to display a current annual renewal certificate in each office where he practices. The operator of every dental laboratory as defined in §466.51, in this state shall be required to conspicuously display a current laboratory registration certificate in his place of business.

History.—§12, ch. 14708, 1931; CGL 1936 Supp. 3534(12), 7712(2); §16, ch. 20240, 1941; §10, ch. 61-471.

466.17 Annual and conditioned renewal of licenses; fees.—

(1) On or before October 1 of each year, every dentist licensed to practice dentistry in this state shall transmit to the secretary-treasurer of the board, upon a form prescribed by the board, his signature, post office address, office address, the number of his license certificate, and such other information as may be requested, together with a fee of twenty dollars, and receive therefor an annual renewal certificate authorizing him to continue the practice of dentistry in this state for a period of one year or a conditional renewal certificate as provided for in subsection (2).

(2) Any dentist who does not currently maintain residence and domicile in this state, shall be issued a conditional renewal certificate upon application for a payment of the twenty dollar fee as provided in subsection (1), and cannot practice in this state until he has obtained a current annual renewal certificate. No annual renewal certificate shall be issued to the holder of a conditional renewal certificate, if for good cause, the board determines that the applicant has not maintained the degree of professional skill and knowledge required when he was first licensed in this state or he has become physically or mentally incompetent, or has been guilty of immoral conduct. The board may, in its discretion, re-

quire said person to demonstrate to the board that he has maintained such professional skills and knowledge and has not been guilty of conduct which would warrant suspension or revocation of a license under this law.

History.—§13, ch. 14708, 1931; CGL 1936 Supp. 3534(13); §17, ch. 20240, 1941; §5, ch. 57-181; §24, ch. 57-1; §11, ch. 61-471; §1, ch. 63-334.
cf.—§466.20 Examination fees; compensation of board.

466.18 Automatic suspension, cancellation of licenses for failure to renew; notification; occupational license.—

(1) The license and license certificate of any dentist who has not secured his annual renewal certificate or conditional renewal certificate on December 31 of any year shall be automatically suspended after notice as provided in subsection (2). A suspended license may not be reinstated until the dentist whose license has been suspended files a written application on a form prescribed by the board, pays his renewal fee and a delinquency fee of twenty-five dollars. On March 31 of any year the license of any dentist who has not renewed the same and paid the required renewal and delinquency fee shall be automatically cancelled and annulled after notice as provided in subsection (2) and it may not be reinstated or renewed until the dentist shall make application for and take the examination as provided by §466.14, and pay the fee therefor as provided in §466.20.

(2) (a) Prior to suspending the license of any dentist who has not renewed his license the board shall notify him on November 30 at his last known address of his delinquency and advise him of the penalty therefor provided by subsection (1).

(b) Prior to cancelling the license of any dentist who has not renewed his license and paid the necessary fees the board in addition to sending the notices required by paragraph (a), shall notify him on the last day of February of the penalty provided by subsection (1) at his last known address, by registered mail return receipt requested.

(3) Nothing in this section shall in any way prohibit the board from or restrict it in suspending or revoking any license certificate previously granted under the authority of the law of this state regulating the practice of dentistry for a violation of any of the requirements or provisions of this chapter. In addition to the fees required by this chapter every dentist shall secure his annual occupational license as required by law, but the latter shall not be issued to any dentist until he exhibits evidence of being currently licensed under this chapter.

History.—§18, ch. 20240, 1941; §12, ch. 61-471.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

466.19 Change of address; duplicate license certificates and other certificates.—

(1) Every person licensed under this chapter, upon changing his place of business, shall furnish the secretary-treasurer of the board his new address within thirty days.

(2) The board may issue a duplicate of any certificate upon satisfactory proof of loss, destruction, or other valid reason, charging a fee of fifteen dollars for a duplicate license certificate and one dollar for a duplicate of any other certificate.

History.—§19, ch. 20240, 1941; §6, ch. 57-181; (2) a. by §13, ch. 61-471.

466.20 Examination fees; compensation of board; deposit of funds collected.—The board shall charge each person applying to it for a license to practice dentistry in the state, an examination fee of fifty dollars. The examination fee charged each person applying for a license to practice dental hygiene shall be twenty-five dollars. The members of said board shall be compensated for their services as follows:

(1) Each member of said board shall receive twenty-five dollars per day or any part of a day while attending official board meetings, not to exceed twelve meetings per year, of such duration as is necessary to accomplish the purpose of such meetings.

(2) Each member of said board shall receive twenty-five dollars per day or any part of a day while actually preparing, or conducting or grading examinations.

(3) Each member of said board shall receive twenty-five dollars per day or any part of a day while actually engaged in the enforcement of this chapter through attendance in civil or criminal prosecutions, policing of laboratories, interrogating witnesses and other bona fide activities authorized by the board.

(4) Each member of said board shall receive per diem and mileage as provided in §112.061, from place of said member's residence to place of meeting or work and return while engaged in any of the foregoing activities or on other legitimate and authorized board business. The secretary-treasurer of said board and his assistants including such expert or lay assistants as may be authorized by the board to be hired to accomplish its purposes, shall be entitled to such amounts as shall be necessary to defray the cost of stationery and necessary expenses actually incurred in the discharge of his or their duties, and such compensation as the board shall authorize. All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. All expenses of the board shall be paid upon presentation of vouchers approved by the chairman or secretary-treasurer of said board.

History.—§14, ch. 14708, 1931; CGL 1936 Supp. 3534(14); §20, ch. 20240, 1941; §102, ch. 26869, 1951; am. §17, ch. 28215, 1953; §3, ch. 29882, 1955; §14, ch. 61-471; (4) a. by §11, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets.
§455.03 Dispensing with examination of veterans.

466.21 Dentists exempt from jury duty.—All dentists in the actual practice of their pro-

fession in this state are hereby exempt from jury duty; provided, that this exemption shall not operate to disqualify any dentist who may wish to serve as juror.

History.—§15, ch. 14708, 1931; CGL 1936 Supp. 3534(15); §21, ch. 20240, 1941.

466.22 Dentists may prescribe drugs, etc.—A dentist shall have the right to prescribe drugs or medicine, perform such surgical operations, administer general or local anaesthetics and use such appliances as may be necessary to the proper practice of dentistry.

History.—§16, ch. 14708, 1931; CGL 1936 Supp. 3534(16); §22, ch. 20240, 1941.

466.23 Druggists may fill dentists' prescriptions.—Druggists in this state may fill prescriptions of legally licensed dentists in this state for any drugs necessary for the practice of dentistry. Dentists may sign death certificates the same as physicians, when necessary in the line of their professional duties.

History.—§17, ch. 14708, 1931; CGL 1936 Supp. 3534(17); §23, ch. 20240, 1941.

466.24 Suspension or revocation of license certificate for cause.—The board shall suspend or revoke the license of any dentist or dental hygienist when it is established to its satisfaction that he:

(1) Is a habitual user of intoxicants or drugs or is afflicted with psychiatric disorders or other disease deemed dangerous to the public health, thus rendering him unfit for the practice of dentistry or dental hygiene;

(2) Is grossly ignorant or incompetent;

(3) Has been guilty of:

(a) Misconduct either in his business or in his personal affairs which would bring discredit upon the dental profession;

(b) Fraud, deceit or misrepresentation in obtaining his license;

(c) Malpractice;

(d) Willful negligence in the practice of dentistry or dental hygiene;

(e) Employing or permitting any unlicensed person or persons to perform any work in his office, which would constitute the practice of dentistry or dental hygiene;

(f) Publication or circulation, directly or indirectly of any fraudulent, false or misleading statements as to the skill or methods of practice of any person;

(g) Advertising in any manner his professional services in the practice of dentistry or the cost or fees therefor in this state in a manner not expressly authorized by this chapter; claiming or inferring of professional superiority over other practitioners;

(h) Employing or using a solicitor or other agent to obtain patronage;

(i) Giving a public demonstration of skill or methods;

(j) Practicing dentistry along the streets or highways or any place other than the office where the licensee regularly practices dentistry except as provided by this chapter;

(k) The public exhibition or use of specimens of dental work, large display signs or lighted signs, electric or neon or any other media of calling the attention of the public to any person engaged in the practice of dentistry or dental hygiene;

(l) Failure to provide and maintain reasonably sanitary facilities and conditions;

(m) Failure to provide adequate radiation safeguards; or,

(n) Violating any other provision of this chapter regulating the practice of dentistry or dental hygiene.

History.—§18, ch. 14708, 1931; §1, ch. 16970, 1935; CGL 1936 Supp. 3534(18); §24, ch. 20240, 1941; §15, ch. 61-471.

cf.—§466.40, Dental hygienist, revocation of licenses.
§466.41, Dental internes, revocation of permits.
§466.42, Penalties.

466.25 Filing of accusations against dentists, dental hygienists or dental laboratories; notice; hearing; review.—

(1) An accusation may be filed by the board of dental examiners or any aggrieved person with the secretary-treasurer of the board charging any licensed dentist, dental hygienist or dental laboratory owner or operator with the violation of any of the provisions of this chapter, the penalty for which is the suspension or revocation of his license or laboratory registration certificate. The accusation shall be in writing, signed by the accuser, and verified under oath. When an accusation is filed, the board shall study and review the same and if satisfied that, if true, it charges the licensed dentist, dental hygienist or dental laboratory owner or operator against whom it is directed with a violation of a provision or provisions of this chapter, shall set a date for a hearing thereon. The secretary-treasurer of the board shall transmit to the accused a true copy of any and all charges filed with him relating to such accusation, and shall notify the accused in writing of the day fixed for the hearing, which day shall be not less than ten days from the date of such notice. The accused dentist, dental hygienist or dental laboratory owner or operator may appear and show cause why his license or laboratory registration certificate should not be suspended or revoked. For the purpose of such hearing, the board is hereby empowered to require by subpoena the attendance of witnesses, to administer oaths and hear testimony, either oral or documentary, for and against the accused. The notice provided for in this section shall be substantially in the following form:

"To ....., Florida
You are hereby notified that charges have been filed with the secretary-treasurer of the Florida state board of dental examiners against you as a practicing dentist, dental hygienist or dental laboratory owner or operator in the state of Florida, a true copy of such charges being attached hereto, and that the said board has fixed the ..... day of ....., A. D., 19...., at the hour of ..... o'clock..... in ....., Florida, for a hearing on such charges, at which time you are

hereby notified to appear before the said board and show cause, if any you can, why your license to practice dentistry, dental hygiene or dental laboratory registration certificate in Florida should not be suspended or revoked. At the same time and place, the board will hear testimony, either oral or documentary, both for and against you, relating to such charges.

You are hereby notified that you may represent yourself or that you may at your expense be represented by counsel of your choice. It is not mandatory that you be represented by counsel, but notification of such right and privilege is hereby given.

Dated at ....., Florida

Secretary-treasurer of the Florida state board of dental examiners."

(2) Such notice shall be sent to the accused by registered mail return receipt requested directed to his last known mailing address, and the post office registration receipt signed by the accused, or his agent, or, if not accepted by the person to whom addressed, the postal authorities' stamp thereon showing the same "REFUSED," shall be prima facie evidence of service of such notice.

(3) Any hearing held pursuant to this section shall be at a time and place to be determined by the board.

(4) Application for relief from any order of the board suspending or revoking the license or registration certificate of any dentist, dental hygienist or dental laboratory operator or owner shall be by certiorari to the circuit court of the judicial circuit in which the petitioner has his professional office or laboratory or in which the books and records of the board are kept as provided by the Florida appellate rules.

History.—§19, ch. 14708, 1931; CGL 1936 Supp. 3534(19); §26, ch. 20240, 1941; §7, ch. 22858, 1945; formerly §466.26, a., transferred and renumbered by §16, ch. 61-471.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

466.26 Suspension or revocation of license; notice to clerk of circuit court.—If, at such hearing of the accused, the board shall be satisfied that the accused has been guilty of any offense charged in the accusation provided in this chapter, it shall thereupon, without further notice, suspend or revoke the license, license certificate and renewal certificate or dental laboratory registration certificate of the person so accused. The board shall have power in proper cases to authorize the payment of fees and traveling expenses of necessary witnesses required to appear before the board and actually examined in any proceeding properly before it. Upon suspension or revocation of any license, license certificate, renewal certificate, or dental laboratory registration certificate, the fact shall be noted upon the records of the board and the license or dental laboratory registration certificate shall be cancelled upon the date of its revocation. Written notice of such suspension, revocation or cancellation shall be mailed by the secretary-treasurer of the board to the clerk of the circuit court in the county in which the accused practices or resides, and said clerk shall record such notice.

History.—§20, ch. 14708, 1931; CGL 1936 Supp. 3534(20); §27, ch. 20240, 1941; formerly §466.27, a., transferred and renumbered by §18, ch. 61-471.

466.27 Professional signs; announcements.—(1) A dentist shall not have his name displayed in the lobby, buyer's guide, on blotters or cards in the rooms or in the office of any hotel, motel, apartment house or any public place other than as herein provided for.

(2) A dentist may have not more than two unilluminated signs visible from the exterior of his office. Said signs shall be square or rectangular in shape with unshaded lettering not to exceed four inches in height; provided, however, that signs existing on the effective date of this act need not be removed. They shall include his name, the word "dentist" or his degree, D.D.S or D.M.D and may list any specialty to which the dentist confines his practice exclusively. These signs shall be limited to the above information and may be located on only one of his office windows and one at the entrance of the building in which his office is located or in front of the building in which his office is located. No sign shall be permitted to hang over or beyond the sidewalk. In addition to the foregoing signs he may list his name, degree, the word "dentist," any specialty as above defined, his room number and office hours on the directory within the building in which he practices. The letters of such listing shall not exceed two inches in height. The information listed on the directory may be placed on one door entering his office in lettering not to exceed two inches in height without shading.

(3) For thirty days immediately following the opening of an office, changing locations, association or type of practice, announcement thereof may be inserted in the local newspapers but must not be over one column wide not over one and one half inches high and such newspaper listings shall not include more than the dentist's name, title, degree or any specialty as above defined, office location, telephone number and office hours. Announcement cards containing the above and foregoing information may be mailed to bona fide patients and to members of the dental and medical professions.

(4) Professional cards shall not be greater in size than two inches by three and one-half inches and must not include more than the dentist's name, title, degree or any specialty as above defined, office location, telephone number and office hours. Residence telephone number may be included if desired.

(5) Telephone listings shall be confined to the local telephone directory and shall be limited to the dentist's name, title, degree or any specialty as above defined, office location, residence and office telephone numbers, residence address and include his membership in the national, state or local dental society if in accord with the local custom.

History.—§30, ch. 14708, 1931; CGL 1936 Supp. 3534(27); §25, ch. 20240, 1941; formerly §466.25, a., transferred and renumbered by §17, ch. 61-471.

466.28 Secretary-treasurer, records, bonding and annual board report.—

(1) The secretary-treasurer of the board shall keep a record book in which shall be entered the names of all persons to whom licenses, license certificates, renewal certificates, conditional renewal certificates, and laboratory registration certificates have been granted under this chapter, the numbers of such licenses, license certificates, renewal certificates, conditional renewal certificates, and laboratory registration certificates, the dates of granting the same, and other matters of record, the book so provided and kept to be deemed a book of records. A photostatic copy of said records, or a copy of said records, certified by the secretary-treasurer and under the seal of the board, shall be admitted in any of the courts of this state as prima facie evidence of the facts contained in said records and in lieu thereof. A certificate that there is not entered in such record books the name of and number of and date of granting such license, license certificate, renewal certificate, conditional renewal certificates, and laboratory registration certificates, to a person charged with a violation of any of the provisions of this chapter, under the hand of the secretary-treasurer and the seal of the board, shall be prima facie evidence of the facts contained therein and in the records of the board; such certificate shall be admitted in any of the courts of this state in lieu of the records of the board. The original books, records and papers of the board shall be kept at the office of the secretary-treasurer of said board, which office shall be at such place as may be designated by the board. The said secretary-treasurer shall furnish to any persons making application therefor a copy of any part thereof, certified by him as secretary-treasurer, upon payment of a fee of twenty-five cents per hundred words so copied, the said fee to belong to the secretary-treasurer.

(2) The secretary-treasurer shall give such bond as the board shall from time to time require.

(3) The board shall make an annual report of its proceedings to the governor and to the Florida state dental society together with a report of all moneys received and disbursed by the board pursuant to this chapter.

History.—§21, ch. 14708, 1931; CGL 1936 Supp. 3534(21); §28, ch. 20240, 1941; §7, ch. 22858, 1945; §7, ch. 57-181; (2), (3) n. by §19, ch. 61-471.

466.29 Injunctions against unlawful practice of dentistry, etc.—When it appears to the board that any person is practicing dentistry or dental hygiene in this state without a license, license certificate or renewal certificate, the board may, upon application to the proper court, be granted a temporary injunction directed to such person, enjoining further practice of dentistry or dental hygiene by him or her until such time as he or she shall furnish satisfactory proof that he or she has been duly licensed to practice dentistry or dental hygiene in this state, and that such license is still in full force and effect. A copy of the records certified by the secretary-treasurer, or a certificate of such officer showing that such person is not the then owner and holder of a valid license to practice dentistry or dental hygiene, shall be sufficient showing by the board that such person is practicing dentistry or dental hygiene in contravention of this chapter, and upon such showing by the Board, temporary injunction shall be issued by the court. If within the time set by the court such person has not satisfactorily proved that he or she is the then holder of a valid license, license certificate or renewal certificate to practice dentistry or dental hygiene, permanent injunction shall be issued. Such permanent injunction may be dissolved upon presentation to the court issuing same of a certificate from the secretary-treasurer of the board stating that the person enjoined is now the holder of a valid license, license certificate or renewal certificate.

History.—§29, ch. 20240, 1941.

466.30 Use of forged or invalid certificate; penalties.—Any person using or attempting to use as his or her own a diploma of a dental college or school or a license certificate, renewal certificate, conditional renewal certificate or laboratory registration certificate of another person, or a forged diploma or license certificate or renewal certificate, or conditional renewal certificate or laboratory registration certificate, or any forged identification, shall be deemed guilty of a felony, and upon conviction shall be subject to the same penalties of fine and imprisonment as are now made and provided for by the laws of this state for the crime of forgery.

History.—§30, ch. 20240, 1941; §8, ch. 57-181.

466.31 Sale of forged or invalid certificates; penalties.—Whoever sells or offers to sell a diploma conferring a dental degree, or a license certificate or renewal certificate or conditional renewal certificate or laboratory registration certificate granted pursuant to this chapter or prior dental practice laws, or procures such diploma or license certificate or renewal certificate or conditional renewal certificate or laboratory registration certificate with intent that it shall be used as evidence of the right to practice dentistry or dental hygiene or operate a dental laboratory as defined by law, by a person other than the one upon whom it was conferred, or to whom such license certificate or renewal certificate or conditional renewal certificate or laboratory registration certificate was granted, or with fraudulent intent alters such diploma or license certificate or renewal certificate or conditional renewal certificate or laboratory registration certificate or uses or attempts to use it when it is so altered, shall be deemed guilty of a felony, for which any person upon conviction shall be punished by a fine of not more than $1000 or by imprisonment in the state prison for not more than 5 years. The board may refuse to grant a certificate to practice dentistry or

dental hygiene or to operate a dental laboratory to any person found guilty of making a false statement, or cheating, or of fraud or deception either in applying for such certificate or in taking any of the examinations provided for herein.

History.—§31, ch. 20240, 1941; §9, ch. 57-181.

466.32 Expenses of board member to national association.—In order to maintain a high standard of administration of this chapter, the board may pay from its funds above authorized the expenses of not more than two of its members to the annual meetings of the American association of dental examiners, and also pay the annual membership dues in said association.

History.—§23, ch. 14708, 1931; CGL 1936 Supp. 7712(4); §32, ch. 20240, 1941; §103, ch. 26869, 1951; §4, ch. 29882, 1955; §20, ch. 61-471.

466.33 Enforcement of chapter; duty of board.—

(1) The board and its members and officers shall assist prosecuting officers in the enforcement of this chapter, and it shall be the duty of the board, its members and officers, to furnish the proper prosecuting officer with such evidence as it or they may ascertain, to assist him in the prosecution of any violation of this chapter, and the board is authorized for that purpose to make such reasonable expenditure from the funds in its hands as it may deem necessary in ascertaining and furnishing such evidence.

(2) The board shall be authorized to deputize agents, investigators or other dentists to enforce any of the provisions of this chapter or any rule or regulation promulgated by the board. Any agent, investigator or other person authorized by this chapter shall have all the powers in making arrests and entering premises as are given to all peace officers in this state insofar as it is necessary to assist him in carrying out the purpose and intent of this chapter.

History.—§24, ch. 14708, 1931; CGL 1936 Supp. 7712(5); §33, ch. 20240, 1941; (2) N. by §10, ch. 57-181.

466.34 Employment of unlicensed persons by dentist; penalty.—Every duly licensed and registered dentist who uses the services of any unlicensed person for the purpose of constructing, altering, repairing, or duplicating any denture, partial denture, bridge, splint, orthodontic or prosthetic appliance, shall be required to furnish such unlicensed person with a written work order in such form as shall be approved by the board of dental examiners, which form shall be dated and signed by such dentist, and shall include the patient's name or number with sufficient descriptive information to clearly identify the case for each separate and individual piece of work; said work order shall be made in duplicate form, the duplicate copy to be retained in a permanent file in the dentist's office for a period of two years, and the original to be retained in a permanent file for a period of two years by said unlicensed person in his place of business. Such permanent file of work orders to be kept by such dentist or by such unlicensed person shall be open to inspection at any reasonable time by the board or its duly constituted agent. Failure of the dentist to keep such permanent records of said work orders shall subject such dentist to suspension or revocation of his license to practice dentistry; failure of such unlicensed person to have in his possession a work order as above defined shall be prima facie evidence of a violation of this chapter and shall constitute and be punishable as a felony, for which any person upon conviction shall be punished by a fine of not more than $1,000 or by imprisonment in the state prison for not more than 5 years.

History.—§34, ch. 20240, 1941; §5, ch. 29882, 1955; §11, ch. 57-181; §21, ch. 61-471.

466.35 Soliciting or advertisements by unlicensed persons; revocation of license of dentist using services of unlicensed person.—

(1) Any unlicensed person, corporation, entity, partnership, or group of persons, who shall solicit or advertise by mail, card, newspaper, pamphlet, radio, television, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth, or for regulation of natural teeth, shall be guilty of a felony, for which any person upon conviction shall be punished by a fine of not more than $1,000 or by imprisonment in the state prison for not more than 2 years.

However, nothing in this section shall be construed to prevent the registered dental laboratory from maintaining a listing in the local telephone directory; however, such listing shall be limited to the laboratory's name, location, telephone number and business hours only. This listing may specify that the said dental laboratory accepts only work accompanied by a properly executed work order from a dentist licensed to practice in this state and holding a current renewal certificate.

(2) Whenever it shall be established to the satisfaction of the board that any duly licensed and registered dentist is guilty of knowingly using the services of any person violating any of the provisions of the foregoing subsection, the board shall suspend or revoke his license as provided for in this chapter.

History.—§35, ch. 20240, 1941; §12, ch. 57-181; §22, ch. 61-471.

466.36 Practicing dentistry under assumed name; penalties.—On and after the passage of this chapter, it shall be unlawful for any person or persons to practice or offer to practice dentistry under any name except his or her own proper name, which shall be the name used in his or her license certificate granted to him or her as a dentist as provided in this chapter, and unlawful to use the name of any company, association, corporation, clinic, trade name, or business name in connection with the practice of dentistry as defined in this chapter, provided, nothing herein contained shall be so construed

as to prevent two or more licensed dentists from associating together for the practice of dentistry, each in his or her own proper name. The violation of any of the provisions of this section by any dentist shall subject such dentist to suspension or revocation of his or her license.

History.—§§22, 25, ch. 14708, 1931; CGL 1936 Supp. 3534(22), 7712(3); §36, ch. 20240, 1941.

466.37 Dental hygienist; examination; license; license certificate.—No person shall practice as a dental hygienist in this state until such person has passed an examination by the board under such rules and regulations as it may deem fit and proper to formulate. The board shall issue licenses and license certificates as dental hygienists to those who have passed said examination in a manner satisfactory to the board, which license certificate shall be recorded as provided for in §466.15, and shall be posted and displayed in the office in which said hygienist is employed, but no person shall be entitled to such license and license certificate unless such person shall be a citizen of the United States, of good moral character, and a graduate of a dental hygiene school or college as approved by the board. Any person practicing dental hygiene in violation of the provision of this chapter shall be guilty of a misdemeanor.

History.—§30, ch. 14708, 1931; CGL 1936 Supp. 7712(7); §37, ch. 20240, 1941; §6, ch. 29882, 1955; §23, ch. 61-471.

466.38 Number of dental hygienists employed; work to be performed; revocation of licenses.—Dental hygienists may remove calculus deposits, accretions and stains from exposed surfaces of the teeth and from the gingival sulcus and expose dental x-ray films, make topical application of medicinal agents to the teeth for prophylactic purposes, remove and insert temporary dressings and generally clear the area after work has been performed by the dentist, but shall not perform any other operations on the teeth or mouth. Dental hygienists may perform their duties only in the office of a registered and licensed dentist and under the order and supervision of such dentist, or in public institutions which are approved by the board. No licensed dentist may employ more than two dental hygienists, but the state board of health and public institutions approved by the board may employ licensed dental hygienists under the supervision of a licensed dentist, and are not limited as to number that may be so employed. The board shall suspend or revoke the license of any dentist who shall permit any dental hygienist operating under his supervision to perform any operation other than that permitted under the provision of this chapter, and shall suspend or revoke the license of any dental hygienist found guilty of performing any operation other than those permitted under this chapter; but no order of suspension or revocation provided herein shall be made or entered except after a hearing by the board as provided in this chapter and such order shall be subject to judicial review as authorized by §466.25.

History.—§§27, 29, ch. 14708, 1931; CGL 1936 Supp. 3534(24), (26); §38, ch. 20240, 1941; §7, ch. 29882, 1955; §24, ch. 61-471.

466.39 Dental hygienist; renewal of licenses.—It shall be the duty of all licensed dental hygienists to be registered and have issued to them a renewal certificate annually by the board on or before October 1 of each year. The form, method and all provisions relating to the renewal of licenses of dentists as provided in §§466.17(1) and 466.18, shall apply to the annual registration and renewal of licenses of dental hygienists, except as to the annual renewal certificate fee which shall be ten dollars annually. All persons licensed to practice dental hygiene in this state shall record their license certificate in an office of a clerk of a circuit court in this state as provided in §466.15 for dentists.

History.—§31, ch. 14708, 1931; CGL 1936 Supp. 3534(28); §39, ch. 20240, 1941; §25, ch. 61-471; §2, ch. 63-334.

466.40 Dental hygienists; suspension or revocation of license; grounds.—The board shall suspend or revoke the license of any registered and licensed dental hygienist who is found guilty of using or attempting to use in any manner whatsoever any prophylactic lists, call lists, records, reprints or copies of same, or information gathered therefrom, of the names of patients who might have been served in the office of a prior employer, unless such names appear upon the bona fide call or prophylactic list of the present employer and was caused to so appear through the legitimate practice of dentistry as provided for in this chapter. The board shall also suspend or revoke the license of any licensed dentist who is found guilty of aiding or abetting or encouraging a dental hygienist employed by him to make use of a so-called prophylactic call list, or the calling by telephone or by use of written letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist formerly employing such hygienist. No order of suspension or revocation provided in this section shall be made or entered except after hearing by the board as provided in this chapter, and such order shall be subject to judicial review as provided by §466.25.

History.—§29, ch. 14708, 1931; CGL 1936 Supp. 3534(29); §40, ch. 20240, 1941; §26, ch. 61-471.

466.41 Dental internes; institutional dentists and nonprofit corporations; issuance and revocation of permits.—The board shall have the authority upon presentation of satisfactory credentials and under such rules and regulations as the board may prescribe, to issue a permit to a graduate of an approved dental school or college who has not been licensed or registered to practice dentistry in this state, to serve as a dental interne in state maintained and operated hospitals or institutions of Florida that may offer such a post or in such hospitals or institutions as shall be approved by

the board; provided such hospitals or institutions maintain a recognized staff of one or more licensed dentists. Such interne shall function under the supervision and direction of the dental staff of such hospitals. His work shall be limited to the patients confined to the hospital in which he serves, and he shall serve without fee or compensation other than that received in salary or other remuneration from such hospitals. The board shall have the power to revoke the permit of any such interne at any time upon the recommendation by the executive officer of the dental staff of the hospital or institution in which he serves or for any other reason which the board may deem justifiable.

The board shall have the authority to issue annual permits to unlicensed dentists to serve as institutional dentists, working under the direction and supervision of licensed dentists of this state in the tuberculosis hospitals or other institutions operated by the state, providing such permits be issued only to graduates of schools approved by the board and further subject to cancellation for any reason the board may deem justifiable.

The board shall have the authority, upon presentation of satisfactory credentials, and under such rules and regulations as the board may prescribe, to issue a permit to a nonprofit corporation chartered for one or more of the following purposes:

(1) Training and teaching dental assistants in the public schools of the state;

(2) Promoting research and training among duly licensed dentists in the state;

(3) Providing dental care for indigent persons.

Such nonprofit corporations shall function under the supervision and direction of the board. The board shall have the power to revoke the permit issued to any such corporations for any violation of any of the rules and regulations as prescribed by the board, or for any other reason which the board may deem justifiable. Such permits shall be granted and issued for a period of one year and shall be renewed only upon application and approval of the board, and upon a showing by the nonprofit corporation that it is and will comply with the rules and regulations and all provisions prescribed by the board. Nothing in this section shall be deemed to be in violation of §466.05 or §466.36, and where and if necessary this section shall be deemed an exception to §§466.05 and 466.36; provided however, that this shall be the only exception to said §§466.05 and 466.36.

History.—§41, ch. 20240, 1941; §8, ch. 29882, 1955; §27, ch. 61-471.

466.42 Penalties for violation of chapter.— Any person who shall practice dentistry or dental hygiene in this state within the meaning of this chapter without having first obtained and had recorded a license certificate from the board, shall be guilty of a felony and subject to imprisonment for not more than 2 years and a fine of not more than $1,000, or who violates any of the provisions of this chapter, the penalty for which is not herein specifically provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment in the county jail for not more than 12 months, or by both such fine and imprisonment, in the discretion of the court.

History.—§42, ch. 20240, 1941; §13, ch. 57-181.

cf.—§455.04, Who has duty of enforcement.
§775.06, Alternative punishment.

466.43 Dental college scholarships; how awarded.—

(1) There shall be awarded each fiscal year, beginning with the fiscal year commencing July 1, 1955, to persons selected by the state board of health in consultation with the Florida state board of dental examiners, ten scholarships for the study of dentistry leading to the attainment of the degree of doctor of dental surgery, or equivalent degree.

(2) To be eligible to receive a scholarship under these §§466.43-466.48, an applicant must:

(a) Have been a citizen and resident of this state for not less than five years prior to the date of his application; and

(b) Be able to meet the requirements and academic standards for admission to a fully accredited four year dental college approved by said board of dental examiners; and

(c) Shall furnish evidence satisfactory to the board of health that he does not otherwise have available to him sufficient financial resources to enable him to pursue such a course of study.

(3) A recipient of a scholarship under §§466.43-466.48 shall attend a fully accredited four year dental college approved by the said board of dental examiners and selected by the state board of health.

(4) Preference in the granting of the scholarships provided for herein shall be given to those applicants with the highest weighted scholastic averages in approved undergraduate colleges, provided they are persons of high integrity and character; and provided further that such applicants shall be found to have such qualities and attributes as shall give reasonable assurance of pursuing to completion the course of study for the attainment of the degree of doctor of dental surgery or equivalent degree.

(5) If in any one year there are not ten qualified applicants for the ten scholarships authorized for said year or if any application is made and granted for less than a four year scholarship, then the scholarships or any portion thereof authorized but not utilized during said year may be granted to any qualified applicants who have completed only a portion of their dental training; and if not utilized for this purpose, then said scholarships or any portion thereof shall be carried over and added to the scholarships which are authorized in succeeding years.

(6) No more than three of the scholarships provided for herein shall be awarded in any one year to applicants who are residents of the same county unless the aggregate number of qualified applicants from the remainder of the state for the same year shall be less than seven.

History.—§1, ch. 29806, 1955; (5), (6) by §1, ch. 57-214.

466.44 Dental college scholarships; value and expenditure.—The scholarships provided for herein shall cover the students' tuition, books, laboratory fees and equipment and other fees, supplies, board, room rent, and other necessary and reasonable expenses of attending dental school. In no event, however, shall a scholarship amount to more than one thousand dollars in value in any one year, nor more than four thousand dollars in value in its entirety.

History.—Comp. §2, ch. 29806, 1955.

466.45 Dental college scholarships; agreement to practice in locality designated.—Each recipient of a scholarship under §§466.43-466.48, shall enter into an agreement with the state board of health that he will, after the completion of his dental training, enter upon the practice of dentistry in a community or locality in this state designated by the state board of health and continue in such practice for a period of one year for each one thousand dollars of scholarship granted and utilized. If a recipient of a scholarship provided for herein fails to perform his agreement with the state board of health, he shall immediately forfeit his scholarship and be liable to the state for all scholarship payments he shall have received plus interest on each payment at the rate of eight per cent per annum compounded semiannually. If a recipient of a scholarship provided for herein practices dentistry in a community or locality designated by the state board of health for only a part of the total period of compensatory practice agreed upon, he shall forfeit and be liable to the state only for the amount granted him under such scholarship plus interest on each scholarship payment at the rate of eight per cent per annum compounded semiannually reduced by a credit at a rate of one thousand dollars plus interest thereon, per year for the time he shall have actually practiced in such locality or area. The attorney general shall institute proceedings in the name of the state for the purpose of recovering any amount due the state under §§466.43-466.48, from any scholarship recipient.

History.—§3, ch. 29806, 1955; §§2, 3, ch. 57-214; §28, ch. 61-471.

466.46 Dental college scholarships; state board of health to select list of communities needing dentists.—The state board of health shall determine the localities and communities within the state which do not have practicing therein a dentist, or a sufficient number of dentists, to meet the minimum needs of the inhabitants of such locality or community for the necessary services of a dentist; and shall compile a list of such communities and localities. However, every such community or locality shall have at least 1,000 inhabitants, according to the latest and best information as to such numbers. From such list, the state board of health shall designate the community or locality within which a scholarship recipient shall agree to practice dentistry pursuant to the provisions of §§466.43-466.48.

History.—Comp. §4, ch. 29806, 1955.

466.47 Penalty for violation of scholarship contract.—The failure of a recipient of a scholarship provided for herein to perform his agreement with the state board of health or to pay the amount for which he is liable hereunder shall constitute a ground for the revocation of his license to practice dentistry in this state, provided, however, such failure shall not be due to causes or conditions beyond the control of the recipient.

History.—§5, ch. 29806, 1955; §29, ch. 61-471.

466.48 Rules and regulations.—The state board of health shall have the authority to make reasonable rules and regulations, not inconsistent with §§466.43-466.47 for the carrying out of the provisions of said sections.

History.—§6, ch. 29806, 1955; §30, ch. 61-471.

466.50 Objects and purposes.—The purpose of §§466.50-466.58, and other applicable sections of this chapter, is to safeguard the public health by requiring that only qualified dental laboratories be permitted to operate in this state.

History.—§1, ch. 57-242; §31, ch. 61-471.

466.51 Dental laboratory defined. — The term dental laboratory as used in this chapter shall be deemed to include any person, firm or corporation who:

(1) Performs for a fee of any kind, gratuitously or otherwise, directly or through an agent or employee by any means or method, or who in any way supplies or manufactures artificial substitutes for the natural teeth, or who furnishes, supplies, constructs or reproduces or repairs any prosthetic denture, bridge or appliance to be worn in the human mouth or who in any way holds itself out as a dental laboratory;

(2) Excluded from the provisions of §466.52, shall be those individual dental laboratory technicians who construct or repair dental prosthetic appliances in the office of a licensed dentist for him only and under his supervision and work order.

History.—§2, ch. 57-242; §32, ch. 61-471.

466.52 Registration.—

(1) Every person, firm or corporation operating a dental laboratory in this state shall by January 1 of each year register with the board on forms to be provided by the board and pay to the board at the same time a registration fee of ten dollars for which the board, pursuant to §466.53, shall issue a registration certificate entitling the holder to operate a dental laboratory for a period of one year.

(2) Upon the failure of any dental labora-

tory operator to comply with subsection (1), the board shall notify him by registered mail, February 1, return receipt requested, at his last known address of such failure and inform him of the provisions of subsections (3) and (4).

(3) Any dental laboratory operator who has not complied with subsection (1) by March 1 of any year shall be required to pay a delinquency fee of twenty-five dollars in addition to the regular annual registration fee.

(4) The board is authorized to commence and maintain proceedings to enjoin the operator of any dental laboratory who has not complied with subsection (1) by March 1 of any year from operating a dental laboratory in this state until he has obtained a registration certificate and paid the required fees.

History.—§4, ch. 57-242; §33, ch. 61-471.

466.521 Ownership, address; change.—When the ownership or address of any dental laboratory operating in this state is changed, the owner thereof shall notify the secretary-treasurer of the board within thirty days of such change of ownership or address.

History.—§34, ch. 61-471.

466.53 Board of dental examiners. — The board of dental examiners shall not require an examination, but shall issue a registration certificate upon completion of the registration form and compliance with any rules promulgated by the board under §466.56.

History.—§5, ch. 57-242.

466.54 Periodic inspections required.—The board may require from the applicant for a registration certificate to operate a dental laboratory any information necessary to carry out the purpose of this chapter, and may require periodic inspection of all dental laboratories operating in this state. Such inspections shall include but not be limited to inspection of sanitary conditions and facilities on the premises.

History.—§6, ch. 57-242; §35, ch. 61-471.

466.55 Suspension and revocation. — The board may suspend or revoke the certificate of any dental laboratory registered under §466.52, after notice and hearing for failure to comply with the provisions of this chapter.

History.—§7, ch. 57-242; §36, ch. 61-471.

466.56 Rules.—The board may promulgate all rules necessary to enforce the provisions of this chapter pertaining to and regulating dental laboratories.

History.—§8, ch. 57-242; §37, ch. 61-471.

466.57 Violations.—It shall be unlawful for any person, firm or corporation to operate as a dental laboratory as defined, except those registered as provided in §466.52.

History.—Comp. §3, ch. 57-242.

466.58 Penalties.—Violation of any provision of this chapter as pertaining to and regulating dental laboratories shall constitute a misdemeanor for which any person on conviction shall be punished by a fine of not more than $1000 or by imprisonment in the county jail for not more than 12 months, or by both such fine and imprisonment, in the discretion of the court.

History.—§9, ch. 57-242; §38, ch. 61-471.

CHAPTER 467
ARCHITECTS

467.01 Florida state board of architecture; terms of members. — The governor shall appoint a Florida state board of architecture, to be composed of five members who are architects residing in the state, who have been engaged in the practice of architecture at least five years, whose duty it shall be to carry out the purposes of this chapter.

No person shall be eligible to appointment as a member of the Florida state board of architecture unless he shall be at the time of his appointment a citizen of the United States, a Florida resident, and a registered architect in this state, nor unless he shall have had at least ten years previous experience in the independent practice of architecture under his own name, of which five years shall have been within the state, or shall have had five years experience in such practice and not less than five years experience as a member of the faculty of the school or department of architecture at the university of Florida.

The terms of three of said members shall be in four year cycles from the date of the appointment of the first board; and term of the other two members shall be in four year cycles from a day two years subsequent to such appointment of the first board; each member shall hold over after the expiration of his term until his successor shall be duly appointed and qualified. Any vacancy occurring in the membership of the board shall be filled by the governor of the state for the unexpired term of such membership. The governor may remove any of the members of said board for inefficiency or neglect of duty.

History.—§1, ch. 6951, 1915; RGS 2229; CGL 3562; §2, ch. 20651, 1941.

467.02 Organization of board; members to take oath of office; bond of treasurer.—The members of the state board of architecture shall, before entering upon the discharge of their duties, and within thirty days after their appointment, take and subscribe an oath before any officer authorized to administer oaths in the state, for the faithful performance of duty, and file same with the secretary of state and they shall, as soon as organized, and annually thereafter in the month of January, elect from their number a president and a secretary, who shall also be treasurer. The treasurer shall file a bond for the penal sum of one thousand dollars with the secretary of state, said bond to be accepted and approved by the secretary of state before the treasurer shall enter upon the duties of his office.

History.—§2, ch. 6951, 1915; RGS 2230; CGL 3563; am. §7, ch. 22858, 1945.

467.03 Board to adopt rules and regulations; seal; record; quorum.—The Florida state board of architecture shall have power to sue and be sued in its official name as an agency of the state and to make such rules and regulations as may be necessary to govern its proceedings and regulate the practice of architecture under the laws of the state.

The board shall adopt a seal, and the secretary shall have the care and custody thereof, and shall keep a record of the proceedings of the board, which shall always be open to public examination.

Three members of the board shall constitute a quorum.

History.—§3, ch. 6951, 1915; RGS 2231; CGL 3564; §3, ch. 20651, 1941.

467.04 Board expenses; disposition of fees; compensation of secretary-treasurer.—All moneys collected by the board from fees prescribed or authorized to be charged by this chapter, shall be received and accounted for by the board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. The expenses of the board and the officers thereof, and of the examinations held by the board, and of any other matter in connection with the provisions of this chapter, shall be paid from the moneys collected under the provisions of this chapter. Members of the board shall receive ten dollars per day, or any part

of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. The secretary-treasurer of the board shall receive such annual compensation as shall be provided by the board, by resolution adopted by it at a regular meeting.

History.—§4, ch. 6951, 1915; RGS 2232; CGL 3565; §104, ch. 26869, 1951; §18, ch. 28215, 1953; §12, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

467.06 Special meetings of board; rules for examination of applicants.—Special meetings of the Florida state board of architecture shall be called by the secretary upon the request of any two members, by giving at least five days' notice in writing of the meeting to each member. The board shall adopt rules and regulations for the examination and registration of applicants desiring to practice architecture in accordance with the provisions of this chapter and may amend, modify and repeal such rules and regulations from time to time.

History.—§6, ch. 6951, 1915; RGS 2234; CGL 3567.

467.07 Rules and regulations and names of officers to be published.—The Florida state board of architecture shall immediately upon the election of each officer thereof, and upon adoption, repeal or modification of its rules of government or its rules and regulations for registrations of applicants for registration, file with the secretary of state, and publish in at least one daily newspaper in the state, the names and post office address of each officer, and a copy of such rules and regulations, or the amendments, repeal or modification thereof.

History.—§7, ch. 6951, 1915; RGS 2235; CGL 3568.

467.08 Rules governing examinations.—Provision shall be made by the Florida state board of architecture for holding examinations at least twice in each year, of applicants for registration to practice architecture, if there shall be any such application. All persons now registered to practice architecture shall continue to be so registered but all architects must apply for and obtain annual renewals of their registrations as provided by law. Upon payment of a fee, new applicants may be admitted by the board upon examination. The scope of the entrance-to-practice examination shall be such as to determine the qualifications of the applicant to practice architecture and shall cover such technical and professional subjects as relate to architecture and the basic arts and sciences, a knowledge of which is material to the proper understanding, application and practice of the principles of architecture. Any applicant for examination shall establish by satisfactory evidence to the board with his application that he is twenty-one years of age, that he is a citizen of the United States, or has pending a declaration of intention so to become, that he is of good moral character, that he is a graduate of an accredited high school or has education equivalent thereto, and that either: (1) he is a graduate of a school or college of architecture appearing upon the list of approved schools and colleges of architecture as adopted and published by the board in its rules, with graduation therefrom evidenced by a diploma setting forth the applicant's degree, with a minimum of one year of diversified training in offices of registered practicing architects, or (2) that he has had seven years of diversified training in offices of registered practicing architects, or (3) that he has had training which shall be found by the board to be fully equivalent of either (1) or (2) above. Time spent engaging in architectural activities as a part of military duties while in the armed forces of the United States shall apply towards the periods of diversified training required herein; provided any person enrolled as a student of architecture in any school or college of architecture appearing upon the list of approved schools and colleges of architecture as now adopted and published by the board in its rules and regulations on the date this law becomes effective and also so approved at the time of graduation from such school and who, within one year after the date this law becomes effective, in writing, notifies the board of his enrollment for study and his intention to apply for registration, shall be eligible under the present provisions of §467.08, upon receiving a diploma from said school, to apply for examination and registration under said section, upon complying with the provisions and qualifications thereof; and provided that any applicant, in proper form, filed with and accepted by the board for consideration at the time this law becomes effective shall be subject only to the present requirements of §467.08. All examinations by the board shall be written except that in the case of an architect heretofore registered as such in another state or country who shall establish to the board that he has been engaged for a period of at least ten years in the independent lawful practice of architecture under his own name the board may examine such applicant by either written examination or oral examination or part written and part oral. If, upon any examination, any applicant shall be found by the board to be qualified and competent to engage in the practice of architecture then upon the payment of an additional fee of twenty dollars, certificate of registration shall be issued to such applicant authorizing him to practice the profession of architecture in this state to and including the July 31, next, except that a registrant whose certificate of registration is dated less than six months previous to July 31, shall not be required to renew his certificate until July of the next year, subject to the provisions of law regulating the practice of such profession, and thereafter provided such certificate shall be properly renewed as required by law; provided, however, that no certificate shall be

issued either with or without an examination to any corporation, partnership, firm or association to practice architecture in this state, but all certificates shall be to individual persons.

All examinations shall be prepared and conducted by or under the direction and supervision of the board, and due notice of the time and place of the holding of such examinations shall be published, as in the case provided for the publication of the rules and regulations thereof.

History.—§8, ch. 6951, 1915; RGS 2236; CGL 3569; §5, ch. 20651, 1941; §1, ch. 29727, 1955.

467.09 Certain persons exempt from registration; inter-professional privileges between architects and professional engineers defined.— No person shall be required by this or any other state law regulating the practice of architecture to qualify as an architect in order to make plans and specifications for or supervise the erection, enlargement or alteration of any building upon any farm for the use of any farmer, irrespective of the cost of such building, or any one- or two-family residence building costing less than ten thousand dollars or any domestic outbuilding appurtenant to any such one- or two-family residence regardless of costs, or of any other type building costing less than five thousand dollars (except schools, auditoriums, or other buildings intended for the mass assemblage of people). Nor shall anything in this or any other state law be held to prevent registered professional engineers or their employees or subordinates under their responsible supervising control from performing architectural services which are purely incidental to their engineering practice or registered architects or their employees or subordinates under their responsible supervising control from performing engineering services which are purely incidental to their architectural practice. Provided that no professional engineer shall practice architecture or use the designation "architect" or any term derived therefrom, and no architect shall practice professional engineering or use the term "engineer" or any term derived therefrom. Otherwise, any person who shall be engaged in the planning or design for the erection, enlargement or alteration of buildings for others or furnishing architectural supervision of the construction thereof shall be deemed to be practicing architecture and be required to secure a certificate and all annual renewals thereof required by the laws of this state as a condition precedent to his so doing.

The term "building" in this chapter shall be understood to be a structure, consisting of foundations, walls and roof, with or without the other parts. Nothing contained in this chapter shall be construed to prevent any employee of an architect from acting under his instruction, control and supervision, in any capacity whether paid by the architect or the owner.

History.—§9, ch. 6951, 1915; RGS 2237; CGL 3570; §1, ch. 20651, 1941.

467.10 Who entitled to a certificate; display; to be recorded.—In the case of a copartnership of architects, each member must hold a certificate to practice. Each person holding certificate to practice architecture in this state, shall post such certificate in a prominent place in his place of business and shall cause such certificate to be recorded in the secretary of state's office upon payment of a fee of one dollar to the secretary of state. Failure to post his certificate or to have the same recorded, shall be deemed sufficient cause for revocation of said certificate.

History.—§10, ch. 6951, 1915; RGS 2238; CGL 3571.

467.11 Admission without examination. — Hereafter no person shall be admitted to practice architecture in this state without an examination except in accordance with one of the following procedures: (1) That a certificate of registration shall be issued upon filing of application and payment of the same fees as if qualified by examination to a person who has passed a standard examination of the national council of architectural registration boards and who furnishes satisfactory evidence of continued honorable professional conduct after the passing of such examination. (2) That the board, upon application and the payment of the same fees as if qualified by examination shall issue to the person so applying a certificate of registration if such person is a citizen of the United States and holds an unexpired certificate of registration issued to him by any state, territory or possession of the United States, or by any country, provided that the requirements for the registration of architects under which said certificate of registration was issued are found by the board to be the equivalent of the requirements for registration in this state by examination; and provided further that the applicant submits satisfactory evidence of his present ability and of his integrity.

History.—§11, ch. 6951, 1915; RGS 2239; CGL 3572; §6, ch. 20651, 1941; §2, ch. 29727, 1955.

467.12 Annual registration; fee. — Every registered architect who desires to continue to practice his profession in this state shall annually during the time he shall continue to practice, pay to the secretary of the Florida state board of architecture during the month of July of each year an annual registration fee in such amount as the Florida state board of architecture may in its discretion determine, except as provided in §467.08; provided, however, that such registration fee shall not exceed twenty-five dollars; and the secretary shall thereupon issue to such registered architect a certificate of renewal of his registration for a term of one year. Upon failure to have his certificate renewed during the month of July in each and every year, except as provided in §467.08, the holder thereof shall have his certificate revoked, but the failure to renew said registration in apt time shall not deprive him of the right to renewal upon payment of said fee; provided, his application for rein-

statement is made within one year after the expiration of his certificate.

History.—§13, ch. 6951, 1915; RGS 2240; CGL 3573. Am. §1, ch. 25008, 1949; §3, ch. 29727, 1955.

467.13 Filing and distribution of roster; registration made condition precedent to obtaining occupational license.—No roster of architects need be published by the board hereafter, but annually the secretary of the board shall prepare a roster showing the names and business addresses of all registered architects and file the same in the office of the secretary of state and furnish a copy to each registered architect. A copy shall also be furnished without charge upon the request of any public official of this state, including any state, county or municipal building inspector or commissioner. Any person applying to the licensing official of any county, city, town or village for an occupational license to practice architecture shall at the time of such application exhibit to such licensing official satisfactory evidence under the seal of the Florida state board of architecture and the hand of its secretary that such applicant possesses a registration certificate and any required annual renewal thereof and no such occupational license shall be granted until such evidence shall be presented, any provision of any special act or general act notwithstanding.

History.—§7, ch. 20651, 1941.

467.14 Revocation of certificate; reinstatement; procedure, process, attorneys and counsel.—Architect's certificate issued in accordance with the provisions of this chapter shall remain in full force until revoked for cause as provided in this chapter. Any architect's registration certificate and current renewal may be suspended for a period not exceeding twelve months, or may be revoked, by the unanimous vote of the members of the board sitting in any hearing, provided the members so sitting shall constitute a quorum of the board, for gross incompetency, or negligence in the construction of buildings, or for a dishonest practice or practices on the part of the holder thereof as an architect, or for affixing or permitting to be affixed his seal or his name to any plan, specification, drawing or other related document which was not prepared by him or under his responsible supervising control, or for using his seal or doing any other act as an architect at a time when his certificate of registration is suspended or at a time when current renewals have not been obtained in conformity with §467.12, or on conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence, for wilfully misleading or defrauding any person employing him as an architect, or for the violation of this or any other law of this state relating to the practice of architecture or any lawful rule or regulation made by the board pursuant to law, provided, that the accused certificate holder shall have had twenty days notice of the charge against him and of the time and place of the meeting of the board for the hearing and determination of such charge. At such hearing the accused shall have the right to cross-examine witnesses against him, to produce witnesses in his defense and to appear personally or by counsel. In the event of suspension or revocation the secretary of the board shall give notice to the secretary of state, who shall duly cancel the recordation of such registration in his office. The Florida state board of architecture under the hand of its secretary and seal of the board, may require the production of books, papers or other documents and may issue subpoenas to compel the attendance of witnesses to testify and to produce such books, papers or other documents in their possession before the board or any member thereof relevant to any hearing or to any proceeding concerning any violation of laws regulating architects or the practice of architecture, said subpoenas to be served by the sheriff of the county where the witness resides or may be found. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or to produce any books, papers or other documents required to be produced, the board may present its petition to the circuit court of the county wherein such person was served with subpoena setting forth the facts, whereupon such court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena or show cause why he fails to obey the same, and unless said person shall show sufficient cause for failing to obey the same, the court shall forthwith direct such person to obey the same and upon his refusal to comply he shall be adjudged in contempt of court and punished therefor, as the court may direct. In any judicial proceeding to which the board may be a party, the board shall be entitled to the services of the attorney general of this state and of the several state's attorneys and assistant state's attorneys in any circuit where such litigation may be. The board shall also have power to secure such other legal advice and services as may be necessary or proper for the conduct of its affairs.

The person whose certificate of registration was revoked may have a new certificate of registration issued to him by the secretary of said board upon the certificate of said board, issued by them upon satisfactory evidence for proper reasons for his reinstatement, and upon payment to the secretary of a fee of ten dollars. The person whose certificate of registration is suspended shall have his certificate of registration reinstated by the board at the end of the period of his suspension.

History.—§14, ch. 6951, 1915; RGS 2241; CGL 3574; §9, ch. 20651, 1941; §1, ch. 26938, 1951.
cf.—§30.23 Fees of sheriffs and constables.

467.15 Seal of architect.—Every registered architect shall have a seal, which must contain the name of the architect, his place of business, and the words "Registered Architect, State of Florida", with which he shall stamp

all drawings and specifications issued from his office for use in this state.

No architect shall affix or permit to be affixed his seal or his name to any plan, specification, drawing or other related document which was not prepared by him or under his responsible supervising control, nor shall any architect use his seal or do any other act as an architect unless holding at the time a certificate of registration and all required renewals thereof.

History.—§15, ch. 6951, 1915; RGS 2242; CGL 3537; §8, ch. 20651, 1941.

467.16 Report of receipts and expenditures made to governor.—Annually, within the first week of July, the secretary of the board shall make to the governor of the state a complete statement of the receipts and expenditures of the board, attested by affidavit of the president and secretary, and a complete report of the transactions of the board with such recommendations for the advancement and betterment of the profession as it may think best.

History.—§16, ch. 6951, 1915; RGS 2243; CGL 3576. Am. §1, ch. 25013, 1949.

467.17 Penalty for violations.—It shall be a misdemeanor punishable as provided by law for any person to practice architecture in this state (except as exempted in §467.09) or to use the title "architect" or to use or display any title, sign, word, card, advertisement, or other device or method to indicate that such person practices or offers to practice architecture or is an architect, without being registered as an architect and having a certificate of registration then in force unless exempted therefrom by the provisions of law; or to give false testimony or knowingly offer forged evidence to the board or any member thereof with the intent of deceiving the board or any member thereof, or of obtaining registration or a renewal certificate of registration; or to falsely impersonate any registered architect; or to use any expired or revoked certificate of registration; or to violate the provisions of this or any other law of the state relating to the registration of architects.

History.—§12, ch. 6951, 1915; RGS 5539; CGL 7711; §10, ch. 20651, 1941.

467.18 Civil proceedings.—

(1) As cumulative of any other remedy or criminal prosecution, whenever it shall appear to the Florida state board of architecture that any person is or has been violating any of the provisions of this chapter, or the lawful rules, regulations or orders of the board, or any of the laws of the state relating to architecture, the said board may file an application in its own name, or a proceeding by mandamus, in the name of the state, on its own relation, and by its counsel, alleging the facts, and praying for a temporary restraining order, an injunction and permanent injunction, or writ of mandamus against such person, restraining him from violating, or disobeying or commanding him to obey such law, order, rule or regulation.

(2) Upon proper application, and showing that such person is not registered, or that a renewal certificate has not been applied for, or that registration has been denied, revoked or suspended, or that the law, order, rule or regulation has been or is about to be violated or disobeyed, which showing may be made by affidavit, the court wherein the proceeding shall have been filed, shall issue a temporary restraining order or injunction, or alternative writ of mandamus, and, upon final hearing, shall grant and issue an injunction including mandatory injunction, or a peremptory writ of mandamus, upon finding the truth and sufficiency of the allegations of the bill or petition. The court may enforce said injunction or writ by punishment for contempt, and by such other writs and process, mesne or final, as are permitted to circuit courts, and shall make such other orders as its discretion and the rules shall require. Such injunction or writ may be limited in time, perpetual, or conditional, as may be necessary and proper to the enforcement of this chapter, or the lawful rules, regulations or orders of the board, or the law of the state relating to architecture.

History.—§1, ch. 28071, 1953; §2, ch. 29737, 1955.

CHAPTER 468

OPERATORS OF MOVING PICTURE MACHINES

468.01 Licenses required; application of chapter.—Any person engaging or working at the business of operating or assisting in the operation of any cinematograph or similar apparatus commonly known as moving picture machines, in any city in this state shall be required to obtain a license.

The provisions of this chapter shall not apply to cities and towns of less than six thousand inhabitants.

History.—§1, ch. 6955, 1915; RGS 2244; CGL 3577.
cf.—Ch. 521, Exhibition of motion pictures.

468.02 Board of examiners; qualifications.—The mayor of each city in the state shall appoint a board of examiners and license commissioners to be composed of three members; one of whom shall have some knowledge of electricity; one an expert operator of moving picture machines; and, the third an electrical inspector or building commissioner employed by the city.

History.—§2, ch. 6955, 1915; RGS 2245; CGL 3578.

468.03 Examination of applicants; fee.—All applications for license accompanied by a fee of one dollar shall be made to the board of examiners and each applicant shall at any time and place that the board shall designate, be required to pass an examination as to his qualifications as said board may direct. The examination may be made in whole or in part, in writing, but shall be of a practical and elementary character and sufficiently strict to test the qualifications of the applicant as to his knowledge of electricity.

History.—§3, ch. 6955, 1915; RGS 2246; CGL 3579.

468.04 Issuance of license.—A license good for one year from date of issuance shall be issued to every operator who successfully passes the required examination. Any operator failing to pass said examination shall have the fee returned to him, and his employer shall be notified by the board of examiners.

History.—§4, ch. 6955, 1915; RGS 2247; CGL 3580.

468.05 Qualifications of operator and assistant.—It is unlawful for any proprietor, owner, or manager of any theater or moving picture show in any city, to employ or have in his employ, any operator or assistant operator, on a moving picture machine who is not over eighteen years of age, and who has not successfully passed the examination and received a license as required by this chapter. No operator shall be granted a license as operator who has not had at least one year practical experience on moving picture machines and no person shall be granted an assistant license who has not served under an experienced operator for one year prior to making application for assistant license. All machines shall be under the care and supervision of one person holding an operator's license, who shall be responsible for the proper handling of the machine by said assistant. The provisions of this section shall apply to owners and managers who operate their own machines, who are required to be in possession of an operator's license.

History.—§5, ch. 6955, 1915; RGS 2248; CGL 3581.

468.06 Inspection of machines.—One member of the board of examiners or some person designated by said board shall make an inspection of every moving picture machine in the city at least three times a year and report to the board on blanks provided, the condition of electrical connections, name of operator and each assistant, and make an examination of each license issued.

History.—§7, ch. 6955, 1915; RGS 2249; CGL 3582.

468.07 Appropriation by city.—A sufficient appropriation shall be made by the city council or commission whose duty is to appropriate such funds for the proper administration of the provisions of this chapter, for the purposes and use of the board of examiners.

History.—§8, ch. 6955, 1915; RGS 2250; CGL 3583.

468.08 Violation of regulations as to operating moving picture machine.—Any person violating any of the provisions of this chapter, either as operator or manager, shall be deemed guilty of a misdemeanor and be subject to a fine not exceeding one hundred dollars for each and every violation thereof, or in default of the payment of said fine be imprisoned not exceeding ninety days.

History.—§6, ch. 6955, 1915; RGS 5541; CGL 7718.

CHAPTER 469

PLUMBERS

469.01 Plumber's certificate; chapter not applicable to cities of less than seven thousand five hundred population. — Any person engaged in or working at the business of plumbing in cities of seven thousand five hundred population or more in this state, either as master plumber or employing plumber or as journeyman plumber, shall first receive a certificate thereof in accordance with the provisions of this chapter.

History.—§1, ch. 6944, 1915; §1, ch. 7312, 1917; RGS 2251; CGL 3587, 3588.

469.02 Application for certificate; examination.—Any person desiring to engage in or work at the business of plumbing, either as a master plumber or employing plumber or as a journeyman plumber, in cities having a population of seven thousand five hundred or more and a system of water supply or sewerage, shall make application to the board of examiners provided for in this chapter, at such time and place as said board may direct. Said examinations may be made in whole or in part in writing and shall be of a practical and elementary character sufficiently strict to test the qualifications of the applicant.

History.—§2, ch. 6944, 1915; §2, ch. 7312, 1917; RGS 2252; CGL 3589, 3590.

469.03 Board of examiners; qualifications; terms of office; compensation.—There shall be in every city of seven thousand five hundred inhabitants or more, a board of examiners of plumbers, consisting of three members, one of whom shall be chairman of the board of health; a second member, who shall be a master plumber, and a third member, who shall be a journeyman plumber. Said second and third members shall be appointed by the appointing power of said city or town as provided by charter or ordinance for the term of one year from the first day of January in the year of appointment, thereafter annually before the first day of January, and shall be paid from the treasury of said city the same as other officers, in such sum as the authorities may designate.

History.—§3, ch. 6944, 1915; §3, ch. 7312, 1917; RGS 2253; CGL 3591, 3592.

469.04 Examination of applicants; fees, etc.—The board shall, as soon as may be after their appointment, meet, and shall then designate the times and places for examination of all applicants desiring to engage in or work at the business of plumbing within their respective jurisdiction. Said board shall examine said applicants as to their practical knowledge of plumbing, house drainage, and plumbing ventilation, and, if satisfied with the competency of such applicants, shall thereupon issue a certificate to such applicant authorizing him to engage in or work at the business of plumbing, either as master plumber or employing plumber, or as a journeyman plumber. The maximum fee for a master plumber or employing plumber shall be twenty five dollars, and for a journeyman plumber shall be fifteen dollars. Said certificate shall be valid for the term of one year, but the same may be renewed if application for renewal is made to said board not less than thirty days before the expiration of said certificate. The fee for renewals shall be one dollar. All moneys shall be paid into the city or town treasury for the use of said city or town.

History.—§4, ch. 6944, 1915; §4, ch. 7312, 1917; RGS 2254; CGL 3593, 3594; am. §1, ch. 28035, 1953.

469.05 Cities to provide rules for construction of all plumbing; plumbing inspector; qualification; reports to city board of health.—

(1) All cities or towns in this state; and within the provisions of this chapter shall provide by ordinance, rules and regulations for the construction and maintenance of all plumbing and drainage placed in or on any building or the premises thereof in such city or town, and no work of this character shall be done unless a permit be issued therefor, excepting the repairing of leaks. The term plumbing as used in this section shall not include the installation and maintenance of portable water softening units and no ordinances, rules or regulations adopted by cities or towns shall prevent the installation and maintenance of portable water softening units by licensed operators of water softening services.

(2) Said cities or towns shall provide for the appointment or election of a plumbing inspector and such assistants as are necessary, but said inspector and assistants must be practical plumbers of not less than ten years' experience, who shall see that all rules and regulations touching plumbing are faithfully and diligently observed and executed.

(3) The plumbing inspector shall preside at all meetings of the examining board of plumbers and shall have the deciding voice and vote in all matters connected with the examination of applicants and granting of certificates, whenever the remaining members of said board are unable to agree. The plumbing department of every city or town embraced in this chapter, consisting of the examining board of plumbers, the plumbing inspector and his assistants, shall be

under the supervision of the board of health of said city or town, and the plumbing inspector shall make a complete report of this department to said board of health at the end of each year, and oftener as may be required by said board, or provided for by ordinance.

History.—§5, ch. 6944, 1915; §5, ch. 7312, 1917; RGS 2255; CGL 3595, 3596; §1, ch. 25395, 1949; (1) a. by §1, ch. 61-207.

469.07 Penalty for violation of chapter.—Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five dollars nor exceeding fifty dollars for each and every violation thereof.

History.—§6, ch. 7312, 1917; RGS 5671; CGL 7876.

CHAPTER 470

FUNERAL DIRECTORS AND EMBALMERS

470.01 Definitions.—

(1) For the purpose of this chapter, the term "embalming" shall be construed to mean the disinfection, preservation or the attempted disinfection or preservation of the dead human body by the application of chemicals, externally or internally, or both, or by any other means whatsoever.

(2) The term "embalmer," as used in this chapter, shall be construed to mean a person licensed to practice the profession of embalming under the laws of the state.

(3) The term "funeral directing," as used in this chapter, shall be construed to mean the profession of directing or supervising funerals for profit, or the profession of preparing dead human bodies for burial by means other than embalming, or the disposition of dead human bodies, or the provision or maintenance of a place for the preparation of dead human bodies.

(4) The term "funeral director," as used in this chapter, shall be construed to mean a person licensed to practice the profession of funeral directing under the laws of the state, or one who meets the public, displays and sells funeral supplies, plans details of funeral services with members of the family and minister, and directs and supervises such services, completes financial arrangements for funerals, or uses in connection with the profession of funeral directing the words or terms "funeral director," "undertaker," "mortician," or any other word or term from which can be implied the practicing of the profession of funeral directing or the holding out to the public that one is engaged in the profession of a funeral director.

(5) The term "cemetery," as used in this chapter, shall be construed to mean any one or a combination of more than one of the following, in a place used, or intended to be used, and dedicated for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematorium, or a crematory and columbarium, for cinerary interments.

(6) The term "funeral home," "mortuary," or "funeral establishment," operated by anyone holding himself out to be a funeral director, as used in this chapter, shall be construed to be a place at a specific street address or location where the profession of funeral directing and embalming are practiced in the care and preparation for burial or transportation of dead human bodies, and consisting of:

(a) A chapel or parlor in which funeral services may be conducted.

(b) A preparation room equipped with a sanitary floor and necessary drainage and ventilation and containing necessary instruments and

supplies for the preparation and embalming of dead human bodies for burial or transportation.

(c) A display room containing a stock of caskets and funeral supplies.

(7) As used herein, the word "board" shall be construed to mean and refer to the state board of funeral directors and embalmers.

History.—§§1, 24, ch. 17950, 1937; CGL 1940 Supp. 3599(1); am. §1, ch. 22617, 1945.
cf.—§626.0629, Collecting insurance premiums; advertising, etc., prohibited.

470.02 State board of funeral directors and embalmers; terms of office.—

(1) A state board of funeral directors and embalmers, to consist of seven members to be appointed by the governor with the advice and consent of the senate, is created. Such board shall consist of the state health officer and six practical and practicing, licensed funeral directors and embalmers who, at the time of appointment, shall have been in the active practice of the profession of funeral directing and embalming in the state for five years immediately preceding such appointment. The first appointments to be made under this chapter shall be as follows: One member of said board shall be appointed for a term of one year; one member of said board shall be appointed for a term of two years; two members of said board shall be appointed for a term of three years; and two members of said board shall be appointed for a term of four years; and all appointments made thereafter shall be for a term of four years; except appointments to fill unexpired terms, which shall be for the remainder of such terms only. The governor shall, under this chapter, appoint successors to the members of the present and existing board in the order in which their several commissions expire. In making such appointments one of the members of said board shall be a resident of the state and shall represent the state at large; one of the members of said board shall be a resident of that part of the state composed of Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, Taylor, Hamilton, Suwannee, Lafayette, and Dixie counties; one of the members of said board shall be a resident of that area of the state composed of Levy, Gilchrist, Columbia, Baker, Union, Bradford, Alachua, Nassau, Duval, Clay, St. Johns and Putnam counties; one of the members of said board shall be a resident of that part of the state composed of Marion, Flagler, Volusia, Lake, Seminole, Orange, Osceola and Brevard counties; one of the members of said board shall be a resident of that part of the state composed of Citrus, Sumter, Hernando, Pasco, Pinellas, Hillsborough, Polk, Manatee, Hardee, Sarasota, DeSoto, Highlands, Charlotte, Lee and Glades counties; one of the members of said board shall be a resident of that part of the state composed of Indian River, Okeechobee, St. Lucie, Martin, Hendry, Palm Beach, Collier, Broward, Dade and Monroe counties.

(2) The said board shall have the right to establish and maintain an executive office at a place designated by the board, which designated place may be changed in the discretion of the board.

(3) The board shall have the power to employ, and at its pleasure discharge, an executive secretary, attorneys and such field representatives as may be necessary to enforce the provisions of this chapter.

History.—§2, ch. 17950, 1937; CGL 1940 Supp. 3599(2); am. §2, ch. 22617, 1945; am. §7, ch. 24337, 1947.

470.03 Oath and commission of board members.—Every member of the board, after appointment and before entering upon his duties, shall make oath before some officer competent to administer oaths, that he is legally qualified to become a member of said board under the provisions of this chapter, and that he will faithfully perform the duties of such office. Thereupon, the governor shall deliver to each such person so appointed to membership on the board a commission or certificate of appointment, which commission or certificate shall be filed by said member with the secretary of the board.

History.—§3, ch. 17950, 1937; CGL 1940 Supp. 3599(3).

470.04 Seal; rules and regulations.—The board shall adopt a common seal which may be altered as often as said board may desire and may adopt and enforce reasonable rules and regulations relating to:

(1) The practice of the profession of embalming.

(2) The practice of the profession of funeral directing.

(3) The sanitary condition of funeral homes, mortuaries and funeral establishments where the profession of embalming and funeral directing is carried on, with particular regard to plumbing, sewerage, ventilation and equipment.

(4) Carrying out generally the various provisions of this chapter for the protection of the peace, health, safety, welfare and morals of the public.

History.—§4, ch. 17950, 1937; CGL 1940 Supp. 3599(4); am. §3, ch. 22617, 1945.

470.05 Meetings of board; quorum; president pro tempore. — The board shall hold at least one meeting each year for the purpose of organization and for the transaction of routine business under this chapter, and the transaction of such other business as may be lawful. It may hold special meetings as often as a proper and efficient discharge of its duties may require, all such special meetings to be called by the president of the board, or by any three of its members. The time of its regular annual meeting shall be fixed by the rules or by-laws adopted by the board and its by-laws shall provide for the giving of due and timely notice to all members of the board of the time and place of the holding of all special meetings. A majority of the members of said board shall constitute a quorum to do business but fewer than a quorum may adjourn to a fixed time and place and notify the other members thereof of such adjourn-

ment. At any meeting at which a quorum may be present and the president of the board may be absent, the board may proceed to organize and transact business by selecting a president pro tempore.

History.—§5, ch. 17950, 1937; CGL 1940 Supp. 3599(5).

470.06 Officers of board; compensation and expenses; how paid.—The board at its annual meetings shall organize and elect from its members a president and a secretary-treasurer. Such officers shall serve for a period of one year and until their successors are elected and qualified. The president and secretary-treasurer of the board shall receive a just and fair salary for services required and rendered, to be fixed by the board; all other members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year. All members of the board shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. All expenses necessarily incurred by the secretary-treasurer in the regular performance of his duties together with all expenses, salaries and per diem of said board shall be paid pursuant to the provisions of §215.37, upon vouchers to be signed by the secretary-treasurer and approved by the president of the board.

History.—§6, ch. 17950, 1937; CGL 1940 Supp. 3599(6). §105, ch. 26869, 1951; §19, ch. 28215, 1953; §13, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriation, maximum; adjustment of budgets; state budget commission.

470.07 Applicant for license; examination.—Any person wishing to obtain the right to practice funeral directing or embalming in this state who has not heretofore been licensed so to do shall, before it is lawful for him to practice funeral directing or embalming in this state, make application to the board upon such form and in such manner as shall be prescribed by the board, and obtain a license from said board. Before issuing a license to practice funeral directing or embalming in this state, the board shall examine the applicant as to his qualifications to practice funeral directing or embalming as provided in this chapter.

History.—§7, ch. 17950, 1937; CGL 1940 Supp. 3599(7). am. §4, ch. 22617, 1945.

470.08 Qualifications of applicants.—

(1) No applicant shall be qualified to be examined by the board for license as an embalmer unless he has the following qualifications:

(a) He shall be a bona fide resident of the state.

(b) He shall be over the age of twenty-one years.

(c) He shall have completed a full prescribed course in a standard high school, or a course of education equivalent thereto.

(d) He shall have a good moral character.

(e) He shall have had three years of practical training and instruction as an apprentice under a regular licensed and practicing embalmer holding a Florida state license, and shall have embalmed at least fifty dead human bodies, and shall have attended a regular nine months' course of instruction in a reputable college of embalming approved by the board, in which the following subjects are covered: Anatomy, physiology, chemistry, the principles and methods of embalming, restorative art, bacteriology, public health and sanitation. He shall further be vouched for by two funeral directors duly licensed under the terms of this chapter who are licensed embalmers and who are familiar with his reputation and character. Provided, however, that the requirements of apprenticeship set forth in this subparagraph shall not apply to any person who has served one year of practical training and instruction as an apprentice under a regular licensed and practicing embalmer holding a Florida state license and who has graduated and received a degree in the profession of funeral directing and embalming from a college or university that is a member of the American association of colleges and universities.

(f) Any person who shall have otherwise qualified as required by §470.08 (1), except for his three years of apprentice training, and who thereafter entered and served in the military forces of the United States, and shall have been honorably discharged or relieved, and as a part of his duties during such service he shall have had, in the opinion of the state board of funeral directors and embalmers (hereinafter referred to as the board), practical training and instruction of a nature at least equivalent to that he would necessarily have had as an apprentice embalmer under a duly licensed and practicing embalmer holding a Florida state license, shall be credited on said three-year required apprentice service with such time as he may have so served but the total of such credit shall not exceed two and one-half years.

(g) Provided, further, that the said board, and it only, shall decide upon the proof submitted to it by such applicant whether he has received the degree of training herein contemplated and if so, for what time he should be credited, and shall issue its certificate to him accordingly.

(h) It is the intention of this subsection to provide a plan by which credit not to exceed two and one-half years may be given to any Florida apprenticed embalmer for any training he may have had of a nature which in the opinion of the board is equivalent to Florida apprentice embalming training while engaged in the military services of the United States so as to avoid the hardship of making the ex-serviceman who was so engaged go over substantially the same training twice.

(2) No applicant shall be qualified to be examined by the board for a license as a funeral director unless he shall have the following qualications:

(a) He shall be a bona fide resident of the state.

(b) He shall be over the age of twenty-one years.

(c) He shall have completed a full prescribed course in a standard high school, or a course of education equivalent thereto.

(d) He shall have a good moral character.

(e) He shall have been a practicing licensed embalmer of Florida for at least one year.

(f) He shall have been associated with some funeral director duly licensed under the terms of this chapter in the business of funeral directing for at least twelve months, and shall have been vouched for and recommended by at least two funeral directors duly licensed under the terms of this chapter who are familiar with his reputation and character.

History.—§8, ch. 17950, 1937; CGL 1940 Supp. 3599(8); §4, ch. 22617, 1945.

470.09 Application, fee and examination of applicant; license issued to successful applicant. — Any person having the qualifications prescribed in §470.08 shall be deemed eligible by the board for examination, and may make written application to the board upon a form to be prescribed and furnished by the board, stating under oath the qualifications possessed by him, which application shall be accompanied by the license fee of twenty-five dollars. If such application shall be found in due form, and it shall appear that the applicant is possessed of the requisite qualifications, the secretary of the board shall so notify such applicant.

Then the applicant may present himself before said board at a duly organized meeting thereof for examination by said board as to his knowledge of funeral directing or embalming, whichever it may be, and all subjects necessary and pertaining thereto, said subjects to be prescribed and determined by the board. The examination for embalmers' licenses shall consist of the propounding to such applicant in writing of not less than one hundred and fifty questions on the subject of anatomy and embalming and of not less than one hundred oral questions pertaining to the several subjects and other subjects connected therewith. The oral examination, when possible, shall be conducted in the presence of a cadaver, upon which actual demonstrations may be asked for. The examination for funeral directors' licenses shall consist of the propounding of questions by said board, either oral or written, as to such qualifications for a funeral director's license, as provided in this chapter, or prescribed by said board. All examination papers, questions and answers and credits allowed upon same by the board shall be kept on file by the secretary of the board.

The board shall grant to any applicant eligible under the terms of this chapter for examination and who has correctly answered more than seventy-five per cent of the oral and seventy-five per cent of the written questions propounded in the examination provided for herein, a license to practice the profession of funeral directing or embalming, whichever it may be, in the state.

History.—§8, ch. 17950, 1937; CGL 1940 Supp. 3599(9).

470.10 Licenses; renewal; suspension; practicing without; fictitious names, etc.—

(1) All licenses issued by the board shall expire on June 30 of each year, provided that a six months license shall be issued from January 1 to June 30, 1960, and the fee for same shall be one-half the annual fee. Every person actively engaged in the profession of funeral directing or embalming in the state shall renew his or her license on or before June 30 of each year, except as otherwise provided herein, and any qualified person who fails to renew his license within sixty days from the date the same becomes due, shall be suspended from the right to practice the profession for which he was previously licensed until said license is renewed, provided that no license shall be renewed after September 1 of any year unless the applicant shall submit to the board a penalty fee of five dollars per year or any part thereof, in addition to the annual renewal license fee. If a person shall desire a renewal of his license for the succeeding year, the board shall grant and issue the same without further examination upon the payment by said licensee of a renewal fee plus the penalty, if applicable, as follows: embalmer, ten dollars; funeral director, fifteen dollars.

If a licensed funeral director or embalmer fails to renew his license for a period of three years after the expiration of said license he shall be deemed to have retired from the profession and may be licensed only under the conditions and requirements for persons who have not previously been licensed in this state. All persons desiring to receive practical training and instruction as an apprentice under the supervision of an approved licensed embalmer or funeral director shall register with the board annually at the time set forth in this act and pay a registration fee of five dollars.

(2) All licenses issued under this chapter shall be properly signed by the president and secretary of the board and shall bear the official seal of the board.

(3) All persons receiving licenses under the provisions of this chapter shall register same in the office of the clerk of the circuit court and at the office of the local registrar of vital statistics in the jurisdiction in which he proposes to carry on such practice and shall display such license in a conspicuous place in the office of the licensee.

(4) No license shall be assignable or valid for any person other than the original licensee.

(5) From and after the effective date of this chapter no corporation shall engage in the profession of funeral directing or embalming and no person licensed under this chapter as an embalmer or funeral director shall engage in the profession of funeral directing or embalming under a corporate name, and no person shall engage in the profession of funeral directing or embalming under a fictitious name; provided, however, that where any funeral director or embalmer shall be operating and conducting a business under his own name at the time of the passage of this chapter and said funeral director,

his heirs or personal representatives thereafter sells said business, then and in that event the purchaser thereof shall have the right to continue the use of the name for a period of five years from the date of the purchase of said business, either continuing the business in the former name, or using the former name in connection with his own, or using his name as successor to the former name. Provided, however, the purchaser complies with the fictitious name law of the state; and provided, further, that the provisions of this chapter shall not affect or impair the rights now held by corporations or an embalmer or funeral director now engaged in the profession of funeral directing or embalming under a corporate name, or persons engaged in the profession of funeral directing or embalming under a fictitious name holding licenses at the date this law becomes effective; and further, provided, that any person engaging in the profession of funeral directing or embalming under a corporate or fictitious name and securing a license from and after the date this law becomes effective, shall cause to be placed and shall keep in a conspicuous place at each public entrance to his funeral home, mortuary or funeral establishment, in intelligible lettering, not less than one and one-half inches in height and one inch in width, the name of the person or persons licensed to engage in the profession of funeral directing or embalming at said funeral home, mortuary or funeral establishment.

(6) From and after the effective date of this chapter any person engaging in the practice of the profession of funeral directing shall set forth, in intelligible lettering, on all letterheads, billheads, literature or advertising material published by him, the name of the licensed funeral director in charge of such funeral home, mortuary or funeral establishment.

(7) Every funeral director licensed under this chapter who maintains a funeral home, mortuary or funeral establishment where the professions of funeral directing and embalming are practiced, shall maintain a preparation or operating room where embalming is practiced in said establishment, which preparation or operating room must be properly screened, must have a sanitary floor, must have a glass, porcelain or metal-lined operating table; must contain necessary instruments and supplies for the preparation or embalming of dead human bodies, and must have good ventilation, running water and proper sanitary plumbing, all of which plumbing must be connected with a sewer, septic tank or cesspool, which operating room must be maintained in a clean and sanitary condition at all times. The board shall adopt such rules, regulations and classifications as may be reasonable and proper to define what shall be deemed the proper drainage and ventilation and what instruments are necessary and suitable in a funeral establishment, which rules must conform with the rules of the state board of health. Every funeral establishment operated and conducted by any person licensed under this chapter shall at all times be subject to the inspection of the board, or any of its designated representatives or agents or local or state board of health inspectors. No funeral home, mortuary or funeral establishment shall be located in a cemetery.

History.—§8, ch. 17950, 1937; CGL 1940 Supp. 3599(9); am. §5, ch. 22617, 1945; (1) by §1, ch. 59-107.

470.11 Apprentices; reports, etc. — Within thirty days after any person shall have begun preliminary instruction and training as an apprentice under a licensed and practicing embalmer, as provided in this chapter, he shall file a certificate of employment, signed by his employer, with the secretary of the board. Ninety days thereafter he shall file a statement with the secretary of the board, verified under oath, showing the date from which his preliminary instruction and training began and the name and location of the licensed and practicing embalmer under whom he is receiving such instruction and training. If, during the course of his instruction he shall receive instruction and training from more than one licensed and practicing embalmer, he shall give the date of ending with the first and the date of beginning with the second instructor and each subsequent instructor, in like manner as provided herein for the first instructor.

History.—§9, ch. 17950, 1937; CGL 1940 Supp. 3599(10).

470.12 Grounds for revocation of license.—(1) EMBALMER. Whenever it shall appear to the board that any licensed embalmer practicing in the state has been guilty of any of the following acts, his license shall be revoked by the board:

(a) That the licensee has willfully made material misrepresentations in his application for such license.

(b) That the licensee is either an habitual drunkard or narcotic addict or has been convicted of a crime within the State of Florida involving moral turpitude.

(c) That the licensee has bribed or attempted to bribe any member of the board, either directly or indirectly, for the purpose of influencing said member of said board in the performance of his duties as a member of said board.

(d) That the licensee has willfully interfered with a licensed embalmer having lawful custody of a dead human body in the performance of his duty to embalm said body.

(e) That the licensee has paid or caused to be paid, any sum of money or other valuable consideration to any person to secure business from or through such person.

(f) That the licensee has willfully violated any law of the state or any rule or regulation of the state board of health relating to the embalming of a dead human body.

(g) That the licensee has willfully signed a certificate that he embalmed a dead human body, when in fact the said body was embalmed or prepared by someone else; provided, however, that the embalming of dead human bodies by a licensed apprentice regularly employed and under the direct supervision of said licensee shall be considered, for the purpose of

this provision, as embalming a dead human body by said licensee.

(2) FUNERAL DIRECTOR. Whenever it shall appear to the board that any licensed funeral director practicing in the state has been guilty of any of the following acts, his license shall be revoked by the board:

(a) That the licensee has willfully made material misrepresentations in his application for such license.

(b) That the licensee has bribed or attempted to bribe any member of the board, either directly or indirectly, for the purpose of influencing said member of said board in the performance of his duties as a member of said board.

(c) That the licensee is an habitual drunkard or narcotic addict or has been convicted in the state of a crime involving moral turpitude.

(d) That the licensee has paid or caused to be paid, any sum of money or other valuable consideration to any person to secure business from or through such person.

(e) That the licensee has printed or marked any service or merchandise with the intention of deceiving the public, with respect to the brand, grade and quality of such service or merchandise.

(f) That the licensee has caused the defamation of a duly licensed funeral director in this state by falsely imputing to him dishonorable conduct, inability to perform contracts, or the handling of inferior merchandise.

(g) That the licensee has shipped or delivered merchandise or supplies, with the intent to deceive the purchaser, which did not conform to the samples submitted or representations made prior to securing the order therefor.

(h) That the licensee has employed, retained or otherwise engaged agents to solicit business.

(i) That the licensee has knowingly engaged in any advertising which is misleading or inaccurate in any material particular.

(j) That the licensee has willfully violated any law of the state or any rule or regulation of the state board of health relating to the transportation or disposition of a dead human body.

(k) That the licensee has willfully interfered with a licensed funeral director having lawful custody of a dead human body in the performance of his duty as such funeral director.

(l) That the licensee is participating in any enterprise or plan wherein or whereby the public is defrauded.

History.—§10, ch. 17950, 1937; CGL 1940 Supp. 3599(11).

470.13 Procedure for revocation of license; suspension.—

(1) No license shall be revoked by the board unless due notice is given to the licensee holding such license and the said licensee is accorded a public hearing as provided in this section.

(2) When a written complaint, under oath, is filed with the board, or the secretary of the board has been directed by a majority of the members of the board to make a complaint against a licensed funeral director or embalmer charging said licensee with the commission of any of the acts set forth in §470.12, the board shall conduct an investigation and if, from such investigation, it shall appear to the board that there is reasonable ground for belief that the accused licensee may have been guilty of the violations charged, a day shall be set by the board for a public hearing to determine whether or not the license of the accused shall be revoked or suspended.

(3) The secretary of the board shall transmit to the accused a true copy of said written complaint by registered mail, together with a notice setting forth the charge or charges that will be heard before the board and the date and place at which such hearing will be held, which date shall be not less than thirty days after mailing of such notice. The accused licensee may appear before the board at such time and place in person or by counsel and dispute or disprove the said charge.

(4) For the purpose of such hearing, the board shall have the power, under the hand of the president, the vice-president and the seal of the board, to require the production of books, papers or other documents and may issue subpoenas to compel the defendants or witnesses to testify and produce such books, papers or other documents in their possession as may be in the opinion of the board, relevant to any hearing before it; said subpoenas to be served by the sheriff of the county where the witness resides or may be found. Such witnesses shall be entitled to the same per diem and mileage as witnesses appearing in the circuit courts of the state, which shall be paid by said board. Any member of the board may administer oaths or affirmation to witnesses appearing before the board.

(5) If any person shall refuse to obey any subpoenas so issued or shall refuse to testify or produce any books, papers or other documents required by the board, the board may present its petition to the circuit court of the county where any such person is served with the subpoena or where he resides, setting forth the facts, and shall deposit with said court the per diem and mileage to secure the attendance of such witness; whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

(6) If at such hearing the board shall be satisfied from all the evidence submitted that the accused has been guilty of the offense

charged, it shall thereupon, without further notice, revoke or suspend the license of the person so accused. Upon the revocation or suspension of any license, the fact shall be noted upon the records of the board and the license shall be marked as canceled or suspended upon the date of the decision of the board, and the losing party shall pay all costs of such hearing.

(7) In the event the license of any funeral director and embalmer shall be revoked by the board, the licensee may apply to the board for reinstatement of his license after the lapse of a period of one year, with the right reserved to the applicant to apply for review by certiorari of any adverse decision of the board denying reinstatement to the circuit court of the county of his residence, and such review shall be had in the manner prescribed by the Florida appellate rules.

History.—§11, ch. 17950, 1937; CGL 1940 Supp. 3599(12); §6, ch. 22617, 1945; (7) §8, ch. 63-509.

cf.—§470.29. Additional method of license revocation.
§30.23 Fees of sheriffs and constables.
§90.14 Compensation of witnesses in various courts.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

470.14 Review of order of revocation or suspension by circuit court; procedure on reversal.—Upon the revocation or suspension of any funeral director's or embalmer's license as provided in this chapter, the final order of the board revoking or suspending the license shall be subject to review by the circuit court within whose jurisdiction the funeral director or embalmer whose license has been so revoked or suspended resides.

Such review may be secured by filing in the office of the clerk of said court, within the time and in the manner provided by the Florida appellate rules, a petition for certiorari stating the grounds upon which a review or such order is sought. An appeal may be taken from the final judgment of the circuit court to the appropriate district court of appeal in the same manner and subject to like condition as appeals in chancery are taken.

History.—§12, ch. 17950, 1937; CGL 1940 Supp. 3599(13); §8, ch. 63-509.

cf.—Ch. 59, Appellate proceedings in chancery.
§470.29, Additional method of license revocation.

470.15 Employment of attorneys by board; compensation; payment of witnesses.—The board may employ such attorneys to represent said board as in its discretion seem necessary, compensation of said attorneys to be determined by the board, and may authorize the payment of fees and traveling expenses of necessary witnesses required to appear and actually examined in any proceedings before the board.

History.—§13, ch. 17950, 1937; CGL 1940 Supp. 3599(14).

470.16 License fees are qualification fees.—The license fees required to be paid by this chapter to the board are declared to be qualification fees only and not occupational or professional license fees.

History.—§14, ch. 17950, 1937; CGL 1940 Supp. 3599(15).

470.17 Record of licenses to be kept.—The secretary of the board shall keep a record of all licenses issued, the dates upon which they were issued, the names and addresses of the persons to whom issued, and the kind or character of licenses so issued, and shall furnish a copy of such list to all licensed embalmers and licensed funeral directors, and to all transportation companies within the state, and to the state board of health.

History.—§15, ch. 17950, 1937; CGL 1940 Supp. 3599(16).

470.18 Privileges as to use of bodies extended to board and embalming schools.—The board and all schools within the state for the teaching of embalming and funeral directing shall have the same privilege extended to them as to the use of bodies for demonstration and teaching as are granted in this state to medical colleges.

History.—§16, ch. 17950, 1937; CGL 1940 Supp. 3599(17).

cf.—§872.01, Dealing in dead bodies.
§125.44 Authority to dispose of unclaimed dead bodies.
§245.12 Distribution of dead bodies.

470.19 Fees payable to secretary-treasurer; bond of secretary-treasurer.—All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board. Such moneys shall be deposited pursuant to the provisions of §215.37. The secretary-treasurer of the board shall furnish bond to be approved by said board, conditioned for the faithful discharge of his duties and the safekeeping of all such moneys.

History.—§17, ch. 17950, 1937; CGL 1940 Supp. 3599(18). §106, ch. 26869, 1951; §24, ch. 57-1; §13, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

470.20 Report of board; emergency fund.—The board shall make annually in writing a report to the comptroller of the state containing a detailed statement of the manner and amounts of all its receipts and the nature of all of its expenditures. Any balance of money remaining over at the end of the year, after paying the necessary expenses of the board, shall be held in an emergency fund to meet any extraordinary expense incurred in the proper administration of this chapter, and for educational and extension purposes of the profession of funeral directing and embalming.

History.—§17, ch. 17950, 1937; CGL 1940 Supp. 3599(18).

470.21 Unlawful to practice without license.—It is unlawful for any person to engage in the profession of funeral directing or embalming or practice the same or profess to practice the same or to hold himself out to the public as a funeral director or embalmer without having a license as provided in this chapter, or a renewal thereof for the year in which such acts are performed, which said license or renewal thereof has not been revoked and is not suspended at the time of the performance of said acts.

History.—§18, ch. 17950, 1937; CGL 1940 Supp. 3599(19).

470.22 Unlawful to embalm body without consent of proper official where suspicion of crime.—It is unlawful to embalm a dead human body when the embalmer has knowledge of

any fact sufficient to raise the suspicion of crime in connection with the cause of the death of the deceased, until permission of the coroner or other proper official in whose jurisdiction the embalming is to be performed has been obtained.

History.—§19, ch. 17950, 1937; CGL 1940 Supp. 8599(20).

470.23 Affidavit of embalmer upon embalming body.—Upon embalming a dead human body the embalmer shall forthwith file an affidavit with the local registrar of vital statistics in the county in which such embalming was performed, stating that said human body was embalmed by said embalmer or under his direct supervision and control and that he (the said embalmer) was personally present during the embalming of said human body. On the fifth day of each month the local registrar shall forward to the state board of funeral directors and embalmers all such affidavits filed with him during the previous month. At the expiration of three years from the date of filing, all the affidavits filed under the provisions of this law may be destroyed by the official custodian of those records.

History.—§20, ch. 17950, 1937; CGL 1940 Supp. 8599(21); am. §7, ch. 22617, 1945.
Am. §20, ch. 25372, 1949.

470.24 Duty of funeral directors, etc., to ascertain name and address of deceased.—All funeral directors and undertakers, whether person, firm, or corporation, engaged in the business thereof in the state and in the counties of such state, are required to ascertain the street and town or city address last known of all persons for whom such undertaker or funeral director shall perform funeral or embalming or undertaking services or rites, at the time of receiving into his custody the deceased body; and shall also at such time ascertain the full name of such deceased person.

History.—§1, ch. 14730, 1931; CGL 1936 Supp. 302(1).

470.25 Duty of funeral director, etc., to transmit names and addresses of deceased adults to registration officer.—Each funeral director and undertaker on the first day of each calendar month shall transmit the name and address of the persons of all bodies over twenty-one years of age at the time of his death, so received into their custody during the preceding calendar month, to the registration officer of the county in the State of Florida, in which such deceased person last resided; such transmission of names and addresses to such county registration officer to be in writing upon report blanks to be furnished such undertaker and funeral director by the respective registration officers of the respective counties in which such undertaker or funeral director shall have his offices or places of business, such report blanks to be paid for by the county.

History.—§2, ch. 14730, 1931; CGL 1936 Supp. 302(1).
cf.—§98.301, Duty of registration officer upon receipt of report.

470.26 Disinterment only under supervision of funeral director.—It is unlawful to disinter a dead human body unless said disinterment is under the direct supervision of a funeral director duly licensed under the terms of this chapter.

History.—§21, ch. 17950, 1937; CGL 1940 Supp. 8599(22).

470.27 Exemption from jury service. — All licensed funeral directors and licensed embalmers are exempt from jury service.

History.—§22, ch. 17950, 1937; CGL 1940 Supp. 8599(23).
cf.—§40.08, Persons exempt from jury duty.

470.28 Penalty for violation of chapter.—Any person violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine in an amount not exceeding five hundred dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment, as in the discretion of the court. The board, by all lawful means, shall aid the prosecution of violations of this chapter.

History.—§23, ch. 17950, 1937; CGL 1940 Supp. 7721(1); am. §8, ch. 22617, 1945.
cf.—§775.06, Alternative punishment.

470.29 Supplemental and additional method for revocation or suspension of licenses.—As an alternative, supplemental and additional method of procedure for the revocation or suspension of licenses, the board may, notwithstanding the procedure prescribed in §§470.13 and 470.14, apply directly to the circuit court of the county wherein the person proceeded against resides or where any of the unlawful practices, as set out in §470.12, are being indulged in, by an application for an injunction restraining such person from practicing his profession as an embalmer or funeral director because of such misconduct. The style of said cause shall be: "The State Board of Funeral Directors and Embalmers for the State of Florida v._____," and the court may in its discretion grant a temporary injunction restraining the defendant from carrying on his profession pending the outcome of said cause, and upon the final hearing, if in the opinion of the court any of the charges as set out are sustained by the state board of funeral directors and embalmers, the court shall enter such decree as it seems just, either revoking the license of the defendant and permanently enjoining him from the further practice of his profession as a funeral director or embalmer, or suspending his license for such time and upon such terms and conditions as the court deems the facts in the case warrant, and shall tax the costs against the losing party. The board shall not be required to give any bond, except in cases of a temporary restraining order entered prior to the final hearing.

History.—§9, ch. 22617, 1945; §2, ch. 29737, 1955.
cf.—§470.14 Review of order of revocation or suspension by circuit court; procedure on reversal.

470.30 Registration by funeral directors and embalmers with state board of funeral directors and embalmers, application.—

(1) On or before the first Monday of July of each and every year the owner, owners, or proprietors of every funeral home, mortu-

ary, chapel or funeral establishment, as defined in §470.01, shall make application to the state board of funeral directors and embalmers to register their funeral establishments on a form prescribed by said board. The application shall show the name of the funeral home, mortuary, chapel or funeral establishment, the names and addresses of the owner, owners, or officers and stockholders of any corporation thereof, and the names of all licensed embalmers and funeral directors employed in such funeral establishment, or otherwise connected therewith, together with the date of issue and number of the license of each registered embalmer and funeral director. If the registration fee has been paid and the funeral establishment meets the requirements of §470.10, the said board shall issue a funeral home operating license to each funeral establishment, otherwise it shall be unlawful for any funeral establishment to operate in this state; and further, that such person must present in person certificates from the above mentioned officials showing registration as aforesaid, before an occupational license may be applied for or procured from any city, state or county official having jurisdiction of the issuance of occupational licenses.

(2) No application for license of a funeral establishment shall be considered which does not show in the application therefor that a licensed funeral director and embalmer is regularly employed by such establishment.

History.—§§1, 4, ch. 59-106; (1) §1, ch. 63-422.

470.31 Registration fee.—A registration fee of twenty-five dollars shall be charged by and paid to the state board of funeral directors and embalmers by the owner, or owners, or proprietor of each such funeral home, mortuary, chapel or funeral establishment. Upon each annual registration of such funeral home said fee so charged shall be used by the state board of funeral directors and embalmers to defray expenses necessarily incurred by said board in the administration and enforcement of the provisions of this law.

History.—§2, ch. 59-106.

470.32 Enforcement of registration requirement; suspension or revocation of license.—The state board of funeral directors and embalmers, in order to enforce the provisions of this law and to adequately protect the public health and to properly regulate the operation and management of funeral homes in this state may employ one or more persons who shall be under the jurisdiction and immediate supervision and control of the state board of funeral directors and embalmers, at a yearly salary to be fixed by the board, who shall see that the provisions of this law and all other laws of the state regulating the practice of funeral directing and embalming and the operation of funeral homes in the state are strictly and properly complied with. Said employee or employees shall promptly and diligently report to the state board of funeral directors and embalmers any violations of this and any other law regulating and governing the practice of funeral directing and embalming or the operation and management of funeral homes in the state. After notice and hearing, any license of a funeral home, mortuary, chapel or funeral establishment may be suspended or revoked by said board if the evidence shows that the operators have violated either this law or the provisions of chapter 470.

History.—§3, ch. 59-106.

470.33 Penalty for failure to register.—Any person, firm or corporation who has control of a funeral home, mortuary, chapel or funeral establishment, as defined in this law, and fails to register same according to the provisions of this act, upon conviction, may be fined not less than $100 nor more than $500 for each violation and each day that said funeral home, mortuary, chapel or funeral establishment is operated shall be deemed to be a separate and distinct violation of this law.

History.—§5, ch. 59-106.

CHAPTER 471

PROFESSIONAL ENGINEERS

471.01 Purposes.—It is hereby declared to be the public policy of the state that, in order to safeguard the life, health, property and public welfare of her citizens, any person hereafter practicing or offering to practice professional engineering in Florida, as hereinafter defined, shall be required to submit evidence sufficient to convince the Florida state board of engineer examiners that he is qualified to practice professional engineering, after which he shall be registered as hereinafter provided.

History.—§1, ch. 20621, 1941.

471.02 Definitions.—For the purposes of this chapter, and unless otherwise required by the context, the following definitions shall prevail, to-wit:

(1) The singular shall be construed to include the plural, and vice versa; and the masculine shall be construed to include the feminine or neuter, and vice versa.

(2) The word "person" shall be construed to include any person, firm, partnership or corporation.

(3) The terms "board," "board of engineer examiners," or similar expressions shall be construed to mean the Florida state board of engineer examiners.

(4) The term "professional engineer" or the word "engineer", when used in this chapter, shall be construed to include any person who, by reason of his knowledge of mathematics, the physical sciences and the principles of engineering, acquired either by professional education or by practical experience, is qualified to engage in the practice of professional engineering as hereinafter defined.

(5) The term "professional engineering," when used in this chapter shall be construed to include, among other things, any professional service requiring use or knowledge of mathematics and the principles of engineering rendered or offered to be rendered for public or private utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, streets, engineering surveys, municipal improvements, canals, seawalls, groins, beach preservations, harbors, wharves, piers, docks, barges, dredges, cranes, drainage works, waterworks, irrigations works, water purification plants, sewerage works and systems, sewage disposal plants and works, buildings, timber structures, steel and concrete and reinforced concrete structures, power transmission, electric power lighting plants and associated plants and systems, electrical machinery, electrical apparatus, telephone and telegraph systems, cables, wireless plants, radio broadcasting installations, mineral and mining machinery and equipment, mining developments and operations, gas and oil developments and operations, smelters, refineries, metallurgical

machinery and equipment and apparatus for carrying on such operations, steam turbines, steam engines, water turbines, pumps, refrigeration and air conditioning equipment, internal combustion engines, prime movers and other mechanical, chemical, electrical, industrial and metallurgical structures, machinery, processes and equipment. Any consultation, investigation, plan, design, engineering evaluation, technical advice and report or responsible supervision of construction in any public or private utilities, structures, buildings, machines, equipment, processes or works, shall be considered as professional services and within the purview of the above definitions. The enumeration of any public or private utilities or other works in this section shall not be construed as excluding from the operation of this chapter any other public or private utilities or works which require experience and technical knowledge for their design or the supervision of their construction or for their valuation.

(6) The terms "professional engineer" and "professional engineering" as used herein shall have no reference or application to the term "engineer" as applied to a person engaged or employed as engineman, operator, or driver of any engine or of any mechanical, electrical, chemical or other device or machine, or to the assistant of such person, or as applied to any person engaged or employed in the executive or responsible direction of such person or such operations, or to any person engaged or employed in the fabrication, installation, maintenance, repair or adjustment of such engine, device or machine. The provisions hereof shall not be construed as applying to any such person performing such services as are customarily performed by power, refrigeration, or other stationary engineers, or hoisting and portable engineers, nor shall the provisions herein operate to prevent any craftsman, mechanic, or contractor from rendering and offering to render the services commonly rendered in the pursuit of his craft or business; nor shall the provisions hereof operate to prevent any person from serving as boiler, electrical, elevator, plumbing, building, or other safety or health inspector or examiner in connection therewith, for the state or any of its political subdivisions or for any private firm, person, or corporation.

(7) The term "responsible supervision (or charge) of construction (or works)" and words of similar purport shall be construed to mean the control and direction of the investigation and design of structures, systems or works involving engineering and requiring engineering skill and judgment and the observation with reasonable care and professional skill of the construction of the same. The provisions hereof shall not be construed to mean that the engineer shall guarantee performance by the contractor or assume financial liability for construction deficiencies or defects, nor shall the engineer at any time act as a superintendent in control of construction.

(8) The term "engineer-in-training" as used in this chapter shall mean a person who complies with the requirements for education, experience and character, and has passed an examination as provided in §§471.21 and 471.22.

History.—§1, ch. 7404, 1917; RGS 2273; CGL 3619; §2, ch. 20621, 1941; §7, ch. 22858, 1945; §1, ch. 63-310.

471.03 Unlawful practice.—It shall be unlawful:

(1) For any person who has not been duly registered under the provisions of this chapter or whose certificate has been revoked, to practice, offer to practice, or to hold himself out as qualified to practice professional engineering, as defined in this chapter, in the state.

(2) For any person who has not been duly registered under the provisions of this chapter. or whose certificate has been revoked, to use, in connection with his name or otherwise, any title, name or description tending to create the impression that he is a professional engineer legally authorized to practice his profession in Florida.

History.—§2, ch. 7404, 1917; RGS 2274; CGL 3620; §3, ch. 20621, 1941.

471.04 False pretenses and other unlawful acts.—It shall be unlawful for any person in connection with, or involving, the practice of professional engineering:

(1) To issue or to attempt to issue any plan, specification, plat, report or other document, as his own under the name, seal or certificate of another.

(2) To give or to offer false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, reinstatement, a renewal or a re-issue of a certificate.

(3) To falsely impersonate any other registrant of like or different name.

(4) To use or attempt to use any dormant, expired or revoked certificate.

(5) To buy or sell, or offer to buy or sell, or otherwise fraudulently obtain or dispose of a certificate of registration.

(6) To aid or abet in any of the above matters and things.

(7) To steal or otherwise unlawfully obtain a certificate of registration belonging to another person.

History.—§18, ch. 7404, 1917; RGS 5542; CGL 7720; §4, ch. 20621, 1941.

471.05 Exemptions.—The following persons shall be exempt from the provisions of this chapter, to-wit:

(1) Any person practicing professional engineering for the improvement of or otherwise affecting property legally owned by him unless such practice involves a public utility or the public health, public safety, public welfare or the safety or health of employees. This provision shall not be construed as authorizing the practice of professional engineering through an agent, servant or employee who is not duly registered under the provisions of this chapter

(2) Salaried officers of the government of the United States or salaried engineers employed by said government while engaged within the state in the practice of professional en-

gineering solely for said government.

(3) Any person as contractor in the execution of work designed by a professional engineer, or the supervision of the construction of work as a foreman or superintendent.

(4) A person acting as a public officer employed by the state, a county, or a municipality, or other governmental unit of this state, only on work where the total estimated cost of the same is two thousand dollars or less.

(5) Regular full time employees of a corporation not engaged in the practice of professional engineering as such, who are the subordinates of a person in responsible charge, such person being a registered professional engineer under this chapter and professional engineers admitted and authorized to practice their profession under the laws of some other state and who have been continuously engaged for fifteen years or more in the service of public utilities engaged in interstate commerce, but who do not hold themselves out for hire or engage in other such professional employment in this state.

History.—§§10, 19, ch. 7404, 1917; RGS 2282, 2290; CGL 3619, 3636; §5, ch. 20621, 1941.

471.06 Corporate and partnership practice of professional engineering.—

(1) The practice of or offer to practice professional engineering as defined in §471.02, by individual professional engineers registered under this chapter through a corporation or partnership offering engineering services to the public, or by a corporation or partnership offering engineering services to the public through individual registered professional engineers, as agents, employees, officers or partners, is permitted subject to the provisions of this chapter; provided, that one or more of the principal officers of such corporation or partners of such partnership and all personnel of such corporation or partnership who act in its behalf as professional engineers in this state are registered as provided by this chapter, or are persons lawfully practicing under §471.05 or §471.07, and further provided, that said corporation or partnership has been issued a certificate of authorization by the board as provided herein. All final drawings, specifications, plans, reports, or other engineering papers or documents involving the practice of professional engineering as defined in §471.02 which shall have been prepared or approved for the use of such corporation or partnership or for delivery to any person or for public record within the state shall be dated and bear the signature and seal of the professional engineer who prepared or approved them. Nothing in this section should be construed to mean that a certificate of registration to practice professional engineering shall be held by a corporation.

(2) A corporation or partnership desiring a certificate of authorization shall file with the board an application upon such a form to be prescribed by the board and the designation required by the following subsection, accompanied by the registration fee prescribed by §471.20.

(3) A corporation shall file with the board using a form provided by the board, the names and addresses of all officers and board members of the corporation, including the principal officer or officers duly registered to practice professional engineering in this state, and also of an individual or individuals duly registered to practice professional engineering in this state who shall be in responsible charge of the practice of professional engineering in this state by said corporation. Such partnership shall file with the board using a form provided by the board, the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice professional engineering in this state, and also of an individual or individuals duly registered to practice professional engineering in this state who shall be in responsible charge of the practice of professional engineering in this state by said partnership. This same form, giving the same information, must accompany the annual renewal fee prescribed by §471.24. In the event there shall be a change in any of these persons during the year such changes shall be designated on the same form and filed with the board by the corporation or partnership within thirty days after the effective date of such change.

(4) If all the requirements of this section are met, the board shall issue to such corporation or partnership a certificate of authorization; provided, however, the board may refuse to issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing certificate, or if the board, after giving the persons involved a full and fair hearing as authorized in §471.11, shall determine that any of the officers or directors of said corporation or partners of said partnership are not persons of good character. Any person aggrieved by an adverse determination of the board may appeal to the circuit court in the manner provided in §471.28.

History.—§16, ch. 7404, 1917; RGS 2288; CGL 3634; §6, ch. 20621, 1941; §2, ch. 63-310.

471.061 Combined practice of professional engineering and land surveying.—

(1) A corporation or partnership may engage in the combined practice of professional engineering as defined in §471.02 and land surveying as defined in chapter 472, in this state provided that no less than one professional engineer registered under this chapter and one land surveyor registered under chapter 472, or no less than one individual registered as both a professional engineer under this chapter and a land surveyor under chapter 472 shall be principal officers of such corporation or partners of such partnership. A corporation or partnership practicing under this section shall comply with all provisions of this chapter and chapter 472 not in direct conflict herewith and with all rules and regulations adopted by the board not in direct conflict herewith. All final drawings, specifications, plans, reports or other engineering papers or documents involving the practice of

professional engineering as defined in §471.02 which shall have been prepared or approved for the use of the corporation or partnership or for delivery to any person or for public record within the state shall be dated and bear the signature and seal of the professional engineer who prepared or approved them, and all maps, plats, surveys or other surveying papers or documents involving the practice of land surveying as defined in chapter 472 which shall have been prepared or approved for the use of the corporation or partnership or for delivery to any person or for public record within the state shall be dated and bear the signature and seal of the land surveyor who prepared or approved them.

(2) A corporation or partnership desiring a certificate of authorization under this section shall file with the board an application upon a form to be prescribed by the board and the designation required by the following subsection accompanied by application and registration fees prescribed by §471.20 and chapter 472.

(3) A corporation shall file with the board using a form provided by the board, the names and addresses of all officers and board members of the corporation, including the principal officer or officers duly registered to practice professional engineering and land surveying in this state, and also of an individual or individuals duly registered to practice professional engineering and land surveying in this state who shall be in responsible charge of the practice of professional engineering and land surveying in this state by said corporation. A partnership shall file with the board using a form provided by the board, the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice professional engineering and land surveying in this state, and also of an individual or individuals, duly registered to practice professional engineering and land surveying in this state who shall be in responsible charge of the practice of professional engineering and land surveying in this state by said partnership. This same form, giving the same information, must accompany the annual renewal fees prescribed by §§471.24 and 472.09. In the event there shall be a change in any personnel during the year such changes shall be designated on the same form and filed with the board within thirty days after the effective date of such change.

(4) If all requirements of this section are met, the board shall issue to such corporation or partnership a certificate of authorization; provided, however, the board may refuse to issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing certificate, or if the board, after giving the persons involved a full and fair hearing as set forth in §471.11 shall determine that any of the officers or directors of said corporation or partners of said partnership are not persons of good character. Any person aggrieved by an adverse determination of the board may appeal therefrom to the circuit court in the manner provided in §471.28.

History.—§3, ch. 63-310.

471.07 Professional engineers of other states; temporary certificates to practice in Florida.—The board in its discretion may grant, upon the payment of a fee of twenty-five dollars to a professional engineer holding a certificate to practice professional engineering in another state, a temporary certificate by the board, to engage upon particular work in this state for a period not exceeding three months, when under the rules of comity in such state professional engineers, registered in Florida, are similarly permitted to engage upon work in such state, but professional engineers of other states shall not engage in the general practice of professional engineering in this state without first obtaining such a certificate to practice hereinafter set forth.

History.—§§10, 19, ch. 7404, 1917; RGS 2282, 2290; CGL 3628, 3636; §7, ch. 20621, 1941; am. §7, ch. 22858, 1945.

471.08 Florida state board of engineer examiners; creation, establishment, etc.—For the purpose of carrying out the provisions of this chapter and such other duties as may be imposed upon them by law, there is hereby created the Florida state board of engineer examiners, hereinafter called the board. Said board shall take the place of, be substituted for, and the successor to the present state board of engineering examiners, existing by virtue of §2275, R.G.S., 1920, which is hereby abolished, and all the duties and obligations thereof, save as changed by this chapter, together with all and every its property and assets are hereby imposed upon and transferred to said board hereby created. The rights now vested in any person under and by virtue of the law heretofore existing respecting the practice of professional engineering shall not be affected by this chapter.

Said board shall consist of five members, and shall, except the first members thereof, be appointed by the governor of the state. The five members of the present state board of engineering examiners shall constitute the first board under the provisions of this chapter, and shall serve until their present terms of office shall have expired and their successors duly appointed and qualified. After the expiration of the terms of office of the members of the first board, the succeeding members shall be appointed or reappointed for terms of four years each from and after the expiration of the term of office of their predecessors and shall serve until their successors are duly appointed and qualified. Of the five members composing the said board, there shall be at least two engineers, qualified to practice civil engineering and land surveying, one engineer qualified to practice electrical or mining engineering, and one engineer qualified to practice mechanical engineering. At no time shall the membership of the board include more than three members of governmental agencies, and at least two members shall be engineers engaged in private practice. Each member shall have had at least twelve years active experience

in engineering work (responsible charge of engineering teaching in a recognized technical institution of higher learning shall be construed as "active experience"), shall be of recognized good standing in his profession, shall be a member of recognized engineering society, shall be at least thirty-five years of age and shall have been a resident and citizen of and practicing engineering in the state for at least five years immediately preceding his appointment. The governor of the state may remove any member of the board for misconduct, incapacity, neglect of duty, or upon conviction of a crime involving moral turpitude, and vacancies on the board shall be filled by the governor of the state for an unexpired term.

History.—§3, ch. 7404, 1917; RGS 2275; CGL 3621; §8, ch. 20621, 1941.
cf.—§472.01 et seq., Board duties concerning land surveyors.

471.09 Expenses of board members.—Each member of the board shall receive the sum of twenty dollars per day, or any part of a day, when attending to the work of the board or any of its committees and for the time spent in necessary travel; and, in addition thereto, shall receive per diem and mileage as provided in §112.061.

History.—§3, ch. 7404, 1917; RGS 2275; CGL 362; §9, ch. 20621, 1941; §20, ch. 28215, 1953; §4, ch. 63-310.

471.10 Oath and commission of members; official seal.—Each member of the board upon taking the oath of office, shall receive a certificate or commission of office which shall be evidence of his appointment and qualification in all courts and before all boards. The board shall adopt an official seal, of which the courts of Florida shall take judicial cognizance.

History.—§4, ch. 7404, 1917; RGS 2276; CGL 3622; §10, ch. 20621, 1941.

471.11 Powers of board.—The board shall have power and it is hereby directed to make, adopt, amend, suspend, and repeal such by-laws, rules and regulations as may be necessary to fully carry out the objects and purposes of this chapter. The board shall have power to receive, consider and accept or reject applications for registration; to examine said applicants as to their qualifications, fitness and ability to practice engineering in Florida; to register and certify such applicants as are found to be qualified; and to hear and determine complaints, objections and charges against any applicant or registered engineer or any person practicing engineering without registration or otherwise in violation of law, and, for cause, to revoke any certificate of registration issued by said board. In carrying into effect the provisions of this chapter the board, under the hand of the president or vice-president and seal of the board, may require the production of books, papers or other documents and may issue subpoenas to compel the attendance of witnesses to testify and to produce such books, papers, or other documents in their possession as may be, in the opinion of the board, relevant to any hearing before it, said subpoenas to be served by the sheriff of the county where the witness resides or may be found. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers or other documents required by the board, the board may present its petition to the circuit court of the county wherein such person was served with subpoena setting forth the facts, whereupon such court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court forthwith shall direct such person to obey the same and upon his refusal to comply he shall be adjudged in contempt of court and punished as the said court may direct. If the board, after a full hearing, determines that any person is practicing engineering illegally in Florida, it may, by petition to the circuit court of the county wherein such person resides or wherein he practices engineering illegally, petition said court for an injunction restraining such person from the practice of professional engineering, and the court, upon sufficient showing, shall have power to issue and carry into effect such an injunction. The procedure for an injunction as aforesaid shall be governed by the rules and statutes applicable to the issuance of injunctions.

History.—§4, ch. 7404, 1917; RGS 2276; CGL 3622; §11, ch. 20621, 1941.
cf.—§30.23 Fees of sheriffs and constables.

471.12 Organization of the board, treasurer's bond.—The board shall elect annually from among its membership, a president, a vice-president and a secretary who shall be treasurer for the ensuing term. The secretary shall give a bond in such amount and with such sureties as may be approved by the board, conditioned upon the faithful performance of his duties and the accounting for payment of all moneys received by him. The present officers of the state board of engineering examiners shall be the officers of said Florida board of engineer examiners until the time when their term as such officer would have expired had there been no change in the law.

History.—§5, ch. 7404, 1917; RGS 2277; CGL 3623; §12, ch. 20621, 1941.

471.13 Headquarters of the board; its meetings, quorum.—Headquarters of said board shall be in any city in the state selected by the board at a regular or special meeting. The board shall hold at least two regular meetings each year. Special meetings of the board may be called in such manner and at such times as prescribed by the bylaws, rules or regulations of the board. At all meetings, a majority of the board shall constitute a quorum and such quorum shall be sufficient for the transaction of the business of the board, except as herein otherwise specifically provided.

History.—§5, ch. 7404, 1917; RGS 2277; CGL 3623; §13, ch. 20621, 1941; §12, ch. 61-530; §5, ch. 63-310.

471.14 Power to hire and discharge employees, rent offices, and incur other expenses.—The

board shall have the power to employ and discharge all employees, to rent offices, print its reports, year book, roster of professional engineers, and other necessary printing, purchase furniture, materials, stationery and supplies, and incur such other expenses, as may be necessary and proper to carry out the objects and purposes of this chapter and the administration thereof.

History.—§6, ch. 7404, 1917; RGS 2278; CGL 3624; §14, ch. 20621, 1941; §107, ch. 26869, 1951.

471.15 Expenses of board.—The expenses of the board for all matters connected with the administration of the provisions of this chapter shall be paid pursuant to the provisions of §215.37 upon presentation of vouchers approved by the president or vice-president and countersigned by the secretary of said board.

History.—§7, ch. 7404, 1917; RGS 2279; CGL 3625; §15, ch. 20621, 1941; §108, ch. 26869, 1951; §21, ch. 28215, 1953; §14, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.
§471.29 Receipts and disposition.

471.16 Records of the board.—The board shall keep a record of all of its proceedings and a register of all applications for registration, which register shall show:

(1) The name, age and residence of each applicant,

(2) The date of the application,

(3) The place of business of the applicant,

(4) The applicant's education and other qualifications,

(5) The disposition of the application,

(6) The result of the examination if the applicant was examined,

(7) Whether a certificate of registration was issued and, if so, the serial number of same,

(8) The dates of the action of the board on the application,

(9) Such other information as may be deemed necessary by the board.

History.—§12, ch. 7404, 1917; RGS 2284; CGL 3630; §16, ch. 20621, 1941.

471.17 Roster of registered engineers.—A roster showing the names and places of business or residence of all registered professional engineers legally qualified to practice professional engineering in the state shall be prepared annually by the secretary of the board. A copy of this roster shall be obtainable by each registered engineer and copies thereof shall be placed on file with the secretary of state, the clerks of the circuit courts of the several counties and clerks or recorders of all cities having a population of more than five thousand by the last preceding state or federal census.

History.—§§17, 12, ch. 7404, 1917; RGS 2284, 2289; CGL 3630, 3635; §17, ch. 20621, 1941.

471.18 Records and certificates as evidence.—The records of the board shall be prima facie evidence of the proceedings of the board as set forth therein, and a full transcript of these records or any part thereof, duly certified by the secretary of the board under the seal of the board, shall be received in evidence as prima facie evidence of the facts as set forth therein.

History.—§§15, 12, ch. 7404, 1917; RGS 2284, 2287; CGL 3630, 3633; §18, ch. 20621, 1941.

471.19 Engineers heretofore registered.—No person who heretofore has been duly registered as a professional engineer under the laws of Florida, and whose registration has not been revoked, shall be required to register again under this chapter and his former registration shall be fully recognized under the provisions of this chapter. All certificates heretofore issued and not revoked shall have the same force and effect as if they had been issued under the provisions of this chapter, and shall be subject to the same rules, terms and conditions as are the certificates provided for in this chapter.

History.—§19, ch. 20621, 1941.

471.20 Registration fees.—

(1) AS AN INDIVIDUAL.—The registration fee for professional engineers under this chapter shall be thirty-five dollars each and shall accompany the application. Should the board reject the application or deny the issuance of a certificate of registration to the applicant, the sum of twenty-five dollars shall be retained by the board as an investigation and examination fee and the remaining ten dollars shall be returned to the applicant.

(2) AS A CORPORATION OR PARTNERSHIP.—The registration fee for a corporation or partnership seeking a certificate of authorization under this chapter shall be fifty dollars and shall accompany the application. Should the board reject the application or deny issuance of a certificate of authorization to the applicant, the sum of thirty-five dollars shall be retained by the board as an investigation and examination fee and the remaining fifteen dollars shall be returned to the applicant.

History.—§8, ch. 7404, 1917; §1, ch. 11370, 1925; RGS 2280; CGL 3626; §20, ch. 20621, 1941; §6, ch. 63-310.

471.21 Qualifications for registration.—

(1) AS A PROFESSIONAL ENGINEER.—The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified to be admitted to examination for registration as a professional engineer, to-wit; that he

(a) Is more than twenty-four years of age,

(b) Is of good character and reputation,

(c) Is a graduate from an approved course in engineering of four years or more in a school or college approved by the board as of satisfactory high standing, and has a specific record of an additional four years or more of active practice in engineering work of a character indicating that the applicant is competent to be placed in responsible charge of such work; or in lieu of graduation and the active practice aforesaid, has a specific record of ten years or more of active practice in engineering work of a character indicating that the applicant is competent to be placed in responsible charge of such work.

The applicant shall file his application in the manner to be prescribed by the board.

(2) AS AN ENGINEER-IN-TRAINING.—The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(a) A graduate of an approved engineering curriculum of four years or more who has passed the board's examination in the fundamentals of engineering shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(b) An applicant having a high school education and a specific record of eight or more years of experience in engineering work of a grade and character satisfactory to the board, who passes the board's examination in the fundamentals of engineering shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(c) The certification or enrollment of an engineer-in-training shall be valid for a period of twelve years.

History.—§8, ch. 7404, 1917; §1, ch. 11370, 1925; RGS 2280; CGL 3626; §21, ch. 20621, 1941; §7, ch. 63-310.

471.22 Examinations. — Examinations for registration shall be held at such times and at such places within the state as the board shall determine, provided, however, that there shall be not less than two examinations per annum. The scope of the examinations shall be of such a character as to test the qualifications of the applicant to practice professional engineering, and shall include such subjects as will tend to ascertain the knowledge of the applicant of the theory and practice of professional engineering and may include such subjects as are taught in accredited engineering schools and colleges. The board may adopt such rules and regulations as may specifically set forth the subjects upon which such examinations will be held. As soon as practicable after the close of an examination the board shall determine the result of the examination and either approve or disapprove the applicant as being qualified. An applicant failing to pass an examination may be re-examined at the discretion of the board, for which re-examination the board shall charge the candidate a fee of fifteen dollars.

History.—§9, ch. 7404, 1917; RGS 2281; CGL 3627; §22, ch. 20621, 1941.

471.23 Certificates of registration.—Upon the results of the examination being approved by the board or four of its members as aforesaid, the secretary of the board forthwith shall issue to the applicant a certificate of registration under the seal of the board, in such form as shall be prescribed by the board, signed by the president or vice-president and the secretary of the board, and said applicant shall then be entitled to practice professional engineering in accordance with this chapter. The certificate aforesaid shall be evidence that the person named there is entitled to practice professional engineering in this state.

History.—§§10, 12, 15, ch. 7404, 1917; RGS 2282, 2284, 2287; CGL 3628, 3630, 3633; §23, ch. 20621, 1941.

471.24 Renewal of certificates.—

(1) Certificates of registration shall expire on December 31 following their issuance or renewal and shall become dormant unless renewed as provided herein. Renewals may be effected at any time during the month of December by the payment by the registrant of a fee to be determined by the board, but not to exceed twenty dollars. The failure of the registrant to renew his certifcate during the month of December as aforesaid, shall cause said certificate to become dormant and it shall be unlawful for such registrant to practice, offer to practice, or to hold himself out as qualified to practice professional engineering in Florida after March 1 following the expiration of the certificate. A certificate of registration not renewed within two years after it becomes dormant shall become null and void. The board, for good reason shown (which in the discretion of the board may include reexamination of the applicant), may reissue a certificate of registration to any person whose certificate has become null and void as aforesaid. A fee of twenty dollars shall be charged the applicant for such reissue.

(2) Certificates of authorization issued to corporations and partnerships under the provisions of this chapter shall expire on December 31 following their issuance or renewal and shall become dormant unless renewed as provided herein. Renewals may be effected at any time during the month of December by the payment by the corporation or partnership of a fee of twenty-five dollars. The failure by a corporation or partnership to renew its certificate of authorization during the month of December as aforesaid shall cause said certificate to become dormant and it shall be unlawful for such corporation or partnership to practice, offer to practice or hold itself out as qualified to practice professional engineering in Florida after March 1 following the expiration of the certificate. A certificate of authorization not renewed within two years after it becomes dormant shall become null and void. The board, for good reason shown, may reissue a certificate of authorization to any corporation or partnership whose certificate has become null and void as aforesaid. A fee of forty dollars shall be charged the applicant for such reissue.

History.—§13, ch. 7404, 1917; RGS 2285; CGL 3631; §24, ch. 20621, 1941; §8, ch. 63-310.
cf.—§455.03 Dispensing with examination of veterans.

471.25 Lost certificates.—A new certificate of registration of a duly registered engineer to replace a certificate lost, destroyed, stolen or mutilated, may be issued subject to rules and regulations to be adopted by the board. A fee of five dollars shall be charged the applicant for such issue. The mutilated certificate shall be returned to the secretary of the board before a new certificate is issued. Any lost, destroyed or stolen certificate for which a new certificate has been issued, shall be returned to the board, if ever found. The new certificate aforesaid

shall be marked plainly with the word "DUPLICATE."

History.—§25, ch. 20621, 1941.

471.26 Revocation or suspension of certificates.—The board shall have power to revoke or suspend the certificate of registration of any registrant, provided four or more members of the board vote in favor of such revocation should such registrant be found guilty of:

(1) The practice of any fraud or deceit in obtaining a certificate of registration to practice professional engineering; or

(2) Conviction of any crime involving moral turpitude; or

(3) Malpractice, malfeasance, gross negligence or incompetency in the practice of professional engineering.

(4) Affixing or permitting to be affixed his seal or his name to any plans, designs, drawings, or specifications which were not prepared by such registrant or under his responsible supervision, direction or control.

(5) The violation of any law of this state relating to the practice of professional engineering or any lawful rule or regulation made by the board pursuant to law.

Any corporation or partnership which has been duly certified under the provisions of this chapter and has engaged in the practice of professional engineering in this state shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board shall revoke or suspend the certificate of registration of an agent, employee, officer or partner of such corporation or partnership who acts in its behalf as professional engineers in this state provided four or more members of the board vote in favor of suspension or revocation of such certificate of authorization. Before the certificate of authorization of a corporation or partnership is revoked or suspended by the board, such corporation or partnership shall be furnished notice, an opportunity to be heard and such other procedural guarantees as are provided in §471.27. Any corporation or partnership aggrieved by an adverse determination of the board may appeal therefrom to the circuit court in the manner provided in §471.28.

History.—§12, ch. 7404, 1917; RGS 2284; CGL 3630; §26, ch. 20621, 1941; §9, ch. 63-310.

471.27 Procedure for revoking or suspending a certificate.—Any person, including a member of the board, may prefer charges against any registrant. Such charges shall be in writing and shall be sworn to by the person making them. They shall be preferred by delivering them, together with six copies thereof to the secretary of the board, who, forthwith, shall furnish each member of the board with a copy of said charges. All charges, unless dismissed by the board as being unfounded or trivial, shall be heard and disposed of by the board within four months after the date upon which they were preferred, except as to cases hereinafter noted. The time and place of said hearing shall be fixed by the board, and a copy of the charges, together with notice of the time and place of the hearing, shall be served upon the person against whom preferred, either personally or by registered mail with return receipt demanded, addressed to the said person at his last known address as the same appears on the records of the board, at least twenty days before the time fixed for the hearing. Where personal service can not be made as aforesaid, or where registered notice is returned undelivered, the secretary of the board shall cause a short, simple notice to the registrant to be published for four consecutive weeks (four publications being sufficient) in a newspaper published in the county wherein the registrant's last known address appears as shown on the records of the board, or if no newspaper be published in said county, then said notice may be published in a newspaper published in an adjoining county. If said address appears in some state, territory or country other than the State of Florida, then said notice may be published in the county wherein the board may have its headquarters. Said notices shall contain the name of the registrant, his last known address, the number of his registration certificate under which he has been registered to practice in Florida, the time of the preferring of the charges, the date set for the hearing of said charges, the nature of the charges and the place where said hearing will be held. Due proof of service or of publication shall be filed with the secretary of the board and shall be recorded by him in the minutes of the boards. The board, for good cause shown, may continue any hearing from time to time and in proper cases to a time beyond the aforesaid four months' period. At any hearing the accused shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him and to testify and produce evidence and witnesses in his defense. If, after such hearing, four, or more, members of the board present at such hearing, find the accused guilty of the charge, or charges, against him, they shall evidence their finding by so voting, and the board shall thereupon revoke the certificate of registration of the person so found guilty and, thereafter, unless a certificate is again issued to him, said person shall not practice professional engineering in the state. Or, in proper cases, and in lieu of revocation, the board may suspend the certificate of said person so found guilty for a period of time not to exceed two years, during which time said person shall not practice professional engineering in the state unless his certificate is reinstated as hereafter provided. The board, for good cause shown, and by a vote of four or more of its members, may reissue a certificate to any person whose certificate has been revoked as aforesaid, for which reissue the board shall charge such person the sum of five dollars unless otherwise ordered by the board; and in cases where a certificate has been suspended as aforesaid, the board by a favorable

vote of four or more of its members, may reinstate said certificate at any time. Upon the reissue or reinstatement of the certificate of any person, such person shall be entitled to resume the practice of professional engineering in accordance with this chapter.

History.—§12, ch. 7404, 1917; RGS 2284; CGL 3630; §27, ch. 20621, 1941.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

471.28 **Review of decision of board revoking or suspending a certificate of registration.**—Any person who shall feel aggrieved by the action of the board in revoking or suspending his certificate of registration may have the decision of the board reviewed by filing a petition for certiorari with the circuit court of the county wherein the board maintains its headquarters, in the manner and within the time prescribed by the Florida appellate rules. The circuit court shall hear the case upon the record from the board. The board and the appellant shall have the right of review of the judgment of the circuit court by the appropriate district court of appeal pursuant to the Florida appellate rules.

History.—§12, ch. 7404, 1917; RGS 2284; CGL 3630; §28, ch. 20621, 1941; §9, ch. 63-509.

471.29 **Receipts and disposition.**—The secretary shall receive and account for all moneys collected under the provisions of this chapter. Such moneys shall be deposited pursuant to the provisions of §215.37.

History.—§5, ch. 7404, 1917; RGS 2277; CGL 3623; §29, ch. 20261, 1941; §109, ch. 26869, 1951; §24, ch. 57-1; §14, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§471.15 Expenses of board.

471.30 **Seals.**—The board shall adopt and prescribe a form of seal to be used by registrants holding valid certificates of registration hereunder. Each registrant shall obtain a seal in the form aforesaid and all plans, specifications, plats or reports prepared or issued by the said registrant shall be stamped with said seal, and such seal shall be evidence of the authenticity of that to which affixed, but it shall be unlawful for any person to stamp or seal any document with said seal after his certificate of registration has become dormant or revoked unless reinstated or re-issued. The registrant shall affix his name to all documents so stamped and sealed.

History.—§2, ch. 7404, 1917; RGS 2274; CGL 3620; §30, ch. 20621, 1941.

471.31 **Profit from employment.**—It shall be unlawful for any person employed in the practice of professional engineering to participate in or derive any profit from the subject matter of his employment, either in the matter of construction work or materials, other than the compensation he is to receive for such work by virtue of his contract for professional employment.

History.—§14, ch. 7404, 1917; RGS 2286; CGL 3632; §31, ch. 20621, 1941.

471.32 **Reciprocity.**—Agreements for reciprocity with the national council of state boards of engineering examiners, states, territories and countries may be entered into by the board at its discretion and under such rules and regulations as the board may prescribe.

History.—§10, ch. 7404, 1917; RGS 2282; CGL 3628; §32, ch. 20621, 1941.

471.33 **Penalties.**—Any person who violates any of the provisions of this chapter or commits any of the unlawful acts or practices as herein set forth shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars or imprisonment not exceeding one year, or both, at the discretion of the court. If such convicted person be a registered professional engineer, then his conviction as aforesaid shall immediately and automatically revoke and annul his certificate of registration. It shall be the duty of the duly constituted officers of the law of this state or any political subdivision thereof to enforce the provisions of this chapter and to prosecute any persons, firms, partnerships or corporations violating the same.

History.—§18, ch. 7404, 1917; RGS 5542; CGL 7720; §33, ch. 20621, 1941.
cf.—§775.06, Alternative punishment.

471.34 **By-laws and rules, amendment of.**—No by-laws or rules by which more than a majority vote is required for any specific action by the board shall be amended, suspended or repealed by a smaller vote than that required for action thereunder.

History.—§4, ch. 7404, 1917; RGS 2276; CGL 3622.

471.35 **Power of board to inquire into identity of certificate holder.**—The board may at any time inquire into the identity of any person claiming to be a registered professional engineer, and after due service of a notice in writing, require him to prove to the satisfaction of the board that he is the person authorized to practice professional engineering under the certificate of registration by virtue of which he claims the privileges of this chapter. When the board finds that a person claiming to be a professional engineer registered under this chapter is not in fact the person to whom the certificate of registration was issued, it shall reduce its findings to writing and file them in its office. Such findings shall be prima facie evidence that the person mentioned therein is falsely impersonating a professional engineer of a like or different name.

History.—§12, ch. 7404, 1917; RGS 2284; CGL 3630; am. §7, ch. 22858, 1945.

471.37 **Liability of professional engineers.**—(1) The fact that individual registered professional engineers practice engineering as defined in this chapter through a corporation or partnership shall not relieve such engineers from personal liability for their professional acts and each such corporation or partnership shall be jointly and severally liable for the professional acts of agents, employees, officers, or partners.

(2) The fact that individual registered land surveyors practice land surveying as defined in chapter 472 through a corporation or partnership engaged in the combined practice of

professional engineering and land surveying shall not relieve such land surveyors from personal liability for their professional acts and each such corporation or partnership shall be jointly and severally liable for the professional acts of agents, employees, officers or partners.

History.—§11, ch. 63-310.

471.38 Engineering scholarship trust fund.—

(1) There is created in the state treasury an engineering scholarship trust fund, and said fund shall be expended by the state board of engineer examiners solely for the award of scholarship loans for the study of engineering as hereinafter provided.

(2) The board is authorized to accept for, and deposit in the engineering scholarship trust fund, bequests, gifts, contributions, and funds of any designation from private or public sources, including the United States government, and including surplus funds presently on hand or hereafter accruing.

(3) The board is authorized to pledge such funds as security for scholarship loans, with organizations such as, but not limited to, the united student aid fund.

History.—§12, ch. 63-310.

471.39 Engineering scholarships; how awarded.—

(1) There shall be awarded each year, beginning with the first year sufficient funds become available, to persons selected by the state board of engineering examiners, scholarship loans for the pursuit of required pre-engineering studies for periods not exceeding four semesters or trimesters, and scholarship loans for the study of engineering for periods not exceeding six semesters or trimesters.

(2) To be eligible to receive a scholarship loan for the pursuit of required pre-engineering studies, an applicant must:

(a) Have graduated from a high school in this state, or be a student in a high school in this state and be eligible under a recognized accelerated college entrance program for admission before graduation from high school to an accredited institution of higher learning; and

(b) Have met the minimum academic standards which shall be established by regulations hereinafter authorized; and

(c) Have furnished evidence satisfactory to the board of engineer examiners that he does not have available to him sufficient financial resources to enable him to pursue required pre-engineering studies.

(3) A recipient of a scholarship loan for the pursuit of required pre-engineering studies shall attend an accredited junior college, college, or university, offering a course of pre-engineering studies and shall pursue a course of studies which will qualify him for admission to an approved college of engineering.

(4) To be eligible to receive a scholarship loan for the study of engineering an applicant must:

(a) Be a citizen and resident of this state.

(b) Be eligible for admission to an approved college of engineering, and have attained an academic standard in pre-engineering studies of not less than the minimum standards established by regulations hereinafter authorized.

(c) Have furnished evidence satisfactory to the board of engineer examiners that he does not have available to him sufficient financial resources to enable him to pursue the study of engineering.

(5) A recipient of a scholarship loan for the study of engineering shall attend an accredited college of engineering approved by the state board of engineering examiners.

History.—§12, ch. 63-310.

471.40 Engineering scholarships; value; disbursement; promissory notes.—

(1) The scholarships provided for herein shall cover the student's tuition, books, laboratory fees, equipment, and other fees, supplies, board, room rent, and other necessary and reasonable expenses of attending a college or university.

(2) Each payment or pledge to a scholarship loan shall be made from the engineering scholarship trust fund in a manner which shall be established by regulations hereinafter authorized.

(3) The total amount of funds expended or pledged from the engineering scholarship trust fund shall not at any time exceed funds available in said funds.

(4) Each person who receives a scholarship loan directly from the engineering scholarship trust fund shall execute, as principal, a suitable promissory note under seal, which shall be endorsed by his parent or guardian, or by some other responsible citizen as surety and shall deliver said note to the state board of engineer examiners in a manner that shall be provided by regulations hereinafter authorized. Each said note shall be made payable to the engineering scholarship trust fund for the amount of the scholarship payment.

History.—§12, ch. 63-310.

471.41 Satisfaction of notes and exemption of interest.—

(1) The first note executed by a scholarship recipient shall become due and payable one year after the recipient receives his engineering degree, or one year after the cessation of his attendance in an approved institution of higher learning, whichever comes first. Each subsequent note shall become due and payable in its chronological order of execution and at intervals following the due date of the first executed note equal to the period of time intervening between the execution of the first note and each subsequent note.

(2) The recipient of a scholarship loan under the provisions of this act who earns any degree in engineering and becomes employed or engaged in the practice of engineering in this state during or prior to the period that notes executed by him for a scholarship loan are due and payable, shall be exempt from interest payments or charges, so long as he is

employed or engaged in the practice of engineering within the state. This includes exemption of interest of loans made directly from the engineering scholarship trust fund or loans made from other sources, which are guaranteed by a pledge from the engineering scholarship trust fund. The payment of interest on loans that are guaranteed by a pledge shall be made out of the engineering scholarship trust fund.

History.—§12, ch. 63-310.

471.42 Penalty for violation of scholarship loan agreement.—

(1) The failure of a recipient of a scholarship loan awarded under the provisions of this chapter to perform his agreement with the state board of engineering examiners or to pay the amount for which he is liable thereunder, shall constitute a ground for the state board of engineer examiners refusal to examine him for registration as a professional engineer in this state, or shall constitute a ground for the revocation or suspension of his certificate of registration as a professional engineer in this state.

(2) The attorney general shall institute proceedings in the name of the state for the purpose of recovering any amount due the state under §§471.38-471.43 from any scholarship loan recipient. All amounts of money received in the payment of notes or otherwise recovered under the provisions of §§471.38-471.43, including all interest thereon, shall be deposited in the state treasury to the account of the engineering scholarship trust fund created in §471.38.

History.—§12, ch. 63-310.

471.43 Rules and regulations.—The state board of engineer examiners shall have the authority to make reasonable rules and regulations, not inconsistent with law for the carrying out of the provisions of §§471.38-471.43.

History.—§13, ch. 63-310.

471.44 Savings clause.—The continuity of the board as constituted and operating shall not be affected by the provisions of chapter 63-310, Laws of Florida, provided, however, that none of the provisions in said chapter shall be construed to prevent an architect registered in accordance with the provisions of chapter 467 from practicing professional architecture as defined in chapter 467 in effect April 2, 1963.

History.—§14, ch. 63-310.

CHAPTER 472

LAND SURVEYORS

472.01 Definitions.—As used in this chapter:

(1) The term "Board" means the Florida state board of engineer examiners as provided for in chapter 471.

(2) A person practices "Land Surveying" within the meaning of this chapter, who re-establishes the original lines and corners to townships, ranges, sections, and the subdivision thereof, as established by the surveyors deputized by the surveyor general to survey the public lands of Florida; who subdivides the land in accordance with rules and regulations prescribed by the general land office and the laws of Florida; who surveys and otherwise determines on the ground the plane boundaries of tracts and parcels of land, traverses the boundaries of lakes, water-courses, seacoast and similar natural features; who resurveys on the ground lines and subdivisions surveyed at a previous date by himself or other surveyors; and who otherwise performs recognized acts of land surveying in connection with the establishing and re-establishing of boundaries of tracts of land.

(3) "Land Surveyer" means any person who practices land surveying.

History.—§1, ch. 15657, 1931; CGL 1936 Supp. 4151(96); am. §7, ch. 22858, 1945.
cf.—§85.08, Liens in favor of land surveyors.

472.02 Land surveyors required to register.—No person shall practice land surveying without having first been duly and regularly registered by the board as a land surveyor as required by this chapter, nor shall any person practice land surveying whose authority to practice is revoked by the board.

History.—§2, ch. 15657, 1931; CGL 1936 Supp. 4151(97).

472.03 Florida state board of engineer examiners authorized to examine applicants; revoke certificates, etc.—The state board of engineer examiners may examine applicants for registration to practice land surveying; register and issue certificates of registration to all applicants whom it deems qualified to practice land surveying in accordance with this chapter; and revoke certificates of registration for just cause as provided for in this chapter.

History.—§3, ch. 15657, 1931; CGL 1936 Supp. 4151(98).

472.04 Qualifications of applicants; fees.—The board shall examine any applicant who pays a fee of ten dollars and submits evidence, verified by oath and satisfactory to the board that he:

(1) Is more than twenty-one years of age;

(2) Is of good character;

(3) Has been engaged in surveying work as surveyor or assistant to a competent surveyor for at least three years.

(4) Or in lieu of requirement (3) as specified above, is a graduate of an engineering college of recognized good reputation, and possesses the necessary surveying knowledge to be determined by the examination conducted by said board according to law.

(5) All fees or other monies collected by the board shall be deposited in the state treasury to the credit of the state agencies fund and the expenses of each board member shall be ten dollars per day, or part of a day, while attending official board meetings, not to exceed twelve meetings per year, and per diem and mileage as provided in §112.061, from the place of their residence to the place of meeting and return, and other expenses of the board shall be paid upon requisition of the secretary-treasurer of the board from an appropriation for such purposes.

History.—§4, ch. 15657, 1931; CGL 1936 Supp. 4151(99). Sub. §(5), §110, ch. 26869, 1951; am. §22, ch. 28215, 1953.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.
§455.03 Dispensing with examination of veterans.

472.05 Examination of applicants.—Examination for registration shall be held at regular or special meetings of the board at such times and at such places within the state in each year as the board shall determine.

The scope of the examination and the methods and procedure shall be prescribed by the board. The applicant, to become registered, must satisfy the board by means of the prescribed examination, references and experience record, that he is fully qualified as to age, good character, and technical training, experience and good judgment to practice land surveying in Florida. The examination shall be written, or partly oral and partly written. The applicant's sworn chronological statement of his technical education and experience, submitted in the form prescribed by the board, may be accepted in lieu of a further written examination.

As soon as practicable after the close of each examination the members of the board who have conducted such examination shall canvass the qualifications of each applicant as evidenced by the said examination, and shall certify to the secretary of the board results of the examination; the secretary of the board shall notify each applicant of the result of his examination.

History.—§5, ch. 15657, 1931; CGL 1936 Supp. 4151(100).

472.06 Certificate of registration; fee.—Upon receipt of an additional fee of ten dollars the board shall issue to any applicant who has been certified as having passed the examination conducted by the board, a certificate of registration signed by the president and secretary of the board, whereupon said applicant shall be authorized to practice land surveying.

History.—§6, ch. 15657, 1931; CGL 1936 Supp. 4151(101).

472.07 Reciprocity with other states, territories and countries.—The board may enter into reciprocal agreement for the registration of land surveyors with any state, territory or country, whose standard of qualification for registering land surveyors shall, in the opinion of the board, be as high as those of this state. The board shall issue a certificate of registration to any person who shall pay a fee of twenty dollars and present satisfactory evidence that such person holds a legal certificate of registration from the proper authorities in the state, territory or country adjudged of a sufficiently high standard by the board.

Upon receipt of such certificate of registration, duly signed by the president and secretary of the board, the applicant shall be entitled to all of the rights and privileges conferred by a certificate issued after examination by the board.

History.—§7, ch. 15657, 1931; CGL 1936 Supp. 4151(102).

472.08 Persons not affected by this chapter.—This chapter shall not apply to any land surveyor working for the United States government; nor to any land surveyor coming from without this state and employed herein until a reasonable time, as prescribed by the rules of the board, shall have lapsed to permit the registration of such person under this chapter; provided, that before practicing within this state he shall have applied for the issuance to him of a certificate of registration and shall have paid the fee prescribed in this chapter for admission to examination; nor to those professional engineers registered and then qualified to practice in the state who shall apply for registration as land surveyors and shall satisfy the board of their qualifications as land surveyors under this chapter; nor shall the members of the board as such be required to be registered as land surveyors.

History.—§9, ch. 15657, 1931; CGL 1936 Supp. 4151(104).

472.09 Annual renewal of registration.—Every certified land surveyor registered under this chapter who desires to continue the practice of his profession, shall annually pay to the secretary of the board a fee of five dollars on or before a date to be fixed by the board, for which fee a renewal certificate of registration for the current year shall be issued; excepting professional engineers duly qualified as land surveyors who pay their renewal fee as registered engineers shall not be required to pay a renewal fee as land surveyors.

The board may, before issuing an annual renewal certificate, inquire into the character, professional practice and qualifications of any applicant, and if, in its judgment, he may have been guilty of any of the improprieties enumerated in this chapter as cause for revocation of a certificate of registration, he may be called before the board for supplemental examination for character and technical competency. If, in the opinion of the board, after notice and hearing, he is found guilty of any of the said improprieties or incompetence, renewal certificates shall be denied him and he shall be deprived of any of the privileges accorded him by a legally issued certificate, subject always to the right of review by certiorari by the appropriate circuit court in the manner and within the time prescribed by the Florida appellate rules.

History.—§10, ch. 15657, 1931; CGL 1936 Supp. 4151(105); §7, ch. 22858, 1945; §10, ch. 63-509.

472.10 Revocation, suspension and reissue of certificates; records of board.—The board may at any time inquire into the identity of any person claiming to be a registered land surveyor and after due service of a notice in writing, require him to prove to the satisfaction of the board that he is the person authorized to practice land surveying under the certificate of registration by virtue of which he claims the privilege of this chapter.

When the board finds that a person claiming to be a land surveyor registered under this chapter is not in fact the person to whom the certifcate of registration was issued, it shall reduce its findings to writing and file them in its office. Such findings shall be prima facie evidence that the person mentioned therein is falsely impersonating a land surveyor of a like or different name.

The board may revoke or suspend a certificate of registration of a land surveyor for fraud or deceit in the securing of his certificate; for conviction of any crime involving moral turpitude; for malpractice, malfeasance, gross carelessnes or gross incompetence in the practice of land surveying; for affixing or permitting to be affixed his seal or his name to any maps, plats or surveys which were not prepared by such registrant or under his responsible supervision, direction or control; and for the violation of any law of this state relating to the practice of land surveying or any lawful rule or regulation made by the board pursuant to law.

Any corporation or partnership which has been duly certified under the provisions of this

chapter and has engaged in the practice of land surveying in this state shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing the board shall revoke or suspend the certificate of registration of an agent, employee, officer or partner of such corporation or partnership who acts in its behalf as land surveyor in this state provided four or more members of the board vote in the favor of such suspension or revocation of such certificate of authorization.

The board shall adopt rules and regulations governing the proceedings for the revocation or suspension of certificates of registration and authorization.

The board may reissue a certificate of registration to any person and a certificate of authorization to any corporation or partnership whose certificate has been revoked, for reasons which the board shall determine to be satisfactory.

The records of the board shall be open to public inspection and certified copies thereof shall be received in evidence in all the courts of this state as prima facie evidence of what they purport to be and of the facts therein contained.

History.—§11, ch. 15657, 1931; CGL 1936 Supp. 4151(106); §1, ch. 63-258.

472.11 Corporations engaged in land surveying.—

(1) The practice or offer to practice land surveying as defined in §472.01 by individual land surveyors registered under this chapter through a corporation or partnership, or by a corporation or partnership through individual land surveyors, as agents, employees, officers or partners, is permitted subject to the provisions of this chapter; provided that one or more of the principal officers of such corporation or partners of such partnership and all personnel of such corporation or partnership who act in its behalf as land surveyors in this state are registered as provided by this chapter, or are persons lawfully practicing under §472.08, and further provided that said corporation or partnership has been issued a certificate of authorization by the board as provided herein. All final maps, plats, surveys, reports, or other surveying papers or documents involving the practice of land surveying as defined in §472.01 which shall have been prepared or approved for the use of the corporation or partnership or for delivery to any person or for public record within the state shall be dated and bear the signature and seal of the land surveyor who prepared or approved them.

(2) A corporation or partnership desiring a certificate of authorization shall file with the board an application upon a form to be prescribed by the board and the designation required by the following subsection, accompanied by the application and registration fees prescribed by §§472.04 and 472.06.

(3) A corporation shall file with the board using a form to be prescribed by the board the names and addresses of all officers and board members of the corporation, including the principal officer or officers duly registered to practice land surveying in this state, and also of an individual or individuals duly registered to practice land surveying in this state who shall be in responsible charge of the practice of land surveying in this state by said corporation. A partnership shall file with the board using a form provided by the board the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice land surveying in this state, and also of an individual or individuals duly registered to practice land surveying in this state who shall be in responsible charge of the practice of land surveying in this state by said partnership. This same form, giving the same information, must accompany the annual renewal fee prescribed by §472.09. In the event there shall be a change in any of those persons during the year such changes shall be designated on the same form and filed with the board by the corporation or partnership within thirty days after the effective date of such change.

(4) If all the requirements of this section are met, the board shall issue to such corporation or partnership a certificate of authorization; provided, however, the board may refuse to issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing certificate, or if the board, after giving the persons involved a full and fair hearing, shall determine that any of the officers or directors of said corporation or partners of said partnership are not persons of good character. Any person aggrieved by an adverse determination of the board may appeal to the circuit court in the manner provided in §471.28.

(5) Nothing in this law shall be construed to mean that a certificate of registration to practice land surveying as defined herein shall be held by a corporation.

History.—§12, ch. 15657, 1931; CGL 1936 Supp. 4151(107); §1, ch. 63-258.

472.12 List of land surveyors to be published annually.—The board shall, during the month of April of each year, certify and publish a complete list of registered land surveyors with their business addresses in a newspaper published in the state.

History.—§13, ch. 15657, 1931; CGL 1936 Supp. 4151(108).

472.13 Penalty for violation of chapter.—Any person, who, not being then legally authorized to practice land surveying within this state according to the provisions of this chapter, shall practice, or attempts or advertises to practice, or holds himself out as authorized to practice land surveying, or shall use in connection with his name, or otherwise assume, use, or advertise, any title or designation tending to convey the impression that he is a land surveyor; or any person who shall buy, sell or fraudulently obtain any certificate of registration or who shall aid or abet buying,

selling or fraudulently obtaining of such certificates, or who shall practice or attempt or advertise to practice or hold himself out as authorized to practice land surveying under cover of any certificate obtained or issued fraudulently or unlawfully or under fraudulent representations or willful misstatement of fact in a material regard; and any person who shall practice or attempt or advertise to practice, or hold himself out as authorized to practice land surveying under a false or assumed name or who shall falsely impersonate any land surveyor or former land surveyor of a like or different name or who shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished according to law, and in addition his certificate of registration shall be automatically revoked.

History.—§14, ch. 15657, 1931; CGL 1936 Supp. 8135(8).

cf.—775.07, Punishment for misdemeanor.

472.14 Registered engineers and surveyors authorized to enter lands of third parties under certain conditions.—Registered engineers and registered land surveyors be and they are hereby granted permission and authority to go on, over and upon the lands of others when necessary so to do to make land surveys, and in so doing to carry with them their agents, servants and employees necessary for that purpose, and that such entry under the right hereby granted shall not constitute trespass, and that such registered engineers and registered land surveyors shall not nor shall their agents, servants or employees so entering under the right hereby granted be liable to arrest or a civil action by reason of such entry; provided, however, that nothing in this section shall be construed as giving the said registered engineers, registered land surveyors, their agents, servants or employees any right to destroy, injure, damage or move anything on said lands of another without the written permission of the landowner.

History.—§1, ch. 22740, 1945.

CHAPTER 473

PUBLIC ACCOUNTANTS

473.01 Definition of terms used in chapter.—Wherever the term "certified public accountant" is used in this chapter, it shall be deemed and construed to mean a person holding a certificate to practice as a certified public accountant issued under this chapter, or any law of the state heretofore in force and effect.

Wherever the term "public accountant" is used in this chapter, it shall be deemed and construed to mean a person holding a certificate of authority to practice as a public accountant issued under the provisions of this chapter or any law of the state.

Wherever the term "board" is used in this chapter, it shall be deemed and construed to mean the state board of accountancy created under this chapter, unless otherwise specified.

History.—§26, ch. 15637, 1931; CGL 1936 Supp. 3935(25).

473.02 "Public accounting" defined.—A person, either individually or as a member of a firm or an officer or employee of a corporation, shall be deemed to be engaged in practice of public accounting within the meaning and intent of this chapter:

(1) Who holds himself out to the public in any manner as one who is skilled in the knowledge, science and practice of accounting and as qualified to render professional services as an accountant for compensation; or

(2) Who maintains an office for the transaction of business as a public accountant, or who, except as an employee of a public accountant, practices accounting, as distinguished from bookkeeping for more than one employer; or

(3) Who offers to receive clients to perform for compensation, or who does perform upon behalf of clients for compensation, professional services that involve or require an audit or verification of financial transactions and accounting records; or

(4) Who prepares, signs or certifies for clients, reports of audits, balance sheets and other financial, accounting and related schedules, exhibits, statements, or reports which are to be used for publication or for credit purposes, or are to be filed with a court or other tribunal or governmental agency, or used for any other purpose; or

(5) Who in general, or as an incident to such work, renders professional assistance to clients for compensation in any or all matters relating to accounting procedure and the recording, presentation and certification of financial facts; or

(6) Who prepares for another or signs any statement, schedule, audit, balance sheet, or other document or paper reflecting, or purporting to reflect, the results of an audit or examination of the financial records or books of account of such person, which is used, or intended to be used, for the purpose of obtaining or soliciting any loan or credit.

History.—§15, ch. 15637, 1931; CGL 1936 Supp. 3935(15).
cf.—§1.01(3), "Person" defined.

473.03 State board of accountancy; terms and qualifications.—The governor shall appoint five persons, each of whom shall be a resident of the state and shall hold a certificate as a certified public accountant issued by the state board of accountancy of this state, and such persons and their successors in office shall constitute the state board of accountancy and shall have and exercise all of the powers and authority vested by law in said board.

All appointments to membership upon said board shall be for four years from the termi-

nation of the now existing terms. All persons appointed to membership upon said board shall hold office, after the expiration of their respective terms, until their successors are appointed and qualified. All vacancies upon the board shall be filled by appointment by the governor for the unexpired term. No person shall ever be appointed to membership upon such board unless he shall at the time of such appointment be the holder of a certificate as a certified public accountant issued by the board.

History.—§1, ch. 15637, 1931; CGL 1936 Supp. 3935(1).

473.04 Powers and duties of board. — The board is charged with the responsibility for the administration of this chapter and may design and use a seal, compel the attendance of witnesses, administer oaths, take testimony and receive proofs concerning all matters within its jurisdiction. It shall formulate rules for its guidance, not inconsistent with the provisions of this chapter, and shall print the same for distribution. It shall prescribe a standard of professional conduct and formulate reasonable rules defining unethical practices for persons holding certificates under this chapter. Every person practicing as a public accountant or as a certified public accountant in this state shall be governed and controlled by the rules and standards adopted by the board.

History.—§2, ch. 15637, 1931; CGL 1936 Supp. 3935(2).

473.05 Power of board to enjoin violations and to compel obedience to law or regulations. —Whenever it shall appear to the board that any person is violating or about to violate the terms and provisions of this chapter, the board may file an application for injunction in its own name, or proceedings in mandamus in the name of the state, on its own relation, and by its counsel alleging the facts and praying for an injunction or writ of mandamus as the case may be against such person, partnership, or corporation, and its members, officers, or directors restraining them from further violating, or commanding them to obey, such law.

Upon proper application and showing that the defendant has not registered as required by the terms and provisions of this chapter, or that the defendant is not in good standing under any certificate that may have been theretofore issued, or is violating any of the provisions of this chapter, or that a certificate to practice accountancy as a public accountant or certified public accountant has been denied said defendant, or suspended or revoked, or that this chapter has been or is about to be, or is being violated or disobeyed, which showing may be made by affidavit, the judge of the court wherein the application shall be filed shall issue a restraining order or alternative writ of mandamus and upon the final hearing shall grant and issue an injunction including a mandatory injunction, or a peremptory writ of mandamus as prayed upon finding the truth and sufficiency of the application or petition as the case may be.

The court may enforce said injunction or writ of mandamus by punishment for contempt, and by such other writs and process, mesne or final, as are permitted to circuit courts and shall make such other orders or decrees as its discretion and the rules shall require. Such injunction or writ may be limited in time, perpetual or conditional, as may be necessary and proper to the enforcement of this chapter. The laws of the state now in force, and the rules of the supreme court regulating appeals in similar cases shall apply to appeals in cases brought under this section.

History.—§1, ch. 17265, 1935; CGL 1936 Supp. 3935(2-a). Am. §2, ch. 29737, 1955.
cf.—Ch. 64 Injunctions.

473.06 Organization of board; to keep records.—The board shall annually elect one of its members as chairman and shall select a secretary, who must be a member of the board. It shall make an annual written report to the governor. It shall keep all applications filed, all documents under oath, a record of the proceedings, and shall maintain a registry of the names and addresses of all persons applying for, and of those receiving, certificates under this chapter, any of which, or a certified copy thereof, shall be prima facie evidence of all matters set forth therein, and shall be admissible in evidence in all of the courts of this state.

History.—§3, ch. 15637, 1931; CGL 1936 Supp. 3935(3).

473.07 Meetings of board; quorum.—Three members of the board shall constitute a quorum at any meeting duly called in accordance with the rules adopted by the board. The board shall hold a meeting at least twice each year, for the purpose of conducting an examination of those who have applied for certificates under this chapter. The time for holding such examinations shall be fixed by the rules of the board and may be changed from time to time, but no such change shall be made unless at least ten days' notice thereof shall have been given to all persons who have applications pending for certificates. The board may meet, for the purpose of holding examinations and conducting other business, at such places in the state as may be fixed by the board.

History.—§4, ch. 15637, 1931; CGL 1936 Supp. 3935(4).

473.08 Qualifications of applicant for examination; certificates to successful examinees; standards.—

(1) Any person who is a citizen of the United States and a resident of the state, over the age of twenty-one years, of good moral character, and a graduate of a high school with a four years' course of study, or who has had an equivalent education, and who shall otherwise meet the qualifications specified in the rules of the board, shall be entitled to take an examination for the purpose of determining whether or not such person shall be permitted to practice in this State as a certified public accountant, provided such person

(a) is a graduate of at least a four-year accredited college or university course with a major in accounting, or

(b) has had not less than three years' experience in the practice of public accounting, or

(c) has been engaged in the occupation of keeping books of account concurrently for more than one individual or business in the state as his sole vocation for a continuous period of at least five years immediately preceding the date of his application to take such examination, and proof of compliance with this provision shall be established in such form as is prescribed by the rules of the state board of accountancy.

(2) A person who qualifies to take said examination pursuant to provisions of paragraph (a) of subsection (1) of this section, and who takes and passes said examination, shall not receive a certificate as a certified public accountant and shall not be permitted to practice public accounting in this State until he shall have completed one year of work in a registered accountant's office, or until he shall have successfully completed an additional accredited one year accounting course at an accredited college or university, and proof of compliance with the provisions of this paragraph shall be established in such form as is prescribed by the state board of accountancy.

(3) For the purpose of this section, a resident of Florida is defined as one who has resided in this state for at least two years immediately preceding the filing of his application, and who is legally domiciled in the state.

(4) The provisions of paragraphs (b) and (c) of subsection (1) of this section shall be effectice for a period of five years following the date of enactment of this amendment, after which period no person other than a graduate of at least a four-year accredited college or university course with a major in accounting shall be considered as having fulfilled the educational requirements necessary to qualify for an examination for the purposes of determining whether such person shall be permitted to practice as a certified public accountant, except that any person whose application for an examination shall have been approved by the state board of accountancy prior to the termination of said five year period shall be entitled to take such examination at any time or times during the period of five years immediately following the termination of the five year period first referred to in this paragraph.

(5) The state board of accountancy shall have the authority to establish the standards for determining and shall determine:

(a) what constitutes an education equivalent to that of a graduate of a high school with a four-year course of training:

(b) what educational institutions offer a four-year accredited college or university course, and

(c) what courses taken at such schools constitute a major in accounting, within the contemplation of this section.

History.—§5, ch. 15637, 1931; CGL 1936 Supp. 3935(5). Am. §1, ch. 26483, 1951.

473.09 Application; fee; disposition of fee.—All persons desiring to receive a certificate to practice as a certified public accountant in this state shall file a written application to take an examination before the board, such application to be upon a form prescribed by the board, and shall be signed and sworn to by the applicant. Each applicant shall remit to the board at the time of filing such application such sum of money as the board from time to time may prescribe, but in no case shall such sum exceed seventy-five dollars for an original application or twenty-five dollars for an extended examination. If such application is approved by the board, such sum of money shall be retained by the board and expended, administered or otherwise disposed of in accordance with the laws of the state. If such application shall be denied, such sum of money shall be returned to the applicant, except for twenty-five dollars of the amount paid for an original application.

History.—§6, ch. 15637, 1931; CGL 1936 Supp. 3935(6). Am. §1, ch. 29785, 1955.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

§455.03 Dispensing with examination of veterans.

§473.21 Disposition of fees.

473.10 Examination of applicants; subjects.—The board shall conduct examinations by the propounding of questions in writing. The method of conducting the examination and all regulations concerning the same shall be prescribed by the board in rules to be adopted in accordance with this chapter. The board shall prescribe by such rules methods for grading papers, and shall prescribe what shall constitute a passing grade entitling the applicant to a certificate. The examinations shall be in theory of accounts, practical accountancy, auditing, commercial law as affecting accountancy, and such other related subjects as shall be specified by the board.

History.—§7, ch. 15637, 1931; CGL 1936 Supp. 3935(7).

473.12 Registration and payment of fees by accountants.—Each person holding a certificate as a certified public accountant or certificate as a public accountant, whether granted under this chapter or under any other law of the state, shall, between the first day of January and the thirty-first day of March, in each year, notify the board in writing of his present place of residence, the name of any accountant or firm of accountants by whom he shall then be employed or the name of any firm of which he shall then be a member. At the time of transmitting such information he shall pay to the secretary of the board a registration fee each year in an amount to be established by the board; provided, however, that such registration fee shall not exceed the sum of twenty-five dollars for any one year.

Thereupon, the board shall issue to such person a registration card showing that such person has duly registered and is entitled to practice in the state as a certified public accountant or as a public accountant, as the case may be, for said year. If any person holding a certificate as a certified public accountant or as a public accountant shall fail to register and pay the fee annually, within the time and in the manner provided by this section, then at any time thereafter the board may give notice to such person by registered mail, at his address shown upon the records of the board, requiring such person to register and pay such fee within thirty days after the mailing of such notice. If such person shall fail to register and pay the said fee within the said period of thirty days, the board shall enter an order suspending the certificate of such person, and thereupon such person shall no longer be entitled to exercise or enjoy any of the rights or privileges conferred by such certificate until he shall have been reinstated by the board after having registered and paid all delinquent registration fees, as provided in this chapter; provided that if such person shall fail to register and pay such annual fee for a period of five consecutive years, the board may, before reinstating such person, require him to pass an examination prescribed by the board for reinstatement, which examination may be oral or written, in the discretion of the board.

History.—§8, ch. 15637, 1931; CGL 1936 Supp. 3935(8); am. §1, ch. 24164, 1947.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

473.13 Publication of lists of accountants.—The board may, in its discretion, establish such rules and regulations as to the publication of lists of persons holding certificates as certified public accountants and public accountants, as may in the judgment of the board be for the best interests of the profession of public accounting in the state.

History.—§9, ch. 15637, 1931; CGL 1936 Supp. 3935(9).

473.14 Temporary certificate.—The board may, in its discretion, adopt rules and regulations providing for the issuance of temporary certificates to persons for the purpose of enabling such persons to fulfill specific engagements or employments, the contracts for which were entered into beyond the limits of the state.

No such temporary certificate shall be valid for more than ninety days after its issuance, and no certificate shall cover more than one engagement, and no such certificate shall be issued to any firm or copartnership unless all of the members thereof hold certificates as certified public accountants issued under the laws of another state or certificates as chartered accountants issued under the laws of a foreign country; and no such temporary certificate shall be issued to an individual unless he holds a certificate as a certified public accountant issued under the laws of another state or country, or a certificate as a chartered accountant issued under the laws of a foreign country. Each person applying for a temporary certificate shall pay to the board the sum of ten dollars, which shall be disposed of as other moneys are required to be disposed of under this chapter.

History.—§12, ch. 15637, 1931; CGL 1936 Supp. 3935(12).

473.15 Communications between accountant and client privileged.—All communications between certified public accountants and public accountants and the person for whom such certified public accountant or public accountant shall have made any audit or other investigation in a professional capacity, and all information obtained by certified public accountants and public accountants in their professional capacity concerning the business and affairs of clients shall be deemed privileged communications in all of the courts of this state, and no such certified public accountant or public accountant shall be permitted to testify with respect to any of said matters, except with the consent in writing of such client or his legal representative.

History.—§13, ch. 15637, 1931; CGL 1936 Supp. 3935(13).

473.16 Unlawful for certificate holder to act as agent for nonresident accountant; exceptions.—It is unlawful for any person holding a certificate as a certified public accountant or a certificate of authority as a public accountant to act as the representative, agent or manager, in the state, in connection with the practice of public accounting, of any person not authorized under the provisions of this chapter to practice public accounting in this state, or of any firm or association of persons, unless each member of such firm or association of persons shall be authorized to practice public accounting in this state under the provisions of this chapter; provided, that any certified public accountant or firm of certified public accountants residing beyond the limits of the state, who was or were represented on June 25, 1931, in the state by a representative, agent or manager, shall be permitted to continue to be represented in this state by such representative, agent or manager, but no new or successor representative, agent or manager in the state shall be appointed, employed or selected for such certified public accountant or firm of certified public accountants without the approval in writing of the board first being had and obtained.

History.—§16, ch. 15637, 1931; CGL 1936 Supp. 3935(16).

473.17 Use of "Certified Public Accountants" and "Public Accountants" in firm name.—Any firm, every member of which is a certified public accountant, after registering the firm name with the board, may use the designation "Certified Public Accountants" in connection with the firm name.

Any firm, every member and resident manager of which is either a certified public accountant or a public accountant, after registering the firm name with the board, may use the designation "public accountants" in connection with the firm name.

History.—§17, ch. 15637, 1937; CGL 1936 Supp. 3935(17).

cf.—§473.26, Each member of firm to have certificate.

473.18 Records, etc., to remain property of accountant. — All statements, records, schedules and memoranda made by a certified public accountant or a public accountant or by the employee or employees of a certified public accountant or of a public accountant, incident to, or in the course of, professional service to a client, except the reports submitted by such certified public accountant or public accountant to the client, shall be and remain the property of such certified public accountant or public accountant in the absence of an express agreement between the certified public accountant or public accountant and the client.

History.—§19, ch. 15637, 1931; CGL 1936 Supp. 3935(18).

473.19 Certificates granted to holders from other states.—The board may, in its discretion, issue a certificate as a certified public accountant to any applicant who holds a valid and unrevoked certificate as a certified public accountant issued by, or under the authority of, another state or political subdivision of the United States, or who holds a valid and unrevoked certificate as a chartered accountant issued by, or under the authority of, a foreign country; provided, the applicant has complied with the provisions of this chapter and the rules of the board. The board shall not be required to issue any certificate under the provisions of this section unless:

(1) The original certificate was secured as the result of an examination which in the judgment of the board was the equivalent of the standard established by it, and,

(2) The applicant has been engaged in the practice of public accountancy in Florida as a full time employee of a certified public accountant, as defined in this chapter, for a period of two years, and is a resident, having resided continuously in the state for a period of two years, and,

(3) The state or country issuing the original certificate grants similar privileges to persons holding certificates as certified public accountants issued under the laws of this state, and,

(4) The board is otherwise fully satisfied as to the moral and technical fitness of the applicant.

History.—§21, ch. 15637, 1931; CGL 1936 Supp. 3935(20); am. §2, ch. 24164, 1947.

473.20 Revocation of certificates; grounds; procedure.—Any certificate to practice as a certified public accountant or as a public accountant may be revoked and canceled or suspended for a definite period, not to exceed two years, when it shall appear to the board:

(1) That such person has been guilty of an act described in §473.23; or,

(2) That such person has been convicted of a felony; or,

(3) That the certificate was obtained by fraud or deceit; or,

(4) That such person has been guilty of any fraudulent, wrongful or unlawful act while holding such certificate; or

(5) That such person was guilty of a fraudulent, wrongful or unlawful act prior to the issuance of the certificate and of which the board did not have knowledge at the time of the issuance of the certificate; or

(6) That any reason exists which would have justified the refusal of the certificate in the first instance; or

(7) Because of the commission by the holder of a certificate of any act which renders him unfit to associate with the fair and honorable members of the accounting profession; or

(8) That such person is an habitual drunkard.

A certificate may be revoked or suspended only by the unanimous vote of all members of the board for a period not to exceed two years for the violation by the holder thereof of any of the rules or canons or professional ethics promulgated by the board.

No certificate shall be revoked, or the operation thereof suspended, until after the board shall have had a hearing, at which the person holding such certificate shall be entitled to be present and to be represented by counsel. The board shall prescribe rules and regulations for receiving complaints against any person holding a certificate issued under this chapter and for the filing of charges against any such person by the board itself.

When any such complaint or charge shall be filed, a copy thereof shall be mailed, under the direction of the board, by registered mail, to the person against whom such complaint or charge is made, at the address of such person as shown upon the records of the board; and with such copy of the charge or complaint there shall be transmitted a notice that a hearing thereon will be had before the board at a time and place to be specified, not less than thirty days after the mailing of such notice. The burden of proof of such charges shall rest upon the persons who shall have preferred the same, or upon the board, as the case may be.

At the time fixed for such hearing, or at any adjournment which may be granted by the board, the matter shall proceed to hearing. The board, in its discretion, may be represented by counsel employed by the board. If the complaint or charge shall be sustained, the board may enter an order revoking or suspending the certificate, as provided by this chapter, or may censure the holder of the certificate. If the complaint or charge be not sustained, an order shall be entered by the board exonerating the holder of the certificate.

History.—§22, ch. 15637, 1931; CGL 1936 Supp. 3935(21).
cf.—473.23, Penalties for specific violations.
§473.25, Penalty for practicing without certificate.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

473.21 Disposition of fees; compensation of board members.—All moneys collected by the board from fees prescribed or authorized to be charged by this chapter, shall be received and accounted for by the board or by the secretary of the board, under its direction. Such

moneys shall be deposited and expended pursuant to the provisions of §215.37. Expenditures shall include the per diem and travel expenses of the secretary in attending official meetings; the salary of the secretary and incidental expenses of administration; the costs of taking testimony and procuring the attendance of witnesses before the board or its committees; office help and clerical help for the chairman of the board; costs of all legal proceedings taken under the provisions of this chapter for the enforcement thereof; costs of educational programs for the benefit of practicing certified public accountants, practicing public accountants and their employees, and all publicity campaigns and activities to inform the public of the character and value of the services rendered by certified public accountants and public accountants. Each member of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return, for time actually expended in pursuance of the duties imposed by this chapter. All bills shall be audited and approved by the board or by a committee of the board appointed for that purpose.

History.—§23, ch. 15637, 1931; §2, ch. 17267, 1935; CGL 1936 Supp. 3935(22); §3, ch. 24164, 1947; §111, ch. 26869, 1951; §22, ch. 28215, 1953; §24, ch. 57-1; §15, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.
§455.03 Dispensing with examinations of veterans.
§473.09 Application; fee; disposition of fees.

473.22 Card, sign, etc., as evidence against accountant.—The display of a card, sign, advertisement or directory listing, or the issuance of a letterhead, bearing a person's name as a practitioner of public accounting, shall be prima facie evidence in any hearing or prosecution against such person that the person whose name is so carried thereon is responsible for the same and that he is announcing himself thereby to be engaged in the practice of public accounting. In any hearing or prosecution under this chapter, the proof of a single act prohibited by law shall be sufficient, without proving a general course of conduct.

History.—§20, ch. 15637, 1931; CGL 1936 Supp. 3935(19).

473.23 Penalty for specific violations.—Any person:

(1) Who shall use any other term than certified public accountant or the abbreviation C. P. A. to indicate that he is a public accountant with a specially granted title; or

(2) Who shall announce by printed or written statement that he holds any membership in any society, association or organization of professional public accountants, unless such society, association or organization has been officially recognized by the board; or

(3) Who shall, when practicing as a member of a firm, announce either in writing or by printing, or represent verbally, that the firm is practicing as "Certified Public Accountants", unless all members of the firm are holders of valid and unrevoked certificates as certified public accountants issued by the state board of accountancy of this state; provided, that any person holding a certificate in good standing as a certified public accountant or as a public accountant granted by the state board of accountancy of this state, when acting as a representative, partner or manager of an individual or firm, properly qualified to practice public accounting under the laws of a state, or states, other than Florida, may hold out to the public that such individual is or that such individuals are, so qualified; or

(4) Who shall attempt to practice public accounting under an assumed name, or in the name of a corporation; or

(5) Who shall, as a member of a firm, announce either in writing or by printing, or represent verbally, that the firm is practicing as "Public Accountants", unless all members of the firm are holders of certificates of authority to practice as public accountants or certificates as certified public accountants within the meaning of this chapter; provided, that any person holding a certificate in good standing as a certified public accountant or as public accountant granted by the state board of accountancy of this state, when acting as a representative, partner or manager of an individual or firm, properly qualified to practice public accounting under the laws of a state or states, other than Florida, may hold out to the public that such individual is, or that such individuals are so qualified; or

(6) Who shall, as an officer of a corporation, permit it to practice public accounting; or

(7) Who holds himself out to the public as a certified public accountant, or who assumes to practice as a certified public accountant, unless he has received and holds a certificate as such from the board; or

(8) Who holds himself out to the public as a public accountant or who assumes to practice as a public accountant unless he has received and holds a certificate of authority from the board; or

(9) Who shall practice, or hold himself out as qualified to practice, as a certified public accountant or as a public accountant after his certificate has been revoked, or during the time that his certificate is suspended; or

(10) Who shall practice, as an individual or as a member of a firm, or who shall permit a firm of which he is a member to practice, as a certified public accountant or as a public accountant, unless a registration card has been duly secured for the current year in accordance with the provisions of this chapter; or

(11) Who shall sell, buy, give, or obtain an alleged certificate as a certified public accountant or certificate of authority or a registration card in any other manner than as provided for by this chapter; or

(12) Who shall attempt to practice as a certified public accountant or as a public accountant under guise of a certificate not issued by the board, or under cover of a certificate obtained illegally or fraudulently; or

(13) Who shall knowingly certify to any false or fraudulent report, certificate, exhibit, schedule or statement; or

(14) Who shall attempt by any subterfuge to evade the provisions of this chapter while practicing public accounting; or

(15) Who shall, as an individual or as a member of a firm or as an officer of a corporation, permit to be announced by printed or written statement, or shall represent verbally, that any report, certificate, exhibit, schedule or statement has been prepared by a certified public accountant or by a public accountant when the person who prepared the same was not such certified public accountant or public accountant, except when such person is the employee of a certified public accountant or public accountant, or a firm of certified public accountants or public accountants;

Shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars for each offense or imprisonment in the county jail for a period not exceeding six months.

History.—§18, ch. 15637, 1931; CGL 1936 Supp. 7875(1); am. §7, ch. 22858, 1945.
cf.—§775.06, Alternative punishment.

473.24 Use of titles "certified public accountant" and "public accountant"; penalty.—Any person who shall receive from the board under this chapter, or who shall have heretofore received from the board, a certificate to practice as a certified public accountant, shall be styled and known as a "certified public accountant", and no other person shall assume to use such title or the abbreviation "C. P. A." or any other word, words, letters or figures to indicate that the person using the same is a certified public accountant.

Any person who has heretofore received from the board a certificate of authority to practice as a public accountant shall be styled and known as a "Public Accountant" and no other person, except a certified public accountant, shall assume to use such designation to indicate that such person is entitled to practice as a public accountant in this state.

Any person holding a proper certificate of authority to practice as a public accountant in the state, and who is in good standing thereunder, and who holds a certificate as a certified public accountant issued by or under the authority of another state or political subdivision of the United States, may use the letters "C. P. A." after his name, provided he shows immediately after such letters that name of the state or political subdivision as aforesaid under whose authority such certificate was issued.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than six months.

History.—§10, ch. 15637, 1931; §1, ch. 17267, 1935; CGL 1936 Supp. 3935(10), 7875(2).
cf.—§775.06, Alternative punishment.

473.25 Practicing without certificate unlawful; penalty.—No person may practice in this state as a certified public accountant or as a public accountant, nor hold himself out to the public as being qualified to practice public accounting, or any phase or branch thereof, in the state, unless such person shall be the holder of a certificate as a certified public accountant or as a public accountant then in full force and effect under the provisions of this chapter.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months.

History.—§14, ch. 15637, 1931; CGL 1936 Supp. 3935(14), 7875(4).
cf.—§775.06, Alternative punishment.

473.26 Each member of firm must have certificate; management of office; practicing under an assumed name; penalty.—It shall be unlawful for any person to engage in the practice of public accounting in this state as a member of a firm unless he shall be the holder of a certificate as a public accountant or a certificate as a certified public accountant, issued by the board. It shall be unlawful for any office of a public accountant or certified public accountant in Florida to be managed by anyone other than a certified public accountant or public accountant, registered as such in Florida. No person shall practice public accounting in this state under an assumed name, and no certificate as a certified public accountant shall ever be granted to a corporation. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months.

History.—§11, ch. 15637, 1931; CGL 1936 Supp. 3935(11), 7875(3); am. §4, ch. 24164, 1947; §15, ch. 57-1.

473.27 Occupational licenses.—Any state, county, or municipal official charged with the duty of collecting occupational taxes and issuing occupational licenses shall not issue to any person an occupational license to practice accountancy unless said person so applying for an occupational license shall produce to said official a registration card for the year in which application is made issued by the state board of accountancy showing that said applicant is the holder of a license to practice as a public ac-

countant or as a certified public accountant under the provisions of the laws of this state.

History.—§5, ch. 24164, 1947.

473.29 **Exceptions.**—Nothing contained in §§473.12, 473.19, 473.21 and 473.26, 473.27 shall be construed to apply to any bookkeeper or public bookkeeper engaged in the occupation of bookkeeping as an employee or independent contractor contracting with one or more persons, organizations, or entities for the purpose of keeping books, making trial balances, and preparing financial statements, all as a part of bookkeeping services; provided that such trial balances or financial statements are issued without opinion or certificate over the signature of such person as "Bookkeeper" or "Public Bookkeeper."

History.—§7, ch. 24164, 1947; §1, ch. 57-273.

CHAPTER 474

VETERINARIANS

474.01 Board of veterinary examiners; terms; meetings; organization.—The governor of the state shall as soon as practicable after the passage of this law, appoint three licensed graduate veterinarians, not more than one of whom shall be graduates of the same veterinary college, and neither of whom shall be connected with any veterinary college in any capacity, who shall constitute a state board of veterinary examiners. One member shall be appointed for a period of two years, one for three years, and one for four years. Subsequent appointments shall be for a period of four years. The Florida State Veterinary Medical Association may recommend to the governor of Florida licensed graduate veterinarians for appointment to the board and the governor, in his discretion, may follow such recommendations. At the first meeting of said board, and biennially thereafter, the board shall elect a president, vice-president and secretary-treasurer. The state board of veterinary examiners shall meet at least once a year at such times and places as may be ordered by the president of said board for the purpose of examining diplomas and credentials, and conducting examinations of applicants for license to practice veterinary medicine and surgery in the state.

History.—§2, ch. 10289, 1925; CGL 4055; §1, ch. 20313, 1941.

474.02 Examination of applicants by board.—All persons before entering upon the practice of veterinary medicine and surgery in this state shall be required to pass an examination conducted by said board of veterinary examiners, and may be granted a license by said board after passing such examination and otherwise complying with the provisions of this law.

History.—§3, ch. 10289, 1925; §1, ch. 13891, 1929; CGL 4056; §2, ch. 20313, 1941.

474.03 Annual renewal of license.—On or before the 1st day of April of each year, each practicing veterinarian in the state shall file with the secretary of the board of veterinary examiners his application for renewal of his license to practice. Said applications shall be made on forms to be furnished by the board, on which shall appear the name, age and residence of the applicant. All such applications shall be accompanied by a fee of five dollars. In the event any licensee of this board shall fail for a period of sixty days, after the expiration of his license, to make application to the board for its renewal, his name shall be stricken from the register of licensed veterinarians and before such person may again practice veterinary medicine he shall be required to take an examination before the board; unless, however, such person has been prevented from applying for renewal for good cause, of which the board shall be the judge of the sufficiency thereof. All licenses issued under the provisions of this chapter shall expire on the 1st day of April of each year, and shall be renewed by complying with the provisions of this chapter.

History.—§4, ch. 10289, 1925; CGL 4057; §3, ch. 20313, 1941.

474.04 Examination; application; conduct; filing of examination papers.—An applicant to be eligible to take the examination required under §474.02, shall be a graduate of a veterinary college recognized by the American veterinary medical association. Such applicant desiring to obtain a license to practice veterinary medicine and surgery in this state shall make application in writing to the state board of veterinary examiners, through its secretary, upon blanks prescribed and furnished by said board, which application shall set forth the grounds upon which the application is based, and shall be accompanied by the diploma of the applicant, with his affidavit, setting forth that the applicant is a graduate of a certain veterinary college, mentioned in the diploma and recognized by the American veterinary medical association and that he is the person to whom the diploma was originally issued. Said examination shall be in writing and shall include such subjects as are included in the curricula of recognized veterinary colleges. Every examination shall be conducted in such manner that the applicant shall be known by number only until such examination papers are read and the proper grade determined. All examination papers shall be filed with the secretary-treasurer of the board and kept for reference and inspection for a period of not less than two years. The said board of veterinary examiners shall make a record of the grade of each applicant on each subject on said examination and said grade shall be a part of said examination papers to be preserved for two years along with the examination papers. The fee for examination in all cases shall be twenty-five dollars, which shall accompany the application. Provided that, the provision of this section

shall not be deemed to apply to those persons who are duly licensed under the laws of this state to practice veterinary medicine and surgery and the various branches thereof at the time this law becomes effective, it being the intention hereof to allow such license holders to continue in the practice of their profession, and to approve and confirm all licenses so held at the time this law becomes effective.

History.—§5, ch. 10289, 1925; §2, ch. 13891, 1929; CGL 4058; §4, ch. 20313, 1941; §1, ch. 61-65.
cf.—§455.03 Dispensing with examination of veterans.

474.05 Examination of applicants; refusal of license upon certain grounds.—It shall be the duty of the board of veterinary examiners when called to meet by the president of said board, to examine the applications, diplomas and affidavits of all applicants and certify the names of the applicants who are eligible to take an examination under the terms of this chapter. The board of veterinary examiners shall advise eligible applicants of date and place next examination will be held and a license will be granted to all such applicants who pass a satisfactory examination: provided, that the board of veterinary examiners shall have the power to refuse a license to any applicant on the grounds of his being guilty of gross malpractice or immorality, or that he or she has been convicted of a felony, or any crime involving moral turpitude, or who has been refused the issuance of a license to practice veterinary medicine or surgery in any of its branches by any other state or county, and the said board of veterinary examiners is hereby authorized and empowered to revoke any license heretofore issued by said board on either of said grounds: provided, further, that no such action shall be taken until the person so charged shall be cited by the board of veterinary examiners to appear for hearing before said board, and said hearing shall be conducted by the board in the following manner, to-wit: Whenever an accusation is filed with the board, the board shall set a date for a hearing and the secretary shall transmit by registered mail to the accused a true copy of all papers filed with the board relating to such accusation, and shall notify the accused in writing by registered mail that on the day fixed for hearing, which shall not be less than ten days from the date of such notice, he may appear and show cause, if any, why his license to practice veterinary medicine and surgery in the state should not be revoked; and for the purpose of such hearing the board is hereby empowered to require by subpoena the attendance of witnesses, to administer oaths and hear testimony, either oral or documentary, for and against the accused. If, at such hearing of the accused, the board shall be satisfied that the accused has been guilty of the offense charged in the accusation, it shall thereupon, without further notice, revoke the license of the person so accused. Upon the revocation of any license, the fact shall be noted upon the records of the board and the license shall be marked as canceled, upon the date of its revocation.

History.—§6, ch. 10289, 1925; §3, ch. 13891, 1929; CGL 4059; §5, ch. 20313, 1941.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

474.06 Compensation of board; bond of secretary-treasurer.—All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the president and secretary-treasurer of said board. Each member of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. The secretary-treasurer shall secure a bond in such sums as shall be prescribed by said board to faithfully discharge his duties.

History.—§7, ch. 10289, 1925; CGL 4060; §6, ch. 20313, 1941; §112, ch. 26869, 1951; §23, ch. 25215, 1953; §16, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

474.07 "Practicing veterinarian" defined; exceptions.—Any person shall be regarded as practicing veterinary medicine and surgery within the meaning of this chapter who professes publicly to be a veterinary surgeon, doctor or dentist, or who appends to his name any initials by prefix, or affix, or title implying qualifications to practice the same, or who shall operate on, or prescribe for, or administer any medicine, or any biologic preparation to, either as a cure or preventive for any disease, or who shall treat any physical ailment in, or any physical injury to, or deformity of, any animal, and who shall charge or receive therefor money or other compensation of any kind or character, directly or indirectly. Provided, however, that nothing in this chapter shall be construed to prevent any persons or livestock owners from administering to the ills or injuries of their own animals.

The terms of this chapter shall not apply to commissioned veterinarians of the United States Army nor to regularly employed veterinarians of the United States Bureau of Animal Industry in the performance of their official duties.

History.—§8, ch. 10289, 1925; CGL 4061; §7, ch. 20313, 1941.
cf.—§398.08, Permission to administer drugs.

474.08 Penalty for violation of provisions of chapter.—

(1) Any person practicing veterinary medicine and surgery or veterinary dentistry in this state without a license as hereinabove provided, or who shall fail to comply with any of the terms of this law, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dol-

lars, nor more than one hundred dollars for each and every offense, or by imprisonment for a term of not less than six months, nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

(2) In addition to the penalties herein provided, the state board of veterinary examiners shall have the right to make application to any circuit court in the state for an injunction perpetually restraining and enjoining any person from practicing veterinary medicine and surgery or veterinary dentistry in the state; and such courts are authorized to grant an injunction upon proof that any person has been practicing veterinary medicine, surgery, or dentistry without the license required by this chapter.

History.—§9, ch. 10289, 1925; CGL 7722; §8, ch. 20313, 1941; §1, ch. 22915, 1945; sub. §(2), am. §24, ch. 29737, 1955.

474.09 Penalty for filing diploma of another, or forged, etc., diploma.—Any person filing or attempting to file, as his own, the diploma of another or a forged or fictitious, or a fraudulently obtained diploma or certificate, upon conviction shall be subject to such fine and imprisonment as are made and provided by the statutes of this state for the crime of forgery.

History.—§10, ch. 10289, 1925; CGL 7723; §9, ch. 20313, 1941.
cf.—§831.01 Forgery.

474.11 Veterinary students; non-resident consultants.—Nothing in this chapter shall be construed to prohibit veterinary students from prescribing under the immediate supervision of preceptors, or to prohibit lawfully qualified veterinarians residing in other states or countries from meeting registered veterinarians in this state in consultation.

History.—§8, ch. 10289, 1925; CGL 4061.

474.12 Duty of prosecuting officers.—The proper prosecuting officer of the county where such offense is committed shall prosecute all persons violating the provisions of this chapter upon proper complaint being made. All fines collected under this chapter shall be paid into the treasury of the county where the prosecution is held.

History.—§9, ch. 10289, 1925; CGL 7722.

474.13 Certain surgical practices exempt.—Castration and spaying animals and dehorning of cattle in this state shall not be considered as being within the provisions of this chapter.

History.—§1, ch. 10289, 1925; CGL 4054.

CHAPTER 475

REAL ESTATE LICENSE LAW

475.01 Definition of terms used in chapter.—(1) This chapter may be referred to in any legal proceeding as the "Real Estate License Law."

(2) Every person who shall, in this state, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraise, auction, sell, exchange, buy or rent, or offer, attempt or agree to appraise, auction or negotiate the sale, exchange, purchase or rental of any real property, or any interest in or concerning the same, including mineral rights or leases; or who shall advertise or hold out to the public by any oral or printed solicitation or representation that such person is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing or renting real estate, or interests therein, including mineral rights or leases, of others; and every person who shall take any part in the procuring of sellers, purchasers, lessors or lessees of the real property, or interests therein, including mineral rights or leases, of another; or who shall direct or assist in the procuring of prospects, or the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who shall receive, expect, or be promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who are members of partnerships or officers or directors of corporations engaged in performing any of the aforesaid acts or services; each and every such person shall be deemed and held to be a "real estate broker" or a "real estate salesman," as hereinafter classified, unless said person when performing the act or acts herein specified shall be acting as an attorney-in-fact for the purpose of the execution of contracts or conveyances only, or as an attorney-at-law within the scope of his duties as such, or when acting as the administrator, executor, receiver, trustee, or master under or by virtue of an appointment by will or by order of a court of competent jurisdiction, or as trustee under a deed of trust, or under a trust agreement, the ultimate pur-

pose and intent whereof shall be charitable, philanthropic, or providing for those having a natural right to the bounty of the donor or trustor; nor shall the term broker or salesman be applied to a person who shall deal with property in which he is a part owner, unless said person shall receive a larger share of the proceeds or profits from the transaction than his proportional investment therein would otherwise justify, such excess share being directly or indirectly the result of the service of buying, selling, exchanging or leasing said property; nor shall said terms be applied to one officer of every corporation engaged in the sale of its own properties who shall be its president unless otherwise provided in its charter or by-laws, if said corporation shall not otherwise be classed as a real estate broker or a salesman.

(3) Every person who comes within the meaning of the preceding subsection, and shall not be within the exceptions named, and whose business policies and acts are free from the direction, control or management of another person, and all members of a partnership, and all officers and directors of a corporation, which partnership or corporation is defined by said subsection to be a real estate broker, shall be deemed and held to be operating as real estate brokers; and every other person who shall come within the terms "real estate broker" or "real estate salesman," as defined in the preceding subsection, shall be deemed and held to be operating as real estate salesmen.

(4) "Registration" shall consist of the placing and keeping of the name and business address, and if of a salesman, the name and business address of the employer also, upon the list of brokers and salesmen in the offices of the Florida real estate commission, with the appropriate designation as "broker" or "salesman." Said "registration list" shall be kept in books, or in files, as may be deemed expedient by the commission. Registration shall be in force for a period of six months after the expiration of the last certificate issued, or after the termination of any period of suspension, and no longer; but registration alone shall not entitle the registrant to operate as a broker or salesman.

(5) A "registrant" is a person whose name and business address, and in case of a salesman, the name and business address of the employer also, has been placed, and lawfully remains, on said registration list, and said term shall not include any person who has not applied for a renewal certificate within the aforesaid period of six months.

(6) The "license period" shall be the fiscal year ending at midnight, September 30 of each year, provided, however, that if the commission shall adopt rules or regulations providing for the issuance of certificates for some period other than the fiscal year aforesaid, then the "license period" shall be the fiscal period ending at midnight on the last day of the period for which the certificate is issued.

(7) A "registered broker" shall be any person who is a registrant under this chapter and who has been classified as a real estate broker. All other registrants shall be "registered salesmen."

(8) The word "Commission," when used in this chapter shall refer to the Florida real estate commission, except when obviously used in some other sense.

(9) Where the phrase "members, officers and directors of a partnership or corporation," or similar phrase, is used in this chapter, the word "members" shall be deemed to refer to partnerships only, and not to stockholders in a corporation.

(10) The words "certificate" or "registration certificate" shall be deemed to mean a written instrument, prepared according to the regulations and bearing the seal of the commission, which shall be issued to every broker or salesman as soon as registration is granted, and renewed annually thereafter as long as renewals thereof shall be granted, and which shall be prima facie evidence that the holder is a registrant, and that the registration fee for the license year expiring next after the date of issuance which shall be indorsed thereon, has been paid. Such certificate, except nonactive certificate, shall authorize the holder to act as a broker or salesman until the date of expiration, or until the registration is revoked or suspended.

(11) The term "real estate" or "real property" used in subsection (2), shall include leaseholds, assignments of leaseholds and subleaseholds thereof, as well as any and every interest or estate in land.

(12) The words "appeal," "appealable," "review," "appellate review," "court" and "appellate court," wherever used in this chapter, shall be construed to mean any appropriate proceeding to review the orders and rulings of the Florida real estate commission, or any court wherein said proceedings may be pending, when such construction shall be necessary to make this statute consistent with the provisions of Art. V of the constitution of Florida and the Florida appellate rules adopted pursuant thereto.

(13) The terms "real estate," "real estate property," "real estate broker," and "real estate salesman," as used in this chapter shall not apply to any cemetery lot, or the right of burial in any cemetery, nor shall such terms apply to any person selling, exchanging, leasing or dealing in such aforementioned property.

History.—§1, ch. 12223, 1927; CGL 4062; sub §(11) comp. §1, ch. 29983, 1955; (6) by §1, ch. 59-199; (12)n. by §1, ch. 59-197; (13)n. by §1, ch. 59-438.

cf.—§1.01(3) "Person" defined.

475.02 Florida real estate commission; terms; organization; quorum.—There is created the Florida real estate commission, to consist of three persons, resident citizens of the state, to be appointed by the governor, each of whose vocation for at least ten years prior to his appointment shall have been that of real estate broker.

The members of the commission shall serve until the expiration of the term for which they

shall have been appointed and until their successors shall have qualified. The term of office shall be three years; that of one member shall expire each year, and upon the death, resignation or removal of a member, his successor shall be appointed for the unexpired portion of his term. As the new member is appointed each year, the commission shall reorganize and select a chairman from its number, who shall be the executive officer of said commission, and a secretary. Two members of the commission shall constitute a quorum to do business.

History.—§§2, 3, ch. 12223, 1927; CGL 4063, 4064.

475.03 Commission may delegate duties to individual member.—Any of the duties and powers of the commission, except the actual determination of informations, and the passage and promulgation of rules, regulations and by-laws, may be delegated, by resolution, to any member; but the chairman may exercise such duties and powers without such resolution.

History.—§4, ch. 12223, 1927; CGL 4065.

475.04 Duty of commission to enforce this chapter, keep records and educate members of profession.—

(1) The commission may examine witnesses and administer oaths, and shall investigate persons doing a real estate business in this state to ascertain if they are violating any of the provisions of this chapter, and keep such records and minutes as shall be necessary to an orderly dispatch of business. The commission shall foster the education of real estate brokers and salesmen concerning the ethical, legal and business principles which should govern their conduct.

(2) For the purpose of performing its duty to educate registrants under subsection (1), the commission may conduct, offer, sponsor, prescribe or approve real estate educational courses for all persons registered with the commission as real estate brokers, or salesmen, and the cost and expense of such courses shall be paid as provided for other expenses of the commission by §475.12.

History.—§5, ch. 12223, 1927; CGL 4066; §1, ch. 59-200.

475.05 Power of commission to enact by-laws, rules and regulations and decide questions of practice.—The commission may enact by-laws and regulations for its own government, and rules and regulations in the exercise of its powers, not in conflict with the constitution and laws of the United States or of this state, and amend the same at its pleasure. The commission may decide questions of practice arising in the proceedings before it, having regard to this chapter and the rules and regulations then in force. Printed copies of rules and regulations, or written copies under the seal of the commission, shall be prima facie evidence of their existence and substance, and the courts shall judicially notice such rules and regulations. The conferral, or enumeration, of specific powers elsewhere in this chapter shall not be construed as a limitation of the general powers conferred by this section.

History.—§6, ch. 12223, 1927; CGL 4067; §2, ch. 59-199.

475.06 Privileges and immunities of commission.—The members of the commission are entitled to the same protection and immunities as are other judicial officers, and the acts of the agents and employees of the commission, acting within the scope of their authority and employment, shall not be called in question except by the commission. Its papers, documents, reports or evidence shall not be subject to subpoena, without its consent, until after the same shall have been published at a hearing held under this chapter unless, after notice to the commission, and hearing, the court shall determine that the commission or the accused will not be unreasonably hindered or embarrassed.

History.—§7, ch. 1223, 1927; CGL 4068.

475.07 Commission to designate place of executive offices.—Executive offices shall be established and maintained at a place designated by the commission, which designated place may be changed in the discretion of the commission.

History.—§8, ch. 12223, 1927; CGL 4069.

475.08 Compensation of members.—The members of the commission shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return.

History.—§9, ch. 12223, 1927; CGL 4070; am. §24, ch. 28215, 1953; §24, ch. 57-1.

475.09 Employees of commission.—The commission shall employ, and at its pleasure discharge, a secretary and such attorneys, inspectors, clerks and assistants as shall be deemed necessary, and shall outline their duties and fix their compensation.

History.—§10, ch. 12223, 1927; CGL 4071.

475.10 Seal.—The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records and acts of the commission, and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chairman and authenticated by said seal shall be prima facie evidence thereof in all the courts of this state.

History.—§11, ch. 12223, 1927; CGL 4072.

475.11 Disposition of moneys received.—All moneys received by the commission under this chapter shall be paid to the secretary of said commission. Such moneys shall be deposited pursuant to the provisions of §215.37.

History.—§12, ch. 12223, 1927; CGL 4073; am. §25, ch. 28215, 1953; §17, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

475.12 Payment of expenses of commission.—All expenses incurred by the commission in the administration of the provisions of this chapter shall be paid pursuant to the provisions of §215.37, upon presentation of vouchers approved by the chairman and secretary of said board.

History.—§13, ch. 12223, 1927; CGL 4074; §114, ch. 26869, 1951; §26, ch. 28215, 1953; §17, ch. 61-514.

475.13 Registration and renewal thereof required; fee.—Every person deemed and held to be a real estate broker or real estate salesman under the terms of this chapter shall be required to register with the commission, and to secure a registration certificate for each license period. The fee for each application shall be twenty-five dollars for registration as a real estate broker and fifteen dollars for registration as a real estate salesman. The fee for certificates of registration shall be ten dollars per annum for brokers and five dollars per annum for salesmen. For registration and renewal certificates as nonactive broker, the fee shall be one dollar per annum. The commission may adopt rules and regulations to effect staggered license periods, but in no event shall the license period exceed twenty-four calendar months. If certificates for license periods of more than twelve months be issued pursuant to said rules, the fee for such certificates shall be increased in direct proportion to the base per annum fee for such certificates. No collector or county judge shall issue any real estate occupational license except upon presentation of a currently valid active registration certificate. No application fee shall be refunded to an applicant, nor shall any fee for a certificate be refunded.

History.—§14, ch. 12223, 1927; CGL 4075; §2, ch. 29983, 1955. §3, ch. 59-199.
cf.—§455.03 Dispensing with examination of veterans.

475.14 Nonactive brokers.—Any member of a partnership or officer or director of a corporation who does not desire to do, or perform, any of the acts or services enumerated in §475.01(2), and any registered broker who is a resident of Florida who desires to preserve his registration during a period while not engaged as a broker, may apply for and receive a certificate as a nonactive broker so long as he shall continue to be a resident of the state. All other certificates shall be deemed active.

History.—§15, ch. 12223, 1927; CGL 4076; §3, ch. 29983, 1955.

475.15 Registration of certificates of members of firm, etc., required.—Every partnership and corporation required to be registered shall register, and renew the certificates of its members, officers and directors for each license period, and the registration of such partnership or corporation shall be suspended automatically during any period of time that certificates of any one or more of its members, officers or directors shall not be in force.

History.—§16, ch. 12223, 1927; CGL 4077; §4, ch. 59-199.

475.16 Application for registration.—Every person shall make application for registration in the form required by the rules of the commission, and shall answer such questions and furnish such supporting evidence as may be required by the commission, touching his qualifications.

History.—§17, ch. 12223, 1927; CGL 4078.

475.17 Qualifications of applicants for registration.—

(1) An applicant for registration who is a natural person shall be required to make it appear that he is twenty-one years of age, a citizen of the United States, honest, truthful, trustworthy, of good character, and that he bears a good reputation for fair dealing. An applicant for an active broker's registration or a salesman's registration, shall be required to make it appear that he is competent and qualified to make real estate transactions and conduct negotiations therefor, with safety to investors and to those with whom he may undertake a relationship of trust and confidence. An applicant for a salesman's registration shall show that he is a bona fide resident of the state, and an applicant for an active broker's registration shall show that he has been such a resident for one year immediately prior to the filing of the application. If it shall be made to appear that the applicant has been denied registration or a license or has been disbarred, or his registration or license has been revoked or suspended, by this or any other state or nation, or possession or district of the United States, or any court or lawful agency thereof, to practice or conduct any regulated profession, business or vocation, because of any conduct or practices which would have warranted a like result under this chapter, or that the applicant has been guilty of conduct or practices in this state or elsewhere, which would have been grounds for revoking or suspending registration under this chapter had the applicant then been registered, the applicant shall be deemed not to be qualified, unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient it shall appear to the commission that the interest of the public and investors will not likely be endangered by the granting of registration. The foregoing qualifications apply to members of partnerships and officers and directors of corporations. A corporate applicant shall have been organized under, or be legally qualified to do business in the state.

(2) No person shall be registered as a real estate salesman unless, in addition to the other requirements of law, he shall make it appear that he is, and has been for at least six months next prior to the filing of his application, a bona fide resident of Florida; provided, however, this subsection shall not apply to an applicant for registration as a real estate salesman who shall make it appear that he has lawfully operated exclusively as a real estate broker or salesman in another state, requiring registration of real estate brokers or salesmen, for at least two years next prior to filing his application in Florida.

(3) No person shall be registered as a real

estate broker unless, in addition to the other requirements of law, he shall make it appear that he has served an apprenticeship as a registered real estate salesman, with and under the instructions and guidance of a registered real estate broker of the state, for at least twelve consecutive months next prior to the filing of his application for registration as a real estate broker. The intent of the legislature in enacting this law is to elevate the profession of a real estate broker for the protection of the public. The apprenticeship provided herein shall not be taken to mean that the salesman be required to attend to the duties of his employment as a real estate salesman to the exclusion of any other employment, nor shall the twelve consecutive months of apprenticeship provided include periods of illness, regular vacations, business trips necessitating absence and emergencies. Provided, that every applicant for registration as a real estate broker at the end of his apprenticeship, shall be required to furnish an affidavit to the Florida real estate commission, on a form provided for that purpose, that he has invested a part of his time as a real estate salesman under a registered real estate broker, and the broker shall be required to furnish an affidavit to the commission, on a form provided for that purpose, that the salesman has satisfactorily completed his apprenticeship, that he is qualified, and has the ability and integrity to be a real estate broker.

(4) When the commission has established an educational course or series of educational courses, to be regularly conducted, offered, or sponsored by it pursuant to §475.04(2), the commission may require the satisfactory completion of one, or more, of the educational courses, or its, or their, equivalent as a condition precedent for any person to become registered as a real estate broker, which requirement shall be in addition to other qualifications required by this chapter. When such requirement is made provisions shall be made to make such course, or courses, available by correspondence or other suitable means to any person who shall make it affirmatively appear to the satisfaction of the commission that by reason of hardship he cannot attend the place, or places, where the course is regularly conducted. The commission is authorized to adopt rules and regulations in the exercise of its powers herein set forth.

History.—§18, ch. 12223, 1927; CGL 4079; am. §1, ch. 24090, 1947; (2), (3) N by §1, ch. 57-244; (4) N by §2, ch. 59-200.

475.171 Inapplicability of §§475.04(2) and 475.17(4) to certain persons.—The provisions of §§475.04(2) and 475.17(4) shall not apply to any person who has, or shall have, completed the apprenticeship as required by §475.17(3), on or before the effective date of any rule or regulation adopted by the commission requiring the completion of any educational course as a condition precedent to registration, if such person shall within not more than ninety days after the effective date of such rule or regulation make and diligently pursue his application to become a registered real estate broker, nor shall these subsections apply to any person who on May 30, 1959, is registered as a real estate broker and holds, or is entitled to receive upon request, an active broker registration certificate.

History.—§3, ch. 59-200.

475.18 Proceedings upon application for registration.—

(1) If the commission shall be of the opinion that an applicant for registration is qualified, the application shall be approved. If the applicant shall fail to pass the examination prescribed by the commission the commission may, in its discretion, permit a second examination, and, if the applicant shall again fail, the application shall be denied, without prejudice to the filing of another application. If, from the application filed, or the replies of persons, designated by the applicant, to inquiries by the commission concerning his qualifications, or from their failure to reply thereto fully, or from answers to inquiries, or the failure to fully answer inquiries, pertinent to his qualifications, propounded to the applicant by the commission, it shall not affirmatively appear that the applicant possesses the necessary residence, character and general competence and qualifications required by this chapter, the commission shall permit reasonable amendments, if offered by the applicant, and if the applicant shall not finally make it affirmatively appear that he is so qualified, the commission may finally deny the application with prejudice. If the application and supporting documents on their face show that the applicant is qualified, but from complaints, or information received, or from investigation, it shall appear to the commission or chairman, at any time before the initial certificate is delivered, that there may be cause to deny registration, the commission or chairman may order an information to be filed, notice served, and hearings before an examiner and the commission held, as hereinafter provided. If an applicant shall be denied registration, except for failure to pass an examination, or by an order giving leave to file a new application, he shall not be permitted to file a new application unless and until the commission shall, in its discretion, and upon petition of the applicant, grant leave to file such new application. No application shall be granted if it shall appear that the applicant has acted, or attempted to act, or has held himself out as entitled to act, as a real estate broker or salesman, in violation of this chapter, during the period of one year next prior to the filing of said application. The commission shall have a broad discretion, in the granting or denial of an application, in view of the difficulty in securing definite and legal proof of bad reputation or of securing satisfactory proof of specific instances of fraudulent or unethical conduct, in the limited time after an application is filed and before a decision should normally be made, and particularly when the applicant

has been beyond the limits of the state until a short time before filing an application. The denial of an application shall not be reversed except upon a clear showing of an abuse of discretion or of an arbitrary and capricious ruling.

(2) The foregoing subsection (1) shall be deemed to bar any person from registration who has done any of the acts or performed any of the services described in §475.01 as constituting the person a real estate broker, or salesman, during the said period of one year next prior to the filing of the application, or during the pendency of said application, and until a valid current registration certificate has been duly issued to him, whether the same was done for compensation or valuable considerations, or not.

History.—§19, ch. 12223, 1927; CGL 4080; am. §2, ch. 24090, 1947; (2) N by §2, ch. 57-244.

475.19 Approved applicants to be examined by commission.—When the application for registration of any natural person, not being then registered, shall be approved, the applicant shall be required to appear in person, at a time and place to be designated by the commission, and answer questions touching his qualifications according to the provisions of this chapter. The operation of this section may be postponed by the commission until such time as it may be practicable to put it in force.

History.—§20, ch. 12223, 1927; CGL 4081.

475.20 Renewal of certificates.—Every certificate shall expire at the end of the license period. Certificates for the next succeeding license period shall be issued upon written request, on a form provided by the commission, accompanied by the required fee, if such request is made while registration is in force. When made in proper form, accompanied by the proper fee, such request shall not be denied or unreasonably delayed.

History.—§21, ch. 12223, 1927; CGL 4082; §5, ch. 59-199.
cf.—§475.01(6) Definition of "license period."

475.21 Registrant having applied for renewal entitled to continue operating.—Registrants who have made request for renewal, and paid the fee therefor, shall be entitled to continue to act as brokers or salesmen, unless under suspension.

History.—§22, ch. 12223, 1927; CGL 4083.

475.22 Broker to maintain sign at entrance of office.—Every registered broker shall maintain a sign on or about the entrance of his principal office and all branch offices, which sign shall be easily observed and read by any person about to enter such office, and shall be of such form and minimum dimensions as shall be prescribed by the commission.

History.—§23, ch. 12223, 1927; CGL 4084.

475.23 Certificate to expire on change of address.—A registration certificate shall cease to be in force whenever a broker changes his business address, or a salesman changes employer. In such cases, the old certificate shall be surrendered, or accounted for, and a new certificate shall be issued, upon request therefor on a form provided by the commission, and the fee for the issuance of the new certificate shall be five dollars.

History.—§24, ch. 12223, 1927; CGL 4085; §4, ch. 29983, 1955.

475.24 Branch office; fees.—Whenever any applicant or registrant desires to conduct business at some other location, either in the same or different city, town, or county than that registered, such other place of business shall be registered as a branch office, and a registration fee of ten dollars shall be paid for each such office. It shall be necessary to maintain and register a branch office, whenever, in the judgment of the commission, the business conducted at a place other than the principal office, is of such a nature that the public interest requires registration of a branch office. Any office shall be deemed to be a branch office if the name or advertising of a broker having a principal office located elsewhere, shall be displayed in such manner as to reasonably lead the public to believe that such office is owned or operated by such broker.

History.—§25, ch. 12223, 1927; CGL 4086.

475.25 Grounds for revocation or suspension.—

(1) The registration of a registrant may be suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, upon a finding of facts showing that the registrant has:

(a) Been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing, trick, scheme or device, culpable negligence, or breach of trust in any business transaction, or has violated a duty imposed upon him by law or by the terms of a listing contract, written, oral, express or implied, in a real estate transaction; or has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design or scheme to engage in any such misconduct, and has committed an overt act in furtherance of such intent, design or scheme; and it shall be immaterial to the guilt of the registrant that the victim, or intended victim, of the misconduct has sustained no damage or loss, or the damage or loss has been settled and paid, after discovery of the misconduct, or whether such victim, or intended victim, thereof, was a customer or a person in confidential relation with the registrant, or was an unidentified member of the general public; or,

(b) Been guilty of false advertising in, on or by, signs, bill boards, newspapers, magazines, periodicals, books, pamphlets, circulars, radio, telephone, telegraph, or other means of communication of publicity, of such character as to deceive or defraud investors, or prospective investors, in real property or interests therein, as more particularly described in subsection (2) of §475.01, whether such property is owned, or

purported to be owned by the registrant or by another; or,

(c) Failed to account or deliver to any person any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document, or thing of value, or any secret or illegal profit, or any divisible share or portion thereof, which has come into his hands, and which is not his property, or which he is not in law or equity entitled to retain, under the circumstances, and at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery; provided, however, that, if the registrant shall, in good faith, entertain doubt as to his duty to account and deliver said property, or as to what person is entitled to the accounting and delivery, or if conflicting demands therefor shall have been made upon him, and he has not appropriated the property to his own use, or intermingled it with his own property of like kind, he may notify the commission promptly, truthfully stating the facts, and ask its advice thereon, or after notice thereof to the commission, shall promptly submit the issue to arbitration by agreement of all parties, or interplead the parties, or otherwise seek an adjudication of the question, in a proper court, and shall abide, or offer to perform, the advice of the commission or the orders of the court, or arbitrators, no information against him shall be permitted to be maintained; or,

(d) Violated any of the provisions of this chapter, or any lawful order, rule or regulation made or issued under the provisions of this chapter; or,

(e) Been guilty of a crime against the laws of this state or any other state or of the United States, involving moral turpitude, or fraudulent or dishonest dealing; and the record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state, shall be admissible as prima facie evidence of such guilt; or,

(f) Shared a commission with, or paid a fee or other compensation to, a person not properly registered as a real estate broker or salesman under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in §475.01(2). For the purpose of this section it shall be deemed immaterial that the person to whom such payment or compensation is made shall have made said referral, or performed said service, from within this state, or elsewhere; provided, however, a registered real estate broker of this state may pay a referral fee or share a real estate brokerage commission with a real estate broker duly licensed, or registered, under the laws of a foreign state so long as said foreign broker does not violate any law of this state.

(g) Become temporarily incapacitated from acting as a broker or salesman with safety to investors or those in a fiduciary relation with him because of drunkenness, use of drugs, or temporary mental derangement, except that the suspension in such cases shall be for the period of such incapacity; or

(h) Rendered an opinion that the title to any property sold is good or merchantable, except when correctly based upon a current opinion of a licensed attorney at law, or failed to advise a prospective purchaser to consult his attorney on the merchantability of the title or to obtain title insurance.

(i) Failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check or draft, entrusted to him by any person dealing with him as a broker, in escrow with a title company or banking institution located and doing business in Florida, or, deposit said funds in a trust or escrow bank account maintained by him with some bank located and doing business in Florida, wherein said funds shall be kept until disbursement thereof is properly authorized, or, if a salesman, failed to immediately place with his registered employer any money, fund, deposit, check or draft, entrusted to him by any person dealing with him as agent of his registered employer. The commission shall establish rules and regulations to provide for records to be maintained by the broker and the manner in which such deposits shall be made.

(2) The registration of a registrant shall be revoked, if such registration, or a certificate issued thereon, is found to have been obtained by the registrant by means of fraud, misrepresentation or concealment, or if the registrant has become a nonresident of the state, or is confined in any state or federal prison, or insane asylum, or through mental disease or deterioration, the registrant can no longer safely be entrusted to deal with the public or in a confidential capacity; and a registration or a certificate may be revoked or cancelled, without prejudice to filing a proper application, or request for certificate, if the same shall have been granted or issued through the mistake or inadvertence of the commission.

(3) The registration of a registrant may be revoked if the registrant shall, for a second time, be found guilty of any misconduct that warrants his suspension under subsection (1) of this section, or if he shall be found guilty of a course of conduct or practices which show that he is so incompetent, negligent, dishonest or untruthful that the money, property, transactions and rights of investors or those with whom he may sustain a confidential relation, may not safely be entrusted to him.

History.—§26, ch. 12223, 1927; CGL 4087; am. §3, ch. 24090, 1947; §11, ch. 25035, 1949; sub.§(1)(g) am. §10, ch. 26484, 1951; sub. §(1), am. §5, ch. 29983, 1955; (1) (f) a. by §1, ch. 61-108.

475.26 Information and notice in denial, revocation or suspension proceedings.—When, by reason of a complaint filed, or upon investigation, it shall appear to the commission or the chairman, that there is reason to believe that registration probably should be denied to an applicant because of facts not sufficiently disclosed in the application record, or that the registration of a registrant probably should be

revoked or suspended, the chairman shall permit an information to be filed with the commission, by an authorized representative of the commission, or some other person having knowledge, information or belief concerning the facts. The information, and all succeeding papers pertaining to the case, shall be filed and marked with the date of the filing, and shall be kept together in one file and given a distinctive number. The party filing the information shall be designated as the plaintiff and the accused applicant or registrant shall be the defendant. In revocation or suspension proceedings as many registrants may be joined in one proceeding as are alleged to have participated in the alleged misconduct charged in one or more of the counts thereof. Where two or more disconnected transactions are alleged in any information, they shall be stated in separate counts, and where the plaintiff is uncertain as to some fact pertinent to a single transaction, the transaction may, in separate counts, be alleged in the alternative and it shall not be an objection that the allegations in said counts are inconsistent; and in a default case, or upon a motion for a final order, or motion to quash, the commission may deny, revoke or suspend registration if the allegations of any count will sustain such a final order, or may make such a final order in any other case, if the evidence supports any count of the information. The facts shall be alleged in concise, simple language, and shall be deemed to afford notice of the charge, if a person of ordinary understanding may reasonably be enabled to present his defense thereto, if any, and both the information and answer shall be aided and deemed amended by the proof, if the opposite party shall be afforded full opportunity to meet and defend against or rebut such proof. Upon the filing of an information, a notice thereof shall be sent by registered mail, in the manner and form prescribed by §475.40, addressed to the defendant at the address which the applicant has designated for official notices, in his application, if a denial proceeding, or, in revocation or suspension proceedings, at the last business address which a broker has registered with the commission, or, in case the defendant is a salesman, in care of the employer, at the last address registered with the commission. A copy of the information shall be enclosed with the notice. The notice shall fix the date, not less than twenty days after the mailing of the notice, on which the defendant is required to file an answer or motion to quash the information. The prayer of the information for revocation or suspension, or both, shall not control or limit the power of the commission to enter such an order as is warranted by the facts and this chapter.

History.—§§27, 28, ch. 12223, 1927; CGL 4088, 4089; am. §4, ch. 24090, 1947.
cf.—§475.44, Disqualification of commission members.

475.27 Appointment of examiner; taking of testimony.—Whenever an issue of material fact shall appear from the information and answer in a denial, revocation or suspension proceeding, the commission, or its chairman, shall make an order appointing an examiner to hear and report the evidence that may be offered upon said issue. The examiner shall receive the evidence offered together with any objections thereto and shall transcribe or cause to be transcribed the same and shall report the testimony to the commission. The parties shall have reasonable opportunity to present all evidence pertinent to any material issue in the case. The examiner shall administer oaths to the witnesses, afford all parties the right to cross-examine adverse witnesses, give notices of the time and place of hearing, and do any other act authorized by this chapter, or lawfully directed by the commission. The examiner may, unless the commission or chairman shall otherwise direct, make a presentment to the circuit court of the county in which the hearing is or was held, of any misconduct of a witness, described in §475.32, for proceedings therein authorized, or the commission or chairman, may make such presentment. Unless an examiner or reporter is a regular salaried employee of the commission, he may be paid a per diem for holding hearings and such compensation for transcribing and reporting testimony, as may be deemed reasonable by the commission. An examiner may adjourn hearings, but all hearings shall be held in the county where the defendant resides or where the matters and things charged in the information are alleged to have occurred.

History.—§29, ch. 12223, 1927; CGL 4090; am. §5, ch. 24090, 1947.

475.28 Rules of evidence.—In all proceedings before the commission or before the courts, civil or criminal, where the payment, receipt or expectation of a commission, compensation or valuable consideration shall be a necessary element to the investigation, inquiry or offense, proof of the performance of the act, service or condition for which such commission, compensation or valuable consideration is required to be shown, shall be prima facie evidence that such act, service or condition was performed or existed for, or in expectation of, the payment or receipt of a commission, compensation or valuable consideration; and where it shall be material to determine whether or not a party to any action, civil or criminal, is properly registered, the burden of proof shall be on such party.

Photostatic copies of all papers and documents may be introduced in lieu of the originals, in the trial of informations, or typewritten copies may be substituted after production of the original to the examiner. The books of account and records of any person shall be admissible upon a showing that they were made in the regular course of business, without introducing the person who made the entries, the weight of such evidence to be decided by the court or commission.

History.—§30, ch. 12223, 1927; CGL 4091.

475.29 Jurisdiction of the commission.—The commission shall have original jurisdiction to receive, hear and determine all informations

permitted to be filed, and shall have power to grant, deny, revoke or suspend registration, or to dismiss an information, as it may find warranted by the facts and the provisions of this chapter. Registration may be revoked or suspended upon one or more of the grounds enumerated in §475.25, or elsewhere in this chapter. An application may be denied under the circumstances enumerated in §475.17 or §475.18, and the commission may enter a final order on an application for registration upon the record made by the applicant as provided in §475.18, or upon an information and proceedings thereon, as otherwise provided in this chapter. The defendant may appear before the court and the commission by attorney or in person.

History.—§31, ch. 12223, 1927; CGL 4092; am. §1, ch. 22861, 1945; am. §6, ch. 24090, 1947.

475.30 Answers, motions and defaults.—

(1) The defendant named in an information shall file with the commission a verified answer thereto, and, if he be so advised, a motion to quash the information, on or before the date fixed in the notice required by §475.26. The filing of an answer to the information shall waive any defect in, or objection to, the notice, or want of notice. The answer shall admit or deny each fact alleged, except mere matters of inducement, or formal allegations, in the information, or avoid the effect thereof by a recital of the facts as defendant conceives them to be, and each issuable fact not denied in one of the manners aforesaid, shall be deemed to be admitted. No admission or allegation of the defendant made in an answer, motion or on the trial, shall be evidence against him in any civil or criminal proceeding, except upon a trial of a charge of perjury against him. All allegations of an answer not admitted in the information shall be deemed denied by the plaintiff.

(2) All questions of jurisdiction, or sufficiency of the information, and other matters of law may be raised by motion to quash, which motion shall be deemed, for the purpose only of said motion, to admit the truth of the facts alleged in the information. The defendant shall be entitled to an immediate hearing upon such motion to quash, and either party to the proceedings, or the commission on its own motion, may call said motion to quash up for hearing on ten days notice to the parties, and all proceedings in the case shall abate until such motion to quash is heard and disposed of by the commission. In the event said motion to quash be denied by the commission, it shall enter its order to such effect, which order shall be reviewable on certiorari as provided in §475.35, but no supersedeas or stay of proceedings shall be granted pending such review except upon application as provided in §475.35. In the event the information shall be adjudged insufficient by the commission or on appeal, the plaintiff shall have the right to amend such information at any time within twenty days after the order holding said information to be insufficient shall have become final. In the event of necessity of procedure not specifically provided for herein, the procedure applicable in chancery practice and appeals shall govern so far as they may be applicable.

(3) If no answer or motion to quash shall be filed on or before the date fixed in the notice prescribed in §475.26, or within the time as it may be enlarged, the chairman shall enter an order declaring the defendant to be in default, the allegations of the information shall be taken as true, and a final order may be entered, ex parte, at any subsequent meeting of the commission. The default may be opened for good cause shown before a final order is entered, and, if it shall appear to the commission, before October 1 next succeeding the entry of a final order, that the failure to file an answer, or sooner apply for an opening of the default, was not, in any wise, due to the fault, neglect, or disobedience of the provisions of this act requiring immediate filing of notice of change of address or employer, of the registrant, the commission may, in its discretion, set aside the final order and permit the filing of an answer.

(4) Whenever, in this chapter, the words denial, revocation, or suspension, or any two of them, or related words shall appear, they shall be construed to be distributive to the appropriate proceedings.

(5) Whenever, under this chapter, service of any paper on the defendant is required, such service may be made personally, or by mail, on him or his attorney, and proof of such service may be made by affidavit of the person making the service. A defendant shall not be required to serve any paper which is required by this chapter to be filed with the commission, unless specifically so stated.

History.—§32, ch. 12223, 1927; CGL 4093; am. §7, ch. 24090, 1947; §11, ch. 25035, 1949; sub.§(2) am. §10, ch. 26484, 1951; (1), (2), (4) by §2, ch. 59-197.

475.31 Final orders.—

(1) Upon default, or the filing of a motion to quash the information, or motion for a final order, or upon the filing of a final report of the examiner, the cause may be heard by the commission at a regular, special or adjourned meeting. The defendant may file a brief not more than fifteen days after service of a notice that the report of the examiner has been filed. He may request an oral argument within said time, and if the request is granted, shall be given notice of the time and place of hearing at least five days before the date thereof. Upon submission of the cause, in any case, and upon being fully advised in the premises, the commission shall make a final order, which shall be signed, or assented to in writing, by a majority of its members, which order, together with any dissent that a member shall desire to file, shall be entered in an appropriate order book. The final order may dismiss the information, which order shall not be appealable; or said order may deny registration, if in a denial proceeding, or revoke or suspend registration if the defendant is a registrant, as the facts and law may warrant, and no final order shall thereafter be annulled, reversed or called in question, except upon appeal, or because void for want of jurisdiction to

enter it. The commission may remand the cause to an examiner for the taking of further testimony, before entering a final order, if justice appears so to require.

(2) All final orders of the commission revoking or suspending registration of a registrant shall become effective when the time for filing petition for writ of certiorari has expired and all other orders or rulings of the commission shall become effective when entered, unless such final orders or other orders and rulings be superseded as provided in §475.35. Any order or ruling which is superseded shall become effective when the time for appeal from the judgment, order, or decision of the appellate court has expired, unless such order or ruling of the commission be finally reversed or set aside. The commission may postpone the effective date of any order where no supersedeas is filed. The commission shall enforce all orders as of the effective date thereof and may maintain such action in the courts as shall be necessary to the effective enforcement thereof.

(3) An order revoking or suspending the registration of a broker shall automatically suspend the certificates of all salesmen registered with said broker, and if a partnership or corporation, of all members, officers and directors also, while the registration and certificate of said broker shall be inoperative, or until new employment or connection is secured, and a new certificate is issued to the member, officer, director or salesman; but the right to transfer or have a certificate issued or reissued shall not extend beyond a period of six months after the termination of the license year in which said order became effective.

(4) The final order of the commission in revocation or suspension proceedings, shall, except where the information is dismissed, or is based upon a default, or upon a motion to quash, or for a final order, contain a finding of facts, sufficient to support the order. The findings of fact of the commission shall have the same force and effect as the findings of a general master in chancery.

(5) Any registrant whose registration has been suspended may petition the commission for the reissuance of a certificate for the balance of the license year, or for a renewal certificate for the succeeding year, at the expiration of the period of suspension, or during an indefinite suspension, and at any time before the expiration of six months after the termination of the license year in which said term of suspension expired, and in support thereof shall show by his affidavit, on a form to be prescribed by the commission, that he has fully complied with all of the terms and conditions of said suspension, and has not, during the full period thereof, acted, or offered to act, or held himself out as being entitled to act, as either a real estate broker or salesman in the state. Thereupon the commission shall reissue or renew said certificate, unless it shall have reason to doubt that said affidavit is in all material respects true, in which case it shall cause to be filed and served on such petitioner a rule requiring him to show cause, within a time fixed therein, why his petition should not be denied, and shall cause a hearing thereon to be held substantially as in the case of a trial of an information; and if it shall find the petitioner has failed to show by a preponderance of the evidence that the facts stated in said affidavit are true, said petition shall be denied.

(6) The commission shall have authority to terminate a period of suspension, if satisfied that justice requires it, and for like reason may permit a former registrant, whose registration has been revoked, to file a new application, which shall thereafter be treated as any other application, upon petition filed by the registrant, if satisfied that the petitioner will thereafter conduct himself in accordance with the law and ethics governing registrants; but the action of the commission in such cases is discretionary and shall be final.

(7) The commission may publish and distribute in such manner and form as it may prescribe any or all of its final orders or decisions made under this chapter, after they shall be final by lapse of time, or upon affirmance on appeal, or opinions of appellate courts, for the guidance of registrants and the public, and may publish, or withhold from publication, the names and addresses of any or all parties concerned.

(8) If, in any proceeding before the commission or a court under this chapter, a question of procedure shall arise which is not covered by this chapter or valid rule made hereunder, it shall be decided in the same manner as though the same or a similar question had arisen in a chancery case.

History.—§33, ch. 12223, 1927; CGL 4094; am. §2, ch. 22861, 1945; §8, ch. 24090, 1947; §11, ch. 25035, 1949; §3, ch. 59-197.

475.32 Subpoenas; issuance; service; failure to answer; witness fees.—Subpoenas for witnesses, whose evidence is deemed material to any investigation or hearing authorized by this chapter, may be issued by the commission or its chairman and under the seal of the commission, or by any circuit clerk, county judge, or clerk of the county court or county judge's court, or examiner appointed under this chapter, commanding such witnesses to be or appear before the commission, the examiner, or any authorized representative of the commission, at a time and place to be therein named, and to bring such books, records, and documents as may be specified, or to submit such books, records, and documents to inspection; and such subpoenas may be served by such examiner or authorized representative of the commission, or by any sheriff or deputy.

Where any witness who has been served with a subpoena fails or refuses to be or appear at the time and place named, or fails or refuses to answer any lawful questions propounded or produce the books, records, or documents required, or who shall be guilty of disorderly or contumacious conduct at the hearing, the facts shall be made known to a circuit judge

of the county, who shall forthwith issue an attachment for such witness, and cause him to be brought before said judge. Upon appearance, if the witness shall fail to purge himself of such failure, refusal or conduct, the judge shall proceed further as in cases of contempt of court; and said witness shall pay the costs of said attachment.

Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination is held at the place of business or residence of the witness, but no witness shall be required to attend a hearing outside of the county wherein he resides, or may for the time be domiciled, without his consent, unless it be shown to a county or circuit judge that such persons are attempting to avoid appearing as witnesses.

Witnesses who testify under subpoena shall be entitled to the same protection and immunities as are witnesses in judicial proceedings.

History.—§§34, 36, ch. 12223, 1927; CGL 4095, 4097.

cf.—§90.14 Pay of witness.
§475.34 Fees of court officials; payment by commission.

475.33 Right of defendant to subpoena witnesses.—The defendant may subpoena witnesses upon payment of the fees required by law, but may be required to advance the cost of taking and transcribing the evidence of such witnesses.

History.—§37, ch. 12223, 1927; CGL 4098.

475.34 Fees of court officials; payment by commission.—The judges, clerks, sheriffs, and other officers shall be entitled to the same fees as may be provided by law for similar services in other cases. The fees of witnesses and officers shall be paid by the commission upon presentation of vouchers approved by the examiner or representative, but the commission shall not be liable for fees incurred by reason of services performed at the direction of a defendant unless otherwise previously ordered.

History.—§35, ch. 12223, 1927; CGL 4096.

cf.—§28.24 Compensation of clerk of circuit court.
§28.241 Filing fees.
§30.23 Fees of sheriffs and constables.

475.35 Appellate review of proceedings.—The final orders and rulings entered or issued in any proceeding before the Florida real estate commission shall be reviewable only by a writ of certiorari issued by the district court of appeals of the appropriate appellate district, or the supreme court, when permitted, as and in the manner provided by the Florida appellate rules or by chapter 120. The venue of the proceedings for such review shall be the appellate district which includes the county wherein hearings before the examiner are required to be heard under the provisions of §475.27; provided however, that if venue cannot be determined under §475.27, then the venue of such proceedings shall be the appellate district which includes the county wherein the executive offices of the commission are located. In all such cases the style of the cause in the court of appeals shall be _____, Petitioner, vs. The Florida Real Estate Commission and (the original plaintiff), Respondents.

History.—§38, ch. 12223, 1927; CGL 4099; am. §9, ch. 24090, 1947; §4, ch. 59-197; §11, ch. 63-509.

475.361 Application and construction of act.—

(1) This act (amendments to 475.01(12), 475.30, 475.31, 475.35 and 475.36 by ch. 59-197) does not apply to any appellate proceeding pending in any court on May 30, 1959.

(2) The provisions of said act shall be construed to be exclusive and not cumulative, or alternative, and to the extent that there is conflict between the provisions of this act, and any other statute, then such other statutes are to the extent of such conflict hereby repealed.

History.—§§6, 8, ch. 59-197.

475.37 Effect of reversal of order of court or commission.—Should the order of the court or commission denying, revoking or suspending registration, be finally reversed and set aside, the defendant shall be restored to his rights and privileges as a broker or salesman, from and after filing the mandate, or a copy thereof, with the commission, and the matters and things alleged in the information shall not thereafter be reexamined in any other proceeding concerning the registration of the defendant; or if the inquiry concerned was in reference to an application for registration, the application shall stand approved, and such application shall be remanded for further proceedings according to law.

History.—§40, ch. 12223, 1927; CGL 4101.

475.38 Payment of costs.—The commission shall not be required to advance any fee or costs to any officer or witness, or to execute any bond in any proceeding in the courts, any general statute to the contrary notwithstanding, but in every case, where the commission shall be liable for any fees or costs, a voucher therefor shall be presented to the commission, and if approved, shall be audited and paid as are other expenses of the commission. The commission may, where it is satisfied that a defendant is unable to pay or advance any fees or costs and that the service from which such fees or costs have accrued, or will accrue, is probably necessary in the interests of justice, upon application by the defendant, order that such fees or costs be incurred at the expense of the commission, and be paid as are other fees and costs, but the defendant shall remain liable to the commission for all sums so paid.

History.—§41, ch. 12223, 1927; CGL 4102.

475.39 Right of commission to bring injunction or mandamus.—Whenever it shall appear to the commission that any person is operating as a broker or salesman without having been duly registered, or is violating any of the provisions of this chapter or lawful rules, regulations or orders of the commission, the commission may file an application for injunction in its own name, or proceedings by man-

damus, in the name of the state, on its own relation, and by its counsel, alleging the facts, and praying for an injunction or writ of mandamus against such person, partnership or corporation, or its members, officers or directors, restraining them from further operating or acting as real estate brokers or salesmen until such time as the proper certificates shall have been granted, or restraining them from disobeying, or commanding them to obey such law, order, rule or regulation.

Upon proper application, and showing that the defendant is not registered or that renewal certificates have not been applied for, or that registration has been denied, revoked or suspended, or that the law, order, rule or regulations have been or are about to be violated or disobeyed, which showing may be by affidavit, the judge of the court wherein the bill shall be filed, shall issue a restraining order or alternative writ of mandamus and, upon the final hearing, shall grant and issue an injunction, mandatory injunction, or peremptory writ of mandamus, as prayed, upon finding the truth and sufficiency of the allegations of the bill or petition. The court may enforce said injunction or writ by punishment for contempt, and by such other writs and process, mesne or final, as are permitted to circuit courts, and shall make such other orders as its discretion and the rules shall require. Such injunction or writ may be limited in time, perpetual or conditional, as may be necessary and proper to the enforcement of this chapter. Decisions of the circuit courts rendered pursuant to this section shall be appealable to the appropriate district court of appeals in the manner and within the time provided by Florida appellate rules.

History.—§42, ch. 12223, 1927; CGL 4103; §2, ch. 29737, 1955; §28, ch. 63-559.

cf.—§350.64, Appeals in cases brought by railroad commissioners.

475.40 Notices.—Whenever any notice shall be required by this chapter, it shall be sufficient to deliver such notice personally to the person to be notified, or to a member or officer of a partnership or corporation, or to cause the same to be sent by registered mail, fully stamped and addressed to such person at the last business address registered with the commission, or, if to a salesman, addressed in care of the registered employer; or to the attorney of record. Such notice shall contain sufficient information to put such person on inquiry, and reasonably lead to a discovery of all facts necessary to the protection of his rights. The period of notice shall be fixed at a reasonable time by the commission, not less than may, for the particular notice, be fixed in this chapter. The affidavit of the person delivering or mailing the notice shall be proof of the fact, but if done by the sheriff or an examiner may be proved by return.

History.—§43, ch. 12223, 1927; CGL 4104.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

475.41 Contracts of unregistered person for commissions invalid.—No contract for a commission or compensation for any act or service enumerated in subsection (2) of §475.01 shall be valid unless the broker or salesman shall have complied with this chapter in regard to registration and renewal of the certificate at the time the act or service was performed.

History.—§44, ch. 12223, 1927; CGL 4105.

475.42 Violations and penalties.—

(1) VIOLATIONS.—(a) No person shall operate as a real estate broker or salesman without being the holder of a valid current registration certificate.

(b) No person registered as a real estate salesman shall operate as a real estate broker, or operate as a salesman for any person not registered as his employer.

(c) No broker shall employ, or continue in employment, any person as a real estate salesman who is not the holder of a valid current registration certificate as salesman; but a registration certificate as salesman may be issued to a person registered as an active broker, upon request and surrender of the certificate as broker, without a fee in addition to that paid for the issuance of the broker's active certificate.

(d) No salesman shall collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer, and with the express consent of the employer; and no real estate salesman, whether the holder of a valid current registration certificate or not, shall commence or maintain any action for a commission or compensation, in connection with a real estate brokerage transaction, against any person except a person registered as his employer at the time the cause of action is alleged to have arisen.

(e) No person shall violate any lawful order, rule or regulation of the commission, which is binding upon him.

(f) No person shall be guilty of any conduct or practice set forth in §475.25 (1) (a), (b), (c), or (f).

(g) No person shall make any false affidavit or affirmation intended for use as evidence by or before the commission, or a member thereof, or by any of its authorized representatives, in connection with any investigation authorized by this chapter, nor shall any person give false testimony under oath, or affirmation, to or before the commission, or any member thereof, or any examiner appointed hereunder, in any proceeding authorized by this chapter.

(h) No person shall fail or refuse to appear at the time and place designated in a subpoena issued under this chapter, unless because of facts that are sufficient to excuse appearance in response to a subpoena from the circuit court, nor shall a person who is present before the commission, a member thereof, one of its authorized representatives, or an examiner, acting under authority of this chapter, refuse to be sworn or to affirm, or fail or refuse to answer fully any question propounded by the commission, a member thereof, or such representatives

or examiner, or any person by the authority of such officer or appointee, nor shall any person, so being present, conduct himself in a disorderly, disrespectful or contumacious manner.

(i) No person shall obstruct or hinder in any manner the enforcement, or performance of any lawful duty by any person acting under the authority, of this chapter, or interfere with, or intimidate, or offer any bribe to, any member of the commission, or any of its employees or examiners, or any person who is, or is expected to be, a witness in any investigation or proceeding under this chapter.

(j) No real estate broker or salesman shall place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, lien, affidavit, or other writing which purports to affect the title of, or encumber, any real property, if the same is known to him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been duly authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or salesman or other person, or for any unlawful purpose.

(k) No person shall operate as a real estate broker under a trade name without causing the same to be noted in the records of the commission and placed on his certificate, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless said partnership or corporation is the holder of a valid current registration certificate.

(2) PENALTIES.—Any person who shall violate any of the provisions of this section shall, upon conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not more than six months, or if a corporation, by a fine of not less than one hundred dollars nor more than one thousand dollars, except where a different punishment is prescribed by this chapter. Nothing in this chapter shall prohibit the prosecution of any person for an act or conduct prohibited by this section, under any other criminal statute of this state, provided, however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

(3) DEFINITIONS.—

(a) Wherever the words "operate" or "operating" as a broker or a salesman shall appear in this chapter, or in any order, rule or regulation of the commission, or in any pleading, indictment or information, under this chapter, or in any court action or proceeding, or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in §475.01(2) and §475.01(3) as constituting or defining a real estate broker or salesman, not including however, any of the exceptions stated therein. A single such act shall be sufficient to bring a person within the meaning of this chapter, and each act shall, if prohibited herein, constitute a separate offense.

(b) The term "valid current registration certificate" shall be held to mean an active registration certificate that is based upon a registration that has not expired, or that has not been revoked, or that is not presently suspended, which was issued prior to the date of the act, conduct or operating, which is the subject of an offense, inquiry, or proceeding, and expiring subsequent thereto, which certificate shall show the then address of the business office, if of a real estate broker, or the then name and business address of the employer, if of a real estate salesman.

(c) The word "person" as used in this chapter shall apply to an individual or a corporation, the singular shall include the plural and the male pronoun shall include the female and neuter.

History.—§45, ch. 12223, 1927; CGL 8134; am. §11, ch. 24090, 1947; §11, ch. 25035, 1949; (1)(d) §10, ch. 26484, 1951; (1)(e) r. §22, ch. 63-129.

cf.—§775.06, Alternative punishment.

475.43 **Presumptions.**—In all criminal cases, and in contempt cases, or other cases filed pursuant to this chapter, if it shall appear that a party has sold, leased or let real estate, the title to which was not in him when it was offered for sale, lease or letting, or such party has maintained an office bearing signs that real estate is for sale, lease or rental thereat, or has advertised real estate for sale, lease or rental, generally, or describing property, the title to which was not in such party at the time, it shall be a presumption that such party was acting or attempting to act as a real-estate broker, and the burden of proof shall be upon him to show that he was not acting or attempting to act as a broker or salesman, as defined herein. All contracts, options or other devices not based upon a substantial consideration, or that are otherwise employed to permit an unregistered person to sell, lease or let real estate, the beneficial title to which has not, in good faith, passed to such party, for a substantial consideration, are hereby declared void and ineffective in all cases, suit or proceedings had or taken under this chapter; provided, however, that this section shall not apply to irrevocable gifts, or to unconditional contracts to purchase, or to options based upon a substantial consideration actually paid and not subject to any agreements to return or right of return reserved.

History.—§3, ch. 22861, 1945.

475.44 **Disqualification of members of the commission.**—A member of the commission may be disqualified from hearing and participating in the decision of a denial, revocation or suspension case on the same grounds and in substantially the same manner as a circuit judge

may be disqualified. Upon the entry of an order of disqualification, either voluntary, or pursuant to a sufficient showing thereof, the governor shall appoint a real estate broker, qualified under §475.02, who is not of kin to any of the parties nor known to be biased or prejudiced in the cause, and who resides more than fifty miles from the county in which the defendant resides, to sit in the place and stead of such disqualified member, who, in the particular cause, shall have the same duties, powers and authority of a member of the commission, and shall be reimbursed for traveling expenses as provided in §112.061. No step in the proceeding, taken prior to the filing of objections to such member, shall be held invalid, unless it is made to appear that the defendant has sustained substantial injury thereby, which cannot otherwise be remedied. Any registrant who shall make any false affidavit for the purpose of disqualifying a member of the commission in any cause may be charged therewith in an information before the commission, and his registration shall be revoked if he is found guilty thereof, and any defendant or other person who shall make any false affidavit intending that the same shall be filed in support of the disqualification of a member of the commission shall, upon conviction be punished by imprisonment in the state prison for a term of not more than five years or by a fine of not less than five hundred dollars and not exceeding five thousand dollars, or by both such fine and imprisonment.

History.—§4, ch. 22861, 1945; §12, ch. 24090, 1947; §19, ch. 63-400.

475.451 Schools teaching real estate practice.—

(1) Every person, school or institution, except approved and accredited colleges and universities of this state, who shall offer or conduct any course or courses of study in real estate practice, or any course or courses designed or represented to enable or assist applicants for registration as real estate brokers or salesmen to pass examinations conducted by the Florida real estate commission, shall, before commencing or continuing further to offer or conduct such course or courses, on and after October 1, 1957, obtain a permit from the real estate commission, and thereafter abide by the regulations imposed upon such person, school or institution by this chapter and rules and regulations of the real estate commission made pursuant thereto; provided, that this section shall not apply to or be construed to regulate any real estate educational program conducted on a non-profit basis.

(2) An applicant for a permit hereunder shall first pass an examination as a real estate broker and be the holder of a registration status as a real estate broker, either active or non-active. The commission may require references to persons having knowledge concerning the applicant and the enterprise, may propound interrogatories to such references and to the applicant concerning the character of the applicant, and shall make such investigation of him or the school or institution as it may deem necessary to the granting of the permit, and if an objection is filed, a notice and hearing shall be held in the same manner as provided by law and rules in hearings on objections or informations against applicants for registration by the real estate commission.

(3) It shall be unlawful for any person, school or institution to offer the courses described in subsection (1) or to conduct classes in such courses, regardless of the number of pupils, or by correspondence or otherwise, without first procuring a permit, or to guarantee that their pupils will pass any examinations given by the commission, or to represent that the issuance of a permit is any recommendation or endorsement of the person, school or institution to which it is issued, or of any course of instruction given thereunder.

(4) The application of each school, institution, or person operating such school or institution, shall be accompanied by a fee of one hundred dollars, and the application of each person employed by a school or institution as an instructor shall be accompanied by a fee of twenty-five dollars and the permit, if issued, shall be annually renewed by the payment of the same fee as for original applications, on or before each succeeding September 30, as in cases of registration certificates of brokers and salesmen, and the same shall be paid into the state agency fund, as provided in §475.11.

(5) Any person guilty of a violation of this section shall be deemed guilty of a misdemeanor, and punished as provided for in §475.42(2).

(6) In the event that any person, school or institution shall violate any of the provisions of this section, or violate any rule or regulation adopted pursuant thereto, or attempt to continue to operate as herein defined, after the revocation or during a period of suspension of a permit, the Florida real estate commission shall be entitled to the appropriate remedy given to it in other cases by §475.39.

History.—Comp. §1, ch. 57-817.

475.47 Publication of false or misleading information; promotion of sales.—It shall be unlawful for any person to publish or cause to be published by means of newspaper, periodical, radio, television, or written or printed matter, any false or misleading information for the purpose of offering for sale or for the purpose of causing or inducing any other person to purchase real estate located in the state, or to acquire an interest in the title thereto.

History.—Comp. §1, ch. 31401, 1956.

475.48 Violation §475.47, penalty.—Any person found guilty of violating the provisions of §475.47 shall, upon conviction, be punished by a fine not exceeding $100,000.00 or by imprisonment not exceeding 5 years, or both such fine and imprisonment.

History.—Comp. §2, ch. 31401, 1956.

475.49 Proceeding to rescind or recover.—Any person who, in reliance upon any false or

misleading information published in violation of §475.47, pays anything of value toward the purchase of or acquiring an interest in the title to real estate located in this state, shall be entitled in an equity proceeding to rescind the contract in accordance with equity principles or in an action at law to recover from the person to whom such payment was made, damages for his loss, and provided, further, that any person who purchases or acquires an interest in the title to real estate or contracts therefor, after he or his agent has made an actual physical or visual examination of the property involved, shall not be entitled to the benefits of this section. Any action under this section not brought within one year from the date of the first payment on the purchase price or other consideration, or within three months after said purchaser or his agent has physically or visually examined said real estate, whichever time shall occur first, shall be barred.

History.—Comp. §3, ch. 31401, 1956.

CHAPTER 476

BARBERS

476.01 Barbers, apprentices and teachers in barbering schools to be registered.—It is unlawful for any person to engage in the practice or attempt to practice barbering without a certificate of registration as a registered barber issued pursuant to the provisions of this chapter by the barbers' sanitary commission.

No person shall teach or attempt to teach in a school of barbering without a certificate of registration as a registered barber teacher, issued by the commission.

It is unlawful for any person to serve as an apprentice under a registered barber or in a school of barbering without a certificate of registration as a registered apprentice issued by the commission.

It is unlawful for any person to operate a barber shop or school of barbering unless such shop or school of barbering shall at all times be under the direction, supervision and management of a registered barber or registered barber teacher.

It is unlawful for any person to hire or employ any person to engage in the practice of barbering unless such person then holds a valid, unexpired and unrevoked certificate of registration as a registered apprentice.

History.—§1, ch. 19183, 1939; CGL 1940 Supp. 4151(25). cf.—§1.01(3), "Person" defined.

476.02 "Barbering" and "Barber Shop" defined.—Any one or any combination of the following practices (when not done for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public) constitutes the teaching and practice of barbering: shaving, or trimming the beard or cutting, waving or bobbing the hair; facial and scalp massages or treatments with oils, creams, lotions or other preparation; singeing, shampooing or dyeing the hair or applying hair tonics; applying cosmetic preparation, antiseptics, powders, oil clay or lotions to scalp, face or neck.

For the purpose of, and as used in this chapter the term "barber shop" is defined to embrace and include any establishment or place of business wherein the practice of barbering is engaged in or carried on.

History.—§2, ch. 19183, 1939; CGL 1940 Supp. 4151(26); am. §7, ch. 22858, 1945.

476.03 Apprentices.—No registered apprentice may independently practice barbering, but he may as an apprentice do any or all of the acts constituting the practice of barbering under the immediate personal supervision of a registered barber, or registered barber teacher, and only one such apprentice shall be employed in any licensed barber shop.

History.—§3, ch. 19183, 1939; CGL 1940 Supp. 4151(27).

476.04 Persons exempt from chapter.—The provisions of this chapter shall not be construed to apply to:

(1) Persons authorized by the law of this state to practice medicine and surgery or osteopathy or chiropractic or persons holding a drugless practitioner certificate under the laws of this state;

(2) Commissioned medical or surgical officers of the United States army or navy or marine hospital service;

(3) Registered nurses under the laws of this state;

(4) Persons practicing beauty culture;

(5) Persons employed in state or local institutions, or hospitals, as barbers, but they are limited to the inmates of said institution.

History.—§4, ch. 19183, 1939; CGL 1940 Supp. 4151(47).

476.05 Qualifications of applicants for certificates as barbers.—

(1) Any person is qualified to receive a certificate of registration to practice barbering:

(a) Who is qualified under the provisions of §476.06;

(b) Who is at least eighteen years of age, of good moral character and temperate habits;

(c) Who has practiced as a registered apprentice for a period of eighteen months under the immediate personal supervision of a registered barber; and

(d) Who has passed a satisfactory examination conducted by the commission to determine his fitness to practice barbering.

(2) An applicant for a certificate of registration to practice as a registered barber, who fails to pass a satisfactory examination conducted by the commission, must continue to practice as an apprentice for an additional six months before he is again entitled to take the examination for a registered barber.

(3) Any person who has not practiced barbering within five years immediately preceding the filing of his application and who has failed to pass an examination conducted by the commission to determine his fitness to practice barbering in this state, shall not be eligible to take a second examination until he has attended a recognized barbering school for at least one thousand hours.

The commission shall not waive any of the above qualifications.

History.—§§1, 5, ch. 19183, 1939; CGL 1940 Supp. 4151(25), 4151(28); §1, ch. 63-251.

476.06 Qualifications of applicants for certificates as apprentices.—

(1) Any person is qualified to receive a certificate of registration as a registered apprentice:

(a) Who is at least sixteen and one-half years of age;

(b) Who is of good moral character and temperate habits;

(c) Who has graduated from a school of barbering approved by the commission, or from the barber training division of the Florida school for the deaf and blind, provided said division meets the standards of the commission and this chapter; and

(d) Who has passed a satisfactory examination conducted by the commission to determine his fitness to practice as a registered apprentice.

(2) An applicant for a certificate of registration to practice as an apprentice in a barber shop, who fails to pass a satisfactory examination, is required to complete a further course of study and practice of not less than five hundred hours, to be completed within six months, of not more than eight hours in any one working day in a school of barbering approved by the commission.

The commission shall not waive any of the above qualifications.

History.—§6, ch. 19183, 1939; CGL 1940 Supp. 4151(29); §2, ch. 63-251.

476.07 Prerequisites of approved barber schools.—No school of barbering shall be approved by the commission unless its management and faculty are registered barber teachers under this chapter, and requires as a prerequisite to admission thereto, graduation from an eighth grade grammar school or its equivalent as determined by an examination conducted by the commission, and requires as a prerequisite to graduation a course of instruction and practice of not less than one thousand hours of continuous study and practice of not more than eight hours in any one day, within a period of twelve months, such course of instruction to include the following subjects:

Scientific fundamentals for barbering, physiology, hygiene, elementary chemistry relating to sterilization and antiseptics, massaging and manipulating the muscles of the face, neck and scalp, hair cutting, bobbing, waving, shaving, beard trimming and dyeing the hair.

No school of barbering shall enroll or admit any student thereto unless such student shall make and file, in duplicate, a duly verified application which said application shall be of such form and contain such matters as the commission may prescribe and shall be obtained by such student or the school from said commission. One copy of such application shall be retained by the school enrolling or admitting the student and the other copy shall be filed by such school with said commission.

No school of barbering shall enroll or admit any student in a post graduate course thereof, which said post graduate course shall be for the purpose of qualifying persons to pass the examination conducted by the commission to determine fitness to practice barbering, unless such student shall file, in duplicate, an application duly verified, which said application shall be obtained by such student or school from the commission and shall be in such form and shall show that the applicant has graduated from an eighth grade grammar school or has the equivalent education as theretofore determined by an examination conducted by said commission, and that such applicant has either (1) graduated from a school of barbering approved by the commission (2) then holds a valid, unexpired and uncanceled certificate of registration as a registered apprentice or (3) can prove by sworn affidavits that he has practiced as a barber in another state or country for at least two years immediately prior

to making such application. One copy of such application shall be retained by the school so admitting or enrolling such student and the other shall be filed by such school with the commission. Nothing in this section contained shall be construed as limiting or modifying the provision of §476.05.

History.—§7, ch. 19183, 1939; CGL 1940 Supp. 4151(30).

476.071 Schools or colleges of barbering.—(1) No school or college of barbering shall be approved by the barbers' sanitary commission and no license shall be issued to operate or conduct any such school or college of barbering unless and until it shall be demonstrated to the commission that the applicant is fully qualified to thoroughly educate and instruct students in all subjects necessary and required to fit them as competent barbers. An application for a license and approval as a registered school or college of barbering shall contain, under oath of the applicant or proper officer of a corporation or association, the following:

(a) The full name of the applicant, person, association or corporation.

(b) The nationality, race and residence of the applicant; if an association or corporation, the same information of the members of the association and of the stockholders and directors of the corporation.

(c) The exact location where the school or college is located or proposed to be located.

(d) Whether or not the school or college is owned or leased, and if leased, the name, race and residence of the fee owner, or if a corporation, of the director and stockholders thereof.

(e) A detailed drawing of the premises where the instruction is to take place, including the size of the building, number of chairs available, sanitary facilities, name, number and qualification of teachers on the staff and proposed number of students.

(f) A statement (certified to by a public accountant licensed to practice in Florida) of the assets and liabilities of the person or firm making such application.

(g) Evidence that a financial responsibility bond for faithful performance of duty has been secured.

(h) Evidence that a performance bond of ten thousand dollars guaranteeing the operation of such school or college for one year has been secured.

(2) No school or college of barbering shall be approved by the barbers' sanitary commission and no license shall be issued to operate or conduct any such school or college of barbering unless and until the following provisions are complied with:

(a) Payment of one hundred dollars a year to the commission for the issuance of a license to operate.

(b) One chair for each student; the chair shall have five feet of free space around it.

(c) One teacher for every twenty students.

(d) The manager, person or teacher in charge of school must have had at least five years experience as a barber teacher in Florida before he may be put in charge of said school.

(e) The teacher shall have at least two years in an accredited college or university and shall have studied complete basic courses in hygiene, bacteria, sterilization and chemistry.

(f) The teacher shall have completed a postgraduate course in barber teacher theory in an approved school, which school shall regularly offer such a course.

(g) The teacher shall pay a teacher license fee of fifty dollars per year.

(h) Provided, however, that subsections (d), (e) and (f) shall not apply to any school or college of barbering engaged in the operation or conduct of any such school or college of barbering on or before June 15, 1959, and which school or college has been approved by the Florida state vocational rehabilitation service, or by the United States veterans administration.

(3) The school shall be liable to any person for its torts.

(4) The commission may revoke or suspend any certificate or school license or registration upon finding that such school or college fails to comply with the provisions of this section or with the rules and regulations prescribed by the commission.

(5) The commission may commence and maintain all proper and necessary actions and proceedings including injunctions for the enforcement of the provisions of this section.

History.—§§1-5, ch. 59-434.

476.08 Application for examination.—Each applicant for an examination shall:

(1) Make application to the commission at least thirty days prior to examination date, on blank forms prepared and furnished by the commission, such application to contain proof under the applicant's oath of the particular qualifications of the applicant;

(2) Furnish to the commission a certificate from a practicing medical doctor of this state dated not more than ten days prior to the date of application attesting that he is free from any contagious or infectious disease;

(3) Furnish to the commission two signed photographs of the applicant, size five inches by three inches, one to accompany the application and one to be returned to applicant to be presented to the commission when the applicant appears for examination;

(4) Pay the required fee to the commission as provided in §476.16.

History.—§8, ch. 19183, 1939; CGL 1940 Supp. 4151(31).

476.09 Time, place and subjects of examination.—The commission shall conduct examinations of applicants for certificates of registration to practice as registered barber teachers, registered barbers, registered apprentices and examinations to determine the educational fitness of applicants to enter a school of barbering not less than four times each year at such time and place as the commission may

determine. The examination of applicants for certificates of registration as registered barber teachers, registered barbers and registered apprentices shall include both practical demonstrations and written and oral tests, and shall embrace the subjects required in §476.07, to be taught in schools of barbering approved by the commission. The director shall be in charge of administering the examination and shall control the personnel assisting in the giving of such examinations. The written examination shall be made up by the commission and shall be graded by the commissioners under the supervision of the director at a regularly scheduled monthly meeting of the commission.

History.—§9, ch. 19183, 1939; CGL 1940 Supp. 4151(32); §3, ch. 63-251.
cf.—§455.03 Dispensing with examination of veterans.

476.10 Certificates to be issued to successful examinees.—A certificate of registered barber teacher, registered barber or of registered apprentice shall be issued by the commission to any applicant who shall pass a satisfactory examination making an average grade of not less than seventy-five per cent on each, both practical and written, and who shall possess the other qualifications required by law.

The certificate shall be signed by all members of the commission at a regular meeting.

History.—§10, ch. 19183, 1939; CGL 1940 Supp. 4151(33); §4, ch. 63-251.

476.11 Qualifications of barbers and apprentices from other states.—

(1) Any person who is at least eighteen years of age and of good moral character and temperate habits, who:

(a) Can furnish to the commission a certificate from a practicing medical doctor of this state dated not more than ten days prior to the date of application attesting that he is free from any contagious or infectious disease; and furnish a certificate showing he has passed the Wassermann or some similar test.

Medical certificate as herein used shall mean a certificate signed by a reputable practicing medical doctor of the state to the effect that he has examined the person named therein and has found him free from all contagious or infectious diseases, including gonorrhea, syphilis and tuberculosis. These certificates must be based on a Wassermann and laboratory test.

(b) 1. Has a license or certificate of registration as a practicing barber from another state or country which has substantially the same standard of requirements for licensing or registering barbers as required by this chapter, or

2. Can prove by sworn affidavit that he has practiced as a barber in another state or country for at least five years immediately prior to making application in this state;

shall upon payment of the required fee be eligible to take an examination to determine his fitness to practice as a registered barber.

(2) Any apprentice who is at least sixteen and one-half years of age and of good moral character, temperate habits, who:

(a) Furnishes to the commission a certificate from a licensed medical doctor of this state dated not more than ten days prior to the date of application attesting that he is free from any contagious or infectious disease;

(b) Has a diploma showing graduation from an eighth grade grammar school, or an equivalent education as determined by an examination conducted by the commission and has a certificate of registration as an apprentice in a state or country which has substantially the same requirements for registration as an apprentice as required by this chapter; shall upon payment of the required fee, be eligible to take an examination to determine his fitness to practice as an apprentice. Should he pass the required examination, a certificate of registration as a registered apprentice shall be issued to him and the time spent in such other state or country as an apprentice shall be credited upon the period of apprenticeship required by this chapter as a qualification to take examination to determine his fitness to receive his certificate of registration as a registered barber.

(3) Any person who has practiced as an apprentice in another state or country which does not have substantially the same requirements for registration as an apprentice as required by this chapter and who has the qualifications as required in §476.06 shall be credited with the time spent as in such state or country upon the period of apprenticeship required by this chapter as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber. The commission shall not waive any of the above qualifications.

History.—§11, ch. 19183, 1939; CGL 1940 Supp. 4151(34); §5, ch. 63-251.

476.12 Display of certificates and certain rules and regulations.—Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

The commission shall prepare copies of the provision of §476.22, together with any other rules and regulations or sanitary requirements for conduct of barber shops and barber schools which may be adopted by said commission in aid or furtherance of the provisions of this chapter, and furnish to the owner or manager of each barber shop and barber school, one such copy to be posted in a conspicuous place in such barber shop or barber school by the owner or manager thereof.

History.—§13, ch. 19183, 1939; CGL 1940 Supp. 4151(36).

476.13 Annual renewal of certificates; registration fees.—Every registered barber teacher, registered barber and every registered apprentice who continues in active practice or service shall annually on or before July first of such year renew his certificate of registration and pay the required fee. Every certificate of registration which has not been renewed during the month of July in any one year shall expire on the first day of August in that year. A registered barber or registered

apprentice whose certificate of registration has expired may have his certificate restored immediately upon payment of the restoration fee. Any registered barber who retires from the practice of barbering for not more than five years may renew his certificate of registration upon the payment of the required restoration fee. Any registered practitioner under this chapter who retires from the teaching or practice of barbering may renew his certificate of registration upon payment of required restoration fee.

History.—§14, ch. 19183, 1939; CGL 1940 Supp. 4151(37).

476.14 Grounds for revoking or refusing to grant certificate.—The commission may either refuse to issue, or renew, or may suspend or revoke any certificate of registration for any of the following causes:

(1) Conviction of a felony shown by a certified copy of the record of the court of conviction;

(2) Gross malpractice or gross incompetency;

(3) Continued practice by a person knowingly having an infectious or contagious disease;

(4) Advertising by means of knowingly false or deceptive statements;

(5) Advertising, practicing or attempting to practice under a trade name or other than one's own;

(6) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit forming drugs;

(7) Immoral or unprofessional conduct;

(8) The commission of any of the offenses described in §476.24 subsections (3), (4), (6), and (7).

History.—§15, ch. 19183, 1939; CGL 1940 Supp. 4151(38).

476.15 Hearing on refusal to issue or revocation of certificates; attendance of witnesses; fees.—The commission may neither refuse to issue, nor refuse to renew, nor suspend, nor revoke any certificate of registration, however, for any of the causes set out in this chapter unless the person accused has been given at least twenty days' notice in writing of the charge against him and a public hearing of the commission, except subsections (2) and (3) of §476.14, when immediate suspension must be made and continued until a satisfactory showing can be made that the disqualification has ceased to exist.

Upon the hearing of any such proceeding, the commission may administer oaths and may procure by its subpoena the attendance of witnesses and the production of relevant books and papers.

Any court of competent jurisdiction, or judge thereof, either in term time or in vacation, upon application either of the accused or of the commission may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the commission in any hearing relating to the refusal, suspension or revocation of certificate of registration.

The fees and mileage of the sheriff and of witnesses shall be the same as allowed in criminal cases and shall be paid from the fund of the commission as other expenses of the commission are paid.

History.—§16, ch. 19183, 1939; CGL 1940 Supp. 4151(39).
cf.—§30.23 Fees of sheriffs and constables.
§32.30 Juries, jurors and witnesses in criminal courts of record.
§34.14 County courts; prosecuting attorney allowed to summons witnesses before him.
§90.14 Compensation of witnesses in various courts.
§932.33 Witnesses; compensation, criminal cases.

476.16 Fees; duplicate certificates.—The fee to be paid by an applicant, who was not a resident of the state on May 30, 1939, for an examination to determine his fitness to receive a certificate of registration to practice barbering is twenty-five dollars and for the issuance of the certificate is two dollars.

The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to teach barbering is fifty dollars and for the issuance of a certificate to teach barbering is five dollars.

The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice as an apprentice is ten dollars and for the issuance of the certificate is two dollars.

The fee to be paid by an applicant for an examination to determine his preliminary education is three dollars.

The fee to be paid for the renewal of a certificate of registration to teach barbering is twenty-five dollars.

The fee to be paid for the renewal of a certificate to practice barbering is five dollars.

The fee to be paid for the restoration of an expired certificate to teach barbering is fifty dollars.

The fee to be paid for the restoration of a certificate to practice barbering is six dollars.

The fee to be paid for the renewal of a certificate of registration to practice as an apprentice is three dollars.

The fee to be paid for the restoration of an expired certificate to practice as an apprentice is five dollars.

All applications for renewals or restoration of certificates must be made within a period of one year after the date of expiration, otherwise the fee shall be twelve dollars.

A duplicate certificate or permit will be issued upon the filing of a statement covering the loss of a certificate or permit, verified by the oath of the applicant, and submitting one signed photograph and the payment of a fee of two dollars for the issuance of the same. Each duplicate certificate or permit shall have the word "duplicate" stamped across the face thereof, and will bear the same number as the certificate or permit that it was issued in lieu of.

History.—§17, ch. 19183, 1939; CGL 1940 Supp. 4151(40).
cf.—§455.03 Dispensing with examination of veterans.

476.17 Florida barbers' sanitary commission.—

(1) There is hereby created the Florida

barbers' sanitary commission consisting of seven members to be appointed by the governor, one from the state at large who shall be a sanitarian as defined in chapter 491, and one from each of the six districts of the state hereinafter set forth.

(a) District 1, consisting of Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Gulf, Calhoun, Jackson, Gadsden, Liberty and Franklin counties.

(b) District 2, consisting of Wakulla, Leon, Jefferson, Madison, Taylor, Lafayette, Suwannee, Hamilton, Gilchrist, Columbia, Dixie, Levy, Alachua, Bradford, Union and Baker counties.

(c) District 3, consisting of Nassau, Duval, St. Johns, Clay, Marion, Flagler, Putnam, Citrus, Hernando, Pasco, Sumter, Lake and Volusia counties.

(d) District 4, consisting of Orange, Brevard, Osceola, Polk, Seminole, Hillsborough, Pinellas and Indian River counties.

(e) District 5, consisting of Manatee, Sarasota, DeSoto, Hardee, Charlotte, Lee, Highlands, Glades, Hendry, Okeechobee, St. Lucie, Martin and Palm Beach counties.

(f) District 6, consisting of Broward, Collier, Monroe and Dade counties.

(2) Each member representing one of the six districts shall be a practical barber who has followed the occupation of barbering in the state for at least five years. No person shall be appointed to the commission or as an inspector, investigator or clerical appointee who is in any way connected with the manufacture, rental, sale or distribution of barber equipment and supplies; and no person connected with a school of barbering in any capacity shall be eligible to serve on the commission.

(3) Within thirty days after May 31, 1963, the governor shall appoint seven eligible and qualified persons to be members of the board as follows:

(a) One member from district 1 for one year.

(b) One member from district 2 for four years.

(c) One member from district 3 for three years.

(d) One member from district 4 for one year.

(e) One member from district 5 for two years.

(f) One member from district 6 for four years.

(g) One member from the state at large for one year who shall be a sanitarian as defined in chapter 491.

Annually, thereafter, as the terms of the members expire, the governor shall appoint successors for a period of four years and such member shall serve until their successors are appointed and qualified, but the governor may remove any member for cause.

(4) No person shall be appointed to serve more than two consecutive terms. A vacancy resulting from any cause other than the expiration of the term shall be filled for the unexpired term by appointment by the governor.

History.—§20, ch. 19183, 1939; CGL 1940 Supp. 4151(41); §1, ch. 57-375; §6, ch. 63-251.

476.18 Organization, quarters, seal, employees, compensation and reports of commission; quorum; bond of secretary.—The commission shall elect a president and a secretary. The secretary may, or may not, be a member of the commission. The commission shall maintain its headquarters in Tallahassee, Leon county, and at its own expense. The commission shall adopt and use a common seal for the authentication of its orders and records, and its secretary shall keep a record of all proceedings of the commission.

The secretary shall give to the state a bond in the sum of five thousand dollars, with sufficient sureties, to be approved by the commission for the faithful performance of his duties. A majority of the commission in meeting duly assembled may perform and exercise all the duties and powers devolving upon the commission. The commission shall meet at least once each month. An assistant attorney general shall be present at any meeting when general policies are changed.

Each member of the commission shall receive a salary of one hundred dollars per month and shall receive per diem and mileage as provided in §112.061 from the place of their residence to the place of meetings and the return therefrom.

There shall be a director of the commission whose duties shall be to carry out the policies enacted by the commission. The director shall be appointed by the governor and shall serve at the pleasure of the governor. The director shall have direct control over all personnel, including inspectors, who are employed by the commission. The director's salary shall be six hundred dollars per month. The commission shall report annually to the governor a full statement of its work during the year, and shall transfer all surplus funds at the end of each year to the state agency fund.

History.—§21, ch. 19183, 1939; CGL 1940 Supp. 4151(42); §27, ch. 28215, 1953; §24, ch. 57-1; §7, ch. 63-251.

cf.—§112.061 Per diem and traveling expenses of state officers and employees.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

476.19 Receipts and their disposition.—All moneys collected by the commission from fees prescribed or authorized to be charged by this chapter, shall be paid to the secretary of the commission, who shall give a receipt for the same. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. Sufficient moneys shall be expended in accordance with law for all necessary and proper expenses in carrying out the provisions of this chapter upon proper claim approved by said commission, or a finance committee thereof.

History.—§22, ch. 19183, 1939; CGL 1940 Supp. 4151(43). §115, ch. 26869, 1951; §28, ch. 28215, 1953; §18, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budget; state budget commission.

476.20 Power of municipalities to regulate barbering.—Nothing contained in this chapter shall be construed to prevent any municipal government in this state from passing and enforcing reasonable laws and regulations governing the barber practice within its limits.

History.—§23A, ch. 19183, 1939; CGL 1940 Supp. 4151(45).

476.21 Records of commission.—The commission shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business and residence of each registered barber and registered apprentice and the date and number of his certificate of registration. This record shall be open to the public at all reasonable times.

History.—§24, ch. 19183, 1939; CGL 1940 Supp. 4151(46).

476.22 Rules and regulations; inspections; etc.—The following rules and regulations shall govern the conduct of barbers and barber colleges in fixing standards of sanitation and cleanliness, and shall be enforced by the barbers sanitary commission.

(1) No barber, barber teacher, apprentice or student shall be allowed to practice in the state if he is infected with, and in a communicable stage of the following conditions or diseases: tuberculosis, ringworm of the skin or scalp, pediculosis, scabies, favus, impetigo, diphtheria, streptoccal, sore throat, venereal disease, influenza, herpes zoster, smallpox, typhoid fever or other diseases capable of being communicated from person to person, and no patron showing evidence of any such disease shall be served by any person practicing barbering, or by any other person, in any barber shop or barber school until he presents a current statement from a physician to the effect that such disease or infection is not communicable.

(2) The medical certificate required in §§476.01 and 476.08 shall include the name of the laboratory, number, date, and result of serology for syphilis and chest x-ray.

(3) The commission may at any time require any barber, barber teacher, apprentice or student to produce a certificate by a physician, licensed as such under the laws of this state, certifying that such barber, barber teacher, apprentice or student, is free from any contagious or infectious disease, which certificate shall, when required by the commission, state the name of the laboratory at which blood tests were made and the serial number of the report on such test or tests.

(4) After the handling of a customer affected with any eruption, or whose skin is broken out, or is inflamed or contains pus, the hands of the attendant shall be disinfected immediately. This shall be done by thorough washing with soap and water, followed by rinsing in alcohol (seventy to eighty per cent) or by the use of some equally efficient disinfectant.

(5) No person practicing barbering in any capacity shall remove, or attempt to remove warts or moles or treat, or attempt to treat, any disease of the skin, scalp, or other disease.

(6) Every person practicing barbering in any capacity shall wash his hands thoroughly with soap and water before serving each patron.

(7) No owner or manager of a barber shop or barber school shall allow any dog, cat, bird or other pet where the practice of barbering is performed.

(8) No owner or manager shall control or operate a barber shop or barber school unless such barber shop or barber school, together with all furniture, equipment, tools, utensils, floors, walls and ceilings, is clean and sanitary and well lighted and ventilated during all hours of operation.

(9) No owner or manager shall control or operate a barber shop or barber school unless all bathrooms, toilets and other adjoining rooms are kept clean and in a sanitary condition; unless all bathtubs are thoroughly washed and cleaned after each patron's or person's use; unless individual soap, washcloths and clean towels are furnished each patron; and unless all bathrooms are kept free and clear of used brushes, sponges, washcloths and towels between use of patrons or persons.

(10) No owner or manager shall control or operate a barber shop or barber school unless all clean towels and linens used in the practice of barbering therein are kept in a closed container or compartment, protected from dust and dirt.

(11) No owner or manager shall control or operate a barber shop or barber school unless such barber shop or barber school is equipped with at least one lavatory for each two barber chairs in said barber shop or barber school, and said lavatory shall be installed in the most convenient place for said chairs.

And it shall be unlawful:

(12) For any barber or apprentice to knowingly continue the practice of barbering or for any student knowingly to continue as a student in any school of barbering while such person has an infectious, contagious or communicable disease.

(13) To own, manage, operate or control any barber shop or barber school unless continuously hot and cold running water be provided for therein.

(14) To own, manage, operate or control any barber school, or part or portion thereof, whether connected therewith or in a separate building wherein the practice of barbering is engaged in or carried on unless all entrances to the place wherein the practice of barbering is so engaged in or carried on shall display a sign indicating that the work therein is done by students exclusively.

(15) To own, manage or control or operate any barber shop unless there is displayed a recognized sign indicating that it is a barber shop, which said sign shall be clearly visible at the main entrance to said shop.

(16) To use upon one patron a towel that

has been used upon another patron unless and until the towel has been relaundered.

(17) To fail to provide the headrest on each chair with a relaundered towel or a sheet of clean paper for each patron.

(18) To fail to place around the patron's neck a strip of cotton, towel or neckband so that the haircloth does not come in contact with the neck or skin of the patron's body.

(19) To use on any patron any razor, scissors, tweezers, combs, rubber discs or parts of vibrators used on another patron unless the same be

(a) Immersed in a two per cent carbolic acid solution, or its equivalent, for a period of not less than fifteen minutes; or

(b) Placed in boiling water at a temperature of 212 degrees Fahrenheit for a period of not less than fifteen minutes; or

(c) Placed in a closed compartment or cabinet containing fumes from a forty per cent formaldehyde solution, for a period of not less than fifteen minutes; or

(d) Placed in an ultra-violet ray sterilizing cabinet containing bactericidal 2537A radiation for a period of fifteen minutes, or for a period as recommended by the manufacturers of such radiation lamp, sufficient to equal the germicidal and organism destruction of two per cent carbolic acid solution, or its equivalent.

(e) Cleaned and prepared for use by any other method that shall be the equivalent in germicidal or organism destructive effect of a two per cent carbolic acid solution used for fifteen minutes, as provided in (a) above.

After complying with either of the above requirements, the razors, scissors, tweezers, combs, rubber discs, or parts of vibrators may then be placed and kept in a clean, closed cabinet until next ready for use.

(20) Any member of the barbers sanitary commission or its agents or assistants may enter into and inspect any barber shop or barber college at any time during business days and hours.

(21) The barbers sanitary commission may, from time to time, make such recommendations to the legislature concerning sanitation and cleanliness as it may be advised will protect the public health and promote sanitation and cleanliness in the barber shops of Florida.

History.—§23, ch. 19183, 1939; CGL 1940 Supp. 4151(44). Am. §1, ch. 57-137.

476.221 Barber shop registration; requirements; fee.—Every person, whether as owner, manager or agent who opens or establishes a barber shop, place or establishment in this state shall, prior to opening or establishing of such shop, place or establishment, file with the Florida barbers' sanitary commission the name and address of the owner of such shop and the city or town and the street and number where the same is located, together with a fee of five dollars. The commission shall furnish the applicant with filing forms upon request for registration. Upon receipt of the completed form and the fee the Florida barbers' sanitary commission shall issue a certificate of registration, for a period of one year. Said registration shall be renewed on or before July 1 of each year, upon the payment of a renewal fee of two dollars. In the event of a change of location of any registered barber shop and upon notice thereof and filing a fee of five dollars with said commission, the commission shall issue a transfer of the certificate of registration of such shop to its new location.

History.—§1, ch. 63-483.

476.222 Barber shop registration; penalties.—

(1) The commission may suspend or revoke any certificate of registration to practice barbering of any person either as owner or operator, manager or agent, who shall open, establish, conduct or maintain a shop, place or establishment in this state for the conduct of the occupation of barbering without first having received from the commission a certificate of registration for such barber shop or establishment.

(2) Before any such certificate is suspended or revoked, the holder thereof shall be given written notice of such suspension or revocation and shall, at a day specified in such notice, at least fifteen days after the service thereof, be given a public hearing.

(3) Such person may, at any time before the day specified in such notice, apply for a barber shop registration certificate, which shall be issued after payment of an additional fee of ten dollars.

History.—§1, ch. 63-483.

476.223 Barber shop registration; barber shops presently operating.—Any barber shop operating on July 1, 1963 shall be issued a certificate of registration for such shop upon furnishing the information set forth in §476.221 to the commission within three months after July 1, 1963, accompanied by the payment of a fee of two dollars. The said barber shops in operation shall be subject to the renewal and penalty provisions of this act.

History.—§1, ch. 63-483.

476.23 False statements.—The willful making of any false statement as to material matter in any oath or affidavit which is required by the provisions of this chapter is perjury and punishable as a misdemeanor under the general law governing punishment of misdemeanors.

History.—CGL 1936 Supp. 7476(3); §19, ch. 19183, 1939. cf.—§775.07, Punishment for misdemeanors.

476.24 Offenses and penalties.—Each of the following shall constitute a misdemeanor punishable upon conviction, as provided by general law for punishment of misdemeanors:

(1) The violation of any of the provisions of §476.01.

(2) Permitting any person in one's employ, supervision or control to practice as an appren-

tice unless that person has a certificate of registration as a registered apprentice.

(3) Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or any other thing of value or by fraudulent misrepresentations.

(4) Practicing or attempting to practice by fraudulent misrepresentations.

(5) The willful failure to display a certificate as required by this chapter.

(6) The use of any room or place for barbering which is also used for residential or business purposes (except the sale of hair tonics, lotions, creams, toilet articles, cigars, tobacco, and such commodities as are used and sold in barber shops), unless a solid partition of ceiling height separates the portion used for residential or business purpose.

(7) A violation of any of the provisions of §476.22.

(8) The willful failure by any owner or manager of a barber shop to display the copy of §476.22, with rules and regulations as provided in this chapter.

The commission is specifically given the authority to enforce this law by injunction.

History.—§18, ch. 19183, 1939; CGL 1936 Supp. 8135(4). cf.—§775.07, Punishment for misdemeanors.

476.25 Certain regulations; definition.—As used in §§476.26-476.32 unless otherwise expressly stated, or unless the context or subject matter otherwise require, "commission" means the barbers' sanitary commission.

History.—§2, ch. 20425, 1941.

476.26 Legislative findings and statement of policy.—This law is enacted in the interest of the public health, public safety and general welfare; that the occupation of barbering and the operation of barber shops is hereby declared to be affected with a public interest; that in order to attain the purposes of this law in promoting and conserving fair competition and salutary and sanitary practices among barbers and barber shops, reasonable minimum charges should prevail for services customarily performed by barbers in barber shops and reasonable opening and closing hours for barber shops should be established under the provisions hereof.

History.—§1, ch. 20425, 1941.

476.27 Powers.—Whenever a petition signed by sixty-six and two-thirds per cent of all the barbers holding certificates of registration and regularly engaged in barbering in any county of the state is filed with the commission and it appears therefrom to the barbers' sanitary commission that unfair or unreasonable economic practices prevail among barbers or barber shops in such county, which may tend to make insecure the economic status of the barbers therein, or that the hours of operation of barber shops in such county are unreasonably long or irregular and tend to make difficult adequate and timely sanitary inspection or tend to impair the health or efficiency of barbers or to endanger the health or safety of their patrons, it shall be the duty of the commission to investigate and determine whether the conditions or practices above mentioned, or any of them, prevail in such county and if found to exist or to be threatened by conditions existing therein, the commission may, by official order, after due notice and hearing as provided for herein, promulgate scales of reasonable minimum prices to be charged for barber services in such county and may establish reasonable opening and closing hours for barber shops therein and may make and promulgate such other reasonable orders, rules and regulations as may be calculated to promote the purposes of this law as herein expressed.

The board may in its discretion establish zones in a county with appropriate varying prices therein.

History.—§§3, 3A, ch. 20425, 1941.
Robbins v Webb's Cutrate Drug Store 16 So. 2d 121.

476.28 Investigations, procedure.—

(1) The practice and procedure of the commission with respect to any investigation authorized by this law shall be in accordance with rules and regulations to be promulgated by the commission, which shall provide for reasonable notice to all persons affected by orders to be made by the commission, and opportunity to be heard either in person, or by counsel, and to introduce testimony in their behalf at any hearing to be held for that purpose.

(2) After receipt of the petition provided for in §476.27 and at least thirty days before making any order promulgating a scale of minimum service charges or opening or closing hours, the commission shall adopt a resolution to investigate barbering and barber shop conditions in such county and within five days after such resolution is adopted the commission shall cause written notices thereof to be mailed to the last known address of all barbers holding certificates of registration, residing and then regularly engaged in barbering in such county, and all barber shops operating within such county, as shown by the files of the commission, notifying them of the adoption of such resolution and fixing a time and place for the hearing of evidence as to conditions existing in such county.

(3) For the purpose of such investigation or of any hearing on any matter covered by this law or by any rule, regulation or order of the commission, the commission or any member thereof, shall have the power to administer oaths, take depositions, issue subpoenas, compel the attendance of witnesses, and the production of books, papers, documents and other evidence. In case of disobedience of any person in complying with any order of the commission or a subpoena issued by the commission, or any of its members, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the county judge of the county in which the person resides, on application by any member of the commission, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience to a subpoena issued from such court,

or a refusal to testify therein. Each public officer who serves such subpoena shall receive the same fees as a sheriff for similar services and each witness who appears in obedience to a subpoena before the commission, or any member thereof, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the circuit courts of this state, and the bills therefor shall be audited and paid in the manner as other expenses are audited and paid by the commission. No witnesses subpoenaed at the instance of a party, other than those herein authorized to issue subpoenas, shall be entitled to compensation from the commission unless the commission shall certify that his testimony was material to the matter investigated.

(4) In making any investigation as to conditions existing in the occupation of barbering and in barber shops, the commission shall give due consideration to the costs incurred in the particular county under investigation with regard to adequacy of income of barbers and barber shop operators to assure full compliance with all sanitary regulations imposed by any law of this state and the commission shall give due consideration to healthful and reasonable working conditions and hours of service in barber shops.

History.—§4, ch. 20425, 1941.

cf.—§30.23 Fees of sheriffs and constables.
§90.14 Compensation of witnesses in various courts.

476.29 Adoption and posting of rules.—The commission shall adopt and enforce all rules, regulations and orders necessary to carry out the provisions of this law. All orders fixing minimum prices or opening and closing hours shall be printed and posted for public inspection in the office of the secretary of the commission, and notice thereof shall be mailed to the last known address of each barber holding a certificate of registration and barber shop directly affected by such order, but failure to receive such notice shall not relieve any person from the duty of compliance therewith.

History.—§5, ch. 20425, 1941.

476.30 Duration of orders.—All orders of the commission fixing schedules of prices to be charged for barber service or fixing opening and closing hours for barber shops, shall remain in force and effect until rescinded, modified, or replaced by a new order promulgated by the commission under the same procedure as provided herein for such original orders.

History.—§6, ch. 20425, 1941.

476.31 Revocation of certificates of registration, hearing.—For violation of any of the provisions of §§476.25-476.32 or of any rule, regulation or order promulgated hereunder, the commission may decline to grant or renew a barber's certificate of registration or may suspend or revoke such certificate of registration, if already granted. If the commission shall refuse to grant or renew a certificate of registration, it shall forthwith notify the applicant by mailing to him a copy of the order at his last known address as shown by the files of the commission and such applicant shall have ten days from the date of the mailing of the notice within which time to request a public hearing upon his application. On receipt of such request the commission shall fix the time, place and manner of holding such hearing under rules and regulations adopted by the commission, which shall provide for reasonable notice to the applicant, and reasonable opportunity for the applicant to appear in person or by counsel and to present his defenses to any charge that is to be heard by the commission. Before the commission shall suspend or revoke such certificate of registration it shall, under rules and regulations adopted by the commission, hold a hearing upon charges against the holder of such certificate of registration, and such rules and regulations shall provide for reasonable notice to the holder of a certificate of registration. Such holder of a certificate of registration shall be afforded reasonable opportunity to appear in person or by counsel and to present his defenses to any charge that is to be heard by the commission.

History.—§7, ch. 20425, 1941.

476.32 Service of order of commission.—Any order of the commission shall be served by the sheriff of the county in the same manner as summons is served in civil actions in the circuit court.

History.—§8, ch. 20425, 1941.

CHAPTER 477

FLORIDA COSMETOLOGY LAW

477.01 Short title.—This chapter shall be known and may be cited as the Florida cosmetology law, which shall govern the profession of cosmetology in the state.

History.—§30, ch. 16800, 1935; CGL 1936 Supp. 4151(277); §1, ch. 63-195.

477.02 Cosmetologist, instructors of cosmetology, junior cosmetologist, and manicurists and pedicurists required to be certified; regulations.—

(1) It shall be unlawful for any person to engage in the practice or attempt to practice cosmetology without a certificate of registration as a registered cosmetologist, registered junior cosmetologist or registered manicurist and pedicurist issued pursuant to the provisions of this chapter by the board of cosmetology, hereinafter established.

(2) No person shall teach or attempt to teach in a school of cosmetology, not operated as a part of the public school system, without a certificate of registration as an instructor of cosmetology, issued by the board.

(3) It shall be unlawful for any person, firm or corporation to serve as a junior cosmetologist under a registered cosmetologist without a certificate of registration as a registered junior cosmetologist issued by the board.

(4) It shall be unlawful for any person, firm or corporation to operate a cosmetology salon unless such salon at all times be under the direct supervision and management of a registered cosmetologist.

(5) It is unlawful for any person, firm or corporation to operate a school of cosmetology, not operated as a part of the public school system, without a certificate of registration issued pursuant to the provisions of this chapter by the board of cosmetology hereinafter established and unless such school of cosmetology shall at all times be under the direct supervision and management of a registered instructor of cosmetology.

(6) It is unlawful for any person, firm or corporation to hire or employ any person to engage in the practice of cosmetology as hereinafter defined, unless such person holds a valid, unexpired and unrevoked certificate of registration to practice cosmetology or a certificate of registration as a registered junior cosmetologist or registered manicurist and pedicurist, or a permit to work as a junior cosmetologist, or permit to work as a manicurist and pedicurist, issued under the provisions of this chapter.

History.—§1, ch. 16800, 1935; CGL 1936 Supp. 4151(278); §1 ch 20333, 1941; am. §1, ch. 21984, 1943; am. §1, ch 24039, 1947; §12, ch. 63-195.

477.03 Cosmetology, cosmetology salon, manicurist, and pedicurist defined.—

(1) Any one or any combination of the following practices, when not done for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally, constitutes the teaching and practice of cosmetology:

(a) Cutting or bobbing the hair.

(b) Facial and scalp massage or treatment with oils, creams, lotions or other preparations.

(c) Singeing, shampooing, or coloring the hair or applying hair tonics.

(d) Applying cosmetic preparations, antiseptics, powders, oil, clay, or lotions to scalp, face, or neck.

(e) Hairdressing or the arranging, waving, dressing, curling, cleansing, thinning, cutting, singeing, bobbing, bleaching, tinting, coloring, steaming, straightening, dyeing, brushing, beautifying, or otherwise treating by any means the hair of any person.

(f) Manicuring, or the cutting, polishing, tinting, coloring, cleansing, or manicuring the nails of any person, and massaging.

(g) Pedicuring, or the shaping, polishing, tinting, coloring, cleansing, or pedicuring the nails of the feet of any person, and massaging, or beautifying the feet of any person.

(h) Permanent waving or the preparing, arranging, curling, cleansing, and treatment of the hair for curling, by the use of permanent waving machines, mechanical appliances, or chemical heat devices or heat materials, or chemical means.

(2) For the purpose of this chapter and as used herein, the term "cosmetology salon" is hereby defined to embrace and include any establishment or place of business wherein the practice of cosmetology as hereinabove defined is engaged in or carried on.

The term "cosmetologist" is hereby defined as one who practices cosmetology in its entirety.

(3) The term "manicurist and pedicurist" is hereby defined as any person who manicures or pedicures or engages in the practice of cutting, trimming, polishing, tinting, coloring, cleansing of the nails of any person, or engages in the practice of shaping, polishing, tinting, coloring, cleansing, the nails of the feet and massaging, cleansing or beautifying the hands or feet of any person shall be construed to be practicing the occupation of a manicurist or pedicurist.

History.—§2, ch. 16800, 1935; CGL 1936 Supp. 4151(279); §2, ch. 20333, 1941; §2, ch. 24039, 1947; (2), §10, ch. 26484, 1951; §12, ch. 63-195.

477.04 Junior cosmetologists to practice under cosmetologist.—No registered junior cosmetologist may independently practice cosmetology, but he may, as a junior cosmetologist, do any or all of the acts constituting the practice of cosmetology under the immediately personal supervision of a registered cosmetologist; and only two such junior cosmetologists shall be employed in any licensed salon in ratio of two junior cosmetologists to each registered cosmetologist in that salon.

History.—§3, ch. 16800, 1935; CGL 1936 Supp. 4151(280); §2, ch. 21984, 1943; §12, ch. 63-195.

477.05 Persons exempted from operation of chapter.—The provisions of this chapter shall not be construed to apply to:

(1) Persons authorized by the law of this state to practice medicine and surgery or osteopathy or chiropractic or persons holding a drugless practitioner certificate under the law of this state.

(2) Commissioned medical or surgical officers of the United States army or navy or marine hospital service.

(3) Registered nurses under the laws of this state.

(4) Persons employed in state or local institutions, or hospitals as cosmetologists.

(5) Barbers duly licensed under the laws of this state, in so far as their usual and ordinary vocation and profession is concerned when engaged in any of the following practices, namely: shaving or trimming the beard or cutting or bobbing the hair, facial and scalp massages or treatments with oils, creams, lotions or other preparations, singeing, shampooing or dyeing the hair or applying hair tonics, applying cosmetic preparations, antiseptics, powders, oil, clay or lotions to scalp, face or neck of any person.

(6) Manicuring, or the cutting, trimming, tinting, polishing, coloring, cleansing or manicuring the finger nails of any person when said manicuring is done in a licensed barber shop which is carrying on a regular and customary business of barbering. This exemption does not apply to manicuring done in other establishments or places.

History.—§4, ch. 16800, 1935; CGL 1936 Supp. 4151(281); (4) §12, ch. 63-195.

477.06 Persons qualified to receive certificate as cosmetologist, manicurist or pedicurist.—

(1) Any person is qualified to receive a certificate of registration to practice cosmetology as a cosmetologist:

(a) Who is qualified under the provisions of §477.07, and who is a citizen of the United States;

(b) Who is at least seventeen years of age, of good moral character and temperate habits, and

(c) Who has practiced as a registered junior cosmetologist for a period of twelve months under the immediate supervision of a registered cosmetologist; and in a salon in which a majority of the practices of cosmetology are engaged in, and

(d) Who has passed a satisfactory examination conducted by the board to determine his or her fitness to practice cosmetology, and shall include practical demonstrations in shampooing the hair, hairdressing, permanent waving, finger waving, hair coloring, manicuring and pedicuring, facial massage, and scalp massage, with the hand, written and oral tests in antisepsis, sterilization, sanitation, and the use of mechanical apparatus, and electricity as applicable to the practices of the occupation of a cosmetologist and may include such other demonstrations and tests as the board in its discretion may require, provided, that any blind person, as defined in §413.021, making application for a certificate of registration as a cosmetologist shall be allowed to have the written portion of the examination read to him or her and to have his or her answers recorded with recording equipment and transcribed by a person or persons approved by the board.

(e) An applicant for a certificate of registration to practice cosmetology as a registered cosmetologist who fails to pass a satisfactory examination conducted by the board, must continue to practice as a junior cosmetologist until an examination is again held in the district in which the applicant resides before he or she is entitled to take a second examination for a registered cosmetologist.

(2) Any person is qualified to receive a certificate of registration to practice manicuring and pedicuring in a cosmetology salon:

(a) Who is a citizen of the United States; or who has made a declaration of intention to become a citizen of the United States; or who having made such declaration of intention, has filed a petition for naturalization within thirty days after becoming eligible to do so, and

(b) Who is at least seventeen years of age, of good moral character and temperate habits; and

(c) Who has completed the following prescribed course and number of hours in the study and practice of manicuring and pedicuring in a school of cosmetology approved by the board. One hundred twenty-five hours for theory and practice of manicuring and pedicuring and twenty-five hours for ethics, sanitation, hygiene and anatomy; these being the only subjects the applicant is required to take. The hundred twenty-five hours of theory and practice to be divided as follows: Seventy-five hours for practice and fifty hours for theory.

(d) Who can prove by sworn affidavits that she has practiced as a manicurist and pedicurist in another state or country for at least one year immediately prior to making application in this state, and

(e) Who can furnish to the state board a certificate from a practicing medical doctor, dated not more than thirty days prior to date of application, attesting that she is free from any contagious or infectious disease, and

(f) Who has passed a satisfactory examination in the scientific fundamentals for manicuring and pedicuring, physiology and hygiene, elementary chemistry relating to sterilization and antisepsis, in addition to the subjects comprising manicuring and pedicuring shall be qualified to receive a certificate of registration as a manicurist and pedicurist, and

(g) Any applicant who fails to pass the examination is required to further complete a course of study of fifty hours to be completed within two weeks in a school approved by the board.

(3) Any blind person as defined in §413.021 is eligible to receive a certificate of registration as a specialist to engage in the following practices in a cosmetology salon under supervision: massaging and manipulating muscles of the face, neck and scalp; giving facials, scalp massages, treatments with oils, creams, lotions or other preparations for the face, neck and scalp; giving shampoos and performing such other practices set forth in §477.03, as the board in its discretion may determine are within the reasonable capabilities of the blind; who:

(a) Is a citizen of the United States; or who has made a declaration of intention to become a citizen of the United States; or who having made such declaration of intention, has filed a petition for naturalization within thirty days after becoming eligible to do so, and

(b) Is at least seventeen years of age, of good moral character and temperate habits; and

(c) Has completed a course of study and training and passed successfully examinations prescribed by the board; provided that such prescribed study, training and examinations are the equivalent of that required of other applicants for certificate to engage in the practices herein set forth.

History.—§5, ch. 16800, 1935; CGL 1936 Supp. 4151(282); §3, ch. 20333, 1941; §3, ch. 21984, 1943; §7, ch. 22000, 1943; §3, ch. 24039, 1947; §§10A, 12, ch. 63-195.

477.07 Persons qualified to receive certificate as junior cosmetologist.—

(1) Any person is qualified to receive a certificate of registration as a registered junior cosmetologist:

(a) Who is a citizen of the United States; or who has made a declaration of intention to become a citien of the United States; or who having made usch declaration of intention, has filed a petition for naturaliation within thirty days after becoming eligible to do so, and

(b) Who is at least sixteen years of age; and

(c) Who is is of good moral character and temporate habits, and

(d) Who has graduated from a school of cosmetology approved by the board or from the cosmetology division of the Florida school for the deaf and blind, provided said division meets the standards of the board and this chapter; and

(e) Who has passed a satisfactory examination conducted by the board to determine his or her fitness to practice as a junior cosmetologist; and which shall cover the practices as defined in §477.03; and

(f) Who can furnish to the board a certificate from a practicing medical doctor, dated not more than thirty days prior to the date of the application attesting that he or she is free from any contagious or infectious disease.

(2) An applicant for a certificate of registration to practice as a junior cosmetologist in a cosmetology salon who fails to pass a satisfactory examination is required to complete a further course of study and practice of not less than fifty hours for each subject failed, to be completed within two months, provided that if an applicant fails in three or less practical subjects on the examination such applicant shall be given a permit to practice as a junior cosmetologist until the next examination is given in the district in which he resides, but provided, however, that if on the third examination the applicant does not pass all subjects no such interim permit shall be issued.

History.—§6, ch. 16800, 1935; CGL 1936 Supp. 4151(283); §4, ch. 20333, 1941; §4, ch. 21984, 1943; §4, ch. 24039, 1947; §12, ch. 63-195; §1, ch. 63-388.

477.08 Schools of cosmetology; requisites; courses taught; enrollment of students.—

(1) No school of cosmetology, not operated as a part of the public school system, shall be approved by the board unless its owner has paid the required fee as prescribed in §477.17, and unless the instructors and faculty are registered instructors of cosmetology under this chapter, and unless it requires as a prerequisite for graduation therefrom, a high school diploma or its equivalent to be determined by a central testing approved by the state department of education; provided, this shall not affect those presently registered as students in cosmetology schools in this state, and further, graduation from an approved cosmetology school within one year prior to May 28, 1963, shall preserve the status of those who have not taken or completed the required examination for the issuance of a certificate hereunder. Such cosmetology school shall possess apparatus and equipment sufficient for the proper and full teaching of cosmetology, and require as a prerequisite to graduation a course of instruction and practice of not less than twelve hundred hours of continuous study and practice of not more than eight hours in any one day, within a maximum period of eighteen months and a minimum period of seven months. Provided, however, that said schools shall waive the high school diploma requirement for students over the age of eighteen years who have successfully completed the tenth grade in an accredited high school; or if such applicant is a graduate of a school for the deaf and blind.

(a) Scientific fundamentals for cosmetology, physiology, hygiene, elementary chemistry relating to sterilization and antiseptics, massaging and manipulating the muscles of the face, neck and scalp, hair cutting, bobbing, hair trimming, and coloring the hair, salon management and business methods, facial and scalp massage, or treatments with oils, creams, lotions, or other preparations, shampooing, singeing, or applying hair tonics, applying cosmetic preparations, antiseptics, powders, oil, clay or lotions to scalp, face or neck.

(b) Hairdressing or the arranging, waving, dressing, curling, cleansing, thinning, cutting, singeing, bobbing, bleaching, tinting, coloring, straightening, dyeing, brushing, beautifying or otherwise treating by any means the hair of any person.

(c) Manicuring or the cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person, and massaging, cleansing, treating, or beautifying the hands or feet of any person.

(d) Pedicuring, or the shaping, polishing, tinting, coloring, cleansing the nails of the feet of any person.

(e) Permanent waving, or the preparing, arranging, curling, cleansing, and treatment of the hair for curling by the use of permanent waving machines, mechanical appliances or chemical heat devices or heat materials or other chemical means.

(f) Removing superfluous hair from the body of any person by the use of depilatories, by the use of tweezers, chemical preparation, or by the use of devices or appliances of any kind or description, except by the use of light waves commonly known as rays and by the use of electrolysis.

(g) Provided that no student shall be allowed to work on the public until such student has had at least two hundred hours in theory and practical work on wefts and fellow students.

(h) Provided that no patron shall be given a complete service in the junior department; the patron may obtain the service of the student only as she progresses according to schedule. That is, one student may give a wave, depending on the progress the student has made at the time in her course of study.

(i) Provided that students who have completed five hundred hours of their course may render complete service to patrons, in the senior department, as advanced students.

(j) Schools shall require a student in the advanced or senior department to wear some kind of insignia, badge, cap or marking on her uniform to indicate that she is a student in the senior department.

(2) No school of cosmetology shall enroll or admit any student thereto unless such a student shall make and file, in duplicate, a duly verified application which said application shall be of such form and contain such matters as the state board of cosmetology may prescribe and shall be obtained by such student or the school from said board. One copy of such application shall be retained by the school enrolling or admitting the student and the other copy shall be filed by the school with said board. No school of cosmetology shall conduct a post graduate course unless the time required for completing same does not exceed a maximum of six weeks. No school of cosmetology shall enroll or admit any student in a post graduate course thereof, which said post graduate course shall be for the purpose of qualifying persons to pass the examination conducted by the board to determine fitness to practice cosmetology, unless such student shall file, in duplicate, an application duly verified, which said application shall be obtained by such student or school from the state board of cosmetology and shall be such form as prescribed by said board. Said application shall also show that the applicant has completed the tenth grade in school, or its equivalent, and that such applicant has either:

(a) Graduated from a school of cosmetology approved by the board;

(b) Holds a valid, unexpired and uncanceled certificate of registration as a registered junior cosmetologist, or

(c) Can prove by sworn affidavits that he or she has practiced as a cosmetologist, manicurist and pedicurist in another state or country for at least five years immediately prior to making such application. One copy of such application shall be retained by the school so admitting or enrolling such student, and the other shall be filed by such school with said board. Nothing in this section contained shall

be construed as limiting or modifying the provision of §477.06. The school must be located in one building only.

(3) No school of cosmetology, except vocational training schools, existing in this state on May 20, 1941, shall continue to operate for a period of more than ninety days thereafter, nor shall any school of cosmetology (except vocational training schools) established after May 20, 1941, commence operations, unless and until the owner thereof shall obtain from the board a certificate of registration to operate a school of cosmetology. Every such certificate so issued shall expire one year from May 20, 1941, and a new certificate shall be obtained at that time and yearly thereafter by each school of cosmetology. The fee to be paid each year by the owner of the school to the board for the issuance of this certificate of registration shall be fifty dollars; provided, however, that whenever a school shall be established within six months of the expiration date of the then current certificates of registration the fee required of that school for a certificate of registration for the remainder of that year shall be only one half of the regular yearly fee.

(4) Every application for a certificate of registration to operate a school of cosmetology shall be in writing on blanks provided by the board and shall contain the name of the school, its local address, the name and address of the owner or owners, and a statement that all the requirements of law and of the rules and regulations of the board relative to schools of cosmetology have been complied with. Such application shall be signed by the owner or by one of the owners of the said school and shall also be verified by oath, and shall be accompanied by a remittance of the required fee. Upon receipt by the board of an application properly filled out, signed and verified, and of the required fee, it shall issue the certificate of registration, but the mere issuance of such certificate shall not be construed as constituting an approval by the board of the said school.

(5) Notwithstanding the provisions of §477.08, wherein the subjects comprising the course of instruction in schools of cosmetology are outlined, the board shall have authority to change or modify the course of instruction for such schools by adding new subjects or by substituting other subjects for these therein mentioned. The board shall also have authority to prescribe the number of hours which shall be devoted by schools of cosmetology to each of the subjects which the board may require to be taught provided the board does not thereby increase the total number of hours prescribed in §477.08.

(6) Any person is qualified to receive a certificate of registration as an instructor of cosmetology:

(a) Who is a citizen of the United States, or who has made a declaration of intention to become a citizen of the United States, or who having made such declaration of intention, has filed a petition for naturalization within thirty days after becoming eligible to do so, and

(b) Who is at least twenty-three years of age, and of good moral character.

(c) Who has a high school education.

(d) Who was a registered, practicing cosmetologist for at least five years, before being allowed to take the teachers' examination, provided that persons who have had at least one year in a college are exempted from this requirement.

(e) Who passes examination in theory and practice of teaching cosmetology in addition to other subjects, with no mark in any one subject below seventy-five, and a general average of eighty.

(7) Any person, firm or corporation who shall desire to establish a school of cosmetology (except vocational school, and those schools of cosmetology established prior to May 20, 1941), and who shall apply to the board for a certificate of registration to operate such schools, shall at the same time, file with the board a good and sufficient surety bond executed by the applicant as a principal and by a surety company as surety in the amount of ten thousand dollars and payable to the state. The bond shall be in the form, and shall be signed by a surety company approved by the board and shall be conditioned upon compliance with all laws relative to schools of cosmetology and upon faithful performance of all contracts existing between the school and the students thereof during the life of the bond, whether such contracts be written, oral or implied. Every such bond shall continue in full force and effect for the lifetime of the school and any bona fide student of the school during the life of the bond may maintain an action against either the maker thereof or the surety thereon or both, and the bond shall be for the purpose of satisfying any judgment which the student may recover as damage for the breach of this contract.

Provided, that upon it being made to appear to the board that any person, firm or corporation is unable to obtain a surety bond may, in its discretion permit such person to file a good and sufficient surety bond executed by not less than two personal sureties as surety thereon, each of whom shall be worth the full amount of such bond over and above his debts, liabilities, and exemptions at law, and each shall make an affidavit to such effect which shall be attached to such bond. Every such bond shall be approved by the board, and the board may at any time require a new and additional bond upon determining that the sureties upon any bond have become insolvent or are not any longer qualified as such sureties and upon failure to file such new and additional bond the board shall revoke the certificate of registration.

History.—§7, ch. 16800, 1935; CGL 1936 Supp. 4151(284); §5, ch. 20333, 1941; §5, ch. 21984, 1943; §§5, 17, ch. 24039, 1947; §10, ch. 26484, 1951; §§2, 3, 12, ch. 63-195.

cf.—§455.03 Dispensing with examination for veterans.

477.09 Requirements as to applications for examinations.—Each applicant for an examination shall:

(1) Make application to the board at least ten days prior to examination date, on blank forms prepared and furnished by the board, such application to contain proof under the applicant's oath of the particular qualifications of the applicant;

(2) Furnish to the board two signed photographs of the applicant, size two inches by two inches, one to accompany the application and one to be placed on the certificate of registration when issued; and,

(3) Pay the required fee to the board as provided in this chapter.

(4) Present upon application for examination to become a junior cosmetologist a high school diploma, or such applicant shall pass a standard equivalency test for same that shall be uniform throughout the state. The test shall be administered by the testing center approved by the state board of education. A certified copy of the results shall be filed with the state board of cosmetology provided, however, that if such applicant is over the age of eighteen years the high school diploma requirement shall be waived if said applicant has successfully completed the tenth grade in an accredited high school; or if such applicant is a qualified graduate of a school for the deaf and blind.

History.—§8, ch. 16800, 1935; CGL 1936 Supp. 4151(285); §6, ch. 21984, 1943; (4) n. §4, ch. 63-195.

477.10 Examinations; times and places; to be in theory and practice and to be written and oral.—

(1) The board shall conduct examination of applicants for certificates of registration to practice as registered instructors of cosmetology, registered cosmetologists, registered junior cosmetologists and registered manicurists and pedicurists not less than twelve times each year at such time and place as the board may determine. The examination of applicants for a certificate of registration as registered instructors of cosmetology, registered cosmetologists and registered junior cosmetologists and registered manicurists and pedicurists shall include both practical demonstrations and written and oral tests and shall embrace the subjects required in §477.08, to be taught in schools of cosmetology approved by the board, provided however, that any graduate from a school of cosmetology recognized by the board may be issued a certificate to practice until an examination is held by the board in the locality of such applicant, at which time said applicant shall take said examination and her temporary certificate shall expire.

(2) Any blind person, as defined in §413.021, making application for a certificate of registration pursuant to the provisions of this chapter shall be allowed to have the written portion of the examination read to him or her and his or her answers recorded with recording equipment and transcribed by a person or persons approved by the board.

History.—§9, ch. 16800, 1935; CGL 1936 Supp. 4151(286); §6, ch. 24039, 1947; §§10A, 12, ch 63-195.

477.11 Certificate issued to applicant with passing grade.—A certificate as a registered cosmetologist or as a registered junior cosmetologist shall be issued by the board to any applicant whose application for an examination has been properly made within thirty-six months from graduation from a qualified school of cosmetology who shall pass a satisfactory examination making an average grade of not less than seventy-five per cent, with a minimum of sixty-five per cent in any subject, and who shall possess the other qualifications required by this chapter.

History.—§10, ch. 16800, 1935; CGL 1936 Supp. 4151(287); §7, ch. 21984, 1943; §7, ch. 24039, 1947; §12, ch. 63-195.

477.12 Prerequisites and qualifications of nonresident applicants.—

(1) A person who is a citizen of the United States; who is at least seventeen years of age, and of good moral character and temperate habits, and who furnishes to the board a certificate from a practicing medical doctor, dated not more than thirty days prior to the date of the application, attesting that he is free from any contagious or infectious disease and who has a license or certificate of registration as a practicing cosmetologist from another state or country, which has substantially the same standard of requirements for licensing or registering cosmetologists as required by this chapter; or, who can prove by sworn affidavits that he has practiced as a cosmetologist in another state or country for at least five years immediately prior to making application in this state, shall, upon payment of the required fee, be issued a permit to practice as a junior cosmetologist only until he is called by the board for examination to determine his fitness to receive a certificate of registration to practice cosmetology. Should he fail to pass the required examination, he may be allowed to practice as a junior cosmetologist only until he is called by the board for the next term examination. Should he fail to pass the second examination, he must cease to practice cosmetology in this state until such time as said person qualifies by passing said examination.

(2) Any junior cosmetologist who is at least sixteen years of age and of good moral character, temperate habits and who furnishes to the board a certificate from a practicing medical doctor, dated not more than thirty days prior to the date of the application attesting that he is free from any contagious or infectious disease, who has completed the tenth grade in school, or its equivalent, and has a certificate of registration as a junior cosmetologist in a state or country which has substantially the same requirements for registration as a junior cosmetologist as is required by this chapter, upon payment of the required fee, shall be issued a permit to work as a junior cosmetologist until called by the board for an examination to determine his fitness to receive a certificate of registration as a junior cosmetologist. Should he pass the required examination a certificate of registration as a registered junior cosmetologist may be issued to him and the time spent

in such other state or country as a junior cosmetologist may be credited upon the period of training required by this chapter as a qualification to take examination to determine his fitness to receive a certificate of registration as a registered cosmetologist.

(3) Any person who has practiced as a junior cosmetologist in another state or country, which does not have substantially the same requirements for registration as a junior cosmetologist as required by this chapter and who has the qualifications as required in §477.07 (1) (a)-(e) may be credited with the time so spent as a junior cosmetologist in such state or country upon the period of training required by this chapter as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered cosmetologist.

History.—§11, ch. 16800, 1935; CGL 1936 Supp. 4151(288); §8, ch. 21984, 1943; §8, ch. 24039, 1947; §12, ch. 63-195.

477.13 Display of certificates; rules and regulations.—

(1) Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair or booth.

(2) The board shall prepare copies of the provisions of §477.23, together with any other rules and regulations or sanitary requirements for conduct of cosmetology salons and schools of cosmetology which may be adopted by said board in aid or furtherance of the provisions of this chapter, and furnish to the owner or manager of each cosmetology salon and school of cosmetology one such copy to be posted in a conspicuous place in such cosmetology salon or school of cosmetology by the said owner or manager thereof.

History.—§13, ch. 16800, 1935; CGL 1936 Supp. 4151(290); §9, ch. 21984, 1943; (2) §12, ch. 63-195.

477.14 Annual renewal of certificates; date of expiration; required training for instructors; training course by board, availability to cosmetologists.—Every registered instructor of cosmetology, cosmetologist, junior cosmetologist, and manicurist and pedicurist who continues in active practice or service shall annually on or before July 1 of such year renew his or her certificate of registration and pay the required fee. Every certificate of registration which has not been renewed during the month of July in any one year shall be subject further to the restoration fee on August 1 in that year. A registered cosmetologist, junior cosmetologist, or manicurist and pedicurist whose certificate of registration has expired may have his or her certificate restored within three years thereafter upon payment of the current certificate fee and restoration fee. At least once every two years every registered instructor of cosmetology shall attend a course of study and training of not less than two weeks continuous duration in a school to be approved by the state board of cosmetology, and a failure to comply with the provisions hereof shall be cause for the refusal to renew a certificate of registration upon application, or for the cancellation thereof by the board, provided, that from and after the year 1949 the board shall offer a course of study and training for instructors of cosmetology, which course shall include lecturers and professional demonstrators who are expert in the latest and most advanced methods of cosmetology. Such course shall be available to registered cosmetologists as well as instructors of cosmetology. Any registered cosmetologist, manicurist and pedicurist who retires from practice, and any registered instructor of cosmetology who retires from teaching, for not more than three years may renew his or her certificate upon the payment of the required renewal and restoration fees and due compliance herewith.

History.—§14, ch. 16800, 1935; CGL 1936 Supp. 4151(291); §6, ch. 20333, 1941; §1, ch. 20860, 1941; §10, ch. 21984, 1943; §9, ch. 24039, 1947; §12, ch. 63-195.

477.15 Suspension or revocation of certificate; grounds.—The board may either refuse to issue, or renew, or may suspend or revoke any certificate of registration for any of the following causes:

(1) Conviction of a felony shown by a certified copy of the record of the court of conviction;

(2) Gross malpractice or gross incompetency;

(3) Continued practice by a person knowingly having an infectious or contagious disease;

(4) Advertising by means of knowingly false or deceptive statements;

(5) Advertising, practicing or attempting to practice under a trade name other than one's own;

(6) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs;

(7) Immoral or unprofessional conduct;

(8) The commission of any of the offenses described in §477.27;

(9) The violation of any of the rules and regulations provided by §477.23;

(10) The failure of a junior cosmetologist to take the examinations for a cosmetologist's license at the expiration of the twelve-month period of practicing as a registered junior cosmetologist under the immediate supervision of a registered cosmetologist.

History.—§15, ch 16800, 1935; CGL 1936 Supp. 4151(292); §11, ch. 21984, 1943; (10) §12, ch. 63-195.

477.16 Procedure for revocation, etc.; board may administer oaths; witnesses.—The board shall have the authority to establish rules of procedure for revocation, suspension or denial of license, or other disciplinary action in accordance with chapter 120.

History.—§16, ch. 16800, 1935; CGL 1936 Supp. 4151(293); §5, ch. 63-195.

cf.—§30.23 Fees of sheriffs and constables.
§32.30 Juries, jurors and witnesses in criminal courts of record.
§34.14 County courts; prosecuting attorney allowed to summon witnesses before him.
§90.14 Compensation of witnesses in various courts.
§932.33 Witnesses; compensation, criminal.

477.17 Fees; duplicate certificates.—

(1) The fees to be paid by the various

applicants and to be collected by the state board of cosmetology for the various examinations to be given, for the issuance of the various certificates of registration, for the renewal of the unexpired certificates, and for the restoration of expired certificates, are as follows:

(a) For an examination to determine the qualifications of an applicant to teach cosmetology, forty-five dollars.

(b) For an examination to determine the qualifications of an applicant to practice cosmetology as a cosmetologist, thirty-five dollars.

(c) For an examination to determine the qualifications of an applicant to practice cosmetology as a junior cosmetologist, fifteen dollars.

(d) For an examination to determine the fitness of an applicant to practice as a manicurist and pedicurist, fifteen dollars.

(e) For the issuance of a certificate of registration to teach cosmetology, five dollars.

(f) For the issuance of a certificate of registration to practice cosmetology as a cosmetologist, five dollars.

(g) For the issuance of a certificate of registration to practice cosmetology as a junior cosmetologist, five dollars.

(h) For the issuance of a certificate of registration to practice as a manicurist and pedicurist, five dollars.

(i) For the issuance of a certificate of registration to the owner of a school of cosmetology, fifty dollars.

(j) For the renewal of an unexpired certificate of registration to teach cosmetology, ten dollars.

(k) For the renewal of an unexpired certificate of registration to practice cosmetology as a cosmetologist, manicurist and pedicurist, three dollars and fifty cents.

(l) For the renewal of an unexpired certificate of registration to practice cosmetology as a junior cosmetologist, five dollars.

(m) For the renewal of an unexpired certificate of registration to the owner of a school of cosmetology, fifty dollars.

(n) For the restoration of an unexpired certificate of registration to teach cosmetology, ten dollars, in addition to the renewal fee.

(o) For the restoration of an expired certificate of registration to practice cosmetology as a hairdresser, manicurist and pedicurist, or cosmetologist, five dollars, in addition to the renewal fee.

(p) For the restoration of an expired certificate of registration to practice cosmetology as a junior cosmetologist, five dollars.

(q) For the restoration of an expired certificate of registration to the owner of a school of cosmetology, twenty-five dollars, in addition to the renewal fee.

(r) For issuance of a certificate of registration to the owner of a cosmetology salon, ten dollars. Such certificate is nontransferable.

(2) The examination to be given a resident junior cosmetologist to determine his or her fitness to receive a certificate to practice as a cosmetologist shall be at no cost, provided the junior cosmetologist has graduated from a school approved by the board, passed the examination to become a junior cosmetologist and has qualified with all the provisions of §477.07.

(3) If a certificate of registration has expired more than three years prior to the date of application for restoration, no such certificate may be restored, and such applicant may secure a new certificate of registration only by passing an examination and paying a fee of ten dollars therefor in addition to the fee for the renewal of a certificate.

(4) Any holder of an expired certificate of registration which is entitled to restoration under the provisions of this chapter shall, after payment of the proper restoration fee to and after restoration thereof by the board, thereupon be entitled to have the restored certificate renewed upon the further payment to the board of the proper renewal fee, the restoration fees prescribed by this section being in addition to the renewal fees and in the nature of penalties for permitting a certificate of registration to expire.

(5) Any holder of an unexpired certificate of registration who loses the same may obtain a duplicate thereof by filing with the board a statement of the loss, and submitting a signed photograph and paying a fee of one dollar. Each duplicate certificate shall have the word "duplicate" stamped across the face thereof but shall otherwise be the same as the certificate in place of which it is issued.

(6) Each certificate of registration, including duplicate certificates, and renewals which shall be issued by the board after June 16, 1947, shall have firmly affixed thereto a signed two by two inch photograph (passport size) of the person to whom it is issued and the photograph shall at no time thereafter during the life of the certificate be detached therefrom. The photograph mentioned herein shall be furnished by the applicant and shall be in addition to those required by §477.09.

History.—§17, ch. 16800, 1935; CGL 1936 Supp. 4151(294); §7, ch. 20333, 1941; §12, ch. 21984, 1943; §10, ch. 24039, 1947; §11, ch. 25035, 1949; (1) (r) n. §6 and §12, ch. 63-195.

477.18 State board of cosmetology; qualifications; terms.—

(1) A board is created known as the state board of cosmetology, which consists of five members appointed by the governor for a term of four years, and confirmed by the senate. The initial term of the new member from district four shall expire on June 27, 1964, and term of the new member from district five shall expire on June 27, 1965. The existing board as thus supplemented shall assume the duties and functions of the existing board under the provisions of this chapter, and thereafter the terms of these two districts shall be for four years. Appointments to fill vacancies shall be for the unexpired term of the vacancy. Each district of the Florida cosmetologist association, inc., may submit to the governor for his consideration in making appointments under this act, a list of

three persons. Each member shall be a practicing cosmetologist, who has followed the profession of cosmetology in this state for at least five years immediately prior to the appointment, and shall have completed twelve grades of school, or its equivalent. Equivalency shall be determined by an equivalency test to be administered by the testing center approved by the state department of education. He shall be a graduate of a school of cosmetology; provided, that the educational requirements shall not disqualify any person who is presently appointed as a member of the board who is not actually engaged in conducting a cosmetology salon in this state, and no cosmetologist shall be appointed a member of the board who is connected directly or indirectly in the business of manufacture, rental, sale or distribution of cosmetology salon equipment or supplies.

(2) No school owner, operator, manager or instructor or any one connected in any manner with a school shall be a member of the board. No person who is a member of the board of barber examiners shall be a member of the board of cosmetology.

(3) No member who has served a full term shall be eligible for reappointment to succeed himself. The governor may remove any member for cause.

(4) Members appointed to fill vacancies caused by death, resignation or removal shall serve during the unexpired term of their predecessors.

(5) The amendment of this section shall not in any manner affect the length of current terms of office of present members of the state board of cosmetology.

History.—§20, ch. 16800, 1935; CGL 1936 Supp. 4151(295); §13, ch. 21984, 1943; §§11, 18, ch. 24039, 1947; §11, ch. 25035, 1949; (1) §7, (2) and (5) §12, ch. 63-195.

477.19 Members of board appointed from districts.—For the purpose of having different sections of the state represented by a member of the board, the state is divided by counties into five districts, based on population and geographical juxtaposition of shop distribution and one member of said board shall be appointed and come from each district. Said districts shall be known as districts one, two, three, four and five, the boundaries of which shall be determined by the state board of cosmetology.

History.—§21, ch. 16800, 1935; CGL 1936 Supp. 4151(296); §8, ch. 63-195.

477.20 Board; organization; compensation; annual report; bond of secretary.—

(1) A majority of the members of the board in meeting duly assembled may perform and exercise all of the duties and powers devolving upon the board. The board shall adopt and use a common seal or its official seal for the authentication of its orders and records. An office shall be maintained in Tallahassee, Florida, but this requirement shall not be construed to prevent the board from maintaining other offices in some other cities within the state if, in the opinion of the board, such other offices are necessary in order for the board to perform its duties in a more efficient manner, provided however, that not more than one of such offices shall be maintained in each of said districts established by this chapter, exclusive of said office to be maintained at Tallahassee.

(2) It shall be the duty of the members of the board to attend all board meetings, inspect all schools quarterly, conduct as many examinations as shall be deemed by the board to be necessary during each year of applicants for certificate of registration to practice cosmetology as provided and required by law, and to keep a general supervision over the affairs of the board.

An executive secretary shall be employed who shall conduct and supervise the Tallahassee office, shall assist the board members in carrying out the provisions of the state cosmetology law, and shall instruct the inspectors in the performance of their duties. The executive secretary shall make a biennial report to the governor and the members of the board, which report shall contain a full statement of the work of the board during the two years reported. In order to insure the faithful performance of the duties of the board , the executive secretary shall execute and deliver to the state a bond in the amount of ten thousand dollars with sufficient sureties, to be approved by the board. The annual salary of the executive secretary shall be fixed by the board, payable monthly, unless otherwise fixed by any law enacted at this or any succeeding legislature. Each member of the board shall receive twenty dollars per day, or for any part of a day, when performing administrative duties. When examinations are held by the board each member shall receive an additional ten dollars per day or any part of a day. The board members shall also receive the same travel subsistence and mileage as provided in §112.061, as allowed other state officers and employees.

(3) The board shall have the authority to employ inspectors and to employ and fix the compensation of such regular or special counsel, clerks, and other assistants as it may deem necessary in order to carry out the provisions of this chapter, and shall receive the same travel subsistence and mileage as provided in §112.061, as allowed other state officers and employees. No employee of the board shall be related by blood or marriage to any member of said board.

(4) All inspectors appointed under the provisions of this law shall be registered cosmetologists who have engaged in the practice of cosmetology in this state for not less than three years, and who are not less than twenty-five years of age; provided, however, that the provisions of this subsection shall not apply to those inspectors who are now employed by the state board of cosmetology.

(5) The board may employ a full time educational director and shall have the authority to employ an assistant educational director if necessary. Duties of the educational director shall be to survey all schools at least annually,

and recommend the accreditation status of each school for action of the board. In addition, the educational director shall recommend curriculum standards, and promote education for the cosmetologists through surveys, institutes, conferences and such other means as may result in improving the profession of cosmetology in this state. The educational director and assistant educational director shall have had six years experience as a practicing cosmetologist, a high school diploma, and such other qualifications as may be established by the Florida state board of cosmetology. Said directors shall be entitled to per diem and travel expenses as provided by §112.061. The board shall provide necessary clerical assistance, not to exceed two persons, for the educational director.

History.—§22, ch. 16800, 1935; CGL 1936 Supp. 4151(297); §9, ch. 20333, 1941; am. §14 ch. 21984, 1943; am. §1, ch. 24082, 1947; §11, ch. 25035, 1949; (2) §117, ch. 26869, 1951; (2) §29, ch. 28215, 1953; (2) §16, ch. 57-1; §§9, 12, ch. 63-195.

cf.—§112.061 Per diem and traveling expenses of state officers and employees.

477.21 Disposition of money received by board; executive secretary.—All moneys received by the board under this chapter shall be paid to the executive secretary at Tallahassee, who shall give a receipt for same. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. All necessary and proper expenses in carrying out the provisions of this chapter shall be paid upon presentation of vouchers approved by said board; provided, that the board is charged with the duty and responsibility of awarding each year not in excess of ten scholarships in cosmetology training for courses in the various schools of cosmetology of this state, which scholarships shall be in the amount of two hundred dollars each. The executive secretary of the board shall not be a person registered under this law.

History.—§23, ch. 16800, 1935; CGL 1936 Supp. 4151(298); §10, ch. 20333, 1941; am. §15, ch. 21984, 1943; am. §§12, 13, ch. 24039, 1947; §118, ch. 26869, 1951; §30, ch. 28215, 1953; §19, ch. 61-514; §12, ch. 63-195.

cf.—§215.37 Minor regulatory boards to be financed by fees collected.

§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

477.22 Board to keep records.—The board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business and residence of each registered cosmetologist and registered junior cosmetologist and the date and number of his certificate of registration. This record shall be open to the public at all reasonable times.

History.—§24, ch. 16800, 1935; CGL 1936 Supp. 4151(299); §12, ch. 63-195.

477.23 Rules and regulations governing cosmetologists.—It is unlawful:

(1) For any cosmetologist or junior cosmetologist to knowingly continue the practice of cosmetology or for any student knowingly to continue as a student in any school of cosmetology, while such person has an infectious, contagious or communicable disease.

(2) To own, manage, operate or control any cosmetology salon or school of cosmetology unless continuously hot and cold running water be provided therein.

(3) To own, manage, operate or control any school of cosmetology or part or portion thereof whether connected therewith or in a separate building wherein the practice of cosmetology is engaged in or carried on unless all entrances to the place wherein the practice of cosmetology is so engaged in or carried on shall display a sign indicating that the work therein is done by students exclusively.

(4) To own, manage, or control or operate any cosmetology salon unless there is displayed a recognized sign indicating that it is a cosmetology salon, which said sign shall be clearly visible at the main entrance of said salon.

(5) To use upon one patron a towel that has been used upon another patron unless the towel has been relaundered.

(6) To fail to provide the head rest on each chair with a relaundered towel or a sheet of clean paper for each patron.

(7) To use in the practice of cosmetology any styptic pencil, sponges, lump alum or powder puff or powder blenders. Possession of a styptic pencil, sponge, lump alum or powder puff in a cosmetology salon is prima facie evidence that the same is being used therein in the practice of cosmetology.

(8) To fail to place around the patron's neck a strip of cotton, towel or neck band so that the hair cloth or shampoo capes do not come in contact with the neck or skin of the patron's body.

(9) To use on any patron any violet ray electrodes, scissors, tweezers, manicure instruments, combs, hair brushes, rubber disc or parts of vibrators used on another patron, unless the same be kept in a closed compartment and immersed in boiling water or in a solution of two per cent carbolic acid, or its equivalent, before each such use, excepting permanent waving equipment.

(10) The board may make other rules and regulations and prescribe other sanitary requirements in addition to the foregoing in aid or furtherance of the provisions of this chapter, subject to the approval of the state board of health.

(11) Any member of said board or its agents or assistants may enter into and inspect any cosmetology salon or school of cosmetology at any time during business days and hours.

(12) Inspection rating sheets issued by the board shall show the sanitary rating of each cosmetology salon, and must be publicly displayed in a conspicuous location in the cosmetology salon.

History.—§25, ch. 16800, 1935; CGL 1936 Supp. 4151(300); §16, ch. 21984, 1943; §12, ch. 63-195.

477.24 Power of municipalities to regulate cosmetology.—Nothing contained in this chapter shall be construed to prevent any municipal government in this state from passing and enforcing reasonable laws and regulations governing the cosmetology practice within its limits.

History.—§26, ch. 16800, 1935; CGL 1936 Supp. 4151(301); §12, ch. 63-195.

477.25 Barber law unaffected by this chapter.—Nothing in this chapter shall be construed or interpreted as changing, modifying or repealing any of the provisions of chapter 476 and the provisions of said chapter and the provisions of this chapter shall be construed, interpreted, considered and enforced as separate laws and independent each of the other.

History.—§27, ch. 16800, 1935; CGL 1936 Supp. 4151(302).

477.26 False statements.—The willful making of any false statement as to material matter in any oath or affidavit which is required by the provisions of this chapter is perjury and punishable as a misdemeanor under the general law governing punishment of misdemeanors.

History.—§19, ch. 16800, 1935; CGL 1936 Supp. 7476(4).
cf.—§775.07, Punishment for misdemeanors.

477.27 Penalty for violation of chapter.—Each of the following shall constitute a misdemeanor and shall be punishable, upon conviction, by imprisonment in county jail for not more than six months or by fine not exceeding five hundred dollars, or by both fine and imprisonment, in the discretion of the court:

(1) The violation of any of the provisions of §477.02.

(2) Permitting any person in one's employ, supervision or control to practice as a cosmetologist, manicurist and pedicurist or as a junior cosmetologist, unless that person has a certificate of registration.

(3) Permitting any manicurist and pedicurist in one's employ, supervision or control to do any other work than manicuring and pedicuring.

(4) Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or any other thing of value, or by fraudulent misrepresentations.

(5) Practicing or attempting to practice by fraudulent misrepresentations.

(6) The willful failure to display a certificate as required by §477.13.

(7) The use of any room or place for cosmetology which is also used for residential or business purposes not connected with cosmetology (except the sale of hair tonics, lotions, creams, toilet articles and such commodities as are used and sold in cosmetology salons) unless a partition of ceiling height which has been approved in writing by the state board of cosmetology or by its representative, separates the portion used for residential or business purposes from the room or portion used for cosmetology; provided, however, that in determining whether or not a particular partition is sufficient in character and construction to warrant approval, the state board or its representatives shall be guided solely by the principle that the more unsanitary the conditions are in the portion of the residence or building which is to be separated from the portion used as a cosmetology salon, the more substantial and impenetrable the partition must be. Nothing herein shall be construed to prohibit the work of body contouring in any regularly licensed cosmetology salon.

(8) A violation of any of the provisions of §§477.15 and 477.23.

(9) The wilful failure by any owner or manager of a cosmetology salon or school of cosmetology to display the copy of §477.23 with rules and regulations as provided in §477.13.

(10) The refusal by any owner of a cosmetology salon or school of cosmetology or by any employee in charge thereof, to permit the board or its representatives to inspect the cosmetology salon or school of cosmetology during regular business hours, or any material interference by such owner or employees with the inspection of such salon or school by the board or its representatives during regular business hours.

(11) The willful or intentional removal of any photograph from the certificate to which it has been attached or the transfer of any photograph from one certificate to another certificate, by any person other than the members of the board or its representatives.

(12) The violation of any rule or regulation officially made by the board in aid or furtherance of this chapter, and approved by the state board of health.

(13) The practicing or attempting to practice any branch of cosmetology other than the branch or branches covered by the certificate.

(14) The failure of any cosmetologist, junior cosmetologist, manicurist and pedicurist to display his health certificate.

(15) The wilful failure of any school of cosmetology to publicly display a certificate of registration which has been issued to it pursuant to law.

History.—§18, ch. 16800, 1935; CGL 1936 Supp. 8135(15); §8, ch. 20333, 1941; §2, ch. 20860, 1941; §17, ch. 21984, 1943; §12, ch. 63-195.
cf.—§775.06, Alternative punishment.

477.28 Injunctions; when authorized.—The state board of cosmetology may institute legal proceedings to enjoin the violation of the provisions of this law upon the grounds set forth in subsections (1) and (2) in any court of competent jurisdiction, and such court may grant a temporary or permanent injunction restraining the violation thereof, and closing any cosmetology salon failing to comply therewith, and no injunction bond shall be required of the state board of cosmetology in any such proceedings:

(1) Upon any person, firm or corporation violating any of the provisions of §§477.02, 477.08, 477.15, 477.23 and 477.27.

(2) Any cosmetology salon with a rating of less than seventy-five per cent for three sanitary inspections during any calendar year, such rating to be based on the uniform system of ratings for sanitary inspection adopted by the state board of cosmetology.

History.—§18, ch. 21984, 1943; §12, ch. 63-195.

477.29 Transitory provisions.—

(1) Every license, certificate or permit in force immediately prior to May 28, 1963 and existing or issued under any law herein repealed is valid and will not be terminated by

this amended law, unless earlier terminated or suspended.

(2) All rules and regulations adopted by the board and in effect immediately prior to May 28, 1963, which are not in direct conflict with any provisions herein, shall remain in full force and effect unless and until repealed, modified or amended by the state legislature.

(3) All persons who were members of the board immediately prior to May 28, 1963, shall serve as members of the board until the expiration of term to which each member was appointed.

(4) Chapter 63-195, Laws of Florida, shall not impair or affect any act done, offense committed, right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred prior to May 28, 1963, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if Ch. 63-195, Laws of Florida had not been passed.

History.—§10, ch. 63-195.

CHAPTER 478

FLORIDA INSTALLMENT LAND SALES LAW

478.011 Short title.—This chapter may be cited as the Florida installment land sales law.

History.—§1, ch. 63-129.

478.021 Definitions.—In this chapter, where the context permits, the word, phrase or term:

(1) Board means Florida installment land sales board.

(2) Installment land sales contract means any money, receipt, certificate, contract or any instrument in writing evidencing an arrangement or agreement whereby the purchase price for real property or any interest therein is amortized by periodic payments and the conveyance with recordation in public records of legal title to the purchaser thereof is deferred.

(3) Person means an individual, company, corporation, association, organization, partnership, trust, syndicate, agent, broker, salesman, representative, or any other legal entity.

(4) Registrant means any person who has been issued a registration certificate by the board authorizing that person to sell subdivided lands by means of an installment land sales contract, either as a subdivider or a salesman.

(5) Subdivided lands means any improved or unimproved lands divided or proposed to be divided by one owner or by a group acting in concert for the purpose of sale or lease, whether immediate or future, into more than fifty lots, parcels, or units.

(6) Subdivision means the composite group of lots, parcels, or units of subdivided lands resulting from the division of a single land area contained in a continuous boundary to be sold or leased, offered for sale or lease, and to be known and designated by a common name.

(7) Subdivider means a person or group of persons acting in concert who, as the owner or through an agent;

(a) Makes or issues more than fifty installment land sales contracts in any one year; or

(b) Offers for sale or lease by installment land sales contracts more than fifty lots, parcels, or units at any one time; or

(c) Offers for sale or lease by installment land sales contracts twenty-five per cent or more of the lots, parcels, or units in a subdivision at any one time.

(8) Salesman means any person who within the state, as agent or employee, performs in behalf of a subdivider any one or more of the services or acts set forth in §475.01 (2).

(9) Initial filing means the first filing of advertising and information pertaining to particular subdivided lands with the installment land sales board.

(10) Subsequent filing means any new or altered information or advertising pertaining to land in a subdivision for which an initial filing has been made and approved.

(11) Notice means a communication by mail from the board executed by its secretary or other duly authorized officer. Notice to registrants shall be deemed complete when mailed to the registrant's address currently on file with the board.

History.—§2, ch. 63-129.

478.031 Installment land sales board, terms, organization, quorum.—There is hereby created and established a state board to be called the installment land sales board, said board to consist of five persons, resident citizens of the state to be appointed by the governor, three of whom shall have been directly engaged in the sale or development of real estate subdivisions as defined by this chapter within the state for a period of four years, and two members not directly engaged in this business.

The members of the board shall serve until the expiration of the term for which they shall have been appointed and until their successors have been qualified. The first appointment to be made shall be as follows:

Two members of said board shall be appointed for the term of one year; two members of said board shall be appointed for the term of two years and one member of said board shall be appointed for the term of three years. All appointments made thereafter shall be for the terms of three years and that of two members shall expire each year except that on every third year the term of only one member shall expire. Upon the death, resignation, or removal of a member, his successor

shall be appointed for the unexpired portion of his term. As the new member is appointed each year, the board shall reorganize and select a chairman. Three members of the board shall constitute a quorum to do business.

History.—§3, ch. 63-129.

478.041 Duties, powers.—

(1) The board shall administer, coordinate and enforce the provisions of this chapter and may examine witnesses and administer oaths and shall investigate persons engaging in the installment land sales business in this state to ascertain whether they are violating any of the provisions of this chapter.

(2) The board shall conduct such hearings and keep such records and minutes as shall be necessary to an orderly dispatch of business.

(3) The board may require the filing of annual and other reports and all other data by persons registered pursuant to this chapter.

(4) The board shall adopt reasonable rules and regulations and may amend or repeal the same after due notice to registrants and public hearing thereon, consistent with the purposes of this chapter not in conflict with the constitution and laws of the United States or of this state. Such rules shall include but shall not be limited to provisions for escrow and trust accounts or other means to reasonably assure that purchasers will receive the title contracted for and all improvements promised; to assure full and fair disclosure; and such other rules as are necessary to effectuate the intent of this chapter; provided, however, that the existing rules and regulations of the Florida real estate commission relating to false and misleading advertising shall be the rules and regulations of the board, until such time as same are amended, repealed, or revised by the board as provided by this section.

(5) The board shall set such fees within the limits hereinafter provided as may be required to administer this chapter.

(6) The board may subpoena witnesses, provide for the taking of testimony by deposition, prescribe rules of procedure, and exercise all administrative powers, issue orders including cease and desist orders, and writs and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements. The accused may subpoena witnesses in all revocation and suspension proceedings under this chapter upon payment of the fees required by law for like service in suits at law.

(7) The board may adopt and prescribe qualifications for the appointment of hearing examiners and the procedures before such hearing examiners, provided, however, that the board shall not be bound by findings of fact or conclusions of law of such hearing examiners. It shall have discretionary authority to take additional testimony and evidence, and to grant and hear oral arguments and rehearings in all cases.

(8) Printed copies of rules and regulations or written copies under the seal of the board, having been duly filed with the secretary of state, shall be prima facie evidence of their existence and substance and the courts shall judicially notice the existence and substance of such rules and regulations without the necessity that they be introduced into evidence for any judicial proceedings.

(9) Final actions of this board shall be reviewable as provided by chapter 120.

(10) The conferral or enumeration of specific powers elsewhere in this chapter shall not be construed as a limitation of the general powers conferred by this section.

History.—§4, ch. 63-129.

478.051 Privileges and immunities of the board and individuals.—

(1) The members of the board are entitled to the same protection and immunities as other quasi-judicial officers, and the acts of the agents and employees of the board, acting within the scope of their authority and employment, shall not be called in question except by the board. Its papers, documents, reports or evidence shall be confidential until after the same shall have been published at a hearing held under this chapter unless, after notice to the board, and hearing, a court shall determine that the records are relevant to a case in issue and that the board or registrants will not be unreasonably hindered or embarrassed; provided, however, that the board shall, upon the request of any county commission, provide said commission with a copy of any plat or survey concerning real property located in its county as same may be filed with the board; provided however, that usual discovery processes permitted parties under Florida rules of civil procedure shall be available to any accused in revocation and suspension proceedings hereunder as to said papers, documents, reports or evidence in the possession of said board.

(2) Except as in this section otherwise provided, all records and information disclosed to the board and its employees shall be treated as confidential unless the person about whom the disclosure is made expressly waives the privilege of confidentiality.

(3) In revocation or suspension proceedings, and in investigations preceding or incident thereto, unless waived by the accused, the investigations, hearings and records shall not be made public unless and until an order of suspension or revocation has been rendered by the board and becomes final.

History.—§5, ch. 63-129.

478.061 Board to designate place of executive offices, hearings.—The executive offices shall be established and maintained at a place designated by the board, which designated place may be changed in the discretion of the board, provided, however, that the board may, at its election, provide for meetings to be held throughout the state at its discretion.

History.—§6, ch. 63-129.

478.071 Board meetings; compensation of members.—The members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061 from the place of their residence to place of meeting and return. The board shall meet at least once each month.

History.—§7, ch. 63-129.

478.081 Employees of board.—The board shall employ, and at its pleasure discharge, a secretary and such attorneys, inspectors, clerks and any other employees as shall be deemed necessary, and shall outline their duties and fix their compensation. The amount of per diem and mileage and expense money paid to employees shall be as provided in §112.061.

History.—§8, ch. 63-129.

478.091 Seal and authentication of records.—The board shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records and acts of the board, and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the secretary and authenticated by said seal, shall be prima facie evidence thereof in all the courts of this state.

History.—§9, ch. 63-129.

478.101 Disposition of moneys received.—All moneys received by the board under this chapter shall be paid to the secretary of said board. Such moneys shall be deposited in the state treasury into a separate trust fund for the board. The board shall be financed solely and individually from income accruing to it from fees, licenses and other charges collected by the board and all such moneys are hereby appropriated to the board. All salaries and expenses shall be paid as budgeted after such budgets have been approved by the state budget commission or within the limitations of any appropriation for that purpose which may be included in the general appropriations act.

History.—§10, ch. 63-129.

478.111 Payment of expenses of board.—All expenses incurred by the board in the administration of the provisions of this chapter shall be paid therefor upon warrants of the comptroller, when vouchers therefor are exhibited having been approved by the board.

History.—§11, ch. 63-129,

478.121 Registration of subdividers and salesmen.—

(1) No subdivider shall engage in business in this state and sell or offer for sale real property located in Florida, or any other state, district, territory or foreign country by way of installment land sales contract, unless he has registered in the office of the board and has been issued a current registration certificate pursuant to the provisions of this chapter. A person shall be deemed engaged in business in this state for the purpose of this chapter and other statutes of this state relating to persons engaged in business in this state when the subdivided lands are located in this state; when any part of the operation of such business is conducted in this state; or when any advertisement, promotion, or solicitation is made in this state with respect to subdivided lands located outside this state.

(2) A written application for registration as a subdivider shall be filed in the office of the board in such form as the board may prescribe, verified by oath, which shall state the principal office of the applicant, wherever situated, and the location of the principal office and all branches in this state, if any, the names or style of doing business, the names, residences and business addresses of all persons interested in the business as principals, copartners, officers and directors; specifying as to each his capacity and title, the general plan and character of business and a resume of the applicant's background and experience. The board may require such additional information as to applicant's previous history, record and association as it deems necessary to establish the good repute in business of the applicant.

(3) If the board finds that the applicant is of good moral repute, and has not been convicted of a felony in this state or in any other state, or in the United States courts and has complied with the provisions of this chapter, including the payment of fees hereinafter provided, the board shall issue a registration certificate to the said applicant; provided that if the applicant is not a natural person, its managing and executive officers shall meet the qualifications set out herein except for the payment of fees, and further provided, that if the person has been convicted of a felony, such conviction shall not be considered if the person has been restored to his civil rights.

(4) Each application filed for registration as a subdivider shall be accompanied by a filing fee not to exceed one hundred dollars, said fee being nonrefundable. Each subdivider's certificate issued hereunder shall be renewed annually upon the payment of a fee not to exceed one hundred dollars on or before January 31 in each succeeding year.

(5) No person shall sell or offer for sale subdivided land by way of installment land sales contracts as a salesman until he has obtained a certificate of registration as a salesman from the board; said certificate shall be granted by the board after a showing by the applicant that he is of good moral repute; is familiar with the installment land sales law, and furnishes proof that he is licensed by the Florida real estate commission as an active broker or salesman, provided this section shall not apply to salesmen in other states, territories or countries selling or offering for sale in such other states, territories or countries, subdivided lands in this state, if such salesman is authorized to make sales or offers of sales of real estate in the state, territory, or country in which he makes such sales or offers for sale.

(6) Each application filed for registration as a salesman shall be accompanied by a filing fee not to exceed five dollars, said fee being nonrefundable. Each salesman's certificate issued hereunder shall be renewed annually upon the payment of a fee not to exceed five dollars on or before January 31.

(7) In any suit against a registrant involving subdivided lands, the board shall be served with notice and apprised of the status by the registrant. The board may intervene in a suit on behalf of the state to protect the interest of installment land sales contract purchasers upon the filing of an appropriate motion.

History.—§12, ch. 63-129.

478.131 Promotive publication; filing with and approval by board; fees.—

(1) No registrant or his agent or employee shall publish or cause to be published:

(a) By means of any newspaper or periodical,

(b) By means of any radio or television broadcast, or

(c) By means of any written or printed or photographic matter produced by any duplicating process producing ten copies or more, any information offering for sale or for the purpose of causing or inducing any other person to purchase or to acquire an interest in the title to subdivided lands by the use of an installment land sales contract without first filing with the board full and complete copies or descriptions of said information to be pubished, including the installment land sales contract to be used and any photographs or drawings or artist's representations of physical conditions or facilities on the property existing or to exist, and obtaining the board's approval of such information.

(2) In addition to the information required to be filed under subsection (1), the persons filing shall also file supporting data in the form of vicinity maps, plats, affidavits of the person filing and of disinterested persons, questionnaires and such other documents as may be required by the rules and regulations of the board to show that said information is neither false nor misleading and that the person filing has made a full and fair disclosure.

(3) The initial filing fee for each subdivision shall not exceed one hundred fifty dollars for subdivisions comprising less than one hundred lots, parcels, or units of land plus a fee not to exceed one dollar for each lot, parcel, or unit over one hundred up to and including one thousand lots, parcels, or units and fifty cents per lot, parcel, or unit in excess of one thousand.

(4) Upon the occasion of each subsequent filing of additional information relating to a subdivision for which an initial filing has been made under this section, a fee of ten dollars shall be paid and the board may require such further or other supporting data as may be deemed necessary at the time of the subsequent filing.

(5) The Florida real estate commission shall transfer to the board all pertinent records on file with the commission and, on September 1, 1963, all registrants who have filed with the Florida real estate commission any advertising material relating to subdivided lands from which sales are being made pursuant to the provisions of the existing law, shall pay to the board a fee of one hundred fifty dollars for each subdivision in lieu of the fee required by subsection (3).

History.—§13, ch. 63-129.

478.141 Inquiry, inspection and investigation.—

(1) When an initial or subsequent filing is made, the board shall cause such inquiry, inspection and investigation to be made as is deemed necessary to determine whether the information makes full and fair disclosure or is false and misleading.

(2) In making any determination that information makes full and fair disclosure, the board shall review such information and all supporting data, together with facts discovered upon inquiry, inspection and investigation, to ascertain:

(a) Whether the representation of the characteristics of the land, improvements, either existing or proposed, ownership and other matters set forth in said information are couched in such language and form as to fully and fairly inform rather than to mislead prospective purchasers and

(b) Whether the publication or dissemination of said information is in furtherance of any land fraud, or swindle or

(c) Whether the plan of sale or development lacks reasonable and adequate safeguards to reasonably assure purchasers that they can receive the kind and quality of title and improvements called for in their purchase contract or agreement.

(3) An initial filing shall be approved or disapproved by the board within forty-five days from the date of filing, provided, however, that in the event the board fails to approve or disapprove such information within forty-five days, the person filing may publish or cause to be published or distributed all information which has been properly filed.

(4) Any subsequent filing shall be approved or disapproved by the board within ten days from the date of filing, provided, however, that in the event the board fails to approve or disapprove such information within ten days, the person filing same may publish or cause to be published or distributed all information which has been properly filed.

(5) The provisions of subsections (3) and (4) to the contrary notwithstanding, the board may at any time for good and sufficient cause shown after reasonable notice and hearing, enter an order of disapproval of information or advertising filed.

(6) Upon the occasion of all initial filings in proper form as required by the board, the board shall promptly place the information and all supporting data in its files and assign an identifying designation by number, letter or

other suitable means, to said file. The board shall promptly inform the person filing that the information is properly filed, and the identifying designation assigned. The forty-five day period provided in subsection (3) shall commence to run from the date of filing with the board.

History.—§14, ch. 63-129.

478.151 Investigations.—

(1) The board may, at intermittent periods, make such investigations and examinations of any registrant or other person as the board deems necessary to determine compliance with this chapter. For such purposes, it may examine the books, accounts, records and other documents or matters of any registrant. It shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. An examination or production of the above referred to books, accounts, records, documents or matters of the registrant shall not include any portions of said books, accounts, records, documents or matters containing a listing of prospective customers or a listing of methods of sale. Such investigations and examinations shall not be made more often than once during a year unless the board has reason to believe the registrant is not complying with the provisions of this chapter.

(2) The registrant shall not be required to pay a per diem fee and expenses of an investigation unless the registrant is found, after notice and hearing, to have committed fraudulent practices, in which case such registrant shall be required to pay the reasonable cost of investigation and per diem.

History.—§15, ch. 63-129.

478.161 Revocation and suspension of registration.—

(1) A certificate of registration of a subdivider may be suspended for a period of not more than six months after notice and hearing and upon a finding of facts showing that the subdivider has:

(a) Violated any provision of this chapter.

(b) Directly, or through an agent or employee, knowingly engaged in any false, deceptive or misleading advertising, promotion, or sales method, for the purpose of selling, leasing or obtaining prospects for purchase or lease of subdivided lands.

(c) Made any substantial change in the plan of sale and development of subdivided lands or a subdivision, subsequent to the initial filing with respect to the same under the provisions of this chapter, unless prior written approval of the board is obtained.

(d) Sold or leased any subdivided lands by way of installment land sales contract for which no initial filing has been made under the provisions of this chapter.

(e) Violated any lawful order, rule or regulation made, issued, adopted or promulgated by the board.

(2) The registration of a subdivider may be revoked after notice and hearing and upon a finding of facts showing that the subdivider has:

(a) Persisted in the doing of any act for which registration could be suspended.

(b) Been convicted in any court for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions.

(c) Disposed of, concealed, or diverted any funds or assets of any business or company so as to defeat the rights of purchasers under installment land sales contracts.

(d) Failed to faithfully keep and perform any stipulation or agreement made, or entered into with the board as inducement to grant any registration, reinstate any registration, or approve any plan of sale or development, or approve any particular advertising or promotional material, or sales method.

(e) That the registration certificate, or any other order, ruling, or approval of the board has been obtained by the registrant by means of fraud, misrepresentation or concealment.

(3) The registration of a salesman shall be deemed automatically suspended or revoked during the period when the registration of the subdivider is suspended or revoked and during any period when said salesman's registration as a real estate broker or salesman is suspended or revoked by the Florida real estate commission.

(4) The board shall adopt rules of procedure for conducting hearings required to be held under the provisions of this chapter to accord with the requirements of due process of law and the provisions of chapter 120.

History.—§16, ch. 63-129.

478.171 Injunction and receivership.—

(1) For the purpose of enforcing this chapter or any lawful rule, regulation, notice or order adopted by the board, the board may file an application for injunction in its own name, or proceedings by mandamus, in the name of the state, on its own relation, and by its counsel, alleging the facts and praying for an injunction or writ of mandamus against such person, restraining the person from further selling subdivided lands by installment land contracts, or using nonapproved or disapproved advertising, or acting as a registrant until such time as the proper certificates of registration shall have been granted, or restraining the person from disobeying, or commanding the person to obey such law, order, rule or regulation, as is necessary for compliance with this chapter.

(2) Upon a showing that the continued sale of subdivided lands by means of an installment land sales contract, or other acts will prevent the subdivider from delivering the kind and quality of title or improvement contracted for, the court may appoint a receiver to manage the affairs of the subdivider for such period of time as may be necessary and proper, or the court may grant other appropriate relief.

History.—§17, ch. 63-129.

478.181 Conspiracy to publish.—

(1) It is unlawful to aid another in the violation of the provisions of this chapter or to conspire with one or more other persons to violate the provisions hereof, and any persons convicted of so aiding or conspiring shall be subject to the same punishment as one committing this act.

(2) No person publishing or causing to be published information in violation of the provisions of this chapter, nor his accessory, employee or agent may for the purposes of this chapter be deemed to be the agent of a person who pays or delivers anything of value toward the purchase or acquisition of an interest in the title to real estate in reliance upon such publication.

(3) The criminal and civil provisions of this chapter shall not apply to a newspaper, printer, radio broadcaster, telecaster or others having no interest in the real estate involved, who only furnish the media for publication of the information prohibited by the provisions of this chapter.

History.—§18, ch. 63-129.

478.191 Civil remedy.—Any person who in reliance upon any false or misleading information or information which does not make a full and fair disclosure published in violation of this chapter pays anything of value toward the purchase of or acquiring an interest in the title to real estate shall be entitled in an equity proceeding to rescind the contract in accordance with equity principles or an action at law to recover from the person to whom such payment was made, damages for his loss.

History.—§19, ch. 63-129.

478.201 Substitution of parties.—On September 1, 1963, in any civil action pending in the courts of this state in which the Florida real estate commission is a party pursuant to the provisions of any one or all of the sections of the Florida Statutes repealed by chapter 63-129, the board shall be, upon motion, substituted as a party in lieu of the Florida real estate commission.

History.—§20, ch. 63-129.

478.211 Penalties.—A violation of this chapter shall be a misdemeanor and any person upon conviction therefor shall be punished by a fine not exceeding $5,000.00 or by imprisonment not exceeding 6 months, or both.

History.—§21, ch. 63-129.

CHAPTER 479

OUTDOOR ADVERTISERS

479.01 Definitions.—The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

(1) "Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or similar device intended to invite or to draw the attention of the public to any goods, merchandise, property, real or personal, business services, entertainment or amusement, manufactured, produced, bought, sold, conducted, furnished or dealt in by any person which is posted, painted, tacked, nailed or otherwise displayed outdoors on real property, and includes any part of an advertisement recognizable as such.

(2) "Advertising structure" means any structure erected for advertising purposes, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, upon which any poster, bill, printing, painting, device or other advertisement of any kind whatsoever may be placed, posted, painted, tacked, nailed or otherwise fastened, affixed or displayed.

(3) "Advertising sign" means any card, cloth, paper, metal painted or wooden sign or any character, posted, stuck, glued, tacked, painted or otherwise fastened or affixed to or upon any fence, post, tree, wall or thing other than an advertising structure.

(4) "Business of outdoor advertising" means the business of constructing, erecting, operating, using, maintaining, leasing or selling outdoor advertising structures, or outdoor advertising signs or outdoor advertisements.

(5) "Chairman" or "state chairman" means the chairman of the state road department;

(6) "State" means the state of Florida;

(7) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state, outside of cities and incorporated towns;

(8) "Person" includes an individual, partnership, association or corporation;

(9) "Post" means post, display, print, paint, burn, nail, paste or otherwise attach;

(10) "Real Property" includes any property physically attached or annexed to real property in any manner whatsoever;

(11) "Town" means an incorporated town or city;

(12) "Adjacent" means in plain view.

History.—§1, ch. 20446, 1941.

479.02 Enforcement of provisions by state chairman.—It shall be the function and duty of the state chairman to administer and enforce the provisions of this chapter. He may, in the performance of his duties hereunder, assign to division engineers, and other employees in his department such duties as he may prescribe.

History.—§2, ch. 20446, 1941.

479.03 Territory to which act applies; entries, examinations and surveys.—The territory under the jurisdiction of the state chairman for the purpose of this chapter shall include all the state outside the corporate limits of any city or town. The state chairman and all employees under his direction, in the performance of their functions and duties under the provisions of this chapter may enter into and upon any land upon which advertising structures are standing or upon which advertising signs or advertisements are displayed and make such examinations and surveys as may be relevant.

History.—§3, ch. 20446, 1941; am. §7, ch. 22858, 1945.

479.04 Licensed outdoor advertisers.—No person shall engage or continue in the business of outdoor advertising in this state outside the corporate limits of any city or town without first obtaining a license therefor from the state chairman; and no person shall construct, erect, operate, use, maintain, lease or sell any neon, outdoor advertising structure or outdoor advertising sign or outdoor advertisement of any kind in this state outside the corporate limits of any city or town without first obtaining such license from the state chairman. The fee for such license, hereby imposed for revenue for the use of the state, shall be twenty-five dollars per annum for the operation in one county, and seventy-five dollars per annum for persons or corporations operating under this act in two to eight counties, and two hundred dollars per annum for those operating in more than eight counties, payable in advance, and fifteen dollars per annum, payable annually in advance for the use of the county, in each and every county within the state in

which licensee shall engage or continue in the business of outdoor advertising as aforesaid. Applications for licenses, or renewal of licenses, shall be made on forms furnished by the state chairman and shall contain such pertinent information as the state chairman may require and shall be accompanied by the annual fee. All outdoor advertisement fees shall be payable January 1 of each year. Fees for licenses to engage in the business of outdoor advertising shall not be prorated. Nothing in this section shall be construed to require any person to obtain a license who constructs, erects, operates, uses or maintains an outdoor advertising structure or outdoor advertising sign or outdoor advertisement solely on his own property, as herein provided; nor shall any person be required to obtain the license provided for in this section to erect, use or maintain signs at whatever location which relate solely to merchandise, services or entertainment sold, produced, manufactured or furnished by said person at a place of business or residence of which said person is the owner or lessee.

History.—§4, ch. 20446, 1941; §1, ch. 26959, 1951; §1, ch. 63-237.

479.05 Revocation of license.—The state chairman shall have authority, after thirty days notice in writing to the licensee, to revoke any license granted by him upon repayment of a proportionate part of the license fee, in any case where he shall find that any material information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this chapter unless such licensee shall, before the expiration of said thirty days, correct such false or misleading information and comply with the provisions of this chapter. Any person whose license is so revoked may, within thirty days from the date of such revocation apply to the circuit court for a declaratory decree as to the validity of said order of revocation as provided by chapter 87.

History.—§4, ch. 20446, 1941; §17, ch. 63-512.

479.06 Bond required from out of state licensee.—No such license as is provided for in §479.04 shall be granted to any person not residing in this state or to any person having his principal place of business outside the state, or which is incorporated outside the state, until such person shall have furnished and filed with the chairman a bond payable to the state, with surety approved by the chairman and in form approved by the attorney general, in the sum of two thousand five hundred dollars, conditioned that such licensee shall fulfill all requirements of law and observe and obey all the requirements of this chapter. Such bond shall remain in full force and effect so long as any obligations of such licensee to the state shall remain unsatisfied.

History.—§5, ch. 20446, 1941.

479.07 Individual device permits; fees; tags.—

(1) Except as in this chapter otherwise provided, no person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained any outdoor advertising structure, outdoor advertising sign or outdoor advertisement, outside any incorporated city or town, without first obtaining a permit therefor from the chairman, and paying the annual fee therefor, as herein provided. Permits for each calendar year shall be made available by the chairman for purchase not later than the preceding July 1. The chairman shall not issue such a permit to any person in the business of outdoor advertising who has not obtained the license provided for in §479.04.

(2) Applications for permits for advertising structures, advertising signs or advertisements shall be made on forms provided by the chairman and shall be signed by the applicant or his duly authorized representative. Said applications shall set forth the number of permits for which application is made, the sizes of all advertising structures, advertising signs or advertisements included in the application, and the amounts of the annual permit fees. Every application for permit shall be accompanied by payment of the fee for each advertising structure, advertising sign or advertisement included in the application, which fee shall be based on the size of the advertising structure, advertising sign or advertisement as follows: Four lineal feet or less one dollar; over four lineal feet two dollars per eight lineal feet or fraction thereof above four. The size in lineal feet shall be determined by measuring the width or the height, whichever is greater of the advertising structure, advertising sign or advertisement, including all boards, lattice work, borders, flags, decorative parts, devices or other attachments, except and exclusive of the essential structural supports. Application shall also be made in like manner for a permit to operate, use, maintain or display any existing advertising structure, advertising sign or advertisement. No fee may be prorated for a period less than the remainder of the permit year to accommodate short term publicity features; however, all first year fees may be prorated by the payment of an amount equal to one fourth of the annual fee for each remaining whole quarter or part quarter of the permit year ending on January 1, provided that any aggregate payment of prorated fees amounting to less than five dollars and submitted with a single application shall be accompanied by a service fee of one dollar.

(3) Permits issued hereunder shall expire on January 1 of each year. On or before December 1 of each year the chairman shall prepare and send to each licensee and permittee a notice of all licenses and permits of said licensee or permittee which were issued prior to December 1 and which shall expire on January 1. Such notice shall be itemized to indicate the amount of the state license fee, the amounts of county license fees, the names of all counties to which the county license fees

are applicable, and the number of permits and permit fees of each size.

(4) For every permit issued the chairman shall deliver to the applicant a serially numbered metal permit tag which shall indicate the year for which the permit is valid and the size of the advertising structure, advertising sign or advertisement. The permittee shall attach a currently valid permit tag to each advertising structure, advertising sign or advertisement which he owns and which is required to be permitted wherever located within the state outside the limits of any incorporated city or town. Such tag shall indicate the amount of permit fee for the advertising structure, advertising sign or advertisement to which it is attached. The tag shall be attached to the face of the advertising structure, advertising sign or advertisement on the end nearest the highway in a manner that shall cause it to be plainly visible. The construction, erection, use or maintenance of any advertising structure, advertising sign or advertisement which is required by this chapter to be permitted, without having affixed thereto a currently valid permit tag shall be prima facie evidence that the same has been constructed or erected and is being operated, used or maintained in violation of the provisions of this chapter, and shall be subject to removal by legal representatives of the state road department. No person shall paint, alter, mutilate, deface or change the color of a permit tag and no one other than the owner of such tag or his lawful representative shall remove such tag from the advertising structure, advertising sign or advertisement to which it has been affixed. Any person violating this provision shall be guilty of a misdemeanor.

(5) If more than one side of an advertising structure, advertising sign or advertisement is used for advertising, a fee for each such side shall be required. Advertisements sculptured in the round shall be treated as using three sides.

(6) No person shall erect or cause to be erected an advertising structure, advertising sign or advertisement upon the property of another without first securing the written permission of the owner or lessee of said property.

History.—§6, ch. 20446, 1941; §7, ch. 22858, 1945; (2) a. §1, ch. 61-151; §2, ch. 63-237.

479.08 Revocation of permit.—

(1) The chairman may after thirty days notice in writing to the permittee, revoke any permit issued by him under §479.07 upon repayment of a proportionate part of the fee in any case where it shall appear to the chairman that the application for the permit contains knowingly false or misleading information or that the permittee has violated any of the provisions of this chapter unless such permittee shall, before the expiration of said thirty days, correct such false or misleading information and comply with the provisions of this chapter. If the construction, erection, operation, use, maintenance and display of any advertisement, advertising sign or advertising structure for which a permit is issued by the chairman and the permit fee has been paid as above provided, shall be prevented by any zoning board, commission or other public agency which also has jurisdiction over the proposed advertisement, advertising sign or advertising structure or its site, the fee for such advertisement, advertising sign or structure shall be returned by the chairman and the permit revoked. But one half of the fee shall be deemed to have accrued upon the erection of advertising sign or advertising structure or the display of an advertisement followed by an inspection by the chairman or his representatives.

(2) Any person aggrieved by any action of the chairman in refusing to grant or in revoking a permit under §479.07 may, within thirty days from the date of such refusal or revocation apply to the circuit court for a declaratory decree as to the validity of said order of revocation as provided by chapter 87.

History.—§6, ch. 20446, 1941; §7, ch. 22858, 1945; (2) §17, ch. 63-512.

479.10 Removal.—All outdoor advertisements, advertising signs and advertising structures shall be removed by the permittee within thirty days after the date of the expiration or revocation of the permit for the same. Any permittee failing to remove any such advertisement, advertising sign or advertising structure within said thirty days shall be deemed guilty of a misdemeanor.

History.—§8, ch. 20446, 1941; am. §7, ch. 22858, 1945.

479.11 Certain outdoor advertising prohibited.—No advertisement, advertising sign or advertising structure shall be constructed, erected, used, operated or maintained:

(1) Within fifteen feet of the outside boundary of any federal or state highway or within one hundred feet of any church, school, cemetery, public park, public reservation, public playground, state or national forest, or railroad intersection outside the limits of any incorporated city or town.

(2) Which displays intermittent lights not embodied in an outdoor advertising sign, or any rotating or flashing light within one hundred feet of the state owned right of way.

(3) Which uses the word "stop" or "danger", or presents or implies the need or requirement of stopping or the existence of danger, or which is a copy or imitation of official signs;

(4) Which is placed on the inside of a curve or in any manner that may prevent persons using the highway from obtaining an unobstructed view of approaching vehicles.

(5) No advertisement shall be nailed, fastened or affixed to any tree or upon any right of way of any state maintained road.

(6) Which is erected or maintained in an unsafe, insecure or unsightly condition.

History.—§9, ch. 20446, 1941.
Am. §3, ch. 26959, 1951; (2) R by §1, ch. 31413, 1956; (2) N by §1, ch. 57-282; (6) n. by §2, ch. 61-151.

479.12 Outdoor advertising on highways.—Any person who wilfully or maliciously displaces, removes, destroys or injures a mile-board, mile-

stone, danger-sign, signal, guide-sign, guide-post, highway sign, or historical marker or any inscription thereon, lawfully within or adjacent to a highway, or who in any manner paints, prints, places, puts or affixes any advertisement upon or to any rock, stone, tree, fence, stump, pole, mileboard, milestone, danger sign, guide-sign, guide-post, highway sign, historical marker, buildings, barns or other object lawfully within the limits of any highway, shall be guilty of a misdemeanor and shall be punished accordingly.

History.—§10, ch. 20446, 1941.

479.13 Written permission of owner required.—No person shall construct, erect, operate, use or maintain any outdoor advertising structure, outdoor advertising sign or advertisement without the written permission of the owner or other person in lawful possession or control of the property on which such structure or sign is located.

History.—§11, ch. 20446, 1941.

479.14 Disposition of fees.—All moneys received by the chairman under the provisions of this chapter shall be paid by him into the state treasury, and placed in the state roads trust fund for use, in the administration of this chapter and in the construction and maintenance of roads.

History.—§12, ch. 20446, 1941; §2, ch. 61-119.

479.15 Harmony of regulations.—No zoning board or commission nor any other public officer or agency shall permit any advertisement or advertising structure which is prohibited under the provisions of this chapter nor shall the chairman permit any advertisement or advertising structure which is prohibited by any other public board, officer or agency in the lawful exercise of its or their powers.

History.—§13, ch. 20446, 1941.

479.16 Certain advertisements excepted.—The following advertisements, advertising signs and the advertising structures, or parts thereof, upon which they are posted or displayed, are excepted from all the provisions of this chapter except those contained in sub-sections (2), (3) and (4) of §479.11.

(1) Those constructed by the owner or lessee of a place of business or residence on land belonging to said owner or lessee and not more than one hundred feet from such place of business or residence, and relating solely to merchandise, services or entertainment sold, produced, manufactured or furnished at such place of business or residence, are excepted from the permit fee, but do not exempt the license of a contractor who is engaged in the manufacture, erection or maintenance of such advertising sign;

(2) Those constructed, erected, operated, used or maintained on any farm by the owner or lessee of such farm and relating solely to farm produce, merchandise, service or entertainment sold, produced, manufactured or furnished on such farm;

(3) Those upon real property posted or displayed by the owner or by the authority of the owner, stating that real property is for sale or rent, but if said advertisement carries any other wording not pertaining to said property, then the same shall be subject to the conditions of §479.07(2);

(4) Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties, or by trustees under deeds of trust, deed of assignment or other similar instruments;

(5) Danger or precautionary signs relating to the premises on which they are, or signs warning of the condition of or dangers of travel on a highway, erected or authorized by the chairman; or forest fire warning signs erected under authority of the state conservation department and signs, notices or symbols erected by the United States government under the direction of the United States forestry service;

(6) Signs solely to denote route to any city, town, village or historic place or shrine;

(7) Notices of any railroad, bridge, ferry or other transportation or transmission company necessary for the direction or safety of the public;

(8) Signs, notices or symbols for the information of aviators as to location, directions and landings and conditions affecting safety in aviation erected or authorized by the chairman;

(9) Advertisements, advertising signs and advertising structures not visible from any highway or other public place;

(10) Signs or notices containing two square feet or less, placed at a junction of two or more roads in the state highway system denoting only the distance or direction of a residence;

(11) Signs or notices erected or maintained upon property giving the name of the owner, lessee or occupant of the premises;

(12) Advertisements, advertising signs and advertising structures within the corporate limits of cities or towns;

(13) Historical markers erected by duly constituted and authorized public authorities;

(14) Highway markers and signs erected or caused to be erected by the state chairman or the state road department;

(15) Signs erected upon property warning the public against hunting and fishing or trespassing thereon;

(16) Signs erected by red cross authorities relating to red cross emergency stations.

History.—§14, ch. 20446, 1941; §4, ch. 26959, 1951.

479.17 Violation a nuisance; abatement.—Any advertisement, advertising sign or advertising structure which is constructed, erected, operated, used, maintained, posted, or displayed in violation of this chapter is hereby declared to be a public and private nuisance and shall be forthwith removed, obliterated or abated by the state chairman or his representatives, and for that purpose they may enter upon private property without incurring any liability therefor: provided, however, that if any outdoor advertising structure or outdoor advertising sign of the value

of one hundred dollars or more bears thereon the name of the owner thereof, and said owner holds an unexpired license issued under §479.04 the said owner shall be given written notice of the alleged violation, and shall have thirty days after the receipt thereof within which to show that the said advertisement, advertising sign or advertising structure does not violate the provisions of this chapter.

History.—§15, ch. 20446, 1941.

479.18 **Penalties.**—Any person, violating any provision of this chapter whether as principal, agent or employee, for which violation no other penalty is prescribed, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than three hundred dollars; and such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this chapter is committed, continued or permitted. The existence of any advertising copy on any outdoor advertising structure or outdoor advertising sign or advertisement outside incorporated towns and cities shall constitute prima facie evidence that the said outdoor advertising sign or advertisement was constructed, erected, operated, used, maintained or displayed with the consent and approval and under the authority of the person whose goods or services are advertised thereon.

History.—§16, ch. 20446, 1941.

479.19 **Application of chapter.**—The provisions of this chapter shall not apply to structures or shelters erected primarily for the comfort and convenience of the school children of the state or advertising thereon.

History.—§14A, ch. 20446, 1941.

479.20 **Duty of state road department.**—The maintenance division of the state road department shall enforce this law.

History.—§21, ch. 20446, 1941.

479.21 **Penalties for molesting licensed structures.**—Any person who shall remove, destroy, damage, injure, deface or tamper with any advertising structure, or the advertisement thereon, which has been duly licensed under the terms of this chapter, without the consent of either the licensee or the owner of the real estate on which same is located, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

History.—§1, ch. 22757, 1945.

CHAPTER 480

MASSEURS AND MASSEUSES

480.01 Definitions.—

(1) MASSEUR AND MASSEUSE.—

(a) For the purpose of this chapter the term masseur or masseuse shall be deemed to be a person who practices, administers or teaches all or any one or more of the following subjects and methods of treatments, viz: who administers or teaches treatments with any mechanical or electrical apparatus for the purpose of body slenderizing, body reducing or body contouring.

(b) Further, a person who has studied the underlying principles of anatomy and physiology, including the theory of massage, its indications and contra-indications, and administers or teachers all or any one or more of the following subjects and methods of treatments, viz: Oil rubs, salt glows, hot or cold packs, all kinds of baths including steam rooms, cabinet baths, sitz baths, colon irrigations, body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), applying such movements as stroking, friction, rolling, vibration, kneading, cupping, pettrasage, rubbing effleurage, tapotement.

(c) Nothing in this section shall be construed as applying to licensed practical nurses, or to orderlies, or attendants or nurses aides in hospitals under the direction of a licensed physician.

(2) MASSAGE ESTABLISHMENT.—

(a) The term "massage establishment" as used in this chapter shall be construed and deemed to mean any shop, establishment or place of business wherein all or any one or more of the named subjects and methods of treatments, as defined in subsection (1) of this section, are administered or practiced.

(b) It shall be unlawful to operate a massage establishment as defined in §480.01 (2) (a), unless there shall be in its employ and on duty full-time during the hours open for business at least one registered masseur or registered masseuse.

(3) MASSAGE SCHOOL.—The term "massage school" shall be construed and deemed to mean any duly registered massage establishment wherein a tuition fee is charged for instruction of massage or all or any one or more of the subjects and methods of treatments defined in subsection (1) of this section.

(4) MASSAGE.—For the purpose of this chapter, the term "massage" shall be deemed and held to include all or any one or more of the above named subjects or methods of treatments as defined in paragraph (b) of subsection (1); the practice of massage, however, shall include paragraphs (a) and (b) of subsection (1).

(5) BOARD.—The term "board" as used in this chapter shall be construed and deemed to mean the Florida board of massage created by this chapter.

History.—§2, ch. 22034, 1943; §1, ch. 23751, 1947; (1), (4) §1, ch. 29971, 1955; (1) (b) §24, ch. 57-1; (1) (b), (2) §1, ch. 63-172.

480.02 Masseurs and masseuses to be registered.—

(1) It shall be unlawful for any person or persons to engage in the practice or attempt to practice massage for a fee, or for a gratuity, or to conduct or teach in a school of massage without a certificate of registration issued pursuant to the provisions of this chapter.

(2) It shall be unlawful for any person or persons to operate or conduct any massage establishment which does not conform to the sanitary regulations herein contained, or which may be adopted by the board created herein, or to employ any person as an operator or instructor who does not hold a certificate of registration; or to open and conduct a massage establishment or school in a place of residence in the state.

(3) It shall be unlawful for any person or persons to practice any branch of massage as defined in §480.01(1), either for payment or free demonstrations without first being a registered masseur or masseuse under the provisions of this chapter, or without operating and maintaining a bona fide and duly licensed massage establishment, or being employed in such establishment, and without first paying a license fee to the state. No occupational li-

cense, state, county or city, shall be issued to any person unless he or she shall have in his or her possession a certificate of registration and current certificate of renewal, duly authorized and signed by the board of massage examiners.

(4) Apprentices shall be passed upon by the board of massage as proper persons who are satisfactorily apprenticed to some person who maintains and conducts a properly licensed place of business for treatment by massage. Certificates may be issued to such apprentices for a period of six continuous months of service in a properly licensed massage establishment or school.

(5) The number of apprentices shall not exceed the number of registered masseurs and masseuses employed in any one massage establishment.

History.—§3, ch. 22034, 1943; subsection (1), am. §2, ch. 23751; subsection (3), am. §3, ch. 23751; subsection (5), §4, ch. 23751, 1947; (3) §2, ch. 29971, 1955; (4) §1, ch. 59-455; (5) §2, ch. 63-172.

480.03 Exemptions.—The following classes of persons are exempted from this chapter:

(1) Persons authorized by the laws of the state to practice medicine, surgery, osteopathy, chiropractic, naturopathy, or chiropody, or persons holding a drugless practitioners certificate under the laws of this state.

(2) Registered nurses under the laws of this state.

(3) Barbers duly licensed under the laws of this state.

(4) Beauticians duly licensed under the laws of this state.

(5) Any exemption granted under this act is effective only insofar as and to the extent that the bona fide practice of the profession or business of the person exempted overlaps into the field comprehended by this act, and exemptions under this act are only for those activities which are performed in the course of the bona fide practice of the business or profession of the person exempted.

History.—§4, ch. 22034, 1943; (5) N. by §2, ch. 59-455.

480.04 Board of massage examiners; terms.—For the purpose of carrying out the provisions of this chapter the governor shall appoint a board to be known as the Florida board of massage, to consist of three masseurs or masseuses actively engaged in said practice in the state, and the secretary of the state board of medical examiners who shall ex officio act as a member of said board. The members of the first board appointed under this chapter shall be appointed for terms of one, two and three years respectively, and shall hold office until their successors are appointed and qualified. Successors of said members shall be appointed for terms of three years.

History.—§5, ch. 22034, 1943.

480.05 Removal of members of board; officers; meetings.—

(1) The governor may remove from office members of the Florida board of massage for neglect of duties as required by this chapter, or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by the removal of any member of the board of examiners, or his or her resignation or death, all such appointees to be practicing masseurs or masseuses in the state.

(2) The Florida board of massage shall, within two weeks after their appointment, meet at some convenient place in the state, and shall then elect a president from their own members, and a secretary-treasurer. The secretary-treasurer shall give to the governor of the state a penal bond in the sum of one thousand dollars with sufficient sureties to be approved by the governor for the faithful discharge of his duties. The board of massage shall hold at least one examination each year, and may hold other examinations, from time to time, at such place or places as said board may designate.

(3) It shall also be the duty of said board, from time to time, to examine and inspect, or cause to be examined and inspected, all massage establishments and massage schools operated in the state, and for this purpose said board and its agents and employees, shall have, and they are hereby given authority to enter and to inspect any such massage establishments or massage schools at any time during which such establishment or school is open for the transaction of business.

History.—§6, ch. 22034, 1943.

480.06 Requisites for examination; subjects, minimum passing grade; fees.—

(1) Any person who shall furnish to the Florida board of massage satisfactory proof that he or she is eighteen years of age, or more, a bona fide citizen of the United States, of good moral character and temperate habits, and shall make oath that he or she has not been convicted of any offense that would consitute a felony, either in Florida or any other state or country, and shall present a diploma or credentials, issued by a recognized, accredited school of massage, or like institution, or furnishes proof of experience or education which qualifies him or her for the practice of massage, and who furnishes a certificate of physical examination, including a Wasserman test, signed by a regularly practicing physician declaring such person to be free from any contagious, infectious or communicable diseases, such examinations having taken place or certificate issued within the preceding thirty days, and who passes a reasonable demonstrative, oral or written examination, conducted by or under the supervision and direction of said board in the underlying principles of anatomy and physiology, indications and contra-indications of massage, oil rubs, salt glows, hot or cold packs, all kind of baths including

steam rooms, cabinet baths, sitz baths, colon irrigations, body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), in such movements as stroking, friction, rolling, vibration, kneading, cupping, pettrasage, rubbing, effleurage, tapotement, and shall pay the fees hereinafter specified, which fees shall accompany the application to the secretary-teasurer of the board, shall be entitled to be registered, and to be issued a certificate of registration, as masseur or masseuse. Minimum requirements for certificate of registration and licenses shall be a general average in the said examination of seventy-five per cent in all subjects involved, and not less than fifty per cent in any one subject.

(2) Any applicant failing to pass said requirements shall be entitled, within six months, to a re-examination, upon the payment of an additional fee of ten dollars, but two such re-examinations shall exhaust the privilege under the original application.

(3) Every person who has successfully passed the examination provided herein, and to whom a certificate of registration has been issued, shall not be entitled to practice the profession of massage in this state, until such person causes his name to be registered in the office of the state board of health at Jacksonville, within thirty days after date of issuance, and every such person must present his or her certificate from the above named officials, showing registration, as aforesaid, before an occupational license may be applied for, or procured from any city, state or county officer having jurisdiction of the issuance of occupational licenses. Any person who attempts to procure or does procure an occupational license in violation of the provisions of this section shall be subject to the penalties provided for in §480.20.

History.—§7, ch. 22034, 1943; §5, ch. 23751, 1947; (1), §4, ch. 29971, 1955; (1) §3, ch. 63-172.

480.07 Fees for certificates of registration.—

(1) FOR MASSEUR, MASSEUSE AND APPRENTICE.—The fee to be paid by an applicant to determine his or her fitness to receive a certificate of registration to practice as a registered masseur or masseuse, as classified and defined in subsection (1) of §480.01, and excepting a massage school shall be thirty-five dollars and as an apprentice as classified in subsection (4) of §480.02 the sum of twenty-five dollars.

(2) FEES.—The fee to be paid by an applicant for a certificate of registration for a massage school shall be one hundred and fifty dollars.

(3) RENEWALS OF CERTIFICATES.—The fee to be paid by a masseur or masseuse for the renewal of a certificate shall be ten dollars for each such renewal, and for the renewal of a certificate for a massage school the fee is fifteen dollars for each renewal. Certificates issued to apprentices are not subject to renewal.

(4) LATE FEES.—A late fee of two dollars shall be paid to the board by any person licensed or certified by the board who fails to pay his renewal fee within the time allowed by this law.

History.—§8, ch. 22034, 1943; am. §6, ch. 23751, 1947; (3) am., (4) N. by §3, ch. 59-455.
cf.—§455.03 Dispensing with examination for veterans.

480.08 Certificate of registration; recording; display; renewal.—Every certificate of registration shall be conspicuously displayed at the place of practice, and must be recorded in the office of the clerk of the circuit court of each county wherein such registered masseur or masseuse practices, or in which such massage school is operated, and within thirty days of the issuance of such certificate. Annually, on or before the first day of January of each year, each and every registered masseur, masseuse or massage school shall pay to the secretary-treasurer of the Florida board of massage, the renewal fee hereinabove provided for, and shall furnish a new certificate of physical examination taken and issued within the preceding thirty days, by a regularly practicing physician, and declaring the applicant for renewal to be free from any contagious, infectious or communicable disease. The holder of an expired certificate of registration may, within one year from date of expiration thereof, have the certificate renewed upon payment of the required renewal fee, and production of new certificate of physical examination as above provided for. Every renewal certificate shall be registered with the state board of health and displayed in connection with the original certificate. All certificate holders shall be designated as certified masseurs or masseuses, and shall not use any title or abbreviation thereof without the designation "masseur" or "masseuse."

History.—§9, ch. 22034, 1943.

480.09 Massage schools.—No massage school shall be approved by the board, or granted a certificate of registration, until it shall have paid the registration fee and unless it shall have attached to its staff a regularly licensed physician, and shall employ and maintain one or more registered masseurs or masseuses qualified as instructors, nor unless it shall have a minimum requirement of a continuous course of study and training of not less than nine hundred and fifty hours, distributed over a period of not less than six months, and to consist of:

200 hours of physiology
200 hours of anatomy
100 hours of the theory of massage including indications and contra-indications thereof
200 hours of hydro-therapy
150 hours of colon-therapy
100 hours of hygiene and practical demonstration which course of study and training shall have been approved by the board of massage.

History.—§10, ch. 22034, 1943; am. §7, ch. 23751, 1947. §11, ch. 25035, 1949; §4, ch. 59-455; §4, ch. 63-172.

480.10 Sanitary requirements.—It shall be unlawful for any person, persons, firm or corporation:

(1) To own, manage or operate any massage school or establishment unless continuous hot and cold running water be provided therein;

(2) To use upon one patron a towel that has been used upon another person, unless the towel has been relaundered;

(3) Not to provide the head rest on each table with a relaundered towel or sheet, or clean paper towel for each patron;

(4) For any masseur or masseuse to continue to practice while such person has an infectious, contagious or communicable disease;

(5) To own, manage or operate a massage school or massage establishment, unless the same shall have been equipped with a massage table, or tables, from twenty inches to twenty-five inches in width, twenty-four inches to twenty-seven inches in height, and sixty inches to seventy inches in length.

(6) To give cabinet baths, unless such school or establishment shall be equipped with shower baths.

History.—§11, ch. 22034, 1943.

480.11 Revocation of certificates and licenses; preferment of charges.—

(1) The certificate of registration and license of a masseur, masseuse or school of massage may be revoked, suspended or annulled upon any one or more of the following grounds:

(a) That the registrant is guilty of fraud in the practice of massage, or fraud or deceit in his admission to the practice of massage;

(b) That the registrant has been convicted in a court of competent jurisdiction of a felony. The conviction of a felony shall be the conviction of any offense, which, if committed within the state, would constitute a felony under the laws thereof;

(c) That the registrant is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name;

(d) That the registrant is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate him or her for the performance of his or her professional duties;

(e) That the registrant is guilty of untrue, fraudulent, misleading or deceptive advertising;

(f) That the registrant is grossly ignorant, or guilty of wilful negligence in the practice of massage, or has been guilty of employing, allowing or permitting any unlicensed or unregistered person to perform any work constituting the practice of massage as defined in §480.01 (1) (a) and (b), in his or her massage establishment or massage school.

(g) That the registrant is a person of immoral character;

(h) That said registrant has violated any provisions of this chapter.

(i) The certificate of an apprentice shall be revoked if he or she violates any of the provisions of this chapter.

(j) Any registrant who does not renew his or her registration license for two consecutive years must take the examination as prescribed for an applicant to become a registered operator and to comply with all the provisions hereof applicable to any applicant to become a registrant.

(k) That the registrant is guilty of identifying himself or herself as a member of a branch of the healing arts by the use of any mark, sign, advertisement, words, letters, abbreviations, or insignia indicating or implying such or who in any other way, orally, in writing or in print directly or by implication represents himself or herself as such, unless so registered in Florida by such other regulatory agency or board governing that particular profession.

(2) Charges may be preferred by any person, or the board may, on its own motion, direct the executive officer of said board to prefer said charges. An accusation may be filed with the secretary-treasurer of the board charging any licensed masseur, masseuse or school of massage with any of the offenses herein enumerated. Such accusation shall be in writing, signed by the accuser and verified under oath.

History.—§12, ch. 22034, 1943; (i), (j) §8, ch. 23751, 1947; (1) (f), (k) n. §§5, 6, ch. 63-172.

480.12 Form of accusation; notice, etc.— Whenever such accusations as provided for in §480.11 are filed, the board shall set a day for a hearing, and the secretary-treasurer of the board shall transmit to the accused a true copy of any and all charges filed with him relating to such accusations, and shall notify, in writing, the accused, that on the day fixed for the hearing, which shall not be less than ten days from the date of such notice, he may appear, or show cause, if any, why his or her certificate and license to practice massage in the state should not be revoked, suspended or annulled. For the purpose of such hearing the board may require by subpoena the attendance of witnesses to administer oaths and hear testimony and receive evidence, either oral or documentary, for and against the accused, and said accused shall have the right at said hearing to cross-examine the witnesses, to produce witnesses in his defense, and to appear personally or by counsel. The notice provided for in this section shall be substantially in the following form:

To_____

You are hereby notified that charges have been filed with the secretary-treasurer of the Florida board of massage against you as a practicing _____

(masseur or masseuse)

in the State of Florida, a true copy of such charges being attached hereto, and that the said board has fixed the____day of_____, A. D. 19____, at the hour of____o'clock____M., in _____Florida, for a hearing on such charges, at which time and place you are hereby notified to appear before said board, and show cause, if any you can, why your certificate and license to practice massage in the State of Florida should not be_____

(revoked, suspended or annulled)

At the same time and place the board will hear testimony and receive evidence, either oral or documentary, both for and against you relating to such charges.

Dated at....., Florida, this the..... day of..... A. D. 19.....

.....
Secretary-Treasurer of Florida Board of Massage.

Such notice shall be sent to the accused by registered mail, directed to his last known mailing address, and the post-office registration receipt thereof, or the post-office registration receipt signed by the accused, or his agent, shall be prima facie evidence of the service of said notice.

History.—§13, ch. 22034, 1943.

480.13 Power to revoke, suspend or annul certificates and licenses; review; reissuance of certificates and licenses.—

(1) The Florida board of massage may, upon satisfactory proof that any certificate holder or licensee has been guilty of any of the charges preferred against him, revoke, suspend or annul any certificate or license to do business issued thereunder, upon a vote of two of the three board members. Orders of the board may be reviewed by certiorari in the manner and within the time provided by the Florida appellate rules by the circuit court of the circuit in which the certificate is recorded. In the event that such certificate or license is revoked, suspended or annulled under the provisions of this chapter, the board shall forthwith transmit to the clerk of the circuit court or courts in which the accused is registered as a masseur or masseuse, a certificate under its seal, certifying that such registration has been revoked, suspended or annulled, as the case may be, and such clerk shall, upon receipt of such certificate, file the same, and forthwith mark such registration revoked, suspended or annulled, as the case may be, and in the event of suspension, shall indicate thereon the period for which it is suspended.

(2) Any person who shall practice massage after his or her certificate has been revoked, suspended or annulled, shall be deemed to have practiced massage without a certificate and license. However, at any time after six months from the date of said conviction, said board may, in the exercise of its reasonable discretion, by a majority vote, issue a new certificate to the person affected, restoring or conferring all of the rights and privileges of and pertaining to the practice of massage, but the fee shall be the same as upon the issuance of the original certificate.

History.—§14, ch. 22034, 1943; (1) §5, ch. 59-455; (1) §13, ch. 63-509.
cf.—§480.07 Fees for registration of masseurs.

480.14 Records to be kept by secretary-treasurer of board. — The secretary-treasurer of the board shall keep a record book in which shall be entered the names of all persons to whom certificates have been granted under this chapter, the certificate number and the dates of granting such certificates and renewals thereof, and other matters of record, and the books so provided and kept shall be deemed and considered a book of records, and a transcript of any record therein, or a certificate that there is not entered therein the name and certificate number of, or date of granting, such certificate to a person charged with a violation of any of the provisions of this chapter, certified under the hand of the secretary-treasurer, and the seal of the board shall be admitted as evidence in any of the courts of this state. The original books, records and papers of the board shall be kept at the office of the secretary-treasurer of said board, which office shall be at such place as may be designated by the board. The secretary-treasurer shall furnish to any person making application therefor, certified by him as secretary-treasurer, upon payment of a fee of twenty-five cents per hundred words so copied, the fee to belong to the secretary-treasurer.

History.—§15, ch. 22034, 1943.

480.15 Compensation of board members; employment of counsel, inspectors, clerks and assistants.—

(1) The secretary-treasurer of the board shall receive two hundred dollars per month to be paid monthly. Members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. All expenditures shall be in accordance with the provisions of §215.37; upon vouchers to be signed by the secretary-treasurer and approved by said board, or a finance committee thereof. The board shall make an annual report to the governor, which shall contain a full statement of the works of the board during the preceding year, together with such recommendations as it may deem expedient.

(2) The board shall have authority to employ and fix the compensation of such regular or special counsel, inspectors, clerks and other assistants as it may deem necessary in order to carry out the provisions of this chapter; subject, however, to the limitation that the number of clerks and other assistants shall at no time exceed a total of ten, and that the number of inspectors shall at no time exceed eight, two of whom may be inspectors of colored establishments and schools, and subject to the further limitation that no employee of the board shall be related by blood or marriage to any member of said board.

History.—§16. ch. 22034, 1943; §9, ch. 23751, 1947; (1) by §31, ch. 28215, 1953; (1) a. by §20, ch. 61-514.

480.16 Disposition of money received by board.—All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board, who shall give a

receipt for same. Such moneys shall be deposited pursuant to the provisions of §215.37.

History.—§17, ch. 22034, 1943; §119, ch. 26869, 1951; am. §32, ch. 28215, 1953; §20, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

480.17 **Powers of municipalities to regulate massage.**—Nothing contained in this chapter shall be construed to prevent any municipal government in this state from passing and enforcing reasonable laws and regulations governing the practice of massage within its limits.

History.—§18, ch. 22034, 1943.

480.18 **Other laws unaffected by this chapter.**—Nothing contained in this chapter shall be construed or interpreted as changing, modifying or repealing any of the provisions of chapters 458 (relating to physicians), 459 (relating to osteopaths), 460 (relating to chiropractors), 461 (relating to chiropodists), 462 (relating to naturopaths), 463 (relating to optometrists), 464 (relating to nurses), 476 (relating to barbers) and 477 (relating to beauticians), and the provisions of said several chapters, and the provisions of this chapter shall be construed, interpreted, considered and enforced as separate laws and independent of each other.

History.—§19, ch. 22034, 1943.

480.20 **Penalty for violation.**—Any person who shall violate any of the provisions of this chapter shall, upon conviction, be punishable by imprisonment in the county jail for not more than six months, or by a fine not exceeding five hundred dollars, or by both fine and imprisonment in the discretion of the court.

History.—§21, ch. 22034, 1943.

480.21 **Short title.**—This chapter may be referred to and cited as the massage registration law of 1943.

History.—§1, ch. 22034, 1943.

480.23 **Examinations for teachers.** — The board may give examinations to individuals who are qualified to be teachers or instructors in massage schools. Each person to be examined must present satisfactory evidence to the board that he is a graduate of an accredited high school, that he is a graduate of an accredited massage school or that he has five years or more active experience as a masseur or masseuse, and that he is able to impart knowledge of massage, and that he bears a good reputation and is of strong moral character. The fee for the instructor's examination is thirty-five dollars per person each time taken. The board may issue certificates to instructors. Each certificate must be renewed on or before January 1 of each year for a fee of ten dollars.

History.—§6, ch. 59-455.

CHAPTER 482

STRUCTURAL PEST CONTROL

482.011 Short title.—This act may be cited as the structural pest control act.

History.—§1, ch. 59-454; similar provisions contained in former §482.01.

482.021 Definitions.—For the purposes of this measure, and unless otherwise required by the context, the following definitions shall prevail, to-wit:

(1) "Board."—The state board of health.

(2) "Business location."—Any advertised location where structural pest control business is solicited or accepted.

(3) "Category."—A phase or restricted type of structural pest control, such as: fumigation; general household pests (which may include rodent control); termites and other wood destroying organisms.

(4) "Certified operator."—An individual holding a current valid (structural pest control operator's) certificate issued by the commission.

(5) "Commission."—The structural pest control commission of Florida.

(6) "Licensee."—A business engaged in structural pest control.

(7) "Pests."—Arthropods; wood-infesting organisms; rodents; any obnoxious or undesirable living plant or organism in, on or under structures.

(8) "Public hearing."—A hearing or meeting, open to the public, held after notice thereof is given by mail to licensees.

(9) "Structural pest control."—All or any one or more of the following: The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in a structure; the identification of infestation or infections in a structure; the use of any pesticide, chemical, fungicide, insecticide, attractant, repellent, rodenticide, fumigant or mechanical device, for preventing, controlling, eradicating, identifying, mitigating, diminishing, or curtailing insects, vermin, rodents, or other pests in a structure; all phases of fumigation, including treatment of products by vault fumigation and the fumigation of box cars, trucks, ships, airplanes, docks, warehouses and common carriers; also, the soliciting of structural pest control.

(10) "Structure."—Any type of edifice or building, together with the land thereunder and within two feet thereof, together with the contents thereof, together with any patio or terrace thereof; also, that portion of land upon which work has commenced for the erection of an edifice or building; also, every railway car, box car, truck, trailer, ship, boat, airplane, common carrier, dock or wharf.

(11) "This measure."—This law, rules of the board and rules of the commission.

History.—§1, ch. 59-454; similar provisions contained in former §482.02.

482.031 Enforcement.—

(1) The board is the chief enforcer of this measure.

(2) It is the duty of each state and county attorney, sheriff, constable, municipal and county health unit, police officer and municipal and county official, to assist the board, the state health officer or agent of the board in the enforcement of this measure and to prevent unauthorized persons from engaging in structural pest control.

(3) The board and its agents may proceed in the courts by mandamus, injunction or other actions for the enforcement of this measure or against any unauthorized person engaging in structural pest control.

History.—§1, ch. 59-454; similar provisions contained in former §482.03.

482.041 Duties and powers of the board.—The duties, powers and rights of the board under this measure may be carried out by and through the state health officer or a proper division or representative of the board such as the director of the bureau of entomology of the board.

History.—§1, ch. 59-454.

482.051 Rules.—

(1) The board is authorized, empowered and directed to make rules for the complete operation and enforcement of this act and to carry out the intent and purpose of this act. The board shall obtain the advice of the commission and also hold a public hearing before its rules become effective. The current rules and regulations of the board relative to struc-

tural pest control and to thermal-aerosol fogging machines are continued in force until repealed or amended by the board.

(2) The commission may make written recommendations to the board concerning board rules. To formulate recommendations, the commission may appoint an advisory committee or may hold public hearings or may counsel with the certified operators or the Florida pest control association.

History.—§1, ch. 59-454; similar provisions contained in former §482.04.

482.061 Inspectors.—The board shall appoint one and may appoint two or more graduate entomologists as inspectors of the board. The inspectors shall also enforce this measure and shall make (or have made by representatives of the board, county or municipal health unit) inspections of licensees. The inspectors shall report all violations to the board and commission. Appointment as a board inspector qualifies and admits a person to the certified operators examinations, and when he passes he shall receive a certificate valid only during his tenure of office. For the time a person serves as a board inspector all fees for his certificate are waived.

History.—§1, ch. 59-454; similar provisions contained in former §482.05.

482.071 Licenses.—

(1) The board may issue licenses to qualified businesses engaged in structural pest control in this state. It is unlawful for any person to operate a structural pest control business that is not licensed by the board. Upon entering business and also not later than the first day of July, in each year, each business engaged in structural pest control shall apply to the board for a license. Applications shall be on forms furnished by the board. Each license expires the next first day of July. The license fee is five dollars. A license shall cease to be in force when a licensee changes its business address and the old license shall be surrendered and a new license issued for a fee of two dollars. The board shall not issue a license to a structural pest control business unless its structural pest control activities shall be in the charge of a certified operator or operators certified in the categories of the licensee. All fees collected by the board shall be deposited in the general revenue fund and shall be used in carrying out the provisions of this measure.

(2) Each licensee shall display its license within its business location. Each business location must be licensed.

History.—§1, ch. 59-454; similar provisions contained in former §482.06.

482.081 Prerequisite for issuance of occupational license.—No municipality or county shall issue an occupational license to any structural pest control business coming under the provision of this act, unless a license has been procured for each business location from the board.

History.—§1, ch. 59-454.

482.091 Identification cards.—

(1) No licensee shall assign any person to perform or be trained for structural pest control without first applying for an identification card for such person from the board, on a form prescribed by the board. The identification card shall be carried on the employee's person while performing structural pest control and shall be presented on demand to the person for whom structural pest control is being performed or to any inspector.

(2) The responsibility for obtaining identification cards for employees is on the licensee. However, no one shall perform structural pest control without carrying on his person a current valid identification card and without having affixed thereto his signature and a current photograph of himself. No licensee shall assign any employee to perform structural pest control without trained supervision unless said employee is trained and qualified. An identification card shall cease to be in force when the holder thereof ceases to be an employee of the licensee which secured said card. In such case, the old card shall be surrendered to the board. Each card issued shall expire on the next first day of July after issuance. The fee for each identification card is one dollar.

(3) An employee whose duties are confined to office secretarial, bookkeeping, office clerical, office filing, trenching, digging, raking, putting up or taking down tents, clamping, carrying away debris or such activities as specified by the board, may be made exempt by the board from being required to hold an identification card.

(4) An identification card must be applied for or obtained for each employee who in any way applies any fumigant, insecticide, attractant, repellent, rodenticide, pesticide, chemical or fungicide and for each employee who operates any machine or device for applying the same, and also for each employee who performs any of the services of routeman, serviceman, or salesman.

History.—§1, ch. 59-454; similar provisions contained in former §482.06.

482.101 Structural pest control commission of Florida.—

(1) There is hereby created, with perpetual existence, the structural pest control commission of Florida, to consist of five resident citizens of the state who are each certified operators with five years or more experience in structural pest control in the state. The term of office shall be three years. A member shall not succeed himself. Each person who is a member of the Florida structural pest control board on October 1, 1959, is continued in office for the balance of his term as a member of the commission.

(2) Appointments to the commission shall be made by the governor. Upon a vacancy on the commission, the Florida pest control association shall inform the governor and shall submit to him a list of names of persons recommended to fill the vacancy. Vacancies on the

commission may be appointed by the governor for the unexpired term.

(3) Each member of the commission may serve until the expiration of his term and until his successor is qualified. Members of the commission shall be paid twelve dollars for each day the commission meets and shall be reimbursed for traveling expenses as provided in §112.062.

(4) The commission may meet from time to time and place to place within the state.

(5) After public hearing, executive offices of the commission may be established and reestablished and maintained in any county.

(6) The commission may employ and at its pleasure discharge such employees as it shall deem necessary and shall outline their duties and fix their compensation.

(7) The commission, after public hearing, may make all necessary rules not inconsistent with the rules of the board.

(8) The secretary of the commission shall annually present to the governor and the Florida pest control association an audited report which shall include an itemized statement of receipts and expenditures, the name and address of each person certified during the year and the names and addresses of all certified operators and special ID card holders from whom renewal fees were received for the year.

History.—§1, ch. 59-454; (3) §19, ch. 63-400.
Note.—Similar provisions in former §482.07.

482.111 Certificate; disposition of moneys received.—

(1) The commission may issue a structural pest control operator's certificate to each individual who qualifies under this measure.

(2) Upon engaging in structural pest control and on or before the first day of June of each year, each individual qualified and permitted to be in charge of the structural pest control activities of a licensee, shall apply to the commission on forms of the commission for a structural pest control operators' certificate. Each certificate must be renewed on or before each first day of June following the issuance thereof. Each certified operator must display his certificate and current renewal form at the business location in his charge.

(3) Each category of each licensee shall be in the charge of a certified operator who is certified for the particular category. A certified operator may be in charge of one or more or all categories provided he is certified for said categories.

(4) No person shall be in charge of any category of any licensee unless such person is properly certified.

(5) No certified operator shall be in charge of more than one business location.

(6) The issuance fee and the renewal fee for each certificate is twenty-five dollars.

(7) A certified operator who is inactive in structural pest control for a period not exceeding five years may secure a renewal at any time during the five years upon payment of all past fees.

(8) All moneys received by the commission under this chapter shall be paid to the secretary of the commission. Such moneys shall be deposited and expended pursuant to the provisions of §215.37, and shall be used by the commission in carrying out the provisions of this chapter and in promoting structural pest control. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the chairman and secretary of the commission.

(9) Certificates issued by the commission are not transferrable to another person.

(10) In the event of death, loss of certified operator or other emergency, one or more emergency certificates or special ID cards shall be issued upon the request of the licensee, to one or more designated, trained persons by any one commission member for a period of ten days. The commission may renew the same for an additional period up to ninety days and for similar additional periods up to one year. The commission may collect not more than ten dollars for each emergency certificate or card and not more than ten dollars for each renewal thereof. The commission shall promulgate rules and prescribe forms for this purpose.

History.—§1, ch. 59-454; similar provisions contained in former §482.08; (8) a. by §21, ch. 61-514.

482.121 False use of certificate.—

(1) No certified operator shall allow his certificate to be used by any licensee to secure or keep a license unless the certified operator is in charge of the category of the license secured by his certificate.

(2) No licensee shall use the certificate of any certified operator to secure or to keep a license unless the holder of said certificate is in charge of the category of the license secured by the certificate.

History.—§1, ch. 59-454.

482.132 Qualifications for certificate.—The commission may award a structural pest control operator's certificate to an individual who presents satisfactory evidence of qualifications. Each applicant must make it appear to the commission that he is not under the disabilities of minority; that he is a resident citizen of the state, of good character, bears a good reputation for fair dealings and is qualified to be a certified operator with safety to persons and property. The commission may, after public hearing, provide, by rule, other qualifications to be possessed by applicants for certification. Each applicant for certification must also be possessed of the following basic qualifications, to wit:

(1) Three years as a service employee in structural pest control, one year of which must have been in this state immediately preceding application for certification, or a degree with advanced training or major in entomology from a recognized college or university.

(2) Each applicant must have knowledge

of practical and scientific facts of structural pest control.

History.—§1, ch. 59-454; §1, ch. 63-48.
Note.—Similar provisions in former §482.09.

482.141 Examinations.—

(1) Each individual seeking certification must satisfactorily pass an examination which must be written but which may include practical demonstration. A minimum of two examinations shall be held annually.

(2) Application for examination shall be made in accordance with rules of the commission. Each application shall be accompanied by a fee of not more than twenty-five dollars, to be set by the commission, for each category in which the applicant desires to be examined. Any applicant who fails to pass one or more categories may re-apply for examination upon the payment of additional fees as provided for the original application.

(3) The commission shall give an examination in each category. Applicants may seek certification in one or more categories. The certificate shall state the categories allowed thereby.

(4) All provisions of this measure apply whenever a certified operator is certified in less than all categories except that the activities of each certified operator, and the categories in his charge of any licensee, are confined to the category or categories granted.

History.—§1, ch. 59-454; similar provisions contained in former §482.10.

482.151 Special ID card.—

(1) The privilege of being a special ID card holder shall be available to individuals who qualify under this measure but no one shall be required to become a special ID card holder.

(2) The board, in its rules, may provide privileges, duties and limitations regarding holders of special ID cards. The board may permit special ID card holders to relieve certified operators from certain personal duties.

(3) The commission may issue special ID cards to qualified individuals who pass written examinations which may include practical demonstration. Application forms shall be prescribed by the commission. The commission, in its rules, shall provide for such matters as: required qualifications for applicants; phases or categories of examinations; time of examinations, and fees for each time the examinations are taken which shall not exceed ten dollars per category. Each special ID card must be renewed on or before each first day of June following the issuance thereof. The issuance fee and the renewal fee of each special ID card is five dollars.

History.—§1, ch. 59-454.

482.161 Grounds for revocation.—The commission may suspend, revoke or stop the issuance or renewal of any certificate, special ID card, license or identification card coming within the scope of this measure upon any one or more of the following grounds as the same may be applicable:

(1) Violation of any rule of the board, any rule of the commission or any provision of this act;

(2) Conviction in any court within this state of a violation of any provision of this act or any rule of the board;

(3) Habitual intemperance; addiction to narcotics;

(4) Conviction in any court in any state or in any federal court of a felony unless civil rights have been restored;

(5) Knowingly making false or fraudulent claims; knowingly misrepresenting the effects of material or methods; knowingly failing to use methods or materials suitable for the structural pest control undertaken;

(6) Performing structural pest control in a negligent manner;

(7) Failure to give to the board or to the commission or authorized representative thereof, true information upon request regarding methods and materials used, work performed, or other information essential to the administration of this measure.

(8) Fraudulent advertising; advertising in an unauthorized category.

History.—§1, ch. 59-454.

482.171 Revocation or suspension.—

(1) When the holder of any certificate, special ID card, license or identification card has committed any act which is ground for suspension or revocation, the certificate, special ID card, license or identification card of the violator may be declared revoked or suspended by a majority vote of the commission after reasonable notice and hearing. Before suspending or revoking any certificate, special ID card, license or identification card, the commission shall give notice to the holder thereof by registered or certified mail sent to the last known address appearing in the records of the commission. Such notice shall advise the holder of the certificate, special ID card, license or identification card:

(a) The charge placed against him;

(b) The time and place of the hearing to be held;

(c) That he may be represented in person or by counsel;

(d) Failure to appear will result in the suspension or revocation of the certificate, special ID card, license or identification card.

(2) After the service of such notice, the commission shall hold a hearing, open to the public, at the time and place specified in the notice at which hearing the holder of the certificate, special ID card, license or identification card may appear and defend against the charges.

(a) The hearing shall proceed civilly.

(b) Charges shall be made by the commission by setting the same forth in the notice.

(c) The commission may administer oaths, hear testimony, receive evidence and perform all functions and duties necessary or incident to such hearing.

(d) Subpoenas for witnesses to appear before the commission and subpoenas duces tecum may be issued by the circuit court clerk or states attorney of any judicial circuit and the same may be served by any sheriff, constable or deputy.

(3) The commission may stay its orders for one year or less with conditions.

(4) A revocation or suspension of a certificate, special ID card or license shall be of all categories unless the commission in its sole discretion suspends or revokes one or more categories thereof.

(5) Two years after a revocation, application may be made once to the commission for reinstatement and the commission may authorize reinstatement. One additional application may be made two years thereafter.

(6) Any charge of a violation of this measure by a licensee shall affect only the license of the business location from which the violation is alleged to have occurred.

History.—§1, ch. 59-454; similar provisions contained in former §482.13.

482.181 Judicial review.—Judicial review of orders of the commission may be had by writ of certiorari to the circuit court in the county of the commission's executive offices or Leon county in the manner and within the time provided by the Florida appellate rules.

History.—§1, ch. 59-454; §14, ch. 63-509.

482.191 Violation and penalty.—

(1) It is unlawful to solicit, practice, perform or advertise in structural pest control except as provided by this measure.

(2) Any person who violates any provision of this law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $300 or by imprisonment not exceeding 6 months or both, in the discretion of the court having jurisdiction.

(3) Any person who violates any rule of the state board of health relative to structural pest control is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100 or by imprisonment not exceeding 5 days or both, in the discretion of the court having jurisdiction.

History.—§1, ch. 59-454; similar provisions contained in former §482.24.

482.201 Liens on real and personal property.—

(1) A licensee may have and enforce a lien on real property improved for any money that shall be owing it for labor or services performed or materials furnished in accordance with his contract and with the direct contract, subject to the licensee's compliance with the provisions of chapter 84, the Mechanic's lien law.

(2) A licensee may have and enforce a lien for labor and services on personal property upon which the licensee has performed structural pest control and the same may be enforced in accordance with the provisions of and subject to the licensee's compliance with the provisions of chapter 84 and §85.09.

History.—§1, ch. 59-454.

482.211 Exemptions.—

(1) This act does not apply to structural pest control performed by the state, federal, city, or county governmental agencies while officially engaged or to state and educational agencies engaged in research pertaining to structural pest control, or to the measure of control used in: greenhouses, nurseries for plants, agricultural crops, trees, groves, orchards, crop dustings, or to structural pest control other than fumigation performed by a person upon his own individual residence or property.

(2) This act does not apply to the use of wood preservatives used only on wood, properly pretreated timber, properly pretreated lumber or to metal shields, when used in construction on structures.

(3) Each person when performing structural pest control under an exemption shall employ all necessary equipment and materials in a manner that will avoid hazards to public health and safety and such persons shall not be entitled to perform fumigation.

History.—§1, ch. 59-454.

482.221 Grandfather clause.—Each individual holding a valid Florida, structural pest control operator's certificate, special identification card or certificate of authorization to engage in structural pest control by the use of thermal-aerosol fogging machines, on October 1, 1959, upon making proper application, within fourteen months after October 1, 1959, on forms prescribed by the commission and upon paying the proper fee, shall receive from the commission, without examination, a certificate or special ID card as follows:

(1) If certified in termites and other wood destroying organisms, then a certificate covering said category.

(2) If certified in fumigation, then a certificate covering said category.

(3) If certified in both general household pests and rodent control, then a single certificate covering general household pests, which shall include rodent control.

(4) If certified in general household pests but not rodent control, then a certificate covering general household pests, which shall not include rodent control.

(5) If certified in rodent control, but not general household pests, then a special certificate covering rodent control.

(6) If only authorized by certificate of authorization for the use of thermal-aerosol fogging machines, then a special certificate limited to thermal-aerosol fogging machines, which said certificate may be renewed annually until January 1, 1965, at which time each said certificate shall be void. Provided, however, that the holder of such certificate may apply for exam-

ination to be certificated in the category of general household pests.

(7) If certified both in general household pests and authorized by certificate of authorization for the use of the thermal-aerosol fogging machines, then a certificate covering general household pests.

(8) If holding a special identification card for fumigation, then a special ID card covering fumigation.

History.—§1, ch. 59-454.

482.231 Use of fogging machines permitted.—Certified operators certified in the category of general household pests may use thermal-aerosol fogging machines in general household pests control.

History.—§1, ch. 59-454; similar provisions contained in former §482.18.

482.241 Liberal interpretation.—The provisions of this measure shall be liberally construed in order to effectively carry out the provisions of this act in the interest of the public and safety.

History.—§1, ch. 59-454.

482.25 Application of law.—This act does not apply to pending litigation or to any offense committed prior to October 1, 1959, and any such offense is punishable as provided by the statutes in force at the time such offense was committed.

History.—§2, ch. 59-454.

CHAPTER 483

MEDICAL TECHNOLOGY

483.01 Purposes.—The practice of medical technology in the state is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the medical technology profession merit and receive the confidence of the public and the practitioners of the healing arts and that only qualified medical technologists be permitted to practice medical technology in the state in accordance with the provisions of this chapter. All provisions of this chapter shall be liberally construed to carry out these objects and purposes.

History.—Comp. §1, ch. 25069, 1949.

483.02 Definitions.—For the purpose of this chapter the following definitions shall prevail:

(1) "Medical Technology" is the science, art or technique of performing any laboratory tests or examination on or of the blood, blood serum, feces, urine, sputum, exudates, transudates, organ contents or any by-products thereof, from the human body, living or deceased, the results of which are used or interpreted by a practitioner of the healing arts in the practice of his profession.

(2) "Medical Technologist" is a person qualified by training and experience in the art, science and technique of medical technology and duly licensed by the board to engage in the practice of medical technology in the state.

(3) "Medical Technologist Director" is a self-employed medical technologist operating his or her own laboratory, or the technical chief of a medical or clinical laboratory using the services of more than one medical technologist.

(4) The "board" is the board of examiners in the basic sciences.

History.—Comp. §2, ch. 25069, 1949.

483.03 Exemptions.—Nothing in this chapter shall apply to the following persons, practices and operations:

(1) The practice of his profession by a licensed practitioner of the healing arts, including the practice of medical technology by any such practitioner for his own use or for others of his profession.

(2) Persons who are employed by licensed practitioners of the healing arts and who perform laboratory procedures coming within the purview of this chapter, the results of which are used by their employers in the practice of their profession.

(3) Persons employed by any hospital to perform laboratory procedures coming within the purview of this chapter, whose work is under the direct supervision of a practitioner of the healing arts.

(4) The practice of medical technology in the discharge of their official duties by members of the United States armed forces, public health service, or veterans administration, including hospitals operated by any branch of the federal government for veterans of any war.

(5) The practice of medical technology in the discharge of their official duties by any employee of the state board of health or of any similar governmental health organization of any county or municipality of this state.

(6) The making of laboratory tests for practitioners of the healing arts by toxicologists and chemists where such tests are not usually made by medical technologists.

History.—Comp. §3, ch. 25069, 1949.

483.04 Unlawful practices.—It shall be unlawful:

(1) For any person who has not been duly licensed and registered under the provisions of this chapter to practice, offer to practice, or hold himself out as qualified to practice, medical technology, or to render any findings or report of any laboratory test or examination made within the field of medical technology.

(2) For any person who has not been duly licensed and registered under the provisions of the chapter as a medical technologist director to operate or direct the operation of a medical or clinical laboratory in which are performed the laboratory tests incident to the practice of medical technology.

(3) For any medical technologist or medical technologist director to render any findings or report, oral or written, of any test or examination made within the field of medical technology to any one other than a practitioner of the healing arts, a hospital or a governmental agency authorized to use such findings or report.

(4) For any medical technologist to practice, offer to practice, or hold himself or herself out as being qualified to practice, any of the healing arts.

History.—Comp. §4, ch. 25069, 1949.

483.05 Administration.—The board of examiners in the basic sciences is hereby vested with full and complete authority to administer the provisions of this chapter.

History.—Comp. §5, ch. 25069, 1949.
cf.—Ch. 456 Florida basic science law.

483.06 Organization of board.—

(1) A majority of the members shall constitute a quorum but should less than a majority be present on the date appointed for any meeting those present may adjourn from day to day, or from time to time until a quorum is present.

(2) The board may be sued in any county where the plaintiff or complainant resides, provided that a corporation or a nonresident of Florida may sue only in the circuit court for Leon county. Service of process in any suit may be made on the board by serving the same on the attorney general of Florida.

History.—Comp. §6, ch. 25069, 1949.

483.07 Powers and duties of board.—The board shall, subject to the provisions of this chapter, exercise the following powers and duties;

(1) It shall adopt and use a corporate seal, and prescribe such rules for its internal government as it may deem proper.

(2) It shall issue licenses and conduct examinations to ascertain the qualifications and fitness of applicants;

(a) To practice medical technology, and

(b) To become a medical technologist director, and shall prescribe rules and regulations in connection therewith.

(3) Formulate rules and regulations whereby schools and colleges offering courses in medical technology and training schools for medical technologists shall be approved.

(4) Conduct proceedings relative to the issuance, re-issuance, renewal, revocation and suspension of licenses under this chapter.

(5) Employ such clerical and professional assistants, including attorneys, as shall be necessary to carry out the provisions of this chapter.

(6) Maintain complete records of all its proceedings and of all licenses issued hereunder.

(7) The board in the exercise of its powers and duties may compel the attendance of witnesses and the production of documents in the same manner as may now or hereafter be provided therefor in the courts of law of this state; it may administer oaths, take testimony and receive proofs concerning all matters within its jurisdiction.

(8) The board shall forward an annual report to the governor before April 1st of each year covering the activities of the board during the preceding calendar year.

(9) The board shall perform all other lawful acts necessary to carry out and make effective the provisions of this chapter.

History.—Comp. §7, ch. 25069, 1949.

483.08 Qualifications of applicants.—Each person who desires to practice medical technology in the state shall file with the board a written application for a license as a medical technologist and furnish satisfactory proof that he or she is at least twenty-one years of age and of good moral character and a citizen of the United States. Each such applicant must have completed at least two years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a four year period of study, in a recognized college or university approved by the board; and in addition each applicant must be a graduate of an approved school for training medical technologists or must have received equivalent training during a continuous period of not less than two years in an established medical or clinical laboratory approved by the board. All applications shall be under oath and the board is hereby authorized and empowered to adopt such forms as are necessary to implement this section, and to adopt such rules and regulations in regard to the qualifications of the applicants for examination as it from time to time may deem necessary and proper. Each application for examination shall be accompanied by a fee of ten dollars which said fee shall be retained whether or not a license is granted, but shall be refunded in case the applicant is not qualified for the examination.

History.—Comp. §8, ch. 25069, 1949.
cf.—§455.03 Dispensing with examination for veterans.

483.09 Examination of applicants.—The board shall conduct examinations of applicants in such manner as to thoroughly test their qualifications to practice medical technology and such examination may be oral, written, technical, theoretical and practical and shall include the following subjects: bacteriology, biochemistry, hematology, parasitology and serology, and such subdivisions of these general subjects as relate to the practice of medical technology.

History.—Comp. §9, ch. 25069, 1949.

483.10 Licenses to be displayed.—The board shall issue a license to each person who successfully passes the examination provided for in §483.09 and to every other person who becomes entitled to practice medical technology under the terms of this chapter. All such licenses and the renewal certificates hereafter provided for shall be posted and kept conspicuously displayed in the office or laboratory wherein each licensee practices.

History.—Comp. §10, ch. 25069, 1949.

483.11 Special licenses.—The board shall have authority to issue special licenses under the following circumstances:

(1) In all cases where the applicant for examination and license is otherwise qualified except by reason of age, such applicant having not yet reached the age of twenty-one years; provided that no person under the age of eighteen shall be licensed hereunder.

(2) In all cases where the applicant shall be otherwise qualified and shall make application for a license to practice only one or more, but not all, of the following branches of medical technology; bacteriology, hematology, parasitology, serology, bio-chemistry, blood-bank

technique and related fields. Upon receipt of such application and the other provisions of this law having been complied with by applicant, the board shall proceed to examine such applicant in the special field for which a license is sought, in the manner provided by §§483.09 and 483.10.

(3) Where any special license is granted by the board, the license issued shall be marked by the board in some distinctive manner and the reason for its differentiation clearly indicated thereon.

History.—Comp. §11, ch. 25069, 1949.

483.12 Licensing of medical technologist directors.—

(1) The board may license as a medical technologist director any licensed medical technologist who has graduated with a major in science from a recognized college or university approved by the board and who has worked as a medical technologist for a period of at least two years immediately prior to making application under this section and who passes an examination prescribed by the board for the purpose of testing the general fitness of the applicant to direct and operate a medical or clinical laboratory; provided, however, any licensed medical technologist who does not qualify under §483.13 and who is working in the state as a medical technologist at the time this chapter becomes a law may be licensed as a medical technologist director without examination at any time prior to January 1, 1951, if, in the opinion of the board, he is qualified by training and experience to direct and operate a laboratory.

(2) The board shall prescribe the form of application for such license and the information to be supplied thereon. Such application shall be under oath and shall be accompanied by a fee of fifty dollars. Each license provided for in this section shall be prominently displayed in the laboratory of the licensee.

History.—§12, ch. 25069, 1949; (1) a. by §10, ch. 26484, 1951; (1) a. by §13, ch. 61-530.

483.13 Grandfather clause.—

(1) Any person, who, on May 16, 1949, is actively engaged in operating a medical or clinical laboratory in the state, and who has been a resident of this state for six months immediately prior to making application, shall receive from the board a license as a medical technologist director upon making an application under oath in proper form as prescribed by the board and paying a fee of fifty dollars; provided, however, that no such license shall be granted to anyone not licensed as a medical technologist under the provisions of this chapter.

History.—Comp. §13, ch. 25069, 1949; (1) R. by §24, ch. 57-1, remaining subsection renumbered.

483.14 Disposition of fees; expenses of board.—All moneys received by the board under the provisions of §§483.08, 483.12, 483.13 and 483.17 shall be received and accounted for by the secretary of the board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. Each member of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return. The board is authorized to conduct reasonable educational programs at state-wide meetings of the medical technologists of the state and the costs of such programs may be paid from the moneys in the medical technology trust fund.

History.—§14, ch. 25069, 1949; am. §33, ch. 28215; (3) R. by §33, ch. 28215, 1953; §22, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

483.15 Duties and powers of state board of health.—The enforcement of the several provisions of the laws of this state governing and regulating the practice of medical technology and the operation and management of medical laboratories in this state as are now in force or as may be hereafter enacted is vested in the state board of health; provided, however, that the powers granted by this section shall not apply to the examination and registration of applicants before the board of examiners in the basic sciences, nor to any proceedings of said board relative to the issuance, re-issuance, renewal, revocation or suspension of licenses under this chapter. The state board of health shall have the following powers and duties in order to enforce the provisions of this chapter:

(1) It may employ such inspectors, enforcement officers and clerical assistants as may be required.

(2) It may inspect all laboratories at any time to determine sanitary conditions, physical equipment, methods of operation and to inspect licenses and renewal certificates required by this chapter, and it may conduct investigations of alleged violations of this chapter.

(3) It shall make available to the board of examiners in the basic sciences the results of its inspections and investigations, and may recommend appropriate actions to be taken by said board in the enforcement of this chapter.

(4) It shall maintain complete records of all licenses issued under this chapter and of all annual registrations issued pursuant to §§483.16 and 483.17. The board of examiners in the basic sciences shall keep the state board of health advised at all times of all its proceedings and decisions relative to the issuance, revocation or suspension of licenses under this chapter.

History.—Comp. §15, ch. 25069, 1949.

483.16 Annual registration of laboratories; fees.—

(1) Every medical laboratory subject to the provisions of this chapter shall be registered annually on July 1st with the state board of health. Prior to July 1st of each year every owner or proprietor of a medical laboratory shall file an application for such registration on a form prescribed by the state board of

health which shall disclose the name of the laboratory, its address, its owner or owners, the name and license number of its medical technologist director or directors, and the name and license numbers of each medical technologist employed or working therein. A fee of twenty dollars shall be paid to the state board of health for such registration by the owner or proprietor of the laboratory, such fees to be deposited into the general revenue fund of the state.

(2) Failure to effect the annual registration as provided in this section shall be grounds for revocation or suspension of the medical technologist director license or licenses of those operating the laboratory.

History.—§16, ch. 25069, 1949; §1, ch. 61-34.

483.17 Annual registration of medical technologists; fees.—

(1) Each medical technologist shall file an application with the state board of health for an annual renewal certificate before July 1st of each year on such form as may be prescribed by the state board of health. Each such application shall be accompanied by a fee of not more than five dollars as fixed by the board of examiners in the basic sciences. The state board of health shall transmit all such fees to the secretary of the board of examiners in the basic sciences.

(2) The state board of health shall notify in writing each medical technologist who has failed to comply with the foregoing subsection by September 1 of any year, which notice shall advise the delinquent that his failure to apply for a renewal license may result in the cancellation of his license in accordance with the provisions of this chapter.

(3) Any medical technologist license may be canceled and annulled by the board of examiners in the basic sciences if the holder thereof fails to secure a renewal certificate within a period of six months from July 1 of each year; unless, however, such person has been prevented from applying for renewal for good cause, of which the board will be the sole judge of the sufficiency thereof.

(4) Upon cancellation and revocation of any license under the provisions of this section, the former holder thereof may be reinstated only after application filed and examination taken in accordance with §§483.09 and 483.10 hereof.

History.—§17, ch. 25069, 1949; (1) a. by §22, ch. 61-514.

483.18 Revocation and suspension of licenses.—The board shall have the power to suspend for a specified period of time or to revoke any license issued under the provisions of this chapter whenever it shall be satisfactorily proven to the board after full hearing that any licensed medical technologist or medical technologist director practicing in the state has been guilty of fraud, deceit, or misrepresentation in obtaining a license, or of gross immorality, or has been convicted of a felony, or is an habitual user of intoxicating beverages or drugs to such an extent as to render him unfit for the practice of medical technology, or is guilty of malpractice, or is grossly ignorant or incompetent, or whose equipment is grossly inadequate or who is guilty of wilful negligence in the practice of medical technology, or is guilty of employing or permitting any unlicensed person to perform any work which can only be done legally by a person holding a license to practice medical technology, or fails to apply for and secure an annual renewal certificate as provided in §483.17. Charges accusing any licensee under the provisions of this chapter of having committed any of the foregoing acts or practices shall be submitted in writing under oath and a copy thereof shall be served on the accused not less than thirty days prior to the hearing thereon and the accused shall be furnished written notice of the time and place where said charges will be heard and determined; provided, however, that said charges must be heard in the county where the accused resides or has his place of business. The board is authorized and empowered to prescribe forms, rules and regulations in order to carry out the provisions of this section and may authorize the payment out of this board's operating fund of all necessary expenses in connection with any proceeding for the suspension or revocation of any license. No suspension or revocation shall be made except upon a majority vote of the full board. Any person whose license is suspended or revoked under the provisions of this chapter shall have right of review by certiorari by the circuit court of the county in which such person resides or has his place of business; the petition shall be filed within sixty days after entry of order of suspension or revocation.

History.—§18, ch. 25069, 1949; §15, ch. 63-509.

483.19 Injunctions against violators.—Any person who is practicing medical technology under the terms of this chapter without being properly licensed hereunder or any person who violates any of the provisions of this chapter or any order, decision, rule or regulation promulgated hereunder by the board may be enjoined by the courts of this state from any such violation or unlawful practice of medical technology at the instance of the board or any citizen of this state injured or damaged thereby.

History.—Comp. §19, ch. 25069, 1949.

483.20 Criminal penalties.—

(1) Any person using or attempting to use as his own a forged license, forged renewal certificate or any forged qualifications or identifications, shall be deemed guilty of a felony and upon conviction thereof shall be subject to the same penalties of fine and imprisonment as are now made and provided by the laws of this state for the crime of forgery.

(2) Any person who shall violate any of the provisions of this chapter or who procures, aids and abets the violation of any provision hereof shall be guilty of a misdemeanor and punished according to the laws of the state for the punishment of misdemeanors.

History.—Comp. §20, ch. 25069, 1949.

CHAPTER 484

DISPENSING OPTICIANS

484.01 State board of dispensing opticians; jurisdiction; scope of law.—There is hereby created a board to be known as the state board of dispensing opticians, which shall have exclusive jurisdiction over the trade or occupation of dispensing opticians. This chapter provides for the examination and regulation of dispensing opticians; provides a license tax and an occupational tax on persons, partnerships or corporations now or hereinafter engaged in such trade or occupation; prohibits the sale of eyeglasses, spectacles, artificial eyes, lenses, contact lenses and optical devices, except as herein provided, unless and until the dispensing optician has qualified with and obtained a license from the said state board of dispensing opticians; this chapter also provides for the licensing of dispensing opticians having a license to practice and trade on June 8, 1949; this chapter also prescribes the manner of enforcing the provisions of this chapter and fixes the penalties for the violation of the terms and provisions thereof; the said chapter defines the jurisdiction, limitation and powers of said state board of dispensing opticians. Natural persons, partnerships or corporations may engage in the trade or occupation of dispensing opticians, but each place of business maintained in the state shall have a duly licensed dispensing optician to supervise the preparing, fitting and adjusting of optical devices.

History.—Comp. §1, ch. 25255, 1949.

484.02 Dispensing optician defined.—A dispensing optician is defined as one who prepares and dispenses lenses, spectacles, eyeglasses and optical devices to the intended user thereof on the written prescription of a physician or optometrist, duly licensed to practice his profession. A dispensing optician may duplicate lenses without prescription, provided, however, that such duplication shall be exact as to type, form and effective power and provided, further, that said dispensing optician shall not engage in the diagnosis of the diseases of the human eye or attempt to determine the refractive powers of the human eyes or, in any manner, attempt to prescribe for or treat diseases or ailments of human beings. A dispensing optician who qualifies under this chapter shall be determined and recognized as engaging in a lawful trade or occupation in the state. The state board of dispensing opticians shall have exclusive jurisdiction in the enforcement of this chapter over all persons, partnerships or corporations engaged in business as a dispensing optician, whether licensed or unlicensed; provided, however, that nothing herein contained shall be construed as limiting or in anywise abrogating the power or authority of any board or commission created under any of the Laws of Florida, defining and regulating any profession, to enforce the provisions of such respective laws, or exercising any of the powers contained in such laws against violators thereof, even though engaged in the business of a dispensing optician.

History.—Comp. §2, ch. 25255, 1949.

484.03 Application for license; examination; oath.—

(1) Any person wishing to obtain the right to practice the trade or occupation of dispensing optician as hereinbefore defined shall, before it shall be lawful for him to do so in the state, make application to the Florida state board of dispensing opticians, upon such form and in such manner as shall be adopted and prescribed by said board, and obtain a license from the board so to do. Unless such person shall have obtained a license as aforesaid, it shall be unlawful for him to practice the trade or occupation of dispensing optician in the state and he shall be subject to the penalties hereinafter prescribed. The board shall admit to examination any candidate who pays the fee provided for in this chapter and submits evidence satisfactory to the board, verified on oath, that

(a) The applicant is more than twenty-one years of age.

(b) The applicant is of good moral character.

(c) The applicant has satisfactorily completed a one school year of not more than eight hundred fifty hours course of study in a recognized school of optical dispensing or has had practical training and experience of a grade and character satisfactory to the board for not less than two years under the supervision of a dispensing optician, a licensed physician or a licensed optometrist; provided however that any time spent in a recognized school shall be considered as part of the apprenticeship period provided herein.

(2) Applicants for examination may be examined by the said board upon matters pertaining to mathematics and physics, opthalmic materials and laboratory technique, opthalmic optics, opthalmic dispensing and practical sub-

jects. When any applicant passes the necessary examination and meets the qualifications hereinabove set forth, the state board of dispensing opticians shall issue a license to such person to practice the trade or occupation of dispensing optician. Such license shall be conspicuously displayed in the office or place of business of the dispensing optician and it shall not be necessary to remove the same so long as such dispensing optician continues to practice his trade or occupation in the state and said license is not revoked or suspended by the state board of dispensing opticians.

History.—Comp. §3, ch. 25255, 1949.

484.04 State board to prepare examination; fee.—Examination of applicants for license to practice the trade or occupation of dispensing optician shall be made by the state board of dispensing opticians, consisting of five licensed dispensing opticians, according to the methods and covering subject matter deemed by it to be the most practical and expeditious to test the applicant's qualifications. The board may require the examination to be both written and oral. There shall be paid to the secretary-treasurer of the board by each applicant for license an examination fee of twenty-five dollars, which is accompanied by the application. No part of any fee is returnable under any circumstances.

History.—Comp. §4, ch. 25255, 1949.

484.05 State board of dispensing opticians; membership, powers, duties.—There is hereby created the state board of dispensing opticians which said board shall supervise the practice of dispensing opticians and enforce the provisions of this chapter and which said board shall be composed of five licensed dispensing opticians, each of whom shall be resident of the state who has been engaged in the practice of dispensing optician in said state for not less than five years preceding the time of his appointment. The members of said board shall be appointed by the governor of the state and each such appointee shall hold office for a period of four years, or until his successor is appointed and qualified, except as hereinafter provided. Within thirty days after June 8, 1949, it shall be the duty of the governor to appoint five qualified dispensing opticians to said board, in the manner following: One member shall be appointed for one year; one member shall be appointed for two years; one member shall be appointed for three years; and two members shall be appointed for a full term of four years; thereafter, all appointments shall be made for a term of four years. The governor is also empowered to fill vacancies that may occur from time to time to said board with persons duly qualified. Immediately after said appointment aforesaid, the said board shall convene and organize by selecting from among their number a chairman and secretary-treasurer and shall adopt rules and regulations governing the examination of applicants, the enforcement of the provisions of this chapter and shall establish a code of ethics and standards of practice for dispensing opticians and such other rules and regulations governing procedure as shall be necessary and proper for the carrying out of the objectives of this chapter. Said board shall, however, provide for meetings at least once each year for the purpose of receiving applications and giving examinations as above provided and may meet at other times and at such places as the board shall designate from time to time or fix by regulations. The state board of dispensing opticians may administer oaths, summon witnesses, take testimony in all matters relating to its duties. Said board shall issue license to practice the trade or occupation of dispensing optician to all persons who shall furnish satisfactory evidence of attainments and qualifications under the provisions of this chapter and the rules and regulations of the board, such license shall be signed by the chairman and attested by the secretary-treasurer of the board under its adopted seal and it shall give absolute authority to the person to whom it is issued, to practice the trade or occupation of dispensing optician in this state.

History.—Comp. §5, ch. 25255, 1949.
cf.—§455.03 Dispensing with examination of veterans.

484.06 Optical dispensing; unlawful acts.—It shall be unlawful for any person, partnership or corporation to offer any gift or premium or discount in any form or manner in conjunction with the practice of optical dispensing, or to advertise either directly or indirectly by any means whatsoever any definite or indefinite price or credit terms on prescriptive or corrective lenses, frames, complete prescriptive or corrective glasses or any optical dispensing service; to advertise in any manner that would tend to mislead or deceive the public; to solicit patronage by advertising that he or some other person or group of persons possess better qualifications or are best trained to perform the service or to render any service connected with optical dispensing. This section is passed in the interest of public safety, health and welfare and its provisions shall be liberally construed to carry out its objectives and purposes.

History.—Comp. §6, ch. 25255, 1949.

484.07 When license not required.—Nothing herein contained shall be construed to mean that an employee of a licensed physician or a licensed optometrist shall be required to secure a license under this chapter, or be otherwise subject to the provisions of this chapter, so long as said employee is working exclusively for and under the direct supervision of said licensed physician or said licensed optometrist and does not hold himself out to the public generally as a dispensing optician.

History.—Comp. §7, ch. 25255, 1949.

484.08 License renewed annually, fee; state board, compensation.—Annually on or before July 1, each and every licensed dispensing

optician shall pay to the secretary of the state board of dispensing opticians a sum to be fixed annually by said board, of not less than ten dollars nor more than twenty-five dollars, as a renewal of the license fee. Should any licensed dispensing optician fail to pay said fee after notice from the secretary by registered mail, and continue to practice optical dispensing, he shall be punished in the same way as provided in this chapter for misdemeanors. Members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings, not to exceed twelve meetings per year, and shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return; the secretary-treasurer shall be reimbursed for all expenses incurred by him in the keeping of the records of the board and the carrying on of the business of the board directed to be done by him. Said board may employ such investigators or other employees as may be deemed necessary to effectually carry out the provisions of this chapter. The attorney general shall be the legal advisor of said board. The compensation of the persons employed by the board shall be paid in the same manner as the per diem and expenses of said board are paid. The secretary-treasurer of said board shall be paid a salary not to exceed five hundred dollars per year in addition to per diem and mileage allowances and necessary expenses as fixed and approved by said board. The secretary-treasurer, before assuming the duties of his office, shall execute a bond in the sum of two thousand dollars to the state, said bond to be approved by the board, conditioned for the faithful discharge of the duties of his office, the premium for such bond to be paid for from the funds of the board as other expenses. All moneys received by the board under this chapter shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the chairman and secretary-treasurer of said board. The secretary-treasurer of the board shall make an annual report to the governor of the state on or before June 10 of each year, which report shall contain a report of all moneys received and disbursed pursuant to this chapter.

History.—§9, ch. 25255, 1949; §34, ch. 28215, 1953; §23, ch. 61-514.

cf.—§113.07 Bonds of officials.
§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.
§216.211 Appropriations, maximum; adjustment of budgets; state budget commission.

484.09 Unlawful practice.—Any person who shall practice the trade or occupation of dispensing optician as defined in this chapter, without first complying with the provisions of this chapter, or who shall violate any of the provisions of the sections of this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment of not more than six months in the county jail, or both. This chapter, however, shall not apply to licensed physicians or optometrists licensed under the laws of the state and who, on June 8, 1949, shall be engaged in optical dispensing. This chapter, however, shall not now or hereafter apply to physicians or optometrists licensed under the laws of the state, nor shall such licensed physicians or optometrists be subject to the jurisdiction of the state board of dispensing opticians herein created.

History.—Comp. §10, ch. 25255, 1949.

484.10 State boards; rules and regulations; occupational licenses.—In addition to the powers and duties of the board hereinabove enumerated, said board shall have the power to adopt rules and regulations establishing standards of practice for the trade or occupation of dispensing optician and for any breach of provisions of this chapter or of any rule or regulation of the board adopted pursuant hereto, or of any standard adopted by the board for the practice of the trade or occupation of dispensing optician, may suspend or revoke the license of any dispensing optician after notice and hearing prescribed in the regulations of the board, and is hereby authorized to proceed in any of the courts of this state by injunction to restrain any continued violation of this chapter or of such rule or regulation of or standards so adopted. It shall be unlawful for any licensing agency, either state, county, or municipal, to issue an occupational license tax to practice as a dispensing optician unless the applicant therefor shall first exhibit to such official a current certificate issued by the state board of dispensing opticians, showing that the applicant has been qualified by said board to practice as a dispensing optician in accordance with the terms of this chapter. Any person, partnership or corporation, engaged in the trade or occupation of dispensing optician shall pay an occupational license tax of ten dollars per year for the privilege of engaging in such trade or occupation, said license tax to be paid in accordance with the laws regulating the payment of other occupational taxes. Said ten dollar license tax shall be paid for state license; county and municipal taxes shall be in a sum as now required by law, not to exceed five dollars each per year. Any dispensing optician whose license is suspended or revoked under the provisions of this chapter shall have the right of review by certiorari by the circuit court of the county in which such dispensing optician resides or has his place of business, provided such petition shall be filed within sixty days after entry of order of suspension or revocation in the manner provided by the Florida appellate rules.

History.—§11, ch. 25255, 1949; §16, ch. 63-509.

cf.—Ch. 205 License taxes.

484.11 Application of law.—

(1) This chapter shall not apply to any person who is or was United States patentee of such special optical devices as bifocal, bi-

plane or multi-visual lenses and who has for a period of over ten years engaged in the business of lens grinding for such and other optical devices in accordance with prescriptions or specifications of physicians, optometrists or optical scientists.

(2) Nothing in this chapter shall be construed to prevent the sale of spectacles for reading purposes, toy glasses, goggles or sun glasses consisting of plano white, plano colored or plano tinted glasses, or ready made non-prescription glasses, nor shall anything in this chapter be construed to affect in any way the manufacturing and sale of plastic or glass artificial eyes or any persons engaged in said manufacturing or sale of plastic or glass artificial eyes.

History.—Comp. §§8, 11½, ch. 25255, 1949.

CHAPTER 485*

MIDWIFERY

485.011 Midwifery; who may practice.—No person other than a duly registered and licensed physician shall practice midwifery or use the name or title of midwife unless such person shall be duly registered as a midwife with the state board of health.

History.—§1, ch. 14760, 1931; CGL 1936 Supp. 3403(1).

485.021 Application to practice midwifery.—No license to practice midwifery shall be issued unless written application therefor sponsored by two registered practicing physicians has been made in the form prescribed to the state health officer.

History.—§2, ch. 14760, 1931; CGL 1936 Supp. 3403(2).

485.031 Qualifications of applicant to practice midwifery.—

Every applicant for a license to practice midwifery must possess the following qualifications:

(1) Be not less than twenty-one years of age.

(2) Be able to read the manual for midwives intelligently and to fill out the birth certificates legibly; provided that in case of persons who have extended experience or in other exceptional circumstances, this requirement may be waived by the state health officer.

(3) Be clean and constantly show evidence in behavior and in home habits of cleanliness.

(4) (a) Possess a diploma from a school for midwives recognized by the state health officer; or

(b) Have attended under the supervision of a duly licensed and registered physician not less than fifteen cases of labor and have had the care of at least fifteen mothers and newborn infants during lying-in period of at least ten days each; and shall possess a written statement from said physician that she has attended such cases in said fifteen cases, with the date engaged and address of each; and that she is reasonably skilled and competent and establish the fact that she is reasonably skilled and competent to the satisfaction of the state health officer; or

(c) Present other evidence satisfactory to the state health officer showing her qualifications, and

(5) Present evidence satisfactory to the state health officer of good moral character in such form as the state health officer by rule and regulation may prescribe.

History.—§3, ch. 14760, 1931; CGL 1936 Supp. 3403(3).

485.041 License good for one year.—Unless revoked every license to practice midwifery shall permit the holder thereof to practice only during the current calendar year, the term of said calendar year being from January first.

History.—§4, ch. 14760, 1931; CGL 1936 Supp. 3403(4).

485.051 State health officer to make rules regulating practice of midwifery.—The state health officer may make such rules and regulations as he may deem necessary for regulating the practice of midwifery within the state.

History.—§5, ch. 14760, 1931; CGL 1936 Supp. 3403(5).

485.061 Revocation of license.—The state board of health may revoke the license of such persons practicing midwifery pursuant to this chapter, after having given the midwife an opportunity to be heard; provided it has cause.

History.—§6, ch. 14760, 1931; CGL 1939 Supp. 3403(6).

485.071 Midwives to conform to rules and regulations.—All midwives to whom licenses shall be issued pursuant to this chapter must conform to all rules and regulations of the state board of health, the provisions of public health laws of the state, the rules and regulations of any local boards of health and all lawful orders and directions of the state board of health or local boards of health or local health officers.

Any violation on the part of any midwife of any of the rules and regulations of the state board of health, the provisions of the public health laws or the rules and regulations of any local boards of health, or the disobedience of any lawful order of the state board of health, or any local boards or health officers, shall be sufficient cause for the revocation of the license issued to the midwife, and shall also be sufficient cause for the withholding of license to practice midwifery from any midwife so offending in any manner as aforesaid by the state health officer.

History.—§7, ch. 14760, 1931; CGL 1936 Supp. 3403(7).

485.081 Midwives to practice in normal cases only.—A duly licensed and registered midwife may practice midwifery in cases of normal labor and in no others. No midwife shall in any case use instruments of any kind, or assist labor by any artificial, forcible or mechanical manner or attempt to remove adherent placentae, or administer, prescribe, advise or employ any poisonous drug or herb or medicine or attempt the treatment of disease except where the attendance of a physician cannot

* Originally chapter 457.

be speedily secured and in such cases, the midwife shall secure the attendance of the physician as soon as possible.

History.—§8, ch. 14760, 1931; CGL 1936 Supp. 8403(8).

485.091 Penalty for violation of chapter.—Any person who fails or neglects to register as required by the provisions of §485.011, or who shall violate the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not more than fifty dollars.

History.—§7, ch. 12005, 1927; CGL 7703.

cf.—§455.04, Who has duty of enforcement.

CHAPTER 486

PHYSICAL THERAPY PRACTICE ACT

486.011 Short title.—This chapter may be cited as the "physical therapy practice act."

History.—§1, ch. 57-67; similar provision contained in former §486.01.

486.021 Definitions.—In this chapter, unless the context otherwise requires:

(1) "Physical therapy" means the treatment of any disability, injury, disease, or other condition of health of human beings, or the prevention of such disability, injury, disease or other condition of health and rehabilitation as related thereto by the use of the physical, chemical and other properties of air, cold, heat, electricity, exercise, massage, radiant energy, including ultraviolet, visible and infra red rays, ultrasound, water and apparatus and equipment used in the application of the foregoing or related thereto. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in this chapter.

(2) "Physical therapist" means a person who applies physical therapy as defined in this chapter upon the prescription, and under the direction and supervision of a person licensed and registered in this state to practice medicine and surgery, and whose license is in good standing.

(3) "Board" means the state board of medical examiners.

(4) Words importing the masculine gender may be applied to females.

History.—§2, ch. 57-67; similar provisions contained in former §486.02.

cf.—ch. 456 Basic science law.
ch. 458 Board of medical examiners.

486.031 Registration requirements. — To be eligible for registration by the board as a physical therapist an applicant must:

(1) Be at least twenty-one years old and a citizen of the United States, and

(2) Be of good moral character, and

(3) Have been graduated by a high school, and

(4) (a) Have been graduated from a school giving a course in physical therapy, which course, as given by such school has been approved for training physical therapists by the appropriate sub-body of the American medical association, if any, at the time of his graduation; or if graduated prior to 1936, the course was approved by the American physical therapy association at the time of his graduation and pass to the satisfaction of the board, an examination conducted by it to determine his fitness for practice as a physical therapist as hereinafter provided; or

(b) Be entitled to registration without examination as provided in §486.071 or §486.081.

History.—§3, ch. 57-67; similar provisions contained in former §486.03.

486.041 Application for registration. — A person who desires to be registered as a physical therapist shall apply to the board in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by §486.031. He shall pay to the board at the time of filing his application, a fee of twenty-five dollars, no part of which shall be returned.

History.—§4, ch. 57-67; similar provisions contained in former §486.04.

486.051 Examination of applicants.—

(1) The board shall hold examinations for applicants for registration as physical therapists at least once a year, and more often at the discretion of the board, at a time and place to be determined by the board. Examination of applicants for registration as physical therapists shall be made by the state board of medical examiners according to the methods deemed by it to be most practical and expedient to test the applicant's qualifications, including oral and written tests and practical demonstrations. In the written tests each applicant shall be designated by a number instead of by name so that his identity shall not be disclosed to the members of the board until after the examination papers are graded. Examinations shall be given in the following subjects: the applied sciences of neuroanatomy, kinesiology, psy-

chology, physics, physical therapy as defined in this chapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery, medical ethics, and the technical procedures in the practice of physical therapy as defined in this chapter.

(2) The board shall employ three registered physical therapists for a term of three years each to aid in such examination, and the board shall fix their compensation and pay their expenses; provided, however, that the registered physical therapists presently so employed shall serve until the expiration of their respective terms of employment or until their successors shall be employed. At any time there is a vacancy to be filled by the employment of a registered physical therapist, the Florida chapter of the American physical therapy association shall recommend to the board in a number of not less than twice the vacancies to be filled, and the board may appoint from submitted list, in its discretion, any of those so recommended. An annual registration fee of five dollars shall be required of all registered physical therapists, the time and place of payment to be determined by the board.

History.—§5, ch. 57-67; similar provisions contained in former §§486.05, 486.06; (2) a. by §24, ch. 61-514.
cf.—§455.03 Dispensing with examinations of veterans.

486.061 Issuance of certificates to applicants passing examinations.—The board shall register as a physical therapist and shall furnish a certificate of registration to each applicant who successfully establishes his eligibility under the terms of this law, and any person who holds a certificate of registration pursuant to this section may use the words "physical therapist," "physiotherapist," "physical therapy technician," or "registered physical therapist," and he may use the letters "P.T.," "Ph.T.," "P.T.T.," or "R.P.T.," in connection with his name or place of business to denote his registration hereunder.

History.—§6, ch. 57-67; similar provisions contained in former §§486.07, 486.09.

486.071 Issuance of certificates without examination.—

(1) The board shall register as a physical therapist and shall furnish a certificate of registration without examination, to any person who applies for such registration on or before October 1, 1957, and who:

(a) As of July 1, 1957 meets the qualifications for a physical therapist, as set forth by the American physical therapy association, or the American registry of physical therapists, or

(b) As of July 1, 1957 has practiced physical therapy in Florida for six years or more, and has, in the opinion of the board, sufficient training and experience in physical therapy as to be entitled to registration without examination.

(2) Any person who holds a certificate of registration pursuant to subsections (1) or (2) of this section may represent himself as a "physical therapist," "physiotherapist," "physical therapy technician," or "registered physical therapist," and he may use the letters "P.T.," "Ph.T.," "P.T.T.," or "R.P.T.," in connection with his name or place of business to denote his registration hereunder. At the time of making application for registration pursuant to the terms of this section each applicant shall pay to the board a fee of twenty-five dollars, no part of which shall be returned.

History.—§7, ch. 57-67; similar provisions contained in former §486.09.

486.072 Disposition of fees.—All moneys received by the board under this chapter shall be deposited and expended pursuant to the provisions of §215.37. All such expenditures shall be paid upon presentation of vouchers approved by the president and secretary-treasurer of said board.

History.—§24, ch. 61-514.
cf.—§215.37 Examination and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

486.081 Issuance of certificates to persons passing examination of certain other physical therapy examining boards; permits.—The board may register as a physical therapist and furnish a certificate of registration without examination to any applicant who presents evidence, satisfactory to the board, of having passed the examination in physical therapy of the American registry of physical therapists, or an examination before a similar lawfully authorized examining board in physical therapy of another state, District of Columbia, territory or foreign country, if the standards for registration in physical therapy in such other state, district, territory or foreign country are determined by the board to be as high as those of this state. Any person who holds a certificate of registration pursuant to this section may use the words "physical therapist," "physiotherapist," "physical therapy technician," or "registered physical therapist," and he may use the letters "P.T.," "Ph.T.", "P.T.T.," or "R.P.T.," in connection with his name or place of business to denote his registration hereunder. If the board determines that the applicant has not passed such examination as to entitle him to a certificate of registration without examination the board may, if it determines the applicant possesses sufficient other qualifications for the practice of physical therapy, issue the applicant a permit allowing him to practice physical therapy, pursuant to the terms of this chapter, until the holding of the next examination provided for by this chapter, but not for a longer period of time. At the time of making application for registration without examination, pursuant to the terms of this section the applicant shall pay to the board a fee of twenty-five dollars, no part of which shall be returned.

History.—§8, ch. 57-67; similar provisions contained in former §486.09.

486.091 Refusal, revocation and suspension of registration.—The board, after registered notice in writing to the party in interest, shall

hold a hearing within thirty days after the mailing of said notice, may refuse to register any applicant and may suspend or revoke the registration of any registered person:

(1) Who is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to incapacitate him for the performance of his professional duties; or

(2) Who is guilty of fraud in the practice of physical therapy or deceit in obtaining his registration as a physical therapist; or

(3) Who has been convicted in a court of competent jurisdiction of a felony. The conviction of a felony shall be the conviction of any offense which, if committed in the state, would constitute a felony under the laws of this state; or

(4) Who is guilty of treating or undertaking to treat ailments of human beings otherwise than by physical therapy, as authorized by this chapter; or

(5) Who has undertaken to practice physical therapy independently of the prescription, direction, and supervision of a person licensed by the state to practice medicine; or

(6) Who has been found by a court of competent jurisdiction to be a mentally ill person and has not thereafter been restored to legal capacity; or

(7) Who is guilty of conduct unbecoming a person registered as a physical therapist or detrimental to the best interest of the public.

History.—§9, ch. 57-67; similar provisions contained in former §486.08.

486.101 False representation of registration prohibited.—It shall be unlawful for any person who is not registered under this chapter as a physical therapist or whose registration has been suspended or revoked, to use in connection with his name or place of business the words or letters "Physical therapist," "physiotherapist," "physical therapy technician," "registered physical therapist," or the letters "P.T.," "Ph.T.," "P.T.T.," or "R.P.T.," or any other words, letters, abbreviations or insignia indicating or implying that he is a physical therapist or who in any other way, orally, in writing, in print or by sign, directly or by implication represents himself as a physical therapist.

History.—§10, ch. 57-67; similar provisions contained in former §486.10.

486.111 Supervision of licensed practitioner of medicine required.—It shall be unlawful for any person registered under this chapter as a physical therapist to treat human ailments by physical therapy except under the prescription, direction, and supervision of a person licensed by the state to practice medicine.

History.—§11, ch. 57-67; similar provisions contained in former §486.12.

486.121 Powers and duties of board of medical examiners.—The state board of medical examiners may administer oaths, summon witnesses, and take testimony in all matters relating to its duties under this chapter. The board is authorized to adopt only those rules and regulations needed to carry out the mechanics and procedures to effectuate this chapter and may amend and revoke such rules at its discretion. If the board determines an applicant for registration is qualified to practice physical therapy the board may issue the applicant a permit allowing him to practice physical therapy pursuant to the terms of this chapter until the holding of the next examination provided for by this chapter, but not for a longer period of time. The board shall have power to pass upon the good standing and reputability of any school or college offering courses in physical therapy, and whether the courses of such school or college in physical therapy meet the standards fixed by the board. In determining the standing and reputability of any such school and whether the courses can be approved by the board, the board may investigate and make personal inspection of the same. The powers and duties of the board, as set out in this chapter, shall in no way limit or interfere with its powers and duties as set forth in chapter 458. All powers and duties of the board, as set forth in this chapter, shall be supplemental and additional powers and duties to those conferred upon the board by chapter 458.

History.—§12, ch. 57-67; similar provisions contained in former §486.13.

486.131 Annual registration with state board of health.—Any person who holds a certificate of registration under this chapter shall not be required, in order to practice physical therapy, to register or obtain a certificate, license, or other evidence of authority from any other state board; provided, however, that annual registration of any person holding a certificate of registration to practice physical therapy pursuant to this chapter shall be made with the state board of health as prescribed in §381.401.

History.—§13, ch. 57-67; similar provisions contained in former §486.14; §7, ch. 61-129.

486.141 Fraudulent representation to obtain registration unlawful.—It shall be unlawful for any person to obtain or attempt to obtain registration as a physical therapist under this chapter by any willful misrepresentation or any fraudulent representation.

History.—§14, ch. 57-67; similar provisions contained in former §486.11.

486.151 Penalties for violations.—Any person who violates any of the provisions of this chapter shall upon conviction be guilty of a misdemeanor and shall be punished by a fine of not more than $500 or be imprisoned in the county jail for a period not exceeding 6 months, or both, in the discretion of the court.

History.—§15, ch. 57-67; similar provisions contained in former §486.15.

486.161 Exemptions.—No provision of this chapter shall be construed to prohibit the following persons from using physical therapy as a part of or incidental to their profession, when they practice their profession under the statutes applicable to their profession: chiro-

practors, chiropodists, doctors of medicine, masseurs, nurses, osteopathic physicians and surgeons, and naturopaths.

History.—§16, ch. 57-67; similar provisions contained in former §486.16.

486.171 Current valid certificates effective.—Any person holding a certificate of registration to practice physical therapy issued by the board which is valid when this law takes effect shall be deemed to be licensed as a registered physical therapist under the provisions of this chapter.

History.—Comp. §17, ch. 57-67.

CHAPTER 487

PESTICIDE ACT

487.01 Short title.—This chapter may be cited as the Florida pesticide law.

History.—Comp. §1, ch. 28214, 1953.

487.02 Definitions.—For the purpose of this chapter:

(1) The term "pest" means and includes all insects, fungi, bacteria, weeds, rodents, predatory animals or any other form of plant or animal life, including viruses, which may infest or be detrimental to vegetation, man, animals, households, (except viruses on or in living man or other animals), or be present in any environment where not desired, or which may be declared to be a pest by the commissioner.

(2) The term "pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, including insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals.

(3) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi or weeds, or such other pests as may be designated by the commissioner, but not including equipment used for the application of pesticides when sold separately therefrom.

(4) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(5) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi in any environment whatsoever.

(6) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest in any environment whatsoever.

(7) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(8) The term "fumigant" means any substance or mixture of substances used as a "pesticide" for fumigating soil, seed, grain, plants, space, structures or any environment whatsoever.

(9) The term "plant nutrient" means any ingredient that furnishes nourishment to the plant or promotes its growth.

(10) The term "plant physiologic" means a substance which may affect the growth or functions of the plant either favorably or unfavorably.

(11) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and wood lice.

(12) The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(13) The term "weed" means any plant which grows where not wanted.

(14) The term "ingredient statement" means a statement of the name and percentage of each active ingredient, the total percentage of the inert ingredients, a statement of the name and percentage of each "added ingredient," in the pesticide; and, in case the pesticide contains arsenic in any form, a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic: provided, that in the case of a household pesticide which is not highly toxic to man, the ingredient statement may name each active ingredient in the descending order of its predominance, together with the name of each and the total percentage of the inert ingredients.

(15) The term "active ingredient" means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

(16) The term "inert ingredient" means an ingredient which is not an active ingredient.

(17) The term "added ingredient" means any plant nutrients or plant physiologics added to the mixture, which are not active pesticidal ingredients but which the manufacturer wishes to show on the label.

(18) The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(19) The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(20) The term "commissioner" means the commissioner of agriculture.

(21) The term "registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

(22) The term "per cent" means one one-hundredth (1/100) part by weight or volume.

(23) The term "sell" or "sale" includes exchange.

(24) The term "manufacturer or processor" means a person engaged in the business of producing, preparing, mixing or processing pesticides. This term may include "importer."

(25) The term "brand" means the name, number, trademark, or any other designation under which pesticides may be distributed, offered for sale, or sold, within the state.

(26) The term "official sample" means a sample of any pesticide offered for sale, or sold, within this state, which is drawn by a duly appointed inspector of the department of agriculture or by the state chemist or his assistants.

(27) The term "true sample" means a sample furnished by a manufacturer, importer or dealer at the request of the state chemist.

(28) The term "state chemist" includes any assistant state chemist.

(29) The term "deficiency" means the amount of an active ingredient of a pesticide by which it fails to come up to its guarantee when analyzed.

(30) The term "tolerance" means the deviation from the guaranteed analysis permitted by law.

(31) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide (or device), or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide (or device).

(32) The term "labeling" means all labels and other written, printed or graphic matter—

(a) Upon the pesticide (or device) or any of its containers or wrappers;

(b) Accompanying the pesticide (or device) at any time; to which reference is made on the label or in literature accompanying the pesticide (or device), except when accurate, nonmisleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(33) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard of quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(34) The term "misbranded" shall apply—

(a) To any pesticide (or device) if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(b) To any pesticide—

1. if it is an imitation of or is offered for sale under the name of another pesticide;

2. if the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

3. if the label does not contain a warning or a caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;

4. if the label does not bear an ingredient statement on that part of the immediate container and on the outside container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;

5. if any word, statement, or other information required by or under the authority of this act to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

6. if in the case of an insecticide, fungicide, fumigant, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

History.—Comp. §2, ch. 28214, 1953.

487.03 Prohibited acts.—

(1) It shall be unlawful for any person to distribute, sell or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of §487.04, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of the pesticide differs from its composition as represented in connection with its registration; provided, that, in the discretion of the commissioner, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(b) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

1. the name and address of the manufacturer and/or the registrant;
2. the name, brand or trademark under which said article is sold;
3. the net weight or measure of the contents, subject, however, to such reasonable variations as the commissioner may permit.

(c) If highly toxic to man and its container is not made of such material, and closed in such manner, that there is no leakage or dusting out when shipped, stored or handled.

(d) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in §487.05, unless the label shall bear, in addition to any other matter required by this chapter,

1. the skull and crossbones;
2. the word "poison" prominently, in red, on a background of distinctly contrasting color;
3. a statement of an antidote for the pesticide.

(e) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder pesticide which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(f) Any pesticide which is adulterated or misbranded, (or any device which is misbranded.)

(g) It shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.

(2) It shall be unlawful for any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of §487.04.

History.—Comp. §3, ch. 28214, 1953.

487.04 Registration.—

(1) Every pesticide which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the commissioner, and such registration shall be renewed annually. The registrant shall file with the commissioner a statement including:

(a) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) The name of the pesticide;

(c) An ingredient statement and a complete copy of the labeling accompanying the pesticide which shall conform to the registration and a statement of all claims to be made for it including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient" contained therein; provided, that if it is a household pesticide and is not highly toxic to man, the label statement may name each active ingredient in the descending order of its predominance, together with the name of each and the total percentage of the inert ingredients. When compounds of metallic elements are an active ingredient of the pesticide, the guarantee shall be made in terms of the metallic element. If free sulphur is present as dusting sulphur, it must be guaranteed as to fineness.

(2) Persons registered to manufacture or sell pesticides, under the provisions of this chapter, may make and sell special lots of pesticides not already registered with the commissioner, provided that request for registration of such special lot of pesticide is mailed to the commissioner on the same day the lot is made.

(3) In case a manufacturer discontinues the manufacturing or distribution of a pesticide, which has been registered in this state, he will be required to continue registration of this pesticide until no more remains on the retailer's shelves, or not to exceed two years from date of discontinuance.

(4) For the purpose of defraying expenses of the commissioner of agriculture and state chemist in connection with carrying out the provisions of this chapter, each person manufacturing or importing for sale any pesticide within this state shall register each and every brand of such pesticide, giving the information required above. The registrant, if a manufacturer or importer, shall pay a registration fee of ten dollars for each and every brand registered annually, for the first ten brands, and two dollars and fifty cents for each and every brand in excess thereof; provided, that manufacturers or importers who have paid the required license fee under chapter 17992 for the year 1953 may register all additional brands

for two dollars and fifty cents each for the remainder of 1953. All registrations expire on December 31 of each year and new registrations must be filed before January 15 of the current year. Nothing in this section shall be construed as applying to jobbers or retail dealers selling pesticides when such pesticides have been registered by manufacturer or importer.

(5) The commissioner, whenever he deems it necessary in the administration of this chapter, may require the submission of evidence of the efficiency of any pesticide. This evidence shall be examined by the technical committee who shall make recommendations to the commissioner as to whether or not it should be accepted for registration. After the technical committee has made its recommendation, the commissioner may register or refuse to register the pesticide. However, before registration is refused the commissioner shall notify the applicant of his intention to refuse, giving his reasons therefor. The applicant shall have fifteen days thereafter in which to request a hearing on his application for registration, and upon his failure to do so refusal shall become final. The commissioner, for reasons of adulteration, misbranding or other good cause may refuse or revoke the registration of any pesticide, upon notice to the applicant or registrant of his intention to so refuse or revoke, giving his reasons therefor. The applicant shall have fifteen days thereafter in which to request a hearing on the commissioner's intention to refuse or revoke registration and upon his failure to do so refusal or revocation shall become final. In no event shall registration of a pesticide be construed as a defense for the commission of any offense prohibited under §487.03.

History.—§4, ch. 28214, 1953; (5) §1, ch. 61-411; (5) §1, ch. 63-222.

487.05 Authority of commissioner; pesticide technical committee; rules and regulations.—

(1) This chapter shall be administered and its provisions and all rules and regulations adopted and promulgated hereunder shall be enforced by the commissioner of agriculture of the state.

(2) The commissioner is authorized, after opportunity for a hearing and upon recommendation of the technical committee:

(a) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles or substances;

(b) To determine whether pesticides are highly toxic to man;

(c) To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of §487.03(1)(e).

(3) All rules and regulations made, adopted and promulgated under authority of this chapter shall be divided into two classes to be known as "technical rules and regulations" and "administrative rules and regulations."

(4) There is hereby created a "pesticide technical committee" to be composed of the state chemist of Florida, the director of the Florida agricultural experiment stations, the director of the Florida agricultural extension service, the field crops, citrus and vegetable members of the state agricultural advisory council and a pesticide member. The pesticide member shall be a manufacturer of commercial pesticides, earning a major portion of his income from the said manufacturing and shall be appointed by the commissioner of agriculture subject to the same procedure as prescribed in §570.23. The term of office of the pesticide member shall be for a period of one year beginning January 15, 1961. All "technical rules and regulations" adopted and promulgated hereunder shall be first recommended to the commissioner of agriculture by a majority of the pesticide technical committee. The pesticide technical committee is hereby authorized to recommend rules and regulations pertaining to the composition and use of pesticides as defined in this chapter without limiting the foregoing general terms.

(5) The commissioner of agriculture or any member of the pesticide technical committee or any firm or corporation, manufacturing, offering for sale, selling, consuming, or otherwise using commercial pesticides in the state may propose a rule or regulation and such proposal shall be acted upon by the pesticide technical committee within a reasonable time, not exceeding ninety days, after it is filed with the state chemist. Any firm or corporation, with officers or agent in the state, interested in the manufacture or sale of commercial pesticides in the state may file its name and address with the state chemist and request that it be furnished with a copy of any proposed rule or regulation, and thereafter the state chemist shall not less than five days before a meeting of the pesticide technical committee for the consideration of the proposed regulation mail a copy of such proposed regulation to every firm so requesting same. Any such firm shall have the right to be fully heard in person or through an attorney by the technical committee upon any proposed rule or regulation.

(6) It shall be the duty of the commissioner of agriculture within a reasonable time to either approve or reject rules and regulations recommended to him by the pesticide technical committee, and if approved, to adopt and promulgate such rules and regulations under the classification of "technical rules and regulations." A majority of the members of the pesticide technical committee shall constitute a quorum; however, any official action by the said committee shall require four affirmative votes.

(7) It shall further be the duty of the technical committee to review and make recommendations to the commissioner on any registrations submitted to it by the commissioner or by the state chemist.

(8) The commissioner of agriculture is hereby authorized to make, adopt, and promulgate all rules and regulations under the

classification "administrative rules and regulations" which he shall deem necessary or helpful in the efficient administration and enforcement of this chapter.

(9) In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end, the commissioner is authorized to adopt by regulation such regulations applicable to and in conformity with primary standards established by this chapter, as have been or may be prescribed in the United States department of agriculture with respect to pesticides.

History.—§5, ch. 28214, 1953; (4)-(6) a. by §§1-3, ch. 59-244; (4)-(6) a. by §2, ch. 61-411.

487.06 Enforcement.—

(1) The examination of pesticides (or devices) shall be made under the direction of the state chemist for the purpose of determining whether they comply with the requirements of this chapter. If it shall appear from such examination that a pesticide (or device) fails to comply with the provisions of this chapter, and the commissioner contemplates instituting criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings and if thereafter, in the opinion of the commissioner, it shall appear that the provisions of the chapter have been violated by such person, then the commissioner shall refer the facts to the (prosecuting attorney) for the county in which the violation shall have occurred, with a copy of the results of the analysis or the examination of such article; provided, however, that nothing in this chapter shall be construed as requiring the commissioner to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever he believes that the public interests will be best served by a suitable notice of warning in writing.

(2) It shall be the duty of each (prosecuting attorney) to whom any such violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(3) The commissioner shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this chapter.

History.—Comp. §6, ch. 28214, 1953.

487.07 Exemptions.—

(1) The penalties provided for violations of §487.03(1) (a) shall not apply to:

(a) Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

(b) Public officials of this state and the federal government engaged in the performance of their official duties;

(c) The manufacturer or shipper of a pesticide for experimental use only:

1. by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides, or

2. by others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address: provided, however, that if a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

(2) An article when intended solely for export to foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

(3) Notwithstanding any other provision of this chapter, registration and tagging is not required in the case of a pesticide stored or shipped from one manufacturing plant within this state to another manufacturing plant within this state operated by the same person or from one manufacturer to another manufacturer, provided they are properly labeled whenever poison labels are required under §487.03(1)(d).

(4) Nothing in this chapter shall be construed to apply to any persons duly licensed or certified under chapter 482, in their performing any structural pest control, or other operation for which they are licensed or certified under said statutes, and provided further, that licensees under chapter 482 would not be required to register pesticides sold at retail if such pesticides are registered with the department of agriculture under the Florida pesticide act.

History.—Comp. §7, ch. 28214, 1953.

487.08 Tolerances, deficiencies and penalties.—

(1) No deficiency shall exist in connection with the analysis or report on the analysis of any sample of a pesticide unless the deficiency is greater than three per cent in one or more of the active ingredients or added ingredients claimed.

(2) Any person violating §487.03(1)(a) shall be guilty of a misdemeanor and upon conviction, shall be fined not more than one hundred dollars.

(3) Any person violating any provision of this chapter other than §487.03(1)(a), shall be guilty of a misdemeanor and upon con-

viction, shall be fined not more than fifty dollars for the first offense and upon conviction for a subsequent offense shall be fined not more than one hundred dollars; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense.

History.—Comp. §8, ch. 28214, 1953.

487.09 Stop sale and seizures.—

(1) Any pesticide (or device) that is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state, shall be liable to be proceeded against in any court of competent jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation. The commissioner of agriculture, or his duly authorized representative, may withhold from sale by stop sale notice any pesticide which does not meet the requirements of this chapter as follows:

(a) In the case of a pesticide—

1. if it is adulterated or misbranded;
2. if it has not been registered under the provision of §487.04;
3. if it fails to bear on its label the information required by this chapter;
4. if it is a white powder pesticide and is not colored as required under this chapter;
5. if highly toxic to man and the labeling or container does not meet the requirements of this chapter.

(b) In the case of a device, if it is misbranded.

(c) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the general inspection trust fund; provided, that the article shall not be sold contrary to the provisions of this chapter; and provided further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be; and provided, that when a pesticide (or device) has been found in violation of the provisions of this chapter, the owner or claimant may, in lieu of prosecution, surrender the article for confiscation and destruction to a duly appointed representative of the commissioner.

(2) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

History.—§9, ch. 28214, 1953; (1)(c) a. by §2, ch. 61-119.

487.10 Jurisdiction and delegation of duties.—Jurisdiction in all matters pertaining to the distribution, sale, and transportation of pesticides (and devices) under this chapter is vested in the commissioner. All authority vested in the commissioner by virtue of the provisions of this chapter, may, with like force and effect, be executed by the state chemist or such employees of the department of agriculture as the commissioner may, from time to time, designate for said purpose.

History.—Comp. §10, ch. 28214, 1953.

487.11 Cooperation. — The commissioner is authorized and empowered to cooperate with and enter into agreements with, any other agency of this state, the United States department of agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

History.—Comp. §11, ch. 28214, 1953.

487.12 Injunction.—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the commissioner is authorized to make application for injunction to a circuit judge, and such circuit judge shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter or any rule or regulation adopted hereunder, such injunction to be issued without bond.

History.—§15, ch. 28214, 1953; §25, ch. 29737, 1955.

CHAPTER 488

COMMERCIAL DRIVING SCHOOLS

488.01 License required to conduct driver's school.—Every person desiring to engage in the business of conducting a driver's school, shall prior to engaging in such business secure a license for such purpose. All applications for such license, both original and renewal, must be made to the director of the department of public safety on a form prescribed therefor by the director.

History.—Comp. §1, ch. 28142, 1953.

488.02 Rules and regulations.—The executive board of the department of public safety through the director shall promulgate such rules and regulations controlling commercial driving schools in Florida as are necessary and proper.

History.—Comp. §2, ch. 28142, 1953.

488.03 License fee; expiration; renewal.—(1) Every application for an original license must be accompanied by an application fee of ten dollars, which shall in no event be refunded. If the application is approved, a further fee of two hundred forty dollars must be paid before the director will issue the license. The funds collected pursuant to this chapter shall be used to further the purpose of this chapter by the department of public safety. The license shall be valid for a period of one year from date of issuance. Licenses shall not be transferable. In the event of any change in ownership or interest in the business, an application for a new license, together with all instructors' certificates issued thereunder, must be surrendered to the director before a license will be issued to a new owner of the business. The fee for annual renewal of licenses shall be fifty dollars per annum.

(2) All revenue received from the applications for and the issuance of licenses under the provisions of this chapter shall be deposited into the general revenue fund of the state. The department of public safety shall include a sufficient amount in its legislative budget request to properly carry out the provisions of this chapter.

History.—§3, ch. 28142, 1953; §1, ch. 61-281; (1) §1, ch. 63-21.

488.04 Instructors, qualifications; certificates.—No person shall receive compensation for giving instructions in the operation of motor vehicles unless such person is the holder of an instructor's certificate issued for such purpose by the director. Such certificate shall be valid for use only in connection with the business of the driver's school or schools listed thereon by the director. An applicant for an instructor's certificate will be required to take special eye, written and road tests, and may be required to furnish additional proof of his qualifications and ability as an instructor.

History.—Comp. §4, ch. 28142, 1953.

488.05 Motor vehicle identification certificates.—No motor vehicle owned or controlled by a driver's school may be used for the purpose of giving driving instructions until the licensee has obtained from the director a school vehicle identification certificate, which certificate shall be carried in such vehicle at all times. No school vehicle certificate will be issued by the director unless and until such vehicle is equipped in accordance with safety requirements as established by the director.

History.—Comp. §5, ch. 28142, 1953.

488.06 Revocation or suspension of licenses.—The director may suspend or revoke any license or certificate mentioned in this law if such revocation or suspension shall be for the purpose of enforcing the safety requirements essential to effect the purpose of this law.

History.—Comp. §6, ch. 28142, 1953.

488.07 Penalties for violation.—Any person who shall violate or fail to comply with any of the provisions of this chapter or any of the rules or regulations promulgated thereunder, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or be imprisoned for not more than one year, or both.

History.—Comp. §7, ch. 28142, 1953.

CHAPTER 489

FLORIDA WATCHMAKERS' COMMISSION

489.01 Definitions.—

(1) The term "watchmaking" for the purpose of this chapter, shall include the repair, replacement, rebuilding, adjustment, or the regulations of the mechanical parts of watches or clocks and the manufacture and fitting of parts designed for use in watches or clocks in public commerce, but not including such watches or clocks as are handled and used by any firm or corporation as instruments on vehicles or aircraft employed in interstate or international transportation. Such term as used herein shall in no sense apply to the manufacture, repair or other activity connected with any device other than watches or clocks for sale or repair as a public service.

(2) The term "watchmaker," as used in this chapter, shall mean any person engaging in the trade or practice of watchmaking.

(3) The term "registered watchmaker," as used in this chapter, shall mean a watchmaker holding a valid and unexpired certificate of registration as provided in this chapter.

(4) The term "apprentice watchmaker," as used in this chapter, shall mean an apprentice watchmaker holding a valid and unexpired certificate of registration as provided in this chapter.

(5) The term "commission," as used in this chapter, shall mean the "Florida watchmakers' commission."

History.—Comp. §1, ch. 57-347.

489.02 Certificate required.—It shall be unlawful for any person to engage in watchmaking for profit or compensation of any kind, without a certificate of registration as hereinafter provided, or to accept or receive watches for repair in a place of business unless there shall be a registered watchmaker in said place of business; and said certificate of registration shall at all times be conspicuously displayed in said business or place of work.

History.—Comp. §2, ch. 57-347.

489.03 Board of examiners; disposition of fees.—

(1) There is hereby created a commission to be known as the "Florida watchmakers' commission," whose duty shall be to administer the provisions of this chapter. Said commission shall consist of five members, to be appointed by the governor within sixty days after the effective date of this law. Each member shall have followed the occupation of watchmaking in this state for at least five years immediately prior to his appointment. Each member of said commission shall hold office for four years and until his successor shall be appointed and shall qualify as a member of said commission, except that in the first appointments under this law, three members shall be appointed for a term of four years each and two members for a term of two years each, and the term of office in such cases shall be designated by the governor at the time of the appointment of any member. The governor may remove any member of the commission for cause. Members appointed to fill vacancies caused by death, resignation, removal or any other cause shall serve for the unexpired term of their predecessor. At least two members of said commission shall be employees as distinguished from employing watchmakers.

(2) The commission shall choose annually, one of its members to serve as chairman and one as secretary, who shall severally have power to administer oaths and take affidavits certifying thereto relative to matters within the powers and in connection with the duties of said commission and under the seal of the commission. A majority of the members of the commission shall constitute a quorum. The commission shall have the power to promulgate reasonable rules and regulations to carry out the purpose of this law and may retain such horological experts and administrative employees as may be necessary to carry out the provisions of this chapter. The secretary shall give such bond as may be required by the commission and shall keep a full record of its proceedings, which shall constitute public records of the state. Each member of the commission shall be paid ten dollars per day, or any part of a day, during the time that the commission shall be in session, and they shall also be paid traveling expenses as provided in §112.061, to and from their respective homes and the place of meeting of the commission.

(3) All moneys received by the commission under this chapter shall be paid to the secretary of the commission. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the chairman and secretary of the commission.

History.—§3, ch. 57-347; (3) §25, ch. 61-514; (2) §14, ch. 63-400.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

489.04 Applications for examinations. — Each applicant for an examination shall make application to the commission at least ten days prior to the date set by the commission for an examination on forms prepared and furnished by the commission, which application shall be

accompanied by an examination fee of fifteen dollars. Applicants for certificates shall be examined at a time and place fixed by the commission. The applicant shall be of good character and at least nineteen years of age, and shall have served an apprenticeship of eighteen months or its equivalent as might be determined by the commission; and provided further that the words "its equivalent" herein are defined to mean that where the applicant has satisfactorily passed a course of instruction in an approved school of not less than six months' duration, for which a certificate shall have been issued by the said school, said school having heretofore been approved by the commission under reasonable regulations. Any school within the state in operation on June 6, 1957, shall be given a reasonable time within which to meet the requirements fixed by the commission.

History.—Comp. §4, ch. 57-347.

489.05 Examination.—An applicant to be entitled to a certificate to engage in watchmaking shall pass an examination given by the commission, which examination shall be confined to such knowledge, practical ability and skill as is essential in the proper repair of watches and clocks and shall include an examination of the theoretical knowledge of watch and clock construction and repair and also shall include a practical demonstration of the applicant's skill in the manipulation and use of watchmakers' tools. The commission shall have authority and shall make reasonable rules and regulations for conducting examinations and shall prescribe the standards of workmanship and skill required of watchmakers receiving certificates issued by the commission.

History.—Comp. §5, ch. 57-347.

489.06 Registration.—

(1) If the applicant successfully passes an examination, the secretary of the commission shall register such fact among the records of the commission and shall issue to said applicant a certificate of registration.

(2) Persons actually engaged in watchmaking within this state on June 6, 1957, shall be exempt from taking the examination herein required upon making application for a certificate of registration within six months after said June 6, 1957, accompanied by an application fee of ten dollars, and upon furnishing to the commission satisfactory proof of his having been so actively engaged in watchmaking; and any person in any branch of the service of the United States on June 6, 1957, who was actually engaged in watchmaking within this state at the time of his entry into service, shall be exempt from taking the examination herein required upon making application within six months after his discharge, accompanied by an application fee of ten dollars and upon furnishing to the commission satisfactory proof of his having been so actively engaged in watchmaking. If the commission shall be satisfied that such applicant is entitled thereto, it shall cause its secretary to so register the applicant and issue a certificate of registration to him.

(3) Certificates of registration for registered watchmakers and apprentice watchmakers shall expire on the thirtieth day of June of each year and may be renewed within thirty days thereafter for a period of one year. As a prerequisite to the issuance of a renewal certificate for registered watchmakers, there shall be paid to the commission a fee of five dollars. Applications for renewal may be made after the fifteenth day of June of each year.

History.—Comp. §6, ch. 57-347.

489.07 Apprentice watchmakers.—Any person over the age of sixteen years, of good character, apprenticed to a registered watchmaker in accordance with regulations established by the commission may engage in the trade of watchmaking under the supervision of a registered watchmaker upon obtaining from the commission a certificate of registration as an apprentice watchmaker, which certificate shall issue upon application on forms prepared and furnished by the commission and their completion by the applicant to the commission's satisfaction. Apprentice watchmakers shall pay to the commission a fee of two dollars for each certificate of registration issued and for each annual renewal thereof.

History.—Comp. §7, ch. 57-347.

489.08 Public identification plan.—The commission shall include in its rules and regulations a plan and procedure under which each watchmaking establishment within the state may install a system of identification whereby each watch sold or repaired shall bear identifying marks as to the owner of the watch for purposes of identification. The commission is further authorized to establish and maintain a master filing system in its headquarters in conjunction with such plan of identification and to cooperate with and assist the Florida sheriffs' bureau, other law enforcement agencies and the civil defense agencies of the state by the furnishing of information relative to identification of persons as well as to assist such agencies in any manner that shall be requested by such agencies in carrying out their duties in the enforcement of the law and in the protection of the lives and property of the people of this state.

History.—Comp. §8, ch. 57-347.

489.09 Revocation.—

(1) The commission may revoke a certificate of registration obtained through error of the commission or fraud on the part of the applicant or if the holder be grossly incompetent, guilty of unethical conduct or has obtained or has sought to obtain anything of value by fraudulent representations in the practice of watchmaking. The commission shall not revoke any certificates of registration until the holder thereof shall have been given thirty days' notice in writing delivered to the holder personally or by transmission to the holder by regis-

tered mail addressed at the address of the holder as shown on his certificate of registration, enumerating the charges and specifying the date and place for a hearing by the commission on such charges. At such hearing the holder of the certificates shall have an opportunity to confront witnesses against him and to produce witnesses and other evidence in rebuttal of such charges. Such hearing shall be held in the county wherein the holder of the certificate was employed or engaged in the business of watchmaking at the time the offense was alleged to have been committed or in the county of the holder's residence. A stenographic record of all proceedings of such hearing shall be made and a transcript kept on file with the commission. If the commission, after such hearing, shall revoke the certificate of registration, the commission shall make an order thereon to be entered among the records of the commission, which order shall become effective when entered among such records, but said order may be reviewed by proceedings in certiorari on the petition of the person whose certificate has been revoked to the circuit court of the county in which the hearing was held within sixty days after the date of the entry of such order by the commission.

(2) One whose certificate has been revoked may, upon the expiration of one year after the entry of the order of revocation, apply to the commission for reregistration and upon satisfactory proof that cause of revocation no longer exists, the commission may in its discretion issue to said person a certificate of registration upon the payment of the fees herein required.

(3) "Unethical conduct" shall include and mean any conduct of a character likely to mislead, deceive or defraud the public; advertising of any character in which untruthful or misleading statements are made; advertising of prices on watch repairing or the giving of any watch or clock parts gratis or at less than cost with intent to deceive the public; performance of any service pursuant to such advertising; lending a certificate of registration to or permitting its use by any person; failure to display the certificate of registration conspicuously at all times as required by this chapter; representation that a watch has been cleaned unless its major parts, train wheels and mainspring have been disassembled and the cap jewels removed and all parts properly cleaned; performance of any work upon a watch or clock in an unworkmanlike or unskilled manner; the misrepresentation that certain services or parts are necessary or have been or will be used in the repair of a watch or clock when such services or parts are not necessary and have not been used in such repairs; employing directly or indirectly any unregistered watchmaker to perform any watchmaking or repairs on watches or clocks, or the noncompliance within thirty days with the directions given in any written notice from the commission to terminate the employment of or with any person who is violating the provisions of this chapter.

History.—Comp. §9, ch. 57-347.

489.10 Legal services.—The attorney general shall be the legal advisor of the commission and shall represent the commission in all the courts and in all other legal matters affecting the commission. Upon application of the Florida sheriffs' bureau, duplicates of the entries for the master filing system as provided in §489.08 shall be furnished the said bureau by the commission.

History.—Comp. §10, ch. 57-347.

489.11 Penalties.—Any person who shall violate any of the provisions of this chapter shall, upon conviction therefor, be guilty of a misdemeanor and shall be punished by a fine not exceeding $500.00 or by imprisonment in the county jail not more than 6 months or by both such fine and imprisonment in the discretion of the court.

History.—Comp. §11, ch. 57-347.

CHAPTER 490

BOARD OF EXAMINERS OF PSYCHOLOGY

490.011 Definition of terms.—As used in this chapter the following terms mean:

(1) A person represents himself to be a psychologist when he holds himself out to the public by any title incorporating the words "psychological," "psychologist" or "psychology" and under such titles offers to render or renders services to individuals or to the public for remuneration.

(2) The term "psychological services" within the meaning of this chapter refers to any services if the words "psychological," "psychologist" or "psychology" are used to describe such services by the person or organization rendering or offering to render them.

History.—§1, ch. 61-473; similar provisions in former §490.01.

490.021 Scope of chapter.—

(1) No individual or organization shall represent himself or itself as a psychologist within the meaning of this chapter other than those certified and registered under the provisions of this law, except that any psychological scientist employed in a recognized educational setting or government-sponsored agency may represent himself by the academic or research title conferred upon him by the administration of such educational setting or government-sponsored agency. Students of psychology, psychological interns and other persons preparing for the profession of psychologist under qualified supervision in recognized training institutions or facilities may be designated by such titles as "psychological intern," "psychological trainee" or others clearly indicating such training status.

(2) No individual or organization, other than those certified and registered under this chapter, shall render or offer to render psychological services as defined in §490.011. No individual or business firm or corporation or partnership shall sell or offer to individuals, the public, or to other firms or corporations for remuneration any psychological services as defined in §490.011, unless such services are performed or supervised by individuals duly and appropriately certified and registered under this chapter.

(3) This chapter in no way restricts the use of the tools, tests, instruments, or techniques which are the common property of the profession of psychology and other related professions as long as these tools, tests, instruments, or techniques are not publicly described or advertised.

(4) No individual may employ or use the title "psychologist" or imply in any way that he is certified by the board created in this chapter, unless he is actually so certified and registered under this chapter.

(5) Nothing in this chapter, however, shall be construed as permitting the certified psychologist to practice medicine as defined in the laws of this state.

History.—§2, ch. 61-473; similar provisions in former §490.02.

490.031 Board of examiners; organization; seal; powers; duties; meetings.—

(1) There is hereby created the Florida state board of examiners of psychology consisting of five members to be appointed by the governor and hereinafter referred to as the board; the board shall select from its membership a chairman who shall serve for one year and who may succeed himself. This board shall have sole power to issue state certificates to psychologists and its duty shall be to administer the provisions of this chapter. Each member of the board shall be a qualified elector of this state, and meet the qualifications for certification as a psychologist, as such training and experience are defined in §490.041. Within sixty days after the effective date of this act, the governor shall appoint five eligible and qualified psychologists to be members of the board; two for a term of one year, two for a term of two years, and the remaining member shall be appointed for a term of three years. Annually thereafter, as the terms of the members expire, the governor shall appoint successors for a period of three years and such members shall serve until their successors are appointed and qualified. No person shall be appointed to serve more than two consecutive terms. A vacancy resulting from any cause other than the expiration of the term shall be filled for the unexpired term by the appointment by the governor.

(2) The expenses of the administration of this law shall be confined to the usual and customary office expenditures consisting of stenographic services, supplies, printing and postage. Members of the board shall serve without salary, but shall receive per diem and mileage as provided in §112.061, from place of their residence to place of meeting and return.

(3) Upon a recommendation by a majority of the board, and after notice and hearing by it, the governor shall remove any member for incompetence, neglect of duty, or malfeasance in office.

(4) The board shall adopt a seal which must be affixed to all certificates issued by it.

(5) The board shall make such rules and

regulations as are necessary to carry out and make effective the provisions of this chapter.

(6) Regular meetings of the board shall be held at such times and places as it prescribes, and special meetings may be held upon the call of the chairman, provided that at least one regular meeting shall be held at least once each year, at which regular or special meeting candidates applying for certification shall be examined and their qualifications determined.

(7) Annually, within the first week of July, the secretary of the board shall make to the governor a complete statement of receipts and expenditures attested by affidavit of the chairman and secretary, and a complete report of the transactions of the board with such recommendations for the advancement and betterment of the profession as he may think best.

History.—§3, ch. 61-473; similar provisions in former §490.03; (2) a. by §26, ch. 61-514; (7) a. by §14, ch. 61-530.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

§216.211 Appropriations maximum; adjustment of budgets; state budget commission.

§455.03 Dispensing with examinations of veterans.

490.041 Certification.—

(1) The Florida state board of examiners of psychology is empowered to grant certificates with the title "psychologist" to those entitled under the provisions of this chapter. Before granting any such certificate, the board shall require any applicant therefor to pass a representative assembled written, and an oral or practical examination in psychology or both such oral and practical examinations, to be given at such time and place and under such supervision as the board prescribes, and also to submit such references and documents as may be required by the board. The examination shall include those subjects relating to the practice of psychology as are taught by the universities approved by the American psychological association. The board is empowered to rate the applicant and its decision is final in any examination. Such applicant shall pay fees as specified in §490.061, and shall satisfy the board that he:

(a) Is of good moral character

(b) Is a citizen of the United States or has legally declared his intention of becoming one

(c) 1. Has received a doctoral degree with a major in psychology from a university whose program has been approved by the American psychological association; or

2. Has received a doctoral degree with a major in psychology from a university maintaining a standard of training comparable to those universities approved by the American psychological association.

(d) Has had at least one year's experience in the field of psychology.

(2) Majority decision of the board is required for the granting of a certificate. The board shall state in writing its reasons for refusal of a certificate to any applicant who has been so denied. Any member of the board who votes against an applicant shall accompany his vote with a written reason therefor.

History.—§4, ch. 61-473; similar provisions in former §490.04.

490.051 Certification under special conditions.—

(1) The board shall waive all the examinations and the payment of application fees for applicants who have submitted evidence that prior to the effective date of this chapter they were residents of Florida and were possessed of all educational and experience requirements set forth in §490.041.

(2) The board shall waive all the examinations and the payment of application fees for Florida residents who have received a master's degree in any field of psychology prior to seven years before the enactment of this law and who have had ten years of experience in the field of psychology.

History.—§5, ch. 61-473; similar provisions in former §490.05.

490.061 Fees.—

(1) The board shall charge a fee of fifty dollars for the examination of a candidate and such fee shall not be returnable. The fee must be in the hands of the secretary not later than ten days prior to the examination date.

(2) Each two years following the issuing of a certificate, the holder of such certificate shall be required to pay a certificate renewal fee not to exceed ten dollars. The secretary of the board shall notify certificate holders of this obligation, allowing a grace period of thirty days. Failure to renew the certificate shall provide grounds for suspension of the certificate. The certificate may be reinstated at the discretion of the board, after payment of delinquent renewal fees.

The secretary of the board shall issue a list of certificate holders, revised and published biennially.

History.—§6, ch. 61-473; similar provisions in former §490.06.

490.071 Use of title without certification prohibited; penalties.—

(1) It is unlawful for any person who has not been granted a certificate by the Florida state board of examiners of psychology and who is not exempted under §490.021 to use the title of psychologist as defined in §490.011.

(2) Any person convicted of violating a provision of this chapter shall be punished by a fine of not more than $100.00 or imprisonment in the county jail not exceeding 6 months or both such fine and imprisonment for each offense.

History.—§7, ch. 61-473; similar provisions in former §490.07.

490.081 Revocation or invalidation of certificates.—

(1) The holder of a valid state certificate shall hold the same during his life. A certificate may be revoked or invalidated for any definite period of time by majority vote of the members of the board on a finding by the board that such holder has, by his conduct or practice, been convicted of a felony; or is guilty of fraud or deceit in obtaining a certificate; or is guilty of misconduct in his profession. Notice of a contemplated revocation or invalidation and the cause therefor and the date of hearing

thereon shall be sent by registered mail to the holder of a certificate at his last known address at least fifteen days before the date of such hearing. No certificate issued under this chapter shall be revoked or invalidated without such hearing but the nonappearance of the holder of a certificate after such notice shall not prevent such hearing.

(2) Any person whose certification has been invalidated for any definite period of time or has been revoked by the board, may have such action reviewed by filing a petition for certiorari with the clerk of the circuit court of Leon county within sixty days after notice of the action of the board.

(3) No person who has a certificate invalidated for any definite period of time or revoked shall be entitled to use the title of psychologist as defined in this chapter, pending any appeal, without express permission of the board or of the court where such appeal is pending.

History.—§8, ch. 61-473; (2) §17, ch. 63-509.
Note.—Similar provisions in former §490.08.

490.091 Reciprocity.—The board shall be empowered to enter into reciprocal agreements with other states or territories of the United States which have certified or licensed psychologists. Any applicant for a certificate who has been examined by the board of psychology in any of the states or territories of the United States which through reciprocity similarly credits the holder of a certificate issued by the Florida state board of examiners of psychology, may on the payment of a fee of fifty dollars, and on filing in the office of the board a true and attested copy of said certificate, showing the same, and also showing that the standards or requirements adopted and enforced by the said board are equal to those provided by this chapter shall without further examination receive the certificate; provided that such applicant has not previously failed at any examination held by the Florida state board of examiners of psychology.

History.—§9, ch. 61-473; similar provisions in former §490.09.

490.10 Disposition of fees.—All moneys received by the board under this chapter shall be paid to the secretary of the board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the chairman and secretary of the board.

History.—§26, ch. 61-514.
cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

CHAPTER 491

SANITARIANS' REGISTRATION ACT

491.01 Title.—This act shall be cited as the "sanitarians' registration act."

History.—§1, ch. 59-191.

491.02 Definitions.—In this act, unless the context otherwise requires:

(1) "Sanitarian" means a person whose education and experience in the biological and sanitary sciences qualifies him to engage in the promotion and protection of the public's health. He applies technical knowledge to solve problems of a sanitary nature and develops methods and carries out procedures for the control of those factors of man's environment which affect his health, safety, and well being.

(2) "Registered sanitarian" means any person who is the holder of a current certificate of registration issued by the sanitarians' registration board.

(3) "Certificate of registration" means a document showing the name of the registrant, the date of issue, serial number and the signature of those authorized by this act to grant it.

(4) "Environmental sanitation" means the sanitary control of man's physical surroundings and within it those factors which may adversely influence and affect his health, safety and welfare. Nothing herein shall conflict with the practice of professional engineering or the provisions of chapter 20621, laws of 1941 (§§471.01-471.33).

(5) "Board" means the sanitarians' registration board as provided for in §491.03.

(6) "Merit system" means the Florida merit system council.

(7) "Civil service" means an accredited civil service board within this state.

History.—§2, ch. 59-191.

491.03 Sanitarians' registration board.—

(1) After May 30, 1959, the governor shall appoint five qualified sanitarians as defined in this law from a list submitted to him by recognized associations of sanitarians within the state who have been employed as sanitarians in Florida for the past five consecutive years and who shall constitute the sanitarians' registration board.

(2) The state health officer shall be an ex officio member of the board.

(3) The terms of the first board members shall be for one, two, three, and two members for four years, respectively, beginning on the date of appointment. The terms of their successors shall be four years. Appointments for vacancies shall be for the unexpired term.

(4) Members of the board shall receive ten dollars per day, or any part of a day, while attending official board meetings and shall receive per diem and mileage as provided by law.

History.—§3, ch. 59-191.

491.04 General powers and duties of board.—

(1) The board is authorized to adopt rules and regulations which may be determined by it to be needed to carry out the mechanics and procedures to effectuate this act and may amend and revoke such rules at its discretion; provided that after the original adoption of the rules and regulations that no change in such rules and regulations shall be effective unless the board has filed such rules or regulations in the office of the secretary of state six months prior to that change.

(2) The board is authorized to employ secretarial assistance and to fix his compensation, and to pay its necessary administrative expenses provided, however, that all moneys paid out under this act shall be paid solely from the revenue received pursuant to the terms of this act.

(3) It shall be the duty of this board to carry out the provisions of this act, except appoint members thereto, review applications for registration, conduct written and oral examinations, keep records of its transactions, conduct hearings, make an annual and financial report and record all matters which appropriately may come before it. These records shall at reasonable times be open to examination by the public. Copies of the annual and financial reports shall be mailed to all registered sanitarians.

History.—§4, ch. 59-191.

491.05 Board, organization and headquarters.—The board shall elect annually from its membership a chairman, a vice-chairman, and a secretary-treasurer. The headquarters of the board shall be in the city where the secretary-treasurer resides. Meetings of the board shall be called by the chairman as prescribed by the rules and regulations of the board. At meetings a majority of the board shall constitute a quorum for the transaction of business.

History.—§5, ch. 59-191.

491.06 Qualifications for registration.—To be eligible for registration by the board as a sanitarian an applicant must:

(1) Be at least twenty-one years old and a citizen of the United States, and a resident of this state;

(2) Be of good moral character as determined by the board;

(3) Have been graduated with a four year degree from a college or university;

(4) Either pass to the satisfaction of the board an examination by the board, or be entitled to registration without examination as provided in §491.07.

(5) Provided that no sanitarian may practice structural pest control unless qualified under chapter 482.

History.—§6, ch. 59-191.

491.07 Registration of certain persons prior to October 1, 1959.—The board shall register as a sanitarian and shall furnish certificate of registration for the year 1959, to any person who applies for such registration on or before October 1, 1959, and who, on June 30, 1959, is employed as a sanitarian and meets the qualifications for a sanitarian, as set forth by one of the following:

(1) (a) Two years of college (15 units in basic sciences) plus one year experience in environmental sanitation,

(b) Two years of college (15 units in basic sciences) plus special training course for sanitarians plus six months experience in environmental sanitation,

(c) College graduate in science or engineering plus one year of experience in environmental sanitation or a special training course,

(d) A bachelor's degree or a master of public health degree in sanitation from an approved school of public health,

(e) High school graduate plus three years experience in environmental sanitation plus special training course in sanitation,

(f) High school graduate plus four years experience in environmental sanitation or

(2) The merit system, or

(3) An accredited civil service board of Florida.

At the time of making application, such applicant shall pay to the board a fee of ten dollars.

History.—§7, ch. 59-191.

491.08 Application for registration.—Unless entitled to registration under §491.07, a person desiring to be registered as a sanitarian shall apply to the secretary of the board in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required under §491.06. He shall pay to the board at the time of filing his application a fee of ten dollars.

History.—§8, ch. 59-191.

491.09 Examinations.—The board shall hold examinations for applicants for registration as sanitarians who have qualified under §491.08, at approximately six months intervals in a major city of Florida in some convenient place to be selected by the board. Examinations will be given in the following subjects:

(1) Sanitary laws, code, rules and regulations;

(2) Milk and food sanitation;

(3) Water supply, sewage and garbage disposal;

(4) Insect and pest control;

(5) Bacteriology and communicable diseases.

History.—§9, ch. 59-191.

491.10 Certificates of registration.—The board shall register as a sanitarian and shall furnish a certificate of registration to each applicant who successfully passes the examination for registration as a sanitarian and to applicants who qualify under §491.07.

History.—§10, ch. 59-191.

491.11 Renewal of certificate, fee.—Certificates of registration shall be renewable annually on or before January 1 upon the submission of application on forms mailed by the secretary-treasurer of the board to each registered sanitarian in the state at his last known post office address on October 1 of the preceding year. A fee of three dollars shall accompany each application for renewal. Certificates of registration shall expire on January 1 of each year.

History.—§11, ch. 59-191.

491.12 Refusal, revocation, or suspension of certificate of registration.—The board may refuse to issue or renew, or may suspend or revoke a license for any one or any combination of the following reasons:

(1) Habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate the performance of professional duties;

(2) Fraud in the practice of sanitation or deceit in obtaining registration as a sanitarian;

(3) Conviction in a court of competent jurisdiction of a felony. The conviction of a felony shall be the conviction of any offense which, if committed in this state, would constitute a felony under the laws of this state; provided, the accused person has been given an opportunity by the board for a public hearing thirty days after notice by registered mail of the hearing.

History.—§12, ch. 59-191.

491.13 Title and abbreviations.—Any person who holds a certificate of registration under this act may use the title "Registered sanitarian" or the abbreviation "R.S." to denote his registration with the board as a sanitarian.

History.—§13, ch. 59-191.

491.14 False claim of registration.—Any person who is not registered or whose certificate of registration is suspended or revoked

shall not use in connection with his name the title "Registered sanitarian" or the abbreviation "R.S." or any other words, letters or insignia indicating that he is a registered sanitarian, nor shall he either directly or indirectly represent himself as being a registered sanitarian.

History.—§14, ch. 59-191.

491.15 Fraud in obtaining registration.—No person shall obtain or attempt to obtain a certificate of registration by any willful misrepresentation or any fraudulent representation.

History.—§15, ch. 59-191.

491.16 Disposition of fees; expenses of board.—All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board. Such moneys shall be deposited and expended pursuant to the provisions of §215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the chairman and secretary-treasurer of said board.

History.—§16, ch. 59-191; §27, ch. 61-514.

cf.—§215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.

491.17 Exemptions.—This act shall not apply to public health officers, public health engineers, entomologists, industrial hygiene engineers, public health nurses, secretarial employees, or insect or pest control operators.

History.—§17, ch. 59-191.

491.18 Reciprocity.—Agreements for reciprocity with states having a registered sanitarians' act and having educational requirements not less than those required by this act may be entered into by the board at its discretion and under such rules and regulations as the board may prescribe.

History.—§18, ch. 59-191.

491.19 Penalty.—Any person violating any of the provisions of this act is guilty of a misdemeanor and upon conviction shall be subject to punishment as provided by law.

History.—§19, ch. 59-191.

CHAPTER 492

FORESTRY PRACTICE ACT

492.01 General provisions. — Any person practicing or offering to practice the profession of forestry in this state as a registered forester shall be required to submit evidence that he is qualified so to practice, and may be registered as hereinafter provided; and it is unlawful for any person to practice the profession of forestry in this state as a registered forester unless such person is duly registered, and to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a registered forester, as hereinafter defined, unless such person has been duly registered.

History.—§1, ch. 61-260.

492.02 Definitions.—

(1) The term registered forester as used in this act means a person who, by reason of his knowledge of the natural sciences, mathematics, economics, and the principles of forestry, acquired by professional training or practical experience, is qualified to engage in forestry practices as herein defined, and has been duly registered.

(2) The terms forestry practices or practice of forestry as used in this act mean any professional service (such as consultation, investigation, evaluation, planning, or responsible supervision of any forestry activity) which requires the application of special knowledge of the principles of forestry. Provided, however, that nothing in this act shall be construed as applying to any vocational class of forest workers, including, but not limited to, such classes as timber cruisers, timber markers, naval stores woods riders, vocational forestry teachers and agents, fire guards, lookouts, and employees of forest industry plants and logging operators.

(3) The term board as used in this act means the state board of registration for foresters.

(4) The term responsible charge as used in this act means the direction of professional foresters' services in evaluation, investigation, or research, requiring initiative, technical knowledge, professional skill, and independent judgment in the practice of forestry.

History.—§2, ch. 61-260.

492.03 State board of registration for foresters; appointment of members; terms.—A state board of registration for foresters is hereby created whose duty it is to administer the provisions of this act. The board shall consist of five foresters who shall be appointed by the governor. Nominees for appointment to the board may be recommended to the governor by the offices of the Florida chapter of the society of American foresters, which nominees shall be at least three in number for each position, and who shall have the qualifications required by §492.04, and the governor may make appointments from the persons so nominated. Every member of the board shall be commissioned by the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his duties. The five members of the board shall be appointed for terms as follows: one for one year, one for two years, one for three years and two for four years. On the expiration of the term of any member of the board the governor shall, in the manner herein provided, appoint for a term of four years a registered forester having the qualifications required by §492.04 to take the place of the member whose term on said board is expiring. Each member shall hold office until the expiration of the term for which such member has been appointed or until his successor shall have been duly appointed and qualified. Appointments to fill vacancies caused by death or resignation shall be for the unexpired term only.

History.—§3, ch. 61-260.

492.04 Qualifications of members of the board.—Each member of the board shall be a citizen of the United States and a citizen and resident of this state, and shall have been engaged in the practice of forestry as herein defined, or in the teaching of forestry, for at least ten years, during at least five years of which he shall have been in responsible charge of such activity, and after the initial appointment to the board shall be registered under the provisions of this act.

History.—§4, ch. 61-260.

492.05 Compensation and expenses of board members.—The members of the board shall receive no compensation for their services but

shall be entitled to any per diem or travel expenses as provided by §112.061.

History.—§5, ch. 61-260.

492.06 Removal of members of the board.—The governor may remove any member of the board as prescribed under §15 of Art. IV of the state constitution.

History.—§6, ch 61-260.

492.07 Organization and meetings of the board.—The board shall have its headquarters in Tallahassee, Leon county. It shall hold at least two regular meetings each year. The two regular meetings shall be held in Tallahassee, Leon county. Special meetings of the board shall be held at such time and place within the state as the bylaws of the board shall provide. The board shall elect or appoint annually the following officers: a chairman and a vice-chairman from the board; and a secretary who need not be a member of the board. A quorum of the board shall consist of three members.

History.—§7, ch. 61-260.

492.08 General powers of the board.—The board shall have the power to make all bylaws and rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it. The board shall adopt and have an official seal. In carrying into effect the provisions of this act, the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance and may also require them to produce books, papers, documents, etc., in a case involving the revocation or suspension of registration. Any member of the board may administer oaths or affirmations to witnesses.

History.—§8, ch. 61-260.

492.09 Receipts and disbursements.—The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same to the state treasurer, who shall keep such moneys in a separate fund to be known as the registered foresters licensing fund. Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrant of the comptroller upon the treasurer, upon itemized vouchers, approved by the chairman and attested by the secretary of the board. The comptroller is hereby authorized to retain and withdraw out of the funds collected hereunder ten per cent of the gross amount collected, as a service charge. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the registered foresters licensing fund. The board is authorized to negotiate with the state forester of the Florida board of forestry to act as secretary of the board and furnish such clerical assistance as is needed to carry out the duties of the board. The board is further authorized to reimburse the Florida board of forestry for such clerical services in accordance with procedures prescribed in this section.

The board may employ counsel and clerical or other assistants as are necessary for the proper performance of its work and may make expenditures of this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this act. Under no circumstances shall the total amount of warrants issued by the comptroller in payment of the expenses and compensation provided for in this act exceed the amount in the hands of the state treasurer known as the registered foresters licensing fund, and such appropriations as may be made by the legislature.

History.—§9, ch. 61-260.

492.10 Records and reports.—The board shall keep a record of its proceedings and a register of all applications for registration and of any action taken thereon. The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced. Annually, as of December 31, the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the board, attested by its chairman and secretary.

History.—§10, ch. 61-260.

492.11 Roster of registered foresters.—A roster of the names and places of business of all registered foresters qualified hereunder shall be prepared annually by the secretary of the board. Copies of this roster shall be placed on file with the secretary of state, and furnished to the public upon request.

History.—§11, ch. 61-260.

492.12 General requirements for registration.—

(1) Any graduate with a bachelor's, master's or doctor's degree from a school or college of forestry accredited by the national society of American foresters and who in addition to such education, shall have a specific record of two years or more of active practice of forestry work, indicating that the applicant is qualified to be placed in responsible charge of such work, and who is of good moral character and integrity, shall be eligible.

(2) Any person who is not a graduate of a school or college of forestry accredited by the national society of American foresters shall be eligible to take a written or oral examination or both to determine his qalifications for registration as a registered forester provided he submits to the board evidence verified by oath and satisfactory to the board that he:

(a) Is twenty-one years of age or older;

(b) Is of good moral character and integrity;

(c) Has been employed or engaged in the practice of forestry for at least seven years and during that time has been in responsible charge of forestry work for at least two years.

Any applicant who shall pass such written or oral examination, or both, in a manner satisfactory to the board shall be eligible for registration as a registered forester.

(3) Any person, who, on the effective date of this act, has been engaged in the active practice of forestry, as defined in §492.02, for at least seven years, with no substitution of education for active practice, and who is of good moral character and integrity, shall be eligible for registration as a registered forester without reference to the requirements set forth in subsections (1) and (2), provided that he file application for registration with the board within two years from the effective date of this act, or men in military service within one year after release.

(4) In considering the qualifications of applicants under subsections (1) and (2), responsible charge of forestry teaching in a department, school, or college of forestry may be regarded as responsible charge of forestry work. The satisfactory completion of each year of an approved course in forestry in a ranger school or college of forestry shall be considered the equivalent of one year of active practice.

History.—§12, ch. 61-260.

492.13 Application and registration fees.—Applications for registration shall be made on forms prescribed and furnished by the board; shall contain statements made under oath, showing among other things, the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, who possess professional qualifications necessary for such membership, and who have personal or professional knowledge of his forestry experience. The application fee for a certificate of registration as a registered forester shall be five dollars, which shall accompany the application. An additional fee of five dollars shall be paid upon issuance of the certificate of registration. Should the applicant fail or refuse to remit the certificate fee within thirty days after being notified in the usual manner that the applicant has successfully qualified, he shall forfeit the right to have the certificate so issued and said applicant may be required to again submit an original application fee therefor. Should the board deny the issuance of a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the board.

History.—§13, ch. 61-260.

492.14 Examinations.—Examinations shall be held at such time and place as the board shall determine. The method of procedure for examinations shall be prescribed by the board and shall test the applicant's knowledge of natural sciences, mathematics, economics and principles of forestry, and his ability to conduct forestry practices as herein defined. A candidate failing an examination may apply for re-examination at the expiration of six months and will be re-examined upon payment of an additional fee of five dollars.

History.—§14, ch. 61-260.

492.15 Certificate.—The board shall issue a certificate of registration upon payment of registration fee as provided for in this act to any applicant who has satisfactorily met all the requirements of this act. The certificate shall authorize the practice of forestry. Certificates of registration shall show the full name of the registrant, shall have a registration number, and shall be signed by the chairman and the secretary of the board under seal of the board. The issuance of a certificate of registration by the board shall be evidence that the person named therein is entitled to all rights and privileges of a registered forester, while the said certificate remains unrevoked or unexpired. Plans, maps, specifications, reports, and other instruments issued by a registrant shall be endorsed with his name and registration number.

History.—§15, ch. 61-260.

492.16 Expiration and renewals.—All certificates of registration shall expire on December 31 following their issuance or renewal and shall become invalid on that date unless renewed. The board shall, each year, fix the annual renewal fee for certificates of registration, which fee shall not exceed the sum of five dollars. Renewal of certificates of registration for the following year may be effected at any time during the month of December of the year in which such certificate has been issued by the payment of the renewal fee so fixed by the board. Such certificates may be later renewed by the payment of an additional fee of fifty cents for each month, or fraction thereof, that payment of the fixed renewal fee is delayed beyond the month of December. The board, in its discretion, may make an exception in meritorious cases.

History.—§16, ch. 61-260.

492.17 Reciprocity.—A person not a resident and having no established place of business in Florida, or who has recently become a resident thereof, may use the title of registered forester provided:

(1) Such person is legally licensed as a registered forester in his own state or county, and has submitted evidence to the board that he is so licensed.

(2) The state or county in which he is so licensed observes these same rules of reciprocity in regard to persons licensed under the provisions of this act.

(3) Requirements for registration in his own state or county are comparable to those set forth in this act and acceptable to the board.

History.—§17, ch. 61-260.

492.18 Revocations and reissuance of certificates.—The board shall have the power after notice and hearing to revoke, or to suspend for such period less than one year as the board may determine, the certificate of registration of any

registrant who is found guilty of violating the code of ethics adopted by the board, gross negligence, incompetency, or professional misconduct in the practice of forestry. The board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency, or professional misconduct in connection with any forestry practices against any registrant as may come to its attention. Any person preferring such charges against any registrant shall submit them in writing and under oath to the secretary of the board. All charges, unless dismissed by the board as unfounded and trivial, shall be heard by the board within three months, where practicable, after the date on which they have been preferred, and the board shall dispose of them as speedily as is feasible. The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing shall be personally served on, or mailed by registered or certified mail to the last known address of such registrant, at least thirty days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce witnesses and evidence in his own defense. If, after such hearing, a majority of the board present votes in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered forester. The board, upon petition being filed by the applicant for restoration and hearing being held thereon, may reissue a certificate of registration to any person whose certificate has been revoked, or may restore the certificate of any person whose certificate has been suspended, by vote of three or more members of the board who favor such reissuance or restoration. A new certificate of registration, to replace any certificate revoked or suspended, may be issued subject to the rules of the board, and a charge of five dollars made for such reissuance. A new certificate, to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of one dollar made for such reissuance.

History.—§18, ch. 61-260.

492.19 Violations.—It is unlawful for any person to practice or offer to practice the profession of forestry as a registered forester in this state, without being registered in accordance with the provisions of this act; or to present or attempt to use as his own the certificate of another; or to give any false or forged evidence of any kind to the board or any member thereof in obtaining a certificate of registration; or to use or attempt to use in any manner an expired, revoked, or suspended certificate of registration; or to endorse any plan, specification, estimate, map or other instrument as a registered forester unless he shall have actually prepared such plan, specification, estimate, map or other instrument, or shall have been in actual responsible charge of the preparation thereof, or to violate any other provisions of this act. The board, or such person or persons as may be designated by the board to act in its stead, is empowered to prefer charges for any of the violations of this title in any court of any county of this state having jurisdiction. Nothing contained in this act shall be construed as preventing any land owner, lessee, or owner of any timber rights, whether as an individual, firm, partnership, or corporation from managing his own timberlands, woodlands, or forest, or from operating the removal of any products therefrom, in any lawful manner desired. It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this act to prosecute any persons, firms, partnerships, or corporations violating the same, by using the title registered forester without being duly registered. The attorney general of the state shall act as legal advisor of the board and render such legal assistance as may be necessary in carrying out the provisions of this act. The board may, at its discretion, employ such other legal assistance as it may deem necessary.

History.—§19, ch. 61-260.

492.20 Penalties.—Any person, firm, partnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be punished as for the commission of a misdemeanor.

History.—§20, ch. 61-260.

CHAPTER 493

PRIVATE INVESTIGATIVE AGENCIES, PATROL AGENCIES, ETC.

493.01 Definitions.—The following terms shall, unless the context otherwise indicates, have the following respective meanings:

(1) Private investigative agency means and includes any person, firm, company, partnership or corporation, engaged in the business of furnishing for hire private investigations and which employs one or more full-time or part-time private investigators.

(2) Watchman, guard or patrol agency means and includes any person, firm, company, partnership or corporation, engaged in the business of furnishing for hire watchman, guard or patrolman services and which employs one or more full-time or part-time watchmen, guards or patrolmen.

(3) Private detective means and includes any person engaged in the business of private investigations but who does not employ any full-time or part-time private investigators.

(4) Watchman, guard or patrol contractor means and includes any person, who as an independent contractor, and not as an employee, engages in the business of furnishing for hire watchman, guard or patrol service which is performed by himself and who does not hire any full-time or part-time watchman, guard or patrolman.

(5) Private investigator means and includes any one who performs the services of private investigation, or who directly supervises others in the performance of such services.

(6) Private investigation means and includes investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:

(a) Crime or wrongs done or threatened against the United States or any state or territory of the United States;

(b) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other group of persons or partnership or corporation;

(c) The credibility of witnesses or other persons;

(d) The whereabouts of missing persons;

(e) The location or recovery of lost or stolen property;

(f) The causes and origin of, or responsibility for, fires, or libels, or slanders, or losses, or accidents, or damage, or injuries to real or personal property;

(g) The affiliation, connection or relation of any person, partnership or corporation with any union organization, society or association or with any official member represented hereof;

(h) With reference to any person seeking employment in the place of any person who has quit work by reason of any strike;

(i) With reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors and subcontractors;

(j) The business of securing evidence to be used before investigating committees, boards of award, or arbitration; or in the trial of civil or criminal cases and the preparation therefor;

(k) The conducting of studies or surveys to determine methods and means of providing security for the person requesting the studies or surveys.

(7) Watchman, guard or patrolman means and includes persons who directly supervise others, or who themselves, separately or collectively, guard persons or property or attempt to prevent theft or unlawful taking of goods, wares and merchandise, or attempt to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents, papers and articles of value or to procure the return thereof, or who perform the services of such watchman, guard or patrolman, or other person for any of said purposes.

(8) Licensee means and includes any person, firm, company, partnership or corporation licensed under this chapter.

(9) The personal pronoun he implies the impersonal pronoun it.

(10) The word secretary means the secretary of state of this state.

History.—§1, ch. 63-340.

493.02 Powers and duties of secretary of state.—

(1) The secretary of state is hereby vested with the power, jurisdiction and authority to issue and revoke licenses to private investigative agencies, watchman, guard or patrol agencies, private detectives and watchman, guard or patrol contractors therefor. The secretary of state shall have the power, jurisdiction and authority to promulgate reasonable rules and regulations for his own government and in the exercise of his powers hereunder, for the conduct of the business of private investigative agencies, private detective, and watchman, guard or patrol contractors, watchman, guard or patrol agencies, not in conflict with the constitution and laws of the United States or of this state, and may amend same at his pleasure.

(2) No person, firm, company, partnership or corporation shall furnish private investigations, watchman, guard or patrolman services, nor shall he advertise, solicit nor in any way promise nor inform any one that he will perform such services without receiving from the secretary of state a license as provided herein.

History.—§2, ch. 63-340.

493.03 Application for license.—Every applicant for a license under this chapter shall file with the secretary a written application accompanied by a fee of twenty-five dollars to cover costs. The fee shall not be rebatable. The written application shall be in accordance with the following provisions:

(1) If the applicant is an individual the application shall be signed and verified by the individual;

(2) If the applicant is a firm or partnership a separate application shall be signed and verified by each individual composing or intending to compose, in the immediate future, such firm or partnership;

(3) If the applicant is a corporation a separate application shall be signed and verified by each officer (not including assistant secretaries or assistant treasurers) thereof;

(4) The application shall contain the following information concerning the individual signing the same:

(a) Full name and title of position held with applicant;

(b) Age, date and place of birth;

(c) The present residence address and the residence addresses within the five years immediately preceding the submission of the application;

(d) Occupations held presently and within the five years immediately preceding the submission of the application;

(e) A statement that he is a citizen of the United States and over the age of twenty-one years;

(f) The address of the principal place in which the business is to be conducted;

(g) The address of all branch offices within the state;

(h) The name under which the business is to be conducted;

(i) The names and addresses of all partners or officers and directors, as the case may be;

(j) A full set of fingerprints and a photograph of the signatory taken within two years immediately preceding the submission of the application;

(k) A statement of the experience of the signatory which he believes would qualify him, his firm or his corporation for a license under this chapter;

(l) A statement of any or all arrests of the signatory;

(m) Such further facts as may be required by the secretary of state to show that the person signing the application is competent, honest, truthful, trustworthy, of good character and bears a reputation for fair dealing.

History.—§3, ch. 63-340.

493.04 License requirements.—Every corporation applying for a license hereunder must be organized, or authorized to do business, under the laws of this state and shall have the capacity to make valid contracts, to sue and be sued in this state. All applicants for licenses under this chapter who are natural persons, and all officers of corporate applicants must be citizens of the United States, and at least the president, the secretary, treasurer, and all other officers actively working for such corporation within this state shall have had at least three years experience, one year of such experience shall be within the state, performing the type of service permitted under the license applied for or the equivalent thereof in related fields. Provided, however, where the applicant is the purchaser of an existing agency, the experience requirement may, in the discretion of the secretary of state, be reduced to one year.

History.—§4, ch. 63-340.

493.05 Notification to secretary of state of new partner or corporate officer.—After filing the application, unless the secretary declines to issue the license, or revokes it after issuance, all private investigative agencies and all watchman, guard or patrolman agencies, shall notify the secretary within ten days of the removal, replacement or addition of any or all partners and officers of the corporate agency, and upon receipt of application forms from the secretary of state, shall cause the same to be completed by the new partner or officer and the same shall be filed with the secretary. The agency's good standing under this chapter shall be contingent upon the secretary of state's approval of any such new partner or officer.

History.—§5, ch. 63-340.

493.06 License fees.—The license fees applicable to the four types of licenses provided for under this chapter are as follows:

(1) Private investigative agency—two hundred dollars;

(2) Watchman, guard and patrolman agency—one hundred dollars;

(3) Private detective—fifty dollars;

(4) Watchman, guard or patrolman contractor—twenty five dollars.

These fees shall be paid to the secretary at the time the application is made. If the secretary declines to issue a license the fee shall be returned to the applicant. Once a license is issued, if it is subsequently revoked, the license fee shall not be returned to the licensee. The holder of a private investigative agency license may furnish for hire services performed by watchmen, guards, or patrolmen. The holders of all other types of licenses may not furnish any services other than those described under the definition of that type of license contained in §493.01.

History.—§6, ch. 63-340.

493.07 Investigation of applicants by secretary of state.—The secretary shall make such individual investigations of applicants for licenses under this chapter as he may deem necessary.

History.—§7, ch. 63-340.

493.08 Issuance of license.—When the secretary of state shall be satisfied of the good character, competency and integrity of the applicant, or, if the applicant be a firm or partnership, the individual members thereof, or, if the applicant be a corporation, the officers thereof, he shall inform the applicant of his findings and that license shall be issued upon the applicant's posting a licensee's bond as provided for in §493.09, and furnishing the secretary of state with a certificate showing that each private investigator or watchman, guard or patrolman employed by the applicant, or that the private detective or watchman, guard or patrol contractor, as the case may be, is covered by a proper bond subject to approval by the secretary of state. Upon the posting of such licensee's bond and furnishing of such certificate, the secretary of state shall issue and deliver to such applicant a license to conduct the type of business applied for at the premises stated in the application. Such license shall not be transferable and shall be revoked or cancelled only by the secretary of state.

History.—§8, ch. 63-340.

493.09 Licensee's bond.—The licensee's bond referred to in §493.08 shall be a surety bond executed by the applicant and two or more sureties, or by a surety company authorized to do business in this state, payable to the governor of this state in the sum of five thousand dollars conditioned upon the faithful and honest conduct and performance by the licensee of the business so licensed. If any person shall be aggrieved by the misconduct of any such licensed agency, such person may maintain an action in his own name upon the bond of said agency, in any court having jurisdiction of the amount claimed. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist.

History.—§9, ch. 63-340.

493.10 License; contents; posting.—

(1) The license issued pursuant to this chapter shall be for a period of one year and shall be in such form as may be determined by the secretary of state, but shall at least specify the name under which the applicant is to operate, the address of the principal place of business, the date on which it will expire, the full name and titles of the persons who submitted application forms and the number of the license.

(2) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state.

(3) The secretary shall upon application and payment of fee issue a separate license for each branch office mentioned in the application. Said license shall be in a form designed by the secretary but it shall at least specify the name under which the licensee operates, its license number and the address of the location to which the license applies.

(4) It shall be the duty of every licensee to furnish all of its partners and officers, as the case may be, and all employees who are private investigators or watchmen, guards and patrolmen, and to furnish himself in the case of a private detective or watchman, guard or patrolman contractor, an identification card. Such card shall be in a form and design as may be approved by the secretary of state, but shall specify at least the name of the holder of the card, the name and number of the licensee, and be signed by a representative of the licensee and by the holder of the card.

History.—§10, ch. 63-340

493.11 Inapplicability of chapter.—This chapter shall not apply:

(1) To any detective or officer belonging to the agencies of the United States or this state, or any county or municipality of this state, while any such officer is engaged in the performance of his official duties.

(2) To special police officers appointed by the state or by the police department of any city or county within the state while any such officer is engaged in the performance of his official duties.

(3) To insurance investigators or adjusters licensed as such.

(4) To any person employed as special agent, detective or private investigator exclusively in connection with the affairs of that employer.

(5) To any person, firm, company, partnership, corporation, or any bureau or agency whose business is exclusively the furnishing of information as to the business and financial standing, and credit responsibility of persons, firms, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds or commercial credit.

(6) To any corporation duly authorized by the state to operate a central burglar or fire alarm protection business.

(7) Attorneys or counselors at law in the

regular practice of their profession, but such exemption shall not inure to the benefit of any employee or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law.

No person, firm, company, partnership, corporation or any bureau or agency, exempted hereunder from the application of this chapter, shall perform any manner of private investigator or watchman, guard or patrol agency service for any person, firm, company, partnership, corporation, bureau or agency whether for fee, hire, reward, other compensation, remuneration, or consideration or as an accommodation without fee, reward or remuneration or by a reciprocal arrangement whereby such services are exchanged on request of parties thereto. The commission of a single act prohibited by this section shall constitute a violation thereof.

History.—§11, ch. 63-340.

493.12 Renewal of license.—A license granted under the provisions of this chapter may be renewed by the secretary of state upon application therefor by the holder thereof, in such form as the secretary of state may prescribe, and payment of fee and filing of surety bond or certificate each in amounts equivalent to those specified in §§493.08 and 493.09 respectively as pertaining to original licenses. The application shall be filed six weeks before the expiration date of the license unless the application is accompanied by a late filing fee of one hundred dollars. In no event will renewal be granted more than six months after the date of expiration of a license. No person, firm, company, partnership or corporation shall carry on any business subject to this section during any period which may exist between the date of expiration of a license and the renewal thereof.

History.—§12, ch. 63-340.

493.13 Change of location of licensee.—In the event the licensee desires to change the location of any place of business indicated in his application on file with the secretary of state, he shall notify the secretary. The secretary of state shall send to him suitable forms designed by the secretary of state, the purpose of which shall be to record in the office of the secretary the fact that there has been a change by way of substitution of the licensee's place or places of business. Upon completion of such form the licensee shall return it to the secretary of state, together with a fee of ten dollars for each changed location, and a certificate from his surety on the bond mentioned in §493.09, to the effect that said bond covers the licensee's business at the changed location. The secretary shall thereupon send to the licensee a certificate of registration of each changed location. Said certificate shall be in a form designed by the secretary of state, but it shall at least specify the name under which the licensee operates, its license number and the address of the location to which the certificate of registration applies.

History.—§13, ch. 63-340.

493.14 Power of secretary of state to suspend or revoke license.—

(1) The secretary of state may refuse to renew or may suspend or may revoke a license for any one or combination of the following grounds:

(a) Fraud or wilful misrepresentation in application for or in obtaining a license.

(b) Wilfully and knowingly violating any of the provisions of this chapter by the licensee or any of his employees.

(c) If the licensee or anyone in his employ has been adjudged guilty of the commission of a crime involving moral turpitude.

(d) A false statement by the licensee that any person is or has been in his employ.

(e) If the licensee or any of his or its employees is found guilty of wilful betrayal of a professional secret.

(f) If the licensee or any of his employees is incompetent, or is guilty of conduct against the interest of the general public.

(g) Failure of the licensee to maintain in full force and effect the surety bond and honesty bond referred to in §§493.08 and 493.09.

(h) Upon the disqualification or insolvency of the sureties of the bonds referred to in §§493.08 and 493.09, unless such licensee files a new bond with sufficient sureties within thirty days after notice from the insurance commissioner of the surety company's home state or this state.

(2) Upon revocation or suspension of license, the licensee shall forthwith return the license which was suspended.

(3) The secretary of state shall hold as confidential any information of a personal nature or that relating to the conduct of the trade or profession.

History.—§14, ch. 63-340.

493.15 Cancellation of license.—In the event the licensee desires to cancel the license, he shall notify the secretary of state and the secretary shall supply him with proper forms as designed by the secretary of state to effectuate the cancellation of said license. Upon cancellation of said license, the licensee shall forthwith return to the secretary of state the license so cancelled.

History.—§15, ch. 63-340.

493.16 Denial of application; hearing; appeal.—The secretary shall, before denying an application for a license or before revoking or suspending any license, and at least fifteen days prior to the date set for the hearing, and upon due notice to the complainant or objector, notify in writing the applicant for, or the holder of such license, of any charge made and shall afford said applicant, or licensee, an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or licensee, or by mailing same by registered mail to the last known business address of such applicant or licensee. The hearing on such charges shall be at such time and place as the secretary of state shall prescribe, pro-

viding that it does not work a hardship on the applicant or defendant, and shall be conducted by such officer or person in the department as the secretary of state may designate, who shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken with the same fees and mileage as prescribed by law in courts in this state in civil cases. Such officer or person in the office of secretary of state designated to take such testimony shall be bound by common law and statutory rules of evidence and by technical or formal rules of procedure that apply to the circuit courts of the state. In the event that the secretary of state shall deny the application for, or revoke or suspend any such license, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed in the office of the secretary of state and copies thereof shall be mailed to the applicant or licensee and to the complainant within two days after the filing thereof as herein prescribed.

After notice of revocation, or suspension, or denial of application has been mailed, by registered mail, to the applicant, or licensee, he shall have thirty days therefrom within which to appeal the revocation, suspension, or denial of application to the circuit court of the judicial circuit within which he resides, or is domiciled.

History.—§16, ch. 63-340.

493.17 Death of licensee; carrying on of business.—

(1) Upon the death of an individual or individuals, of whose qualification a license under this chapter has been obtained, the business with which the decedent was connected may be carried on for a period of ninety days by the following:

(a) In the case of an individual licensee the surviving spouse, or, if there be none, the executor, or administrator of the estate of the decedent.

(b) In case of a partnership, the surviving partners.

(c) In case of an officer of a firm, company, association, organization or corporation, the other officers thereof.

(2) Upon the authorization of the secretary of state the business may be carried on for a further period of time when necessary to complete any investigation or contract, or assist in any litigation pending at the death of the decedent.

(3) Nothing in this section shall be construed to restrict the sale of a business licensed pursuant to this chapter; provided, however, the vendee qualifies for a license under the provisions of this chapter.

History.—§17, ch. 63-340.

493.18 Trust fund.—All funds derived from license fees paid under this chapter for the 1963-65 biennium only shall be paid into a trust fund to be known as the private investigative agency licensing law trust fund to be used by the secretary of state for the administration of this law during the biennium. All unexpended moneys remaining in this trust fund at the close of the biennium shall accrue to the general revenue fund of the state. Thereafter, all fees shall be deposited in the general revenue fund of the state and a budget for the administration of this chapter presented to each session of the legislature.

History.—§18, ch. 63-340.

493.19 Divulging information; prohibited; penalty provided.—Any person who is or has been an employee of a licensee shall not divulge to any one other than his employer, or as his employer shall direct, except as he may be required by law, any information acquired by him during such employment in respect of any of the work to which he shall have been assigned by such employer. Any such employee violating the provisions of this section, and any such employee who shall wilfully make a false report to his employer in respect to any such work, shall be guilty of a misdemeanor. The employer of any employee believed to have violated this section shall supply the secretary of state, or such officer or person in the office of secretary of state as the secretary of state may designate, all the known facts and circumstances in connection with the said employee's transaction, performance or action believed to be in violation of this section, and the secretary of state or his authorized representative shall, should the facts and circumstances be deemed to warrant, conduct further investigation and submit the evidence thus acquired to the secretary of state for appropriate action in accordance with the provisions of §493.23.

History.—§19, ch. 63-340.

493.20 Exclusion of tax.—The imposition of the license fee provided for hereunder authorizes the licensee to practice his profession anywhere in Florida without the imposition of being required to obtain additional licenses throughout Florida, except he shall be required to obtain a city and county occupational license in each city and county where he maintains a physical office.

History.—§20, ch. 63-340.

493.21 Weapon not authorized.—It is hereby specifically provided, that nothing in this chapter shall be construed to authorize any licensee to carry any weapon, whatsoever.

History.—§21, ch. 63-340.

493.22 Violation; penalty.—Any person who violates any provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of not less than $100.00 nor more than $1,000.00, or by imprisonment not to exceed 1 year, or by both a fine and imprisonment.

History.—§22, ch. 63-340.

493.23 Enforcement of chapter; investigation.—

(1) The secretary of state of the state shall have the power to enforce the provisions of

this chapter irrespective of the place or location in which said violation occurred and upon complaint of any person, or on his own initiative to investigate any violation thereof; or to investigate the business and business methods of any licensee, applicant or employee thereof.

(2) In any such investigation by the said secretary of state, each such licensee, applicant or employee thereof shall be obliged to submit information as to his business practices or methods. For purposes of enforcing the provisions of this chapter and in making investigations relating to any violation thereof, and for the purposes of investigating the character, competence or integrity of any such applicant, licensee or employee thereof, and for purposes of investigating practices and business methods thereof the secretary of state shall have the power to subpoena and bring before him any person in the state and may require the production of any papers he deems necessary, but with written permission of the client whose case file is to be examined if the papers relate to a client, and administer oaths and take depositions of any such persons so subpoenaed. Any person duly subpoenaed who fails or refuses to be examined or to answer any legal or pertinent question as to his qualifications or the business methods or business practices of any such person under investigation by the said secretary of state shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine of not more than $100.00. The testimony of witnesses in any such proceeding shall be under oath before the secretary of state or his agent, and wilful false swearing in such proceedings shall be punishable as perjury.

(3) The secretary of state shall designate an advisory committee to be composed of five members. Said advisory committee membership shall insofar as possible be geographically distributed and representative of the various segments of the profession. The committee shall organize, elect a chairman and thereafter meet upon call of the chairman. The committee shall counsel and advise with the secretary of state and make recommendations relative to the operation and regulation of the private detective division of the secretary of state and of the industry.

History.—§23, ch. 63-340.

493.24 Applicability of chapter when effective.—Any private investigative agency or watchman, guard or patrol agency conducting such business on June 7, 1963, shall receive a license from the secretary of state automatically upon his filing with the secretary of state the application provided for in §493.03 and the payment of the fees and procuring of approved bond as provided for in this chapter by August 1, 1963, as to any private investigative agency or watchman, guard or patrol agency.

History.—§25, ch. 63-340.

TITLE XXXI

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 494

MORTGAGE BROKERAGE ACT

494.01 Short title.—This act may be cited as "mortgage brokerage act."

History.—§1, ch. 59-309.

494.02 Definition of terms.—In this act unless the context or subject matter otherwise requires:

(1) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(2) "Mortgage loan" means any loan secured by a mortgage on real property.

(3) "Mortgage broker" means any person not exempt under §494.03 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires or sells, or offers to make, negotiate, acquire or sell a mortgage loan. This subsection shall not apply to transactions involving the sale or purchase of notes or bonds secured by mortgages which are subject to registration by the Florida securities commission.

(4) "Mortgage solicitor" means any individual not licensed as a mortgage broker, who performs any of the functions set out under subsection (3) and who is employed by a mortgage broker or whose business policies and acts are under the direction, control or management of a mortgage broker.

(5) "Mortgage commissioner" means the state comptroller or one of his assistants who might be designated and authorized by the state comptroller to act in his behalf, who is hereinafter referred to as the "commissioner."

(6) "Licensee" means a person, whether mortgage broker or mortgage solicitor, under any of the provisions of this act.

(7) "License" means a license issued under the provisions of this act.

History.—§2, ch. 59-309; (2), (3), (5) §1, ch. 63-58.

494.03 Exempt persons.—This act does not apply to the following:

(1) Banks, trust companies, savings and loan associations, pension trusts, credit unions, insurance companies, small loan companies or federally licensed small business investment companies.

(2) Any person making or acquiring a mortgage loan with his own funds for his own investment without intent to resell said mortgage loan.

(3) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when such person renders services in the course of his practice as an attorney at law.

History.—§3, ch. 59-309; (1), (2) §2, ch. 63-58.

494.04 Licensing of mortgage brokers and mortgage solicitors.—

(1) No person shall act as a mortgage broker or mortgage solicitor without a license therefor as provided in this act.

(2) No mortgage broker's or mortgage solicitor's license shall be granted to any person who has not been a bona fide resident of the state for a period of at least six months immediately preceding the date of application for license, or who is not a citizen of the United States.

(3) Application for license as mortgage solicitor must be accompanied by the recommendation of the mortgage broker who is to be applicant's employer and who is to be responsible for applicant's actions.

(4) Each application for a license or for a renewal thereof shall be made in writing, on such forms and in such manner and accompanied by such evidence in support of such application as prescribed by the commissioner. The commissioner shall require such information with regard to the applicant as he may deem desirable, with due regard to the paramount interests of the public, as to the experience, background, honesty, truthfulness, integrity, and competency of the applicant as to financial transactions involving primary or subordinate mortgage financing, and where the ap-

plicant is a person other than an individual, as to the honesty, truthfulness, integrity, and competency of any officer or director of such corporation, association, or other group, or the members of such partnership.

(5) The license fee for a license year or part thereof ending the following August 31 shall be the sum of twenty-five dollars for a mortgage broker and fifteen dollars for a mortgage solicitor, which fees shall be deposited in the state treasury and are hereby appropriated to the comptroller to be used in administering this act.

(6) If the licensee is a person other than an individual, the license issued to it entitles one officer or member thereof, on behalf of the corporation, partnership, association, or other group, to engage in the business of mortgage broker, and such officer or member to be designated in the application for license. For each officer or member other than the officer so designated, through whom it engages in the business of mortgage broker, the annual fee shall be fifteen dollars in addition to the fee paid for the first license.

(7) Upon the filing of such application, and the payment of said fee, the commissioner shall, upon determination of proper qualifications issue a license to the applicant to act as a mortgage broker or mortgage solicitor under and in accordance with the provisions of this act for a period which shall expire the last day of August next following the date of its issuance. Such license shall not be transferable or assignable.

(8) When a mortgage broker's license is issued to a person other than an individual, if it desires any of its officers or members other than the officer or member designated by it to act on behalf of the corporation, partnership, association or other group, as a mortgage broker, it may procure an additional license to so employ each of such additional officers or members. Each additional officer or member so licensed shall be licensed only to act as a mortgage broker for and on behalf of the corporation, partnership, association or other group.

(9) The licenses of both mortgage broker and mortgage solicitor shall be prominently displayed in the office of the mortgage broker. The mortgage solicitor's license shall remain in the possession of the licensed mortgage broker employer until canceled or until the mortgage solicitor leaves the employ of the mortgage broker.

(10) Immediately upon the mortgage solicitor's withdrawal from the employ of the mortgage broker, the mortgage broker shall return the mortgage solicitor's license to the commissioner for cancellation.

(11) Every licensed mortgage broker shall have and maintain a principal place of business in the state for the transaction of business. The license shall specify the address of said principal place of business and shall be conspicuously displayed therein. In the event the mortgage broker shall maintain a branch office or offices, the commissioner shall, upon application and the payment of a fee of fifteen dollars, issue a branch office license specifying thereon the address of such office, which license shall be conspicuously displayed therein. In case the address of the principal place of business or of any branch office shall be changed, the commissioner shall endorse the change of address on the license without charge.

(12) Every person, firm, association, or corporation licensed as a mortgage broker, shall deposit with the commissioner prior to doing business as such, a bond in the amount of five thousand dollars, executed by the mortgage broker as principal and a surety company authorized and licensed to do business in the state, as surety. The bond shall be conditioned upon the faithful compliance of the broker so licensed with the provisions of this act and, that he will conduct the business of a mortgage broker in a reliable and dependable manner. The bond shall run to the state for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the broker and/or its solicitors. Only one bond shall be required of any person, firm, association, or corporation irrespective of the number of mortgage brokers employed by or who are members of said firm, association, or corporation.

History.—§4, ch. 59-309; (2), (4)-(6), (11) §3, ch. 63-58.

494.05 Denial, suspension or revocation of licenses.—

(1) The commissioner may, upon his own motion, or upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a licensee under this act, within this state. The license of a licensee may be suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, upon a finding of facts showing that the licensee has been guilty of any of the following:

(a) Making any false promises likely to influence, persuade, or induce; or pursuing a course of misrepresentation or false promises through agents or solicitors, or advertising or otherwise.

(b) Misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof, regarding a transaction to which he is a party, and of injury to another party thereto.

(c) Failure to disburse funds in accordance with his agreements.

(d) A crime against the laws of this state or any other state or of the United States, involving moral turpitude, or fraudulent or dishonest dealing, or if a final judgment has been entered against him in a civil action upon grounds of fraud, misrepresentation or deceit.

(e) Failure to account or deliver to any person any personal property such as money,

fund, deposit, check, draft, mortgage, or other document, or thing of value, which has come into his hands, and which is not his property, or which he is not in law or equity entitled to retain, under the circumstances, and at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

(f) Failure to place, immediately upon receipt, any money, fund, deposit, check or draft, entrusted to him by any person dealing with him as a broker, in escrow with an escrow agent located and doing business in Florida, pursuant to a written agreement, or, to deposit said funds in a trust or escrow bank account maintained by him with some bank located and doing business in Florida, wherein said funds shall be kept until disbursement thereof is properly authorized.

(g) Failure to comply with any of the provisions of this act, or with any lawful order, rule or regulation made or issued under the provisions of this act.

(h) Conduce which would be the cause for denial of a license.

(i) Insolvency.

(2) The license of a licensee may be revoked, if the application for the license is found to contain a material misstatement, or the licensee demonstrates by a course of conduct negligence or incompetence in performing any act for which he is required to hold a license under this act, or if the licensee for a second time, shall be found guilty of any misconduct which warrants his suspension under subsection (1).

(3) If a licensee is a person other than an individual, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or members of the licensed corporation, partnership, association or other group, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

(4) No license shall be suspended or revoked except after a hearing thereon. The commissioner shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of such hearing by registered or certified mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the commissioner and shall not be effective until thirty days after a copy of such order of suspension or revocation has been by registered or certified mail furnished to the licensee at such principal place of business.

(5) At any time prior to the effective date of the order issued by the commissioner suspending or revoking any license, the person aggrieved may apply for a review thereof by filing a petition for certiorari in the circuit court of the county in which said person is licensed in the manner provided by the Florida appellate rules.

History.—§5, ch. 59-309; (1) §4, ch. 63-58; (5) §5, ch. 63-512.

494.06 Investigations and complaints.—

(1) If the commissioner has reasonable cause to believe that any licensee has violated any of the provisions of this act, or that the license may be subject to suspension or revocation, he may make such investigations as he may deem necessary and he may examine such licensee or any other person and is hereby granted the power to compel the production of all books, records, accounts and documents.

(2) Any party having reason to believe that this act has been violated, or that a license is subject to suspension or revocation, may file with the commissioner a written complaint setting forth the details of such alleged violation or grounds for suspension or revocation.

History.—§6, ch. 59-309.

494.07 Powers of commissioner.—

(1) The commissioner, or his duly authorized representative, shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction under this act. The commissioner, or his duly authorized representative, shall have power to administer oaths and affirmations to any person.

(2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court having jurisdiction over that person may, upon application and proof of such refusal, make an order awarding process of subpoena duces tecum, for the witness to appear before the commissioner, or his duly authorized representative, and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed to appear at the time and place therein designated.

(3) If any person served with any such subpoena shall refuse to obey the same or to give testimony or to produce evidence as required thereby, the commissioner may apply to the circuit court having jurisdiction over the person for an attachment against such person.

(4) The commissioner may issue and promulgate such rules and regulations as he may deem necessary in the administration of this act and not inconsistent therewith, which rules and regulations shall have the force and effect of law.

History.—§7, ch. 59-309.

494.08 Requirements and prohibitions.—

(1) No person shall advertise, print, display, publish, distribute, telecast or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, televised or

broadcast, in any manner, any statement or representation with regard to the rates, terms, or conditions pertaining to the making, negotiating, or sale of loans, which is false, misleading, or deceptive. No person who is not licensed under this act nor exempt under §494.03 shall use the word mortgage or similar words in any advertising, signs, letterheads, cards, or like matter which tend to represent that he arranges real estate mortgage loans. No person not already registered under this act shall be granted a license in a name containing such words as insured, bonded, guaranteed, secured and the like. No person shall advertise or offer to sell insured or guaranteed mortgages unless the principal and interest of such mortgages is insured by an insurance company authorized by the state insurance commissioner to write such insurance under the provisions of chapter 635, or unless such mortgages are wholly or partially insured or guaranteed by an agency of the federal government.

(2) No person in connection with or incidental to the making of any mortgage loan shall induce, require or permit the mortgage deed or note to be signed by a principal to the transaction if such instruments contain any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not then available.

(3) No person shall charge or exact directly or indirectly from the mortgagor a fee or commission in excess of the maximum fees or commissions as set forth herein. The fee or commission shall include all direct or indirect costs or expenses incidental to the processing and closing of the mortgage loan transaction, including but not limited to appraisal fees, abstracting charges, title insurance premiums, and attorney's fees.

(4) The maximum fees or commissions which may be charged for any mortgage loans shall be as follows:

(a) On mortgage loans of one thousand dollars or less: two hundred and fifty dollars.

(b) On mortgage loans in excess of one thousand dollars and not more than two thousand dollars: two hundred and fifty dollars for the first one thousand dollars of the mortgage loan, plus ten dollars for each additional one hundred dollars of the mortgage loan.

(c) On mortgage loans in excess of two thousand dollars and not more than five thousand dollars: three hundred and fifty dollars for the first two thousand dollars of the mortgage loan, plus ten dollars for each additional one hundred dollars of the mortgage loan.

(d) On mortgage loans in excess of five thousand dollars: two hundred and fifty dollars plus ten per cent of the entire mortgage loan.

For the purpose of determining maximum fees or commissions, the amount of the mortgage loan shall be based on the proceeds of said mortgage loan exclusive of the authorized maximum fees or commissions.

(5) No person not licensed under the provisions of this act shall charge or receive any commission, bonus or fee in connection with arranging for, negotiating, or selling a mortgage loan.

(6) No person shall accept a deposit and/or application for a mortgage loan involving a principal sum of less than twenty-five thousand dollars without delivering to the borrower a statement in writing setting forth the total maximum costs to be charged, incurred or disbursed in connection with processing and closing the mortgage loan.

(7) Mortgage loans insured or guaranteed by an agency of the federal government are exempt from the provisions of subsections (3) and (4).

History.—§8, ch. 59-309; (1), (5) §5, (7) n. §6, ch. 63-58.

494.09 **Applicability of act.**—Failure to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan, and no person acquiring a mortgage loan, as mortgagee or assignee, shall be required to ascertain whether or not the provisions of this act have been complied with.

History.—§9, ch. 59-309.

494.10 **Penalties.**—Whoever violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500, or imprisonment for a term of not more than 6 months, or by both such fine and imprisonment in the discretion of the court, and each violation of this chapter shall constitute a separate offense.

History.—§10, ch. 59-309.

494.11 **Waiver.**—Any waiver of the provisions of this act shall be unenforceable and void.

History.—§11, ch. 59-309.

CHAPTER 495

REGISTRATION OF TRADEMARKS

495.01 Definitions.—

(1) The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(2) The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

(3) The term "applicant" as used herein embraces the person filing an application for registration of a trademark under this act, his legal representatives, successors or assigns.

(4) The term "registrant" as used herein embraces the person to whom the registration of a trademark under this act is issued, his legal representatives, successors or assigns.

(5) For the purposes of this act, a trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state.

History—Comp. §1, ch. 57-212.

495.02 Registrability. — A trademark by which the goods of any applicant for registrant may be distinguished from the goods of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive or scandalous matter; or

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(4) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or

(5) Consists of a mark which, (a) when applied to the goods of the applicant, is merely descriptive or deceptively misdescriptive of them, or (b) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname provided, however, that nothing in this subsection shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five years next preceding the date of the filing of the application for registration; or

(6) Consists of or comprises a trademark which so resembles a trademark registered in this state or a trademark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.

History.—Comp. §2, ch. 57-212.

495.03 Application for registration.—

(1) Subject to the limitations set forth in this act, any person who adopts and uses a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

(a) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation,

(b) The goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods and the class in which such goods fall,

(c) The date when the trademark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business, and

(d) A statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

(2) The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

(3) The application shall be accompanied by a specimen or facsimile of such trademark in triplicate.

(4) The application for registration shall be accompanied by a filing fee of five dollars, payable to the secretary of state.

History.—Comp. §3, ch. 57-212.

495.04 Certificate of registration.—

(1) Upon compliance by the applicant with the requirements of this act, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the trademark, the date claimed for the first use of the trademark anywhere and the date claimed for the first use of the trademark in this state, the class of goods and a description of the goods on which the trademark is used, a reproduction of the trademark, the registration date and the term of the registration.

(2) Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such trademark in any action or judicial proceedings in any court of this state.

History.—Comp. §4, ch. 57-212.

495.05 Duration and renewal.—

(1) Registration of a trademark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed for a like term. A renewal fee of five dollars, payable to the secretary of state, shall accompany the application for renewal of the registration.

(2) A trademark registration may be renewed for successive periods of ten years in like manner.

(3) The secretary of state shall notify registrants of trademarks hereunder of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration by writing to the last known address of the registrants.

(4) Any registration in force on the date on which this act shall become effective shall expire ten years from the date of the registration or of the last renewal thereof or one year after the effective date of this act, whichever is later, and may be renewed by filing an application with the secretary of state on a form furnished by him and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

(5) The secretary of state shall within six months after the effective date of this act notify all registrants of trademarks under previous acts of the date of expiration of such registrations unless renewed in accordance with the provisions of this act by writing to the last known address of the registrants.

History.—Comp. §5, ch. 57-212.

495.06 Assignment.—Any trademark and its registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary of state upon the payment of a fee of two dollars payable to the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this act shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

History.—Comp. §6, ch. 57-212.

495.07 Records.—The secretary of state shall keep for public examination a record of all trademarks registered or renewed under this act.

History.—Comp. §7, ch. 57-212.

495.08 Cancellation.—

(1) The secretary of state shall cancel from the register:

(a) After one year from the effective date of this act, all registrations under prior acts which are more than ten years old and not renewed in accordance with this act;

(b) Any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(c) All registrations granted under this act and not renewed in accordance with the provisions hereof;

(d) Any registration concerning which a court of competent jurisdiction shall find

1. That the registered trademark has been abandoned,

2. That the registrant is not the owner of the trademark,

3. That the registration was granted improperly,

4. That the registration was obtained fraudulently,

5. That the registered trademark is so similar, as to be likely to cause confusion or mistake or to deceive, to a trademark registered by another person in the United States patent office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the owner of a concurrent registration of his trademark in the United States patent office covering an area including this state, the registration hereunder shall not be cancelled.

(e) When a court of competent jurisdiction

shall order cancellation of a registration on any ground.

History.—Comp. §8, ch. 57-212.

495.09 Classification.—The following general classes of goods are established for convenience of administration of this act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a trademark may include any or all goods upon which the trademark is actually being used comprised in a single class, but in no event shall a single application include goods upon which the trademark is being used which fall within different classes of goods:

(1) Raw or partly prepared materials
(2) Receptacles
(3) Baggage, animal equipments, portfolios, and pocketbooks
(4) Abrasives and polishing materials
(5) Adhesives
(6) Chemicals and chemical compositions
(7) Cordage
(8) Smokers' articles, not including tobacco products
(9) Explosives, firearms, equipments, and projectiles
(10) Fertilizers
(11) Inks and inking materials
(12) Construction materials
(13) Hardware and plumbing and steamfitting supplies
(14) Metals and metal castings and forgings
(15) Oils and greases
(16) Paints and painters' materials
(17) Tobacco products
(18) Medicines and pharmaceutical preparations
(19) Vehicles
(20) Linoleum and oilcloth
(21) Electrical apparatus, machines, and supplies
(22) Games, toys, and sporting goods
(23) Cutlery, machinery, and tools, and parts thereof
(24) Laundry appliances and machines
(25) Locks and safes
(26) Measuring and scientific appliances
(27) Horological instruments
(28) Jewelry and precious-metal ware
(29) Brooms, brushes, and dusters
(30) Crockery, earthenware, and porcelain
(31) Filters and refrigerators
(32) Furniture and upholstery
(33) Glassware
(34) Heating, lighting, and ventilating apparatus
(35) Belting, hose, machinery packing, and non-metallic tires
(36) Musical instruments and supplies
(37) Paper and stationery
(38) Prints and publications
(39) Clothing
(40) Fancy goods, furnishings and notions
(41) Canes, parasols, and umbrellas
(42) Knitted, netted and textile fabrics, and substitutes therefor
(43) Thread and yarn
(44) Dental, medical, and surgical appliances
(45) Soft drinks and carbonated waters
(46) Foods and ingredients of foods
(47) Wines
(48) Malt beverages and liquors
(49) Distilled alcoholic liquors
(50) Merchandise not otherwise classified
(51) Cosmetics and toilet preparations
(52) Detergents and soaps.

History.—Comp. §9, ch. 57-212.

495.10 Fraudulent registration.—Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any trademark in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

History.—Comp. §10, ch. 57-212.

495.11 Infringement.—Subject to the provisions of §495.13 any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this act in connection with the sale, offering for sale, or advertising of any goods on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods; or

(2) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods; shall be liable to a civil action by the owner of such registered trademark for any or all of the remedies provided in §495.12, except that under subsection (2) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trademark is intended to be used to cause confusion or mistake or to deceive.

History.—Comp. §11, ch. 57-212.

495.12 Remedies.—Any owner of a trademark registered under this act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may

require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

History.—Comp. §12, ch. 57-212.

495.13 Common law rights.—Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good faith at any time at common law.

History.—Comp. §13, ch. 57-212.

495.14 Time of taking effect; repeal of prior acts.—This act shall be in force and take effect October 1, 1957, after its enactment but shall not affect any suit, proceeding or appeal then pending. All acts relating to trademarks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this act, provided that as to any suit, proceeding or appeal, and for that purpose only, pending at the time this act takes effect such repeal shall be deemed not to be effective until final determination of said pending suit, proceeding or appeal.

History.—Comp. §15, ch. 57-212.

CHAPTER 500

FOODS, DRUGS AND COSMETICS

500.01 Short title.—This chapter may be cited as the Florida food, drug and cosmetic law.

History.—§§1, 26, ch. 19656, 1939; CGL 1940 Supp. 4151(664).

cf.—Ch. 398, Uniform narcotic drug law.
Ch. 465, Regulation of pharmacists.
§601.92, Arsenic on citrus trees prohibited.
Ch. 859, Poisons, adulterated drugs.

500.02 Purpose of chapter.—This chapter is intended (1) to safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intra-state commerce in food, drugs, devices, and cosmetics; and (2) to provide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of and regulations issued under the authority of the federal food, drug and cosmetic act; and likewise uniform with the federal trade commission act, to the extent that it expressly prohibits the false advertisement of food, drugs, devices and cosmetics; and (3) to promote thereby uniformity of such state and federal laws and their administration and enforcement, throughout the United States and in the several states.

History.—§1, ch. 19656, 1939; CGL 1940 Supp. 4151(665).

500.03 Definitions of terms used in chapter.—For the purpose of this chapter:

(1) The term "commissioner" means the commissioner of agriculture of the state when the provisions of this chapter confer any duties or powers in regard to foods. The said term, "commissioner," means the state board of health when the provisions of this chapter confer any duties or powers in regard to "drugs," "devices," or "cosmetics" as defined in this section.

(2) The term "person" includes individual, partnership, corporation and association.

(3) The term "food" means (a) articles used for food or drink for man or other animals, (b) chewing gum, and (c) articles used for components of any such article.

(4) The term "drug" means (a) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (b) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (c) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) articles intended for use as a component of any article specified in clauses (a), (b), or (c) but does not include devices or their components, parts or accessories.

(5) The term "device" (except when used

in subsection (11) and in §§500.04 (10), 500.11 (6), 500.15 (3) and 500.18 (3)) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (b) to affect the structure of any function of the body of man or other animals.

(6) The term "cosmetic" means (a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (b) articles intended for use as a component of any such articles, except that such term shall not include soap.

(7) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.

(8) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(9) The term "immediate container" does not include package liners.

(10) The term "labeling" means all labels and other written, printed, or graphic matters (a) upon an article or any of its containers or wrappers, or (b) accompanying such article.

(11) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(12) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(13) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(14) The term "new drug" means (a) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended or suggested in the labeling thereof; or (b) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(15) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contamination.

(16) The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food, drug or cosmetic establishment.

(17) The term "federal act" means the federal food, drug and cosmetic act (Title 21 U. S. C. 301 et seq.; 52 Stat. 1040 et seq.)

(18) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the Florida pesticide law, chapter 487, and which is used in the production, storage or transportation of raw agricultural commodities.

(19) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(20) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of

its intended use; except that such term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity; or

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(c) A color additive; or

(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives amendment of 1958, pursuant to the federal act; the poultry products inspection act (21 U.S.C. 451 and the following); or the meat inspection act of March 4, 1907, (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following).

(21) (a) The term "color additive" means a material which:

1. Is a dye pigment, or other substance, made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral or other source, or

2. When added or applied to a food, drug or cosmetic or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempt under the federal act.

(b) The term "color" includes black, white and intermediate grays.

(c) Nothing in paragraph (a) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

History.—§2, ch. 19656, 1939; CGL 1940 Supp. 4151(666); §7, ch. 22858, 1945; (1) §1, ch. 59-302; (18)-(21) n. §1, ch. 63-259.
cf.—§1.01, General definitions.

500.04 Certain acts prohibited.—The following acts and the causing thereof within the state are prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic.

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of §§500.12 or 500.16.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by §500.21.

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state from whom he received in good faith the food, drug, device or cosmetic.

(8) The removal or disposal of a detained or embargoed article in violation of §500.06.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act, with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter.

(11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under §500.16, or that such drug complies with the provisions of such section.

(12) The possession of any habit-forming, toxic, harmful or new drug in violation of §500.151.

History.—§3, ch. 19656, 1939; CGL 1940 Supp. 4151(667). (12) N. by §2, ch. 57-167.
cf.—§500.24, Punishment for violations.

500.05 Injunction to restrain violations.—In addition to the remedies herein provided the commissioner may apply to a circuit court for, and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of §500.04; irrespective of whether or not there exists an adequate remedy at law.

History.—§4, ch. 19656, 1939; CGL 1940 Supp. 4151(668).
cf.—§500.32, Penalty for violations.

500.06 Embargoing, destroying, etc., of adulterated or misbranded articles.—

(1) When a duly authorized agent of the commissioner finds, or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It is unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be adulterated, or misbranded, he shall

within a reasonable period of time after the affixing of such notice, petition the judge of the municipal court, county court, criminal court of record, or circuit court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling of the article and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, the court may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the commissioner. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the commissioner that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

(4) When the commissioner or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound or contain any filthy, decomposed or putrid substances, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the commissioner, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

History.—§6, ch. 19656, 1939; CGL 1940 Supp. 4151(669). (2) a. by §18, ch. 59-302.

500.07 Duty of prosecuting officer. — Each state attorney, county attorney, or city attorney to whom the commissioner reports any violation of this chapter, shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this chapter is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the commissioner or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding.

History.—§7, ch. 19656, 1939; CGL 1940 Supp. 4151(670).

500.08 Minor violations not required to be reported.—Nothing in this chapter shall be construed as requiring the commissioner to report, for the institution of proceedings under this chapter, minor violations of this chapter, when the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History.—§8, ch. 19656, 1939; CGL 1940 Supp. 4151(671).

500.09 The commissioner of agriculture may promulgate regulations. — When in the judgment of the commissioner such action will promote honesty and fair dealing in the interest of consumers, the commissioner of agriculture with the advice and consent of the state chemist shall promulgate regulations fixing and establishing for any food or class of food under its common or usual name so far as practicable a reasonable definition and standard of identity, or reasonable standard of quality or fill of container, or reasonable sanitary regulations governing the manufacture, processing or handling of such food products. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the commissioner of agriculture with the advice and consent of the state chemist shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the secretary of the United States department of agriculture under authority conferred by §401 of the federal act.

History.—§9, ch. 19656, 1939; CGL 1940 Supp. 4151(672).

500.10 Food deemed adulterated.—A food is deemed to be adulterated:

(1) (a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which is unsafe within the meaning of §500.13(1)(a) or

(c) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of §408 (a) of the federal act as amended or §500.13(1) or

(d) If it is or it bears or contains, any food additive which is unsafe within the meaning of §409 of the federal act as amended, or §500.13 (1); provided that where a pesticide chemical has been used in or on a raw agricultural commodity

in conformity with an exemption granted or tolerance prescribed under §408 of the federal act, or §500.13 (1), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of §500.13, and this paragraph, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(e) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(f) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(g) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughter house, or

(h) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(2) (a) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (b) if any substance has been substituted wholly or in part therefor; or (c) if damage or inferiority has been concealed in any manner; or (d) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per cent, harmless natural gum, and pectin; provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one half of one per cent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(4) If it is or bears or contains any color additive which is unsafe within the meaning of the federal act or §500.13.

History.—§10, ch. 19656, 1939; CGL 1940 Supp. 4151(678); (1), (4) §2, ch. 63-259.
cf.—§865.07, Adulterated syrup.

500.11 Food deemed misbranded.—

A food is deemed to be misbranded—

(1) If its labeling is false or misleading in any particular; provided, however, that corn meal shall not be considered misbranded because of its being labeled "Water Ground," where such corn meal so labeled shall have been ground on rocks having a diameter of not less than forty-two inches and which revolves during the grinding of same at a speed not greater than one hundred and eighty-six revolutions per minute.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed, or filled as to be misleading.

(5) If in package form, unless it bears a label containing

(a) The name and place of business of the manufacturer, packer, or distributor;

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that under paragraph (b) of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the commissioner.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by §500.09, unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food.

(8) If it purports to be or is represented as—

(a) A food for which a standard of quality has been prescribed by regulations as provided by §500.09 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by §500.09 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of

subsection (7) of this section, unless its label bears (a) the common or usual name of the food, if any there be, and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that, to the extent that compliance with the requirements of clause (b) of this subsection is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner of agriculture with the advice and consent of the state chemist.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the commissioner of agriculture with the advice and consent of the state chemist.

(12) Where a beverage food drink is offered for sale in sanitary glass containers, sealed or securely capped, impervious to contamination by leakage or contact with foreign substance, which containers are, after use of the product, successively refilled and reused by the manufacturer for the same purpose, and the trade name of such product, the net content, and declaration of artificial flavor or color, if used, at all times appear upon the cap, crown or lid of said container, and the manufacturer at least once every year, and oftener if required by the commissioner of agriculture, files in the office of said commissioner an affidavit stating the trade names of the beverages manufactured by him, and the territorial limits within the state in which said beverages are offered for sale, the provisions of this chapter requiring additional labeling or branding of said product shall not apply; provided always, however, that nothing in this subsection contained shall in any manner otherwise restrict, modify or impair the jurisdiction, right and power of the commissioner of agriculture, or of the state chemist, over, or upon or with reference to said food product and the conditions pertaining to its manufacture, nor shall anything herein contained authorize or permit misleading statements or deceptive trade names involving fruit juice or fruit concentrate beverages.

History.—§11, ch. 19656, 1939; CGL 1940 Supp. 4151(674); (1) §1, ch. 26723, 1951; (5) §1, ch. 28269, 1953; (5) §30, ch. 63-572.

cf.—§502.28, Selling substitutes for butter.
§601.99, Misbranding citrus fruit.

500.12 Permits to manufacturers, processors or packers.—

(1) When the commissioner finds after investigation that the distribution in the state of any class of food may, by reason of contamination with micro-organisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the commissioner as provided by such regulations.

(2) The commissioner may suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended may at any time apply for the reinstatement of such permit, and the commissioner shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(3) The state chemist or assistant state chemist or any officer or inspector duly designated by the commissioner shall have access to any factory or establishment the operator of which holds a permit from the commissioner, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

(4) The commissioner shall promulgate regulations exempting from any labeling requirement of this chapter (a) small open containers of fresh fruits and fresh vegetables and (b) food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment.

History.—§12, ch. 19656, 1939; CGL 1940 Supp. 4151(675).

500.13 Addition of poisonous or deleterious substance to food.—

(1) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of §500.10 (1) (b) with respect to any food, unless there is in effect a regulation pursuant to subsection (2) limiting the quantity of such substance, and the use or intended use of such substance conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulturated within the meaning of §500.10(1) (a).

(2) The commissioner, whenever public interest in the state so requires, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the federal act, prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities or for color additives, including, but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes, upon his own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon such petitioner to establish by data submitted to the commissioner that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the commissioner to determine whether such regulation should be promulgated, the commissioner may require additional data to be submitted and a failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending or repealing regulations relating to such substances the commissioner shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

(a) The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect.

(b) The probable composition of, or other relevant exposure from the article and of any substance formed in or on a food, resulting from the use of such substance.

(c) The probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet.

(d) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data.

(e) The availability of any needed practicable methods of analysis for determining the identity and quantity of such substance in or on an article, any substance formed in or on such article because of the use of such substance, and the pure substance and all intermediates and impurities, and

(f) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History.—§13, ch. 19656, 1939; CGL 1940 Supp. 4151(676); §3, ch. 63-259.
cf.—§569.10 Adulterating liquor.

500.14 Drug or device deemed adulterated. —A drug or device is deemed to be adulterated:

(1) (a) If it consists in whole or in part of any filthy, putrid or decomposed substance; or

(b) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health, or

(c) If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) If it is a drug and it bears or contains for purpose of coloring only, a color additive which is unsafe within the meaning of the federal act; or it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, and it is unsafe within the meaning of the federal act.

(2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmocopoeia of the United States it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the

provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia.

(3) If it is not subject to the provisions of subsection (2) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(4) If it is a drug and any substance has been (a) mixed or packed therewith so as to reduce its quality or strength; or (b) substituted wholly or in part therefor.

History.—§14, ch. 19656, 1939; CGL 1940 Supp. 4151(677); (1)(d); (2) §1, ch. 63-158.

500.15 Drug or device deemed misbranded.—A drug or device is deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing

(a) The name and place of business of the manufacturer, packer, or distributor; and

(b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the state health officer.

(3) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substances alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substances, which derivative has been by the state health officer after investigation, found to be, and by regulations under this chapter, designated as habit-forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement Warning—May be habit-forming.

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears

(a) The common or usual name of the drug, if such there be; and

(b) In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the state health officer.

(6) Unless its labeling bears

(a) Adequate directions for use; and

(b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of paragraph (a) of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the state health officer shall promulgate regulations exempting such drug or device from such requirements.

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the state health officer. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia.

(8) If it has been found by the state health officer to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the state health officer shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the state health officer shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(9) If it is a drug and its container is so made, formed, or filled as to be misleading; or if it is an imitation of another drug; or if it is offered for sale under the name of another drug.

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(11) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless

(a) It is from a batch with respect to which a certificate has been issued pursuant to §506 of the federal act and

(b) Such certificate is in effect with respect to such drug.

(12) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or any derivation thereof, unless

(a) It is from a batch with respect to which a certificate has been issued pursuant to §507 of the federal act, and

(b) Such certificate is in effect with respect to such drug; provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under §507 (c) or (d) of the federal act.

(13) (a) If it is a drug intended for use by man which is a habit-forming drug, to which subsection (4) applies; or which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practioner licensed by law to administer such drugs; or which is limited by an effective application under §505 of the federal act or §500.16 to use under the professional supervision of a practitioner licensed by law to administer such drug, unless it is dispensed only

1. Upon the written prescription of a practitioner licensed by law to administer such drug, or

2. Upon an oral prescription of such practitioner which is reduced promptly to writing, and filled by the pharmacist, or

3. By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

(b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug, shall be exempt from the requirements of this section, except subsections (1), (9) (b), (c), (11), (12), and the packaging requirements of subsections (7) and (8), if the drug bears a label containing the name and address of the dispenser or seller, the serial number and date of such prescription or its filling, the name of the prescriber and, if stated in the prescription, the name of the patient and the directions for use and cautionary statements. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to any drug dispensed in violation of paragraph (a) of this subsection. Provided further, that the state health officer may, by regulation, remove drugs subject to subsection (4) of this section and 500.16, from the requirements of paragraph (a) of this subsection when such requirements are not necessary for the protection of public health.

(14) If it is a drug which is subject to §500.15 (13) (a), unless at any time prior to dispensing, its label bears the statement, Caution: Federal Law Prohibits Dispensing Without Prescription, or Caution: State Law Prohibits Dispensing Without Prescription.

(15) If it is a drug which is not subject to subsection (13) (a), if at any time prior to dispensing its label bears the caution statement required in subsection (14).

(16) Nothing in subsection (13) shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marihuana as defined in the applicable federal and state laws relating to narcotic drugs and marihuana.

(17) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History.—§15, ch. 19656, 1939; CGL 1940 Supp. 4151(678); §1, ch. 22927, 1945; §1, ch. 25239, 1949; (11),(12) §§1, 2, ch. 28157, 1953; §2, ch. 63-158.

500.151 Possession of habit-forming, toxic, harmful or new drugs without prescriptions unlawful; exemptions and exceptions.—

(1) No person shall possess any habit-forming, toxic, harmful or new drug subject to §500.15 (13) (a), unless the possession of such drug has been obtained by a valid prescription of a practitioner licensed by law to administer such drug; provided that the provisions of this section shall not be applicable to the delivery of such drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice in the performance of their official duties, as the case may be; or to the possession of such drugs by such persons or their agents or employees for such use: pharmacists; practitioners; persons who procure such drugs for disposition by or under the supervision of pharmacists or practitioners employed by them or for the purpose of lawful research, teaching, or testing, and not for resale; hospitals and other institutions which procure such drugs for lawful administration by practitioners; officers or employees of federal, state, or local governments; manufacturers and wholesalers lawfully engaged in selling such drugs to authorized persons; and common carriers and warehousmen while engaged in lawfully transporting or storing such drugs for authorized persons.

(2) The possession of a drug under subsection (1) not properly labeled to indicate that possession is by a valid prescription of a practitioner licensed by law to administer such drug by any person not exempted under this section shall be prima facie evidence that such possession is unlawful.

(3) The penalty for the violation of this section shall be the same as that provided in §500.24, for the violation of the provisions of §500.04.

History.—§1, ch. 57-167; (1) §3, ch. 63-158.

500.16 Sale, etc., of new drugs; exceptions.—

(1) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless

(a) An application with respect thereto has become effective under §505 of the federal act, or

(b) When not subject to the federal act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the state health officer an application setting forth

1. Full reports of investigations which have been made to show whether or not such drug is safe for use;

2. A full list of the articles used as components of such drug;

3. A full statement of the composition of such drug;

4. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

5. Such samples of such drug and the articles used as components thereof as the state health officer may require; and

6. Specimens of the labeling proposed to be used for such drug.

(2) An application provided for in subsection (1)(b) shall become effective on the sixtieth day after the filing thereof, except that if the state health officer finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) This section shall not apply:

(a) To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs provided the drug is plainly labeled For investigational use only; or

(b) To a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act; or

(c) To any drug which is licensed under the virus, serum, and toxin act of July 1, 1902, (U.S.C. 1958 ed. title 42, chapter 6A, sec. 262).

(4) An order refusing to permit an application under this section to become effective may be revoked by the state health officer.

History.—§16, ch. 19656, 1939; CGL 1940 Supp. 4151(679); §4, ch. 63-158.

500.17 Cosmetics deemed adulterated.—A cosmetic is deemed to be adulterated—

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "caution—this product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness." and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subsection and subsection (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(2) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(3) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(5) If it is not a hair dye and it is, or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History.—§17, ch. 19656, 1939; CGL 1940 Supp. 4151(680); §7, ch. 22858, 1945; (5) §5, ch. 63-158.

500.18 Cosmetics deemed misbranded.—A cosmetic is deemed to be misbranded—

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: provided, that under clause (b) of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the commissioner with the advice and consent of the state chemist.

(3) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If its container is so made, formed, or filled as to be misleading.

(5) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act. This subsection shall not apply to packages of color additives which, with respect to their use for

cosmetics, are marketed and intended for use only in or on hair dyes, as defined in the last sentence of §500.17(1).

History.—§18, ch. 19656, 1939; CGL 1940 Supp. 4151(681); (5) n. §6, ch. 63-158.

500.19 Advertisement of food, etc., deemed false.—

(1) An advertisement of a food, drug, device, or cosmetic is deemed to be false if it is false or misleading in any particular.

(2) For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholocystitis, diabetes, diphtheria, dropsy, erysipelas, gall-stones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (1) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that when the commissioner determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the commissioner shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the commissioner may deem necessary in the interests of public health; provided that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History.—§19, ch. 19656, 1939; CGL 1940 Supp. 4151(682).

500.20 Commissioner may promulgate regulations for enforcement of act as it relates to foods; hearings; analytical work.—

(1) The authority to promulgate regulations for the efficient enforcement of this chapter as it relates to foods is vested in the commissioner. The commissioner may promulgate such regulations as will conform with those promulgated under the federal act in regard to foods, and to this end may promulgate by reference any regulations promulgated under the federal act insofar as applicable and practicable.

(2) Hearings authorized or required by this chapter in regard to foods shall be conducted by the commissioner, the state chemist or other such officer, agent or employee as the commissioner may designate for the purpose.

(3) Before promulgating any regulation contemplated by §§500.09, 500.11(10), and 500.12, the commissioner shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the commissioner (which date shall not be prior to ninety days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the commissioner, to such an extent as he deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing or effective date.

(4) The analytical work incident to the proper enforcement of this law in regard to foods and rules and regulations promulgated by the commissioner in regard to foods shall be done under the direction of the state chemist or his assistants, when properly verified, shall be prima facie evidence in any court of law or equity in this state.

History.—§20, ch. 19656, 1939; CGL 1940 Supp. 4151(683); §2, ch. 59-302; (1) §4, ch. 63-259.

500.201 Board of health may promulgate regulations for enforcement of act as it relates to drugs, devices and cosmetics; hearings; analytical work.—

(1) The authority to promulgate regulations for the efficient enforcement of the chapter as it relates to drugs, devices and cosmetics is vested in the state board of health. The said board may make such regulations promulgated by said authority conform with those promulgated under the federal act in regard to drugs, devices and cosmetics and to this end may promulgate by reference any regulations under the federal act insofar as applicable and practicable.

(2) Hearings authorized or required by this chapter in regard to drugs, devices or cosmetics shall be conducted by the state board of health, the state health officer, or other such officer, agent or employee as the state board of health may designate for the purpose.

(3) Before promulgating any regulations contemplated by §500.15(4), (6), (7) and (8) or §500.19(2) the state board of health shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the said board (which date shall not be prior to ninety days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the said board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing or effective date.

(4) The analytical work incident to the proper enforcement of this law in regard to

drugs, devices and cosmetics and rules and regulations promulgated by the said board in regard to drugs, devices and cosmetics shall be done under the direction of the bureau of laboratories of the state board of health and the certificate of analysis of the director of such bureau or his assistants, when properly verified, shall be prima facie evidence in any court of law or equity in this state.

History.—§3, ch. 59-302; (1) §7, ch. 63-158.

500.21 Inspection of factories, warehouses, etc., by commissioner and board.—

(1) The commissioner or his duly authorized agent and the board of health or its duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the purpose of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter, or any regulation promulgated under its authority, are being violated, and to secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample, and to see that all sanitary regulations promulgated by the commissioner or by the board of health are complied with.

(2) The commissioner or his duly authorized agent and the board of health or its duly authorized agent may appoint inspectors for making such inspections and taking such samples as are necessary for the proper enforcement of this chapter. The commissioner and the board of health shall make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History.—§21, ch. 19656, 1939; CGL 1940 Supp. 4151(684). §4, ch. 59-302.

500.22 Reports and dissemination of information by commissioner.—

(1) The commissioner may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The commissioner may also cause to be disseminated such information regarding food, drugs, devices and cosmetics as the commissioner deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the commissioner from collecting, reporting and illustrating the results of these investigations.

History.—§22, ch. 19656, 1939; CGL 1940 Supp. 4151(685).

500.23 Employment of help, expenses and salaries.—

(1) The commissioner of agriculture may employ all help necessary to carry out and enforce the provisions of this chapter relating to foods and may designate any employee of the department of agriculture to perform any duties necessary to carry out the said provisions. All expenses and salaries shall be paid out of the general inspection trust fund.

(2) The state board of health may employ all help necessary to carry out and enforce the provisions of this chapter relating to drugs, devices and cosmetics and may designate any employee of the said board to perform any duties necessary to carry out the said provisions. All expenses and salaries shall be paid out of the special fund hereby created in the office of the state treasurer to be known as "the drug, device and cosmetic trust fund."

History.—§28, ch. 19656, 1939; CGL 1940 Supp. 4151(686). §5, ch. 59-302; §2, ch. 61-119.

500.24 Punishment for violations of food, drug and cosmetic law.—

(1) Any person who violates any of the provisions of §500.04 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six months or a fine of not more than five hundred dollars; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one year, or a fine of not more than one thousand dollars.

(2) No person shall be subject to the penalties of subsection (1) of this section, for having violated §500.04 (1) or (3), if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state or the manufacturer from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(3) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the commissioner, to furnish the commissioner the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the state, who caused him to disseminate such advertisement.

History.—§5, ch. 19656, 1939; CGL 1940 Supp. 7678(1). cf.—§775.06, Alternative punishment.

500.25 Food containing artificial sweetener.—

(1) The manufacture, sale or delivery, holding or offering for sale of any food or drink containing any artificial sweetener as a substitute for sugar in part or in whole, is prohibited in the state; provided that food or drinks containing artificial sweetener may be sold for special dietary use by persons requiring a sugar-free diet when such food or

drinks are labelled and sold in accordance with special dietary food regulations to be established by the commissioner; provided, all food and drink containing any artificial sweetener as a substitute for sugar, in part or in whole, shall be grouped together at one place in all retail establishments and plainly marked "Special Dietary Foods".

History.—§1, ch. 9363, 1923; CGL 3212; am. §1, ch. 28267, 1953. (1) R. by §24, ch. 57-1, remaining subsection renumbered (1).

500.29 Misbranding of toilet preparations; penalty.—Any person who sells or offers for sale at retail to the public any perfume, talcum powder or other toilet preparations manufactured or prepared by any person other than the person selling or offering the same for sale at retail to the public, which bears upon the label, package, container or bottle the name of the retail seller thereof without also displaying with equal prominence upon such label, package, container or bottle language clearly and plainly indicating by whom the same were prepared or manufactured, together also with the name of the person preparing or manufacturing the same or the name of the factory or laboratory in which the same were manufactured or prepared, shall be guilty of misbranding, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than sixty days.

History.—§1, ch. 10287, 1925; CGL 7852.
cf.—§775.06, Alternative punishment.

500.30 Sale of lye regulated.—It is unlawful for any person to sell at wholesale or retail within this state any caustic acids or caustic alkalies or preparations "containing such acids or alkalies" intended for household use including preparations ordinarily described as or called "lye", without affixing to the bottle, box, vessel, sack or package containing the same a label printed or plainly written containing the name of the article, the name and place of business of the manufacturer, seller, or distributor of such household acids, alkalies or preparations thereof and in addition, the word "poison" which shall conspicuously appear thereon in red capital letters not less than twenty-four point size or which shall be affixed thereto as a sticker conspicuously placed.

History.—§1, ch. 9336, 1923; CGL 7700.

500.31 "Caustic" defined.—The word "caustic" within the intent and purpose of §§500.30-500.32 is construed to mean any "acids or alkalies in liquid or powdered form of" preparations thereof or containing free or chemically, unneutralized hydrochloric acid in a concentration of ten per cent or sulphuric acid in a concentration of ten per cent or nitric acid in a concentration of five per cent or carbolic acid (phenol) in a concentration of five per cent or oxalic acid in a concentration of ten per cent or acetic acid in a concentration of twenty per cent or hypochlorous acid (calx chlorinata bleaching powder or chloride of lime) in a concentration of one hundred per cent or potassium hydrate (caustic potash vienna paste pearlash potassa carbonas) in a concentration of ten per cent or sodium hydrate (caustic soda concentrated lye) in a concentration of twenty per cent or silver nitrate (lunar caustic) in a concentration of five per cent.

History.—§2, ch. 9336, 1923; CGL 7701; am. §7, ch. 22858, 1945.

500.32 Penalty for violation.—Any person violating §500.30 is guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine of not more than one hundred dollars and the costs of prosecution, or imprisonment of not more than ninety days.

History.—§3, ch. 9336, 1923; CGL 7702.
cf.—§775.06, Alternative punishment.

500.33 Horse meat; sale for human consumption.—

(1) It shall be unlawful for any person, firm or corporation to sell horse meat for human food in the markets of Florida for human consumption; provided, however, this section shall not apply to the sale of horse meat where the same is clearly stamped, marked and described as such.

(2) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than three months or by both such fine and imprisonment.

History.—§§1, 2, ch. 21986, 1943.
Am. §11, ch. 25035, 1949.

500.39 Records of interstate shipment.—For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce and persons receiving food, drugs, devices, or cosmetics in interstate commerce shall, upon the request in the manner set out below of an officer or employee duly designated by the state board of health or the commissioner, permit the officer or employee to have access to and to copy all records showing the movement in interstate commerce of any food, drug, device or cosmetic, and the quantity, shipper and consignee thereof.

History.—§11, ch. 59-302.

500.40 Carriers in interstate commerce; excepted from chapter.—Carriers engaged in interstate commerce are not subject to the provisions of this chapter, other than §500.39, by reason of their receipt, carriage, or delivery of food, drugs, devices or cosmetics in the usual course of business as carriers.

History.—§12, ch. 59-302.

500.41 Causes for seizure and condemnation of food, drugs, devices or cosmetics.—Any article of food and any drug, device or cosmetic that is adulterated or misbranded under the provisions of this chapter is subject to seizure and condemnation by the commissioner or by

his duly authorized agents that he designates for that purpose in regard to foods and by the board of health or by its duly authorized agent which it designates for that purpose in regard to drugs, devices or cosmetics.

History.—§13, ch. 59-302; §3, ch. 61-456.

500.42 Seizure; procedure; prohibition on sale or disposal of article; penalty.—Whenever a duly authorized officer or employee of the commissioner or of the board of health finds or has probable cause to believe that cause for the seizure of any food, drug, device or cosmetic, as set out in this chapter exists, he shall affix to the article a tag, stamp or other appropriate marking, giving notice that the article is, or is suspected of being subject to seizure under the provisions of this chapter and that it has been detained and seized by either the commissioner or the board of health, whichever the agent is authorized by. Such agent shall also warn all persons not to remove or dispose of the article by sale or otherwise, until permission of the commissioner or the board of health or of the court of competent jurisdiction in which the article is detained or seized is given. It is unlawful for any person to remove or dispose of the detained or seized article by sale or otherwise without permission of the commissioner or of the board of health, or of the court in such cases. Any person who violates this section shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 6 months or a fine of not more than $500.

History.—§14, ch. 59-302.

500.43 Condemnation and sale, or release.—

(1) When any article detained or seized under §500.42 has been found by the commissioner or the board of health to be subject to seizure and condemnation under §500.42, the commissioner or the board of health shall petition a court for an order of condemnation or sale, as the court may direct. The proceeds of the sale of food used for human consumption, less the legal costs and charges, shall be deposited in the state treasury into the general inspection trust fund. The proceeds of the sale of drugs, devices and cosmetics, less the legal costs and charges, shall be deposited in the state treasury into the general revenue fund.

(2) Upon the payment of the costs of the condemnation proceeding and upon the execution and delivery of a surety bond to the effect that the goods shall not be sold or otherwise disposed of contrary to the provisions of this chapter, the commissioner or the board of health or court may order that the goods be delivered to the owner thereof instead of being condemned or sold.

(3) If the commissioner or the board of health finds that any article seized under the provisions of §500.42, was not subject to seizure under that section, the commissioner or the board of health or the designated officer or employee shall remove the tag or marking.

History.—§15, ch. 59-302; (1) a. by §1, ch. 61-31.

500.44 Enforcement.—

(1) The department of agriculture shall be and is hereby charged with the administration and enforcement of the provisions of this chapter designed to prevent fraud, adulteration or misbranding in the preparation, manufacture or sale of articles of food used for human consumption, and it is further charged to enforce the provisions of this chapter relating to the production, manufacture, transportation and sale of foods used for man, as well as articles entering into and intended for use as an ingredient in the preparation of foods used for man;

(2) The board of health shall be and is hereby charged with the administration of the provisions of this chapter designed to prevent fraud, adulteration or misbranding in the preparation, manufacture or sale of articles of drugs, devices and cosmetics and the said board is further charged to enforce the provisions of this chapter relating to the production, manufacture, transportation and sale of drugs, devices and cosmetics as defined in this chapter.

History.—§16, ch. 59-302.

500.45 Declaration of policy and cooperation between the department of agriculture and the state board of health in enforcement of chapter 500.—In order to more effectively utilize the agencies of the state, in the public interest and without unnecessary duplication and expense the provisions of this chapter shall be enforced by the department of agriculture and the board of health as follows:

(1) The department of agriculture shall be and is hereby charged with the administration and enforcement of the provisions of this chapter designed to prevent fraud, adulteration, misbranding or false advertising in the preparation, manufacture or sale of articles of food used for human consumption, and it is further charged to enforce the provisions of this chapter relating to the production, manufacture, transportation, and sale of foods used for man, as well as articles entering into and intended for use as an ingredient in the preparation of foods used for man;

(2) The board of health shall be and is hereby charged with the administration of the provisions of this chapter designed to prevent fraud, adulteration, misbranding or false advertising in the preparation, manufacture or sale of articles of drugs, devices and cosmetics and the said board is further charged to enforce the provision of this chapter relating to the production, manufacture, transportation and sale of drugs, devices and cosmetics as defined in this chapter;

(3) However, the specific delegation of authority granted above is to specifically place responsibility and should not be construed so as to cause the respective agencies to not cooperate each with the other by interchange of information and copies of reports where deemed advisable.

History.—§17, ch. 59-302.

CHAPTER 501

MILK COMMISSION

501.01 Legislative finding; statement of policy.—This chapter is enacted in the exercise of the police power of the state, and its purpose generally is to protect the public health, safety and welfare. It is declared that the production and distribution of milk, cream and other milk products in the state is an industry upon which to a large degree, the prosperity and health of the people of the state depend, and that the present economic emergency is in part a result of the disparity between the prices of milk, cream and milk products and other commodities, which disparity has diminished the power of milk producers to purchase industrial products, and has broken down the orderly production and marketing of milk, cream and other milk products, and has seriously impaired the agricultural assets supporting the credit structure of the state and political subdivisions thereof; that unhealthful, unfair, unjust, destructive, demoralizing and uneconomic trade practices have grown up and have been carried on in the production, sale and distribution of milk, cream and milk products in this state which impair dairy industry in this state and imperil the constant supply of pure and wholesome milk to the inhabitants thereof, and constitute a menace to the health and welfare of the inhabitants of this state; that such conditions existed at the time of the creation of the milk control board and constituted a menace to the health welfare and reasonable comfort of the inhabitants of this state, and will again constitute such menace should all regulations as set forth in said law creating said board go out of existence. In order, therefore, to protect the well-being of our citizens, and to promote the public welfare, and in order to preserve the strength and vigor of the race, the production, transportation, manufacture, storage, distribution and sale of milk, cream and milk products in the state is declared to be a business affecting the public health and interest of its citizens; and the production, transportation, manufacture, storage, distribution and sale of milk, cream and milk products to be a paramount industry upon which the prosperity of the state and the welfare of its citizens in a large measure depends. In order to correct abuses arising from the destructive and unfair manipulation of prices which are found to spring from a selfish disregard of the public interest in the manner of carrying on the dairy industry, which is an organized industry, it is found necessary to resort to the legislative remedy of regulating prices to save both producers and consumers from such manipulation of prices in the industry; because such practices amount to evils which menace the health, safety, and welfare of the people at large, this chapter is passed. It is further found that the acute economic emergency which existed at the time of the creation of the milk control board was partly the consequence of a severe and increasing disparity between the prices of milk and other commodities, as aforesaid stated; that such practices were and are curtailed by the existence of said board, but will immediately recur should said board and the regulations set up to be administered thereby pass out of existence; that the purchasing power of milk producers is in imminent danger of again being broken down and demoralized; that the danger to the public health and welfare is immediate and impending, the necessity urgent and such as will not admit of interruption in public supervision and control in accord with proper standards of production, sanitation and marketing; that it is therefore necessary that said business be supervised and regulated by proper legislation. The foregoing statement of fact, policy and application of this chapter are declared as a matter of legislative finding and determination.

History.—§1, ch. 19231, 1939; CGL 1940 Supp. 8219(38).
cf.—Ch. 502, Milk, cream and milk products.

501.02 Definitions of terms used in chapter.—As used in this chapter, unless otherwise expressly stated, or unless the context or subject-matter otherwise requires:

"Administrator" means the administrator for the milk commission.

"Commission" means the state agency creat-

ed by this chapter, to be known as the milk commission.

"Person" means any person, firm, corporation or association, and includes the members of partnerships, the officers of corporations and the members of associations.

"Milk dealer" means any person who purchases or handles milk within the state, for sale in this state, or sells milk within the state in any market as defined in this chapter. Each corporation which if a natural person would be a milk dealer within the meaning of this chapter, and any subsidiary of such corporation, shall be deemed a milk dealer within the meaning of this definition. A producer who delivers milk only to a milk dealer shall not be deemed a milk dealer.

"Dairy farmer" means a person producing milk within the state.

"Producer" means a person producing milk within the state and where the term dairy farmer or producer is used in this chapter or in any other laws referring to the powers and duties of the Florida milk commission the two terms shall be construed to mean one and the same; provided, however, that persons appointed to the milk commission as "dairy farmers" cannot also be distributors of milk.

"Distributor" means any milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale.

"Producer-distributor" means a distributor as herein defined who is also a producer as herein defined, producing at least seventy-five per cent of the milk he processes and prepares for sale.

"Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.

"Bob tail" means any person distributing milk at retail or wholesale who does not process or bottle the milk products he distributes or sells, and for the purpose of this chapter is classified and termed a distributor as defined herein and is subject to all the terms and provisions of this chapter applicable to a distributor, including the payment of all license fees or charges by this chapter imposed.

"Store" means a grocery store, hotel, restaurant, hospital, orphanage, soda fountain, dairy products store or other establishment where milk, cream or milk products are kept or offered for sale.

"Milk" means liquid milk and cream, fresh, sour, or storage, and condensed or concentrated whole milk, except when contained in hermetically-sealed cans, originally obtained from the complete milking of one or more healthy cows. In each instance where quantity is referred to, the intent is to include its whole milk equivalent.

"Market" means any city, town or village of the state, or two or more cities, towns or villages and surrounding territory designated by the commission as a natural marketing area containing not less than one thousand population in such designated area.

"Licensee" means any and all persons who are required to obtain a license or permit as required by this chapter.

History.—§2, ch. 19231, 1939; CGL 1940 Supp. 8219(39). Am. §1, ch. 28137, 1953.
cf.—§1.01, General definitions.

501.03 Milk commission.—There shall be a milk commission which shall be composed of:

(1) Three citizens not connected with the milk industry other than as consumers of milk who are citizens of the United States and residents of the state for a period of not less than ten years immediately preceding the date of their appointment.

(2) A dairy farmer as defined in this chapter.

*(3) One distributor or producer-distributor of milk as defined in this chapter.

The members of the commission shall receive per diem as provided by general law, fractions of day to be computed accordingly, and their legal traveling expenses when actually engaged on the business of the commission; and the members of the commission shall receive the sum of ten dollars per day for attendance at board meetings of the commission. The expenditures of the commission shall not exceed the revenue collected under this chapter. The members of the commission and the administrator hereinafter provided for shall be appointed by the governor of the state and shall serve for a term of four years or until their successors are appointed and qualified.

Provided, that in order to insure rotation in office, the first members named hereunder shall be appointed for the following terms of office:

One member engaged in the business of producer as described herein shall be appointed for a term of four years.

One member engaged in the distribution of milk as described herein shall be appointed for a term of three years.

Three members, citizens not connected with the milk industry other than as a consumer of milk products, shall be appointed for a term of three years.

That in addition to the members of the commission there shall be an administrator of the commission (without voting powers) who shall be appointed by the governor of the state to serve for a term of four years or until his successor is appointed and qualified. The administrator shall receive compensation in such amount as is approved by the commission unless a different amount is provided in the general appropriations act, together with per diem and his legal traveling expenses when engaged on the business of the commission provided by §112.061.

Provided, however, that the present members of the commission shall hold office until their respective terms have expired.

The members of the commission and the administrator may be removed by the governor for cause as other appointive officers are removed in the state.

Technical, legal and other services for such

commission shall be performed, so far as practicable, by forces or officers in the state board of health and the state department of agriculture without additional compensation, but the administrator with approval of the commission, shall appoint and at pleasure remove such additional technical, legal and other assistants and employees as may be necessary to carry out the provisions of this chapter, including an auditor not connected with the industry, prescribe their powers and duties and fix their compensation, who shall be paid from the funds collected under any of the provisions of this chapter. The milk administrator shall be the administrative head of the commission. Each member of the commission and the administrator of the commission shall execute and file with the comptroller a bond conditioned for the safe keeping and lawful application of moneys coming to the commission and under his control in such amount as may be approved by the comptroller. The milk administrator shall, subject to the limitation of this chapter, and of law, enforce the provisions of this chapter, but no official act shall be taken, rule or regulation promulgated or official order made or enforced, with respect to the provisions of this chapter, without the approval of a majority of the members of the commission. The principal office of the commission shall be in the city of Tallahassee, but offices in other localities may be maintained by the commission.

History.—§3, ch. 19231, 1939; CGL 1940 Supp. 8219(40); §3, ch. 23877, 1947; paragraph eight am. §123, ch. 26869, 1951. §2, ch. 28137, 1953; (4) a. §1, ch. 61-315; (2) r. §§1, 2, ch. 63-352.

cf.—Ch. 381, State board of public health.
§112.061 Travel expenses of state officers and employees.

*(3) One distributor or producer-distributor of milk as defined in this chapter.

The members of the commission shall receive per diem as provided by general law, fractions of day to be computed accordingly, and their legal traveling expenses when actually engaged on the business of the commission; and the members of the commission shall receive the sum of ten dollars per day for attendance at board meetings of the commission. The expenditures of the commission shall not exceed the revenue collected under this chapter. The members of the commission shall be appointed by the governor of the state and shall serve for a term of four years or until their successors are appointed and qualified.

Provided, that in order to insure rotation in office, the first members named hereunder shall be appointed for the following terms of office:

One member engaged in the business of producer as described herein shall be appointed for a term of four years.

One member engaged in the distribution of milk as described herein shall be appointed for a term of three years.

Three members, citizens not connected with the milk industry other than as a consumer of milk products, shall be appointed for a term of three years.

In addition to the members of the commission there shall be an administrator of the commission (without voting powers) who shall be appointed by the commission and who shall serve at the pleasure of the commission. The administrator shall receive compensation in such amount as is approved by the commission unless a different amount is provided in the general appropriations act, together with per diem and his legal traveling expenses when engaged on the business of the commission provided by §112.061.

Provided, however, that the present members of the commission shall hold office until their respective terms have expired.

The members of the commission may be removed by the governor for cause as other appointive officers are removed in the state.

Technical, legal and other services for such commission shall be performed, so far as practicable, by forces or officers in the state board of health and the state department of agriculture without additional compensation, but the administrator with approval of the commission, shall appoint and at pleasure remove such additional technical, legal and other assistants and employees as may be necessary to carry out the provisions of this chapter, including an auditor not connected with the industry, prescribe their powers and duties and fix their compensation, who shall be paid from the funds collected under any of the provisions of this chapter. The milk administrator shall be the administrative head of the commission. Each member of the commission and the administrator of the commission shall execute and file with the comptroller a bond conditioned for the safe keeping and lawful application of moneys coming to the commission and under his control in such amount as may be approved by the comptroller. The milk administrator shall, subject to the limitation of this chapter, and of law, enforce the provisions of this chapter, but no official act shall be taken, rule or regulation promulgated or official order made or enforced, with respect to the provisions of this chapter, without the approval of a majority of the members of the commission. The principal office of the commission shall be in the city of Tallahassee, but offices in other localities may be maintained by the commission.

History.—§1, ch. 63-513.

***Note.—§1, ch. 63-513 amends §501.03(4) renumbered §501.03(3) by §1, ch. 63-352. The above amendment to be effective June 30, 1965.**

501.04 Powers of milk commission.—The milk commission is declared to be an instrumentality of the state for the purpose of attaining the ends recited in the legislative findings, and may:

(1) Supervise and regulate the entire milk industry of the state, including the production, transportation, manufacture, storage, distribution, delivery and sale of milk, cream and milk products, in any market established by the commission in the state; provided, however, that nothing contained in this chapter shall be construed to abrogate or affect the status, force or operation of any provision of any law relating to public health or sanitation, the purity of food or food products, (the public health law, the public service law, the state sanitary code), milk products law, except as provided for in §501.09(4), state ice cream law, or any local health ordinance or regulation; and provided, further, that nothing in this chapter shall give the commission power to make rules or regulations prohibiting the giving away gratis of milk or milk products in cases of charity.

(2) Investigate all matters pertaining to the production, processing, storage, transportation, distribution and sale of milk in the state.

(3) Act as mediator or arbitrator in any controversial issue that may arise among or between milk producers, distributors and producer-distributors as between themselves or that may arise between them as groups. This provision is not mandatory and does not limit the rights of the parties to litigate any disputes or controversies among them arising.

(4) Institute and maintain such suits and actions as may be necessary to the enforcement of the rules and orders of the commission or any provisions of this chapter.

(5) Examine into the business, books, records, and accounts of any producer, distributor, producer-distributor, or milk dealer; issue subpoenas directed to said persons and require them to produce their records, books and accounts, and subpoena any other persons from whom information is desired.

(6) Take depositions of witnesses within or without the state.

(7) Any member of the commission, the administrator, or any employee designated by the commission, may administer oaths to witnesses and sign and issue subpoenas. The

provisions of the civil law of the state in relation to enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized under the laws of the state to issue subpoenas in civil cases shall apply to a subpoena issued by the commission as authorized in this section and may be enforced in the manner herein provided.

(8) Prohibit the using, buying, purchasing, selling, offering for sale, disposal of, or trafficking in any milk or cream bottle, can or container, by any person, junk dealer or second hand dealer other than the owner or his duly authorized agent; a violation of this provision is expressly declared to be unlawful and to constitute a misdemeanor.

(a) When any milk or cream bottle, can or container shall have stamped thereon the name, trade-mark or design of some particular person the same shall be deemed prima facie evidence of ownership in the person whose name, trade-mark or design shall appear thereon.

(b) Possession by any person, junk dealer or second hand dealer other than the owner or his duly authorized agent, of any milk or cream bottle, can or container bearing the name, trade-mark or design of such owner shall be deemed prima facie evidence of violating the provisions of this chapter, unless such person, junk dealer or second hand dealer shall have been the purchaser of the contents of the said milk or cream bottle, can or container, or shall have exchanged one of his own milk or cream bottles in due course of distribution of milk to his trade.

(c) Upon application to the commission by any person whose name, trade-mark or design is affixed to any milk or cream bottle, can or container, who is the owner thereof, stating under oath that the same is in possession of some other person than the owner, after its contents have been consumed, and that such person refuses to deliver possession thereof to the owner after demand except upon claim of ownership, the commission shall issue a rule to show cause directed to such person requiring such person, within five days after service upon him, to show cause why delivery and possession should not be given to the rightful owner. The commission upon hearing the testimony offered by the parties shall determine the right of possession thereof in a summary manner and enter an order according to the justice of the cause. Any person who violates the turnover order entered by the commission after a full hearing, shall be subject to punishment for contempt, and the commission shall forthwith report such action to the county judge of the county in which such hearing is held, and the county judge upon an affidavit filed reasonably establishing any such or other offense shall punish such person guilty thereunder, after rule to show cause, in the same manner as any other contempt may be punished by said judge in any proceeding over which the county judge may lawfully preside. Upon being adjudged in contempt by the county judge, such person shall be punished by fine not to exceed fifty dollars, or imprisonment not to exceed sixty days. All rights for relief under the laws of the state in contempt proceedings shall be applicable to persons affected by this provision.

(9) Make, adopt and enforce all rules, regulations and orders necessary to carry out the purpose of this chapter; hold hearings after reasonable notice thereof has been given; receive sworn testimony and evidence at hearings as to the reasonableness of any order, rule or regulation of the commission; reasonably classify and establish definite market areas, and provide different rules, regulations and charges therefor; establish health and sanitary requirements. The commission after public hearing and investigation may fix the prices to be paid producers by distributors, milk dealers or producer-distributors in any market or markets; may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market, and may also fix different prices for different grades of milk; may establish the grades of milk; may establish reasonable rules and regulations for fair competition, and fix reasonable rules and regulations for the conduct of the commission's business and for the regulation of its employees; may require reasonable examinations of license applicants to test their general fitness to engage in any business defined in this chapter; may establish rules and regulations for hearings in keeping with the procedure herein authorized; may revoke, suspend or refuse to issue the license of any person hereunder for the violation of any rule, regulation or order of the commission, after due notice and a fair hearing as herein provided; may provide for the collection of license fees authorized by this chapter, and may regulate all matters reasonably incidental to the general or specific powers herein recited; may provide for deputy administrators in any market area created by the commission, with such authority as may be designated by the commission, including the power to investigate complaints, report violations of the commission's orders, and to have such other powers reasonable or incidental thereto, including the right to administer oaths, make investigations, conduct hearings when ordered by the commission, and on due notice to take testimony in connection with investigations of complaints, and to cause the same to be stenographically transcribed and reported and transmitted to the commission for final action thereon, together with such other authority as the commission may designate in keeping with the general powers and purposes created under this chapter.

(10) The commission may designate and use a legal seal and formulate and determine the wording and form thereof; such seal may be affixed by the chairman or secretary of the commission, or its administrator, to all original legal orders of the commission and to any and all legally certified copies of orders or records of said commission.

(11) The operation and effect of any provision of this chapter conferring a general power upon the commission shall not be impaired or qualified by the granting to the commission by this chapter of a specific power or powers.

(12) Not fix the wholesale or retail price of milk sold and delivered to lunch rooms of the public schools of Florida for consumption by students therein, and to all charitable organizations of a public or semi-public nature who buy milk for free distribution to the needy. This prohibition shall in no way prohibit the commission from fixing the price paid to producers for milk sold in the manner and to the institutions designated herein.

History.—§4, ch. 19231, 1939; CGL 1940 Supp. 8219(41), 7677 (3); (12) n. §2A, ch. 28137, 1953; (1) §1, ch. 61-314; (12) §1, ch. 63-188.
cf.—§1.01(3), "Person" defined.
§775.06, Alternative punishment.

501.05 Rules and orders of milk commission.—

(1) The commission shall adopt and enforce all rules and orders necessary to carry out the provisions of this chapter, and may formulate procedures and regulations whereby the commission may through the services of the administrator and its various area deputies render all possible assistance to milk distributors and dairy farmers in ascertaining current milk supply needs in all areas of the state and in securing the cooperation of distributors and dairy farmers in the transfer of milk not needed for class 1 purposes from one distributor to another and from one area to another, in order that the consumer may be assured of a more adequate supply of fresh wholesome milk at all times and the dairy farmer may receive the best market classification possible for the milk which he produces. It shall be the duty of the deputy administrators and all licensees to cooperate with the commission in carrying out the provisions of this subsection.

(2) Every rule or order of the commission shall be posted for public inspection in the main office of the commission and a certified copy filed in the office of the secretary of state. Copies of all orders and records of the commission authenticated by the signature of the administrator shall for all purposes be deemed to be certified copies. An order applying only to person or persons named therein shall be served on the person or persons affected. An order required to be served shall be served by personal delivery of a certified copy or by mailing a certified copy in a sealed envelope with postage prepaid to each person affected thereby, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with the provisions of the laws of the state. The posting in the main office of the commission of any rule, and of any order not herein required to be served, and such filing in the office of the secretary of state, shall constitute due and sufficient notice to all persons affected by such rule or order. A rule of the commission when duly posted and filed as provided in this section shall have the force and effect of law. The provisions of this section as to service of orders shall not apply to orders fixing prices of milk as to which provision is made in §501.13.

(3) The relationship between a producer and a distributor, under which milk produced by the producer is regularly delivered to and accepted by the distributor, when once established, shall not be terminated either by the producer or by the distributor without just cause therefor, and the approval of the commission. Just cause will be considered by the commission as any cause deemed just by a prudent and reasonable man.

Arbitrary, capricious and vindictive reasons will not be considered as just cause for any such termination.

(4) The commission shall set a standard date as the date from which not less than ninety days written notice in writing and in advance must be given by the producer or the distributor involved to the other before any such theretofore established relationship may be terminated; unless such notice is given, such relationship will not be terminated, even though just cause exists for termination, unless just cause exists excusing the failure to give such notice.

History.—§5, ch. 19231, 1939; CGL 1940 Supp. 8219(42). §3, ch. 28137, 1953; §1, ch. 61-309.

501.051 Official actions of commission, place for transaction.—The commission is hereby expressly authorized and empowered to hold meetings at any place in the state, and at any such meeting to make, adopt and promulgate all lawful rules, regulations, resolutions and orders, and take all lawful action. Any such rule, regulation, resolution or order made, adopted or promulgated, or any such action taken, pursuant to or based upon, in whole or in part, a public hearing, shall be valid and enforceable whether or not such public hearing was also held at the place where such rule, regulation or order was made, adopted or promulgated, or such action is taken. All rules, regulations, resolutions and orders made, adopted or promulgated, and all action taken by the commission, at meetings held at places other than Tallahassee shall have the same full force and effect as such rules, regulations, resolutions and orders made, adopted and promulgated, and action taken at meetings held in the city of Tallahassee.

History.—§1, ch. 61-316.

501.06 Investigations by commission.—The practice and procedure of the commission with respect to any investigation by the commission authorized by this chapter shall be in accordance with rules and regulations to be promulgated by the commission which shall provide for a reasonable notice to all persons affected by orders to be made by the commission after such investigation, opportunity to be heard either in person or by counsel, and to introduce testimony in their behalf at a public hearing to be held for that purpose. For the purpose of such investigation or any hearing which the

commission is authorized or required to conduct, the commission, any member thereof, administrator, or deputy administrator, may conduct such hearing, administer oaths, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. In case of disobedience of any person to comply with the order of the commission or a subpoena issued by any person herein authorized to issue same, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the county judge of the county in which the person resides, on application of any member of the commission, the administrator, or deputy administrator shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Each public officer who serves such subpoena shall receive the same fee as a sheriff and each witness who appears in obedience to a subpoena before the commission, any member thereof, the administrator, or deputy administrator, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in circuit courts of this state, which shall be audited and paid as other expenses are audited and paid, upon the presentation of proper vouchers, approved by the commission. No witness subpoenaed at the instance of a party other than those herein authorized to issue subpoenas shall be entitled to compensation from the commission unless the commission shall certify that his testimony was material to the matter investigated.

History.—§6, ch. 19231, 1939; CGL 1940 Supp. 3219(43).

501.07 Entry on and inspection of premises where milk is sold, etc.—Any member of the commission, the administrator, deputy administrator, or an employee designated for the purpose, shall have access to and may enter at all reasonable hours all places where milk is being sold, offered for sale, stored, bottled or manufactured into food products, in any market, established by the commission, and may inspect all books, papers, records or documents in any place within the state for the purpose of ascertaining facts to enable the commission to administer this chapter.

History.—§7, ch. 19231, 1939; CGL 1940 Supp. 3219(44).

501.08 Injunction to restrain violation.—The commission may institute such actions at law or in equity as may appear necessary to enforce compliance with any provision of this chapter, or to enforce compliance with any rule or order of the commission made pursuant to the provisions of this chapter, and in addition to any other remedy herein provided may apply to any circuit court for relief by injunction to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Said court may issue a temporary injunction, without notice, and no bond shall be required to be posted by the commission in any such action, it being an instrumentality of the state.

History.—§8, ch. 19231, 1939; CGL 1940 Supp. 3219(45).

cf.—Ch. 64, Injunctions.
§501.23, Penalties.

501.09 Issuance, revocation, etc., of licenses to milk dealers.—(1) No milk dealer shall buy milk from producers or others for sale within this state, or sell or distribute milk therein unless such dealer be duly licensed as provided in this section, and it is unlawful for a milk dealer to buy milk from or sell milk to a milk dealer who is unlicensed, or, in any way to deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of this chapter.

(2) An application for a license to operate as a milk dealer shall be made on or before July first of each year, by mail or otherwise, to the commission upon blanks prepared under the authority of the commission. The application shall state the nature of the business to be conducted, the full name of the person applying for the license, and if the applicant be a firm, or association, the full name of each member, and if a corporation the names and addresses of all officers and directors, and the city, town or village and the street number, if any at which the business is to be conducted; facts showing that the applicant has adequate technical personnel, adequate technical and physical facilities to properly conduct the business of receiving and handling milk; that he has complied with all rules and orders of the commission filed or served as required by this chapter, and such other facts with respect to the license or permit as may be required by the commission pursuant to this chapter. Such application shall be accompanied by the license fee required to be paid by this chapter. A license or permit shall be granted to the applicant by the commission, subject to the provisions of this chapter.

(3) The commission may decline to grant any license or permit required hereby or may suspend or revoke a license or permit already granted upon due notice and opportunity of hearing to the applicant, licensee or permittee, when satisfied of the existence of any of the following: The commission shall not in any event grant a license to any distributor who shall not before the issuance of such license produce to the commission a certificate from state, county or municipal health authorities, certifying that such distributor has complied with all health and sanitary laws, ordinances and regulations in effect in this state and in the city and county where any such distributor does business. When such health certificate is revoked, the commission shall immediately suspend the license of such distributor whose certificate was revoked until such time as such distributor shall obtain another certificate showing full compliance with such laws, ordinances and regulations; provided, however, that in localities where such certificates cannot be obtained because there is no law, ordinance or

regulation authorizing the issuance of such a certificate, a certificate by an inspector under the milk products law that such distributor has complied with the standards of the United States public health service standard milk ordinance, shall be accepted in lieu thereof.

(a) That a milk dealer has rejected, without reasonable cause, any milk delivered to and accepted by the milk dealer from a producer delivered by or on behalf of the producer in ordinary continuance of a previous course of dealing, or that a milk dealer has rejected without reasonable cause, or has rejected without reasonable advance notice, any milk tendered or offered for delivery to the milk dealer by or on behalf of a producer in ordinary continuance of a previous course of dealing. It is intended hereby to provide and require that a milk dealer shall not reject or refuse to accept any milk tendered or offered for delivery by or on behalf of a producer in ordinary continuance of a previous course of dealing unless there exists reasonable cause for the rejection or refusal to accept such milk and unless the milk dealer has also given such advance notice as may be reasonable under the circumstances of intention to reject or refuse to accept such milk.

(b) That the milk dealer has failed without reasonable cause to account and make payment for any milk purchased from a producer.

(c) That the milk dealer has committed any act injurious to the public health, public welfare, or to trade or commerce in demoralization of the price structure of pure milk to such an extent as to interfere with an ample supply thereof, for the inhabitants of the state affected by this chapter, which is declared to be injurious to the public health, public welfare and to trade and commerce and evidence of a course of conduct on the part of the licensee tending to such demoralization shall be construed to be prima facie evidence of a violation of this section, proof of one act being sufficient to constitute a violation of this section.

(d) Where the milk dealer has made a general assignment for the benefit of creditors or has been adjudged a bankrupt or where a money judgment has been secured against him, upon which an execution has been returned wholly or partly unsatisfied.

(e) Where the milk dealer has continued in a course of dealing of such a nature as to satisfy the commission of his inability or unwillingness properly to conduct the business of receiving or selling milk.

(f) Where the milk dealer has continued in a course of dealing of such nature as to satisfy the commission of an intent to deceive or defraud producers or consumers.

(g) Where there has been a failure either to keep records or to furnish the statements or information required by the commission.

(h) Where it is shown that any statement upon which the license or permit was issued is or was false or misleading in any particular.

(i) Where the applicant is a partnership or corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act on account of which a license may be denied, suspended or revoked, pursuant to the provisions of this chapter.

(j) Where the licensee has violated any of the provisions of this chapter.

(k) The failure of any person to pay any license fee or other moneys required by the terms of this chapter when due shall constitute due cause for revocation of such person's license or permit.

In case of conduct by a licensee or permittee which would authorize the commission to suspend or revoke a license or permit, the licensee or permittee may propose to the commission the imposition of a fine in lieu of revocation or suspension, and the commission in its discretion may accept such offer and impose a fine. If such fine be promptly paid, revocation or suspension shall not be imposed, but if such fine be not promptly paid, the commission shall proceed to such revocation or suspension. Such fine, however, shall not be imposed unless the commission in its discretion determines that such fine would be adequate punishment and will probably procure future compliance with this law and the rules of the commission by such licensee or permittee; nor shall such fine be imposed unless the permittee or licensee shall in writing state to the commission his desire that a fine be imposed in lieu of revocation or suspension.

(4) No person shall engage in the business of distributing milk within any marketing area established by the commission, nor shall any person act as a distributor of milk within any such area, unless such person shall have obtained from the commission a license to act as a distributor of milk within such area.

On or before the first day of July in each year, all persons desiring to obtain licenses to act as distributors of milk in any marketing area shall file with the commission at its office an application in writing for license, which application shall be upon a form to be prescribed by the commission and shall contain such information as the commission shall require including among other things, the name of the applicant, the address of his place of business, the period of time during which he has been distributing milk within the area, the approximate number of gallons of milk distributed by applicant during each of the twelve months preceding July first of the year in which application is filed, and the names and addresses of the producers from whom the applicant has purchased milk during the period of twelve months preceding July first of the year in which the application is filed. Each application shall be verified by the oath of the applicant or his agent, or, if the applicant be a corporation, by the oath of an officer of such corporation.

Upon the filing of the application and the payment by the applicant to the commission of the sum of five dollars which is fixed as a fee to cover the cost of receiving such appli-

cation and issuing the license applied for, the commission shall issue or cause to be issued to the applicant a license in such form as the commission shall prescribe, which shall entitle the licensee to conduct the business of a distributor of milk until the first day of July next succeeding the date of the license, and which license shall be conditioned upon compliance by the licensee with all of the provisions of this chapter and all rules and regulations lawfully made pursuant to the provisions of this chapter.

If a person who was not engaged in the business of distributing milk in one of the marketing areas established by the commission on or before July first of any year shall desire to procure a license to engage in such business, he shall file an application in the form aforesaid in like manner as other applicants are required to file the same and the commission may issue to such applicant a license for the unexpired portion of the year expiring on July first next succeeding the date of such license, but every such applicant shall pay to the commission the sum of five dollars to cover the cost of receiving such application and issuing such license.

Unless previously revoked in the manner provided by this chapter all licenses issued to distributors shall remain in force and effect until midnight of the first day of July next succeeding the date of the issuance thereof.

On or before the tenth day of each month each distributor shall make a report under oath to the commission upon such form and containing such information as the commission shall prescribe, but each report shall specifically, and in addition to all other information which may be required by the commission, contain and set forth:

(a) The number of gallons of milk produced; the number of gallons of milk received; and the number of gallons of milk distributed by such distributor during the preceding calendar month; and

(b) The name and address of each producer or any other person from whom the distributor purchased milk for distribution during the preceding calendar month and the quantity of milk purchased from each producer or other person, and the price per gallon paid to each producer or other person for milk so purchased, and the number of gallons purchased by such distributor if such distributor be also a producer.

For the privilege of continuing in or engaging in the business of distributing milk or acting as a distributor under the provisions of this chapter, there is imposed upon every distributor a tax in an amount equal to fifteen-one hundredths of one cent upon each gallon of milk distributed by each distributor during each calendar month. The amount of such tax shall be remitted by each distributor to the commission at the time that the monthly reports are required to be filed by the distributor with the commission as provided by this chapter.

Every person required to make a report and pay any tax upon the distribution of milk under this chapter shall keep and preserve suitable records of sales and distribution of milk and such other books of account as may be necessary to enable the commission at any time to determine the amount of tax due hereunder, and all books and records shall be open to examination at any time by the commission or any of its authorized agents or by the administrator.

The commission may prescribe rules and regulations for the collection of the license fees as provided and specified herein, and provide any and all necessary machinery for the prompt collection of any and all license fees assessed, and may take all such steps as are reasonably necessary and as authorized hereunder to prevent any person engaging in any business herein regulated without first taking out or paying the license fee prescribed, including the right to seek an injunction without notice or bond.

Any and all registration, license fees and other moneys required to be paid hereunder shall be paid to the commission and promptly receipted for by the administrator, and he shall be placed under such reasonable bond in connection therewith, at the expense of said commission, as the governor of the state may require in order to furnish reasonable security in keeping with the total amount of such proceeds coming into his possession. All proceeds shall be promptly deposited in the state treasury into a separate trust fund to the credit of the commission. Such moneys are hereby appropriated for the administration of the provisions of this chapter unless the legislature provides otherwise in the biennial general appropriations act. All such appropriations shall be disbursed by the comptroller upon vouchers signed by the administrator and countersigned by the chairman of the commission.

Any person subject to the provisions of this chapter failing or refusing to furnish any return required to be made or failing or refusing to furnish a supplemental return or other data required by the commission or who shall violate any of the provisions of this chapter, including failure to secure a license or who shall violate any valid rule or regulation of the commission, or who shall secure a license upon false or fraudulent application, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding five hundred dollars or by imprisonment in the county jail for not exceeding six months and each offense and each day of violation shall constitute a separate offense.

Any person required to make, render, sign or verify any report as aforesaid, who makes or signs any false or fraudulent statement with intent to evade the tax hereby levied, shall be guilty of a misdemeanor and shall upon conviction be fined not less than $300.00 and not more than $1,000.00 or be imprisoned in the county jail for not exceeding one year.

If any licensee shall fail to pay the tax required to be paid within thirty days after the same shall become due, then there shall be added to said tax as a penalty for such failure an amount equal to two per cent of the amount thereof for each month or portion of a month during which such tax shall be delinquent, but this may be waived for cause by the commission.

All route salesmen, solicitors and each milk truck driver shall pay an annual license fee of one dollar.

Every distributor, producer-distributor and bob-tail distributor operating or using a truck, car or any vehicle, motor or otherwise, in the sale or delivery of milk products in connection with any regular retail route or wholesale route shall pay an annual license fee of five dollars for each truck, car or vehicle used for such purpose. This is in addition to other license fees or charges set forth, and application and payment therefor shall be made at the same time as other licenses; provided, however, that every bob-tail, distributor or producer-distributor is allowed to operate one vehicle without payment of this license fee, but on all other vehicles so operated this license fee must be paid.

Each store shall before making sales or being permitted to purchase at wholesale from distributors, producer-distributors or bob-tails, obtain a permit from the commission, which permit shall be subject to revocation as herein provided for violation hereof as licenses may be revoked hereunder.

Every producer and producer-distributor within the state must secure from the commission an annual permit to engage in business. No charge shall be required therefor, but no producer or producer-distributor shall engage in business within the state unless such permit be secured and continued in full force and effect. Same may be suspended or revoked for violation of any of the terms of this chapter or lawful rules or orders of the commission after due notice and hearing. Any person feeling aggrieved thereby may appeal to the circuit court as is provided herein for review of such order by the commission.

No payment of fees provided for in the milk products law, chapter 502 shall be required while this chapter is in full force and effect, but the said fees are expressly suspended for such period of time.

(5) The commission may classify licenses and may issue licenses to milk dealers to store, manufacture or sell milk limited to a particular city or village or to a particular market or markets in the state.

Any applicant, permittee, or licensee deeming himself aggrieved by any action of the commission taken under any of the provisions of this chapter may within thirty days after receipt of a copy of the order of the commission file a petition for certiorari in the manner prescribed by the Florida appellate rules. Said court shall have jurisdiction to reverse, vacate, or modify the order complained of. Upon service of a copy of the petition as provided by the appellate rules, the commission shall forthwith transmit to the clerk of the circuit court a transcript of the record of the commission and the original papers or transcript thereof, and a certified transcript of all evidence adduced upon the hearing before the commission in the proceedings complained of, which shall be filed in the court. No proceedings to reverse, vacate or modify a final order rendered by the commission shall operate to stay the execution or effect thereof unless the circuit court or a judge thereof on application shall allow such stay, in which event the plaintiff in error shall be required to execute an undertaking payable to the milk commission in such a sum as the court may prescribe, with surety to be approved by the clerk of the circuit court, conditioned for the prompt payment by the plaintiff in error of all damages, expenses, costs and attorney's fees arising from or caused by the delay in the effectiveness or enforcement of the order complained of.

No court other than the circuit court may review, suspend or delay any order made by the commission with respect to the granting of a license or permit, refusal to grant a license or permit, the granting of a conditional and limited license, or the suspension or revocation of a license or permit, or enjoin, restrain, or interfere with the commission or any member thereof, in the performance of official duties with respect thereto. Nor shall the writ of mandamus be issued against the commission or any member thereof by any court other than the circuit court.

All rights of appeal from a decree in the circuit court, in chancery, shall exist and be preserved as in other cases.

(6) For the privilege of continuing in or engaging in the business of producing milk, or acting as a dairy farmer under the provisions of this law, there is hereby imposed upon every dairy farmer a tax in an amount equal to fifteen-one hundredths of one cent upon each gallon of class I milk produced, as defined by the commission, by each such dairy farmer, and delivered to the platform of the distributor or producer-distributor during each calendar month. The amount of such tax shall be deducted by the distributor and the producer-distributor from the moneys due to the dairy farmer, and by such distributor or producer-distributor remitted to the commission at the time that the monthly reports are required to be filed by the distributors or producer-distributors with the commission, as provided by this chapter, and in the event the dairy farmer acts as his own distributor he shall remit the said tax to the commission at the time that the monthly reports are required to be filed by the distributor and producer-distributor with the commission, as provided by this chapter.

If at any time during a fiscal year the revenues received by the commission under this chapter exceed by at least twenty-five per cent

the total amount of expenditures as budgeted by the commission for that fiscal year, the payment of taxes provided for in this subsection, and in §501.09(4), on milk distributed by distributors, will be discontinued and such taxes are not imposed for the calendar months remaining in that fiscal year commencing with the first calendar month following the time when such revenues so collected exceed by at least twenty-five per cent the total amount of expenditures so budgeted for that fiscal year. All such taxes are imposed and shall be paid for each calendar month of each fiscal year through and including the month preceding the month in which any such discontinuance provided for herein becomes effective, and those liable for their payment shall continue to be liable therefor, regardless whether such taxes, and any penalties for late payments, are paid before or after the time of any such discontinuance.

(7) The commission may, in issuing a permit to a store after the effective date of this act, provide on it the period of time for which it is effective. Unless the commission, in issuing any such permit, expressly provides upon it the period of time for which it is effective, such permit when issued shall be effective until the store to which it is issued ceases to operate, provided, however, such permit may always be suspended or revoked, as provided herein. All permits now issued to stores shall be effective until the store to which it is issued ceases to operate, provided, however, any such permit may always be suspended or revoked, as provided herein.

(8) A store holding or obtaining a license issued by the hotel and restaurant commission under chapter 509 shall be deemed, for all purposes of this chapter, to hold the permit required of stores under this chapter, and shall not be required to obtain a permit also from this commission, provided, however, the commission may decline to grant, or suspend or revoke, such license as a permit under this chapter for the same reasons or causes and as fully and to the same extent as it may other permits to stores provided for by this chapter.

No store required to hold a license under chapter 509, shall make any sales of milk, or any purchases thereof at wholesale, during any period of time in which it does not hold such license from, or during which such license has been suspended or revoked by, the hotel and restaurant commission.

History.—§9, ch. 19231, 1939; CGL 1940 Supp. 3219(46), 7677 (5-a)-(5-b); (4)(b) par. 5 am. §124, ch. 26869, 1951; sub. §(6) n. §4, ch. 28137, 1953; (3) (a) a. by §1, ch. 61-313; §1, ch. 61-21; (4) §1, (6) §2, ch. 61-310; (7), (8) n. §1, ch. 61-162; (5) §39, ch. 63-512.

cf.—§775.06 Alternative punishment.
§502.12 Milk dealer's license.

501.10 Records of licensees.—The commission may require licensees and permittees to keep the following records:

(1) A record of all milk received, detailed as to location and as to names and addresses of suppliers, with butter fat tests, prices paid, deductions or charges made.

(2) A record of all milk sold classified as to grade, location and market outlet and size and style of container, with prices and amounts received therefor.

(3) A record of quantities and prices of milk sold.

(4) A record of the quantity of each milk product manufactured and quantity of milk or cream used in the manufacture of each product, also the quantity and value of milk products sold.

(5) A record of wastage or loss of milk or butter fat.

(6) A record of the items of the spread or handling expenses and profit or loss represented by the difference between the price paid and the price received for all milk.

(7) Such other records and information as the commission may deem necessary for the proper enforcement of this chapter.

History.—§10, ch. 19231, 1939; CGL 1940 Supp. 3219(47).

501.11 Reports by licensees.—Each licensee and permittee shall, from time to time as required by rule or order of the commission, make and file a verified report on forms prescribed by the commission of all matters on account of which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose and intent of this chapter. Such report shall cover a period of time specified in the order.

History.—§11, ch. 19231, 1939; CGL 1940 Supp. 3219(48).

501.13 Order by commission fixing price of milk.—

(1) The commission shall ascertain by such investigation and proofs as the emergency permits and requires what prices for milk in the several localities and markets of the state and under varying conditions will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, having special regard to the health and welfare of children, and be most to the public interest.

In determining prices to be paid producers, the commission shall take into consideration all conditions affecting the milk industry, including the amount necessary to yield a reasonable return to the producer. In determining what is a reasonable return to the producer the commission shall take into consideration the necessary cost incurred in that particular locality in maintaining dairy animals in a healthy condition, paying wages and supplying working conditions to employees sufficient for their subsistence at levels generally obtaining, and for the safeguarding of their health in defraying the ordinary fixed charges and operating expense incidental to the ownership, control and management of a herd of average numerical size, including a reasonable amount representing annual rent of land and equipment necessarily utilized therein and in addition to afford such producers a reasonable return in excess of their cost of production, and the volume of milk that might reasonably be ex-

pected to be produced by that average herd, and the average standard of its butterfat or milk fat content.

In fixing prices to be paid producers under this chapter, the commission may make them subject to adjustment up or down on account of butterfat or milk fat content in excess of or less than the standard determined by the commission to be average.

Each order of the commission fixing any price to be paid producers for whole fresh liquid milk may be static until further order or may provide that any of the respective prices thereby fixed shall fluctuate as provided therein based upon any reasonably related and ascertainable standard, such as an economical index based upon any set of reliable economical or agricultural statistics reasonably determined by the commission to be appropriately related to milk marketing.

In fixing minimum prices to be paid producers under this chapter for their milk utilized as whole fresh liquid milk the commission shall take into consideration the reasonable return, determined as aforesaid, and the average production volume, determined as aforesaid, and may take into consideration any additional volume of milk that may reasonably be required to be produced in order to provide the volume of milk utilized in such manner.

In fixing the prices to be paid producers for that portion of their milk utilized as whole fresh liquid milk the commission shall take into consideration the factors enumerated hereinabove. In fixing the minimum prices to be paid producers for the remainder of the milk produced by them the commission shall establish prices therefor not to exceed the market value in Florida of the component parts thereof. Each order of the commission fixing prices for milk may be static as to any or all of such prices so fixed until further order or may provide that any of the respective prices fixed thereby shall fluctuate as provided therein based upon any reasonably related and ascertainable standard, such as the Chicago butter or other recognized commodity market, with due allowance made for cost of transportation from such market to the market in Florida.

In determining wholesale and retail prices to be paid to or charged by milk dealers, the commission shall take into consideration all conditions affecting the milk industry including the amount necessary to yield a reasonable return to the milk dealer. In determining the reasonable return to the milk dealer, the commission shall take into consideration reasonable average operating expense in processing, storage, transportation and delivery charges and all necessary reasonable expenses connected therewith.

Whole fresh liquid milk, as used herein, includes all fluid milk or milk products sold in fiuid form, including, but not limited to, skim milk or fortified skim milk.

(2) The commission after making such investigation shall fix by official order the minimum wholesale and retail prices and may fix by official order the maximum wholesale and retail prices to be charged for milk handled within the state for fluid consumption, and wheresoever produced, including the following classes:

(a) By milk dealers to consumers.

(b) By milk dealers to stores either for consumption on the premises or resale to consumers.

(c) By stores to consumers for consumption on the premises where sold.

(d) By stores to consumers for consumption off the premises where sold.

(e) When, pursuant to statute, regulations adopted thereunder or ordinances, various grades of milk are specified, the commission shall fix the minimum price and may fix the maximum price applicable to each in each of the foregoing classes. Orders fixing minimum and maximum prices may vary in different markets and shall designate the markets to which applicable. In construing this section it shall be done taking into consideration for fixing the price, the healthfulness and grade of milk produced and whether or not the sale price gives a fair return to the producer.

(3) It is the intent of the legislature that the public emergency requires that the producers and milk dealers receive a fair return for their products. To that end, if the commission after investigation made either upon its own initiative or upon complaint of a representative group of producers supplying a particular dealer shall determine that such milk dealer purchasing milk from the producers or from or through a cooperative corporation of producers organized under the laws of the state in making such purchases has failed to give fair and reasonable effect to such intent, the commission shall upon due notice and after hearing suspend or revoke the license or permit of the milk dealer so offending and, in addition thereto, a violation of this subdivision shall render such offending milk dealer subject to the provisions of §501.08.

(4) The commission after making such investigation either on its own initiative or on complaint of a representative group of producers supplying a particular dealer or a particular market may fix by official order the prices to be paid by milk dealers to producers and others for milk and its various grades and uses. The order of the commission with respect to the prices to be paid to the producers and others shall apply to the locality or zone in which the milk is produced, the market or markets in which the milk so produced is sold, and may vary in different localities or markets according to varying uses and different conditions. Each order may classify milk by forms, classes, grades or uses as the commission may deem advisable and may specify the price therefor. A violation of this subdivision shall render such

persons offending this chapter specifically subject to the provisions of §501.08.

(5) After the commission has fixed prices to be charged or paid for milk whether by class, grade or use, it is unlawful for a milk dealer to sell or buy or offer to sell or buy milk at any price less or more than such price or prices as shall be applicable to the particular transaction and no method or device shall be lawful whereby milk is bought or sold or offered to be bought or sold at a price less or more than such price or prices as shall be applicable to the particular transaction, whether by any discount, or rebate or free service, or advertising allowance or a combined price for such milk together with another commodity or commodities, or service or services, which is less or more than the aggregate of the prices for milk and the price or prices for such other commodity or commodities, or service or services, when sold or offered for sale separately or otherwise.

(6) Any offender against the matters and things set forth in the foregoing paragraph shall be guilty of a misdemeanor and punished as provided by §501.23. It is unlawful for any person to knowingly aid, encourage or abet any violation of this chapter or any order of this commission whatsoever, or by the use of any advertising method of any character or description whatever on pain of being punished as for a misdemeanor and being subject to being temporarily enjoined by a court of equity without notice and without the furnishing or giving of any bond by the commission.

(7) The commission may upon its own motion or upon application from time to time, alter, revise or amend an official order theretofore made with respect to the prices to be charged or paid for milk. After making such investigation and before making, revising or amending any order fixing the price to be charged or paid for milk, the commission shall give a hearing thereon to all parties interested upon reasonable notice to such interested parties and to the public of such hearing in such newspaper or newspapers as in the judgment of the commission shall afford sufficient notice and publicity. Such order of the commission may be reviewed by certiorari as provided by the Florida appellate rules at the instance of any aggrieved person appearing of record at the hearing either in person or by personal representative and opposing the making of the order.

(8) It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this chapter respecting such milk so produced shall apply and the powers conferred by this chapter on the commission shall attach. After any milk so produced comes to rest within the state, any sale, within the state by a licensed milk dealer required by this chapter to be licensed, or any milk purchased from the producer at a price lower than that required to be paid for milk produced within the state purchased under similar conditions is unlawful.

History.—§13, ch. 19231, 1939; CGL 1940 Supp. 3219(50), 7677(5c); (1) §1, ch. 61-311; (7) §39, ch. 63-512.

501.15 Interstate and federal compacts.—The commission may confer with legally constituted authorities of other states of the United States, with respect to a uniform milk control within the state or as between states, and may enter into a compact or compacts for uniform milk control subject to such federal approval as may be required by law.

History.—§15, ch. 19231, 1939; CGL 1940 Supp. 3219(52).

501.16 Audits and reports to governor and legislature. — The commission shall have its books and records audited annually by the state auditor or a private auditor and make a full report of its proceedings, including said audit, to the governor and the chairman of the finance committee of the senate and the finance committee of the house, annually.

History.—§16, ch. 19231, 1939; CGL 1940 Supp. 3219(53).

501.17 Divulging of information by commission members, etc., forbidden; penalty.—No member of said commission, nor any officer, agent or employee thereof, shall divulge to any person the contents of any document, paper or record examined by him in the performance of his duties hereunder, or any information obtained by him in the course of his investigations, except as may be required to carry out the purposes of this chapter. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding one year.

History.—§17, ch. 19231, 1939; CGL 1940 Supp. 3219(54), 7677(4).
cf.—§775.06, Alternative punishment.

501.18 Law declared not applicable to interstate commerce.—No provision of this chapter shall apply or be construed to apply to foreign or interstate commerce except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto.

History.—§20, ch. 19231, 1939; CGL 1940 Supp. 3219(57).

501.19 Owner of three cows or less exempt.—Any producer of milk that owns, controls or milks three cows or less shall not be subject to pay the license fee, but shall come under the milk price provision.

History.—§21, ch. 19231, 1939; CGL 1940 Supp. 3219(58a).

501.20 Exercise and withdrawal of exercise of supervisory and regulatory powers in markets.—

(1) The commission shall not supervise and regulate any market in the state which it does not now supervise and regulate, or from which the exercise of its supervisory and regulatory powers is hereafter withdrawn unless there is presented to it a written petition signed by not

less than ten per cent in number of the producers and producer-distributors in such market, and representing not less than fifty per cent of the distributors buying milk from the base earned producers in such market, requesting it to exercise its supervisory and regulatory powers therein and unless, in a secret ballot election, to be called by the commission as promptly as reasonably possible after the presentation to it of such petition, a majority in number of the producers and producer-distributors eligible to vote in such election vote in favor of the exercise by the commission of its supervisory and regulatory powers in such market. If in the election such majority in number vote in favor thereof, the commission shall supervise and regulate such market, but otherwise shall not do so.

(2) Whenever there is presented to the commission a written petition signed by not less than ten per cent in number of the producers and producer-distributors in any market in the state over which the commission is exercising its supervisory and regulatory powers, pursuant to this chapter, requesting the commission to withdraw the exercise of such powers from such market, there shall be called by the commission, as promptly as reasonably possible after the presentation to it of such petition, a secret ballot election among the producers and the producer-distributors in that market. In the event, in such election, a majority in number of the producers and producer-distributors eligible to vote in such election vote in favor of the withdrawal therefrom by the commission of the exercise of its supervisory and regulatory powers, the commission shall withdraw the exercise of such powers by it from such market, but otherwise shall not do so.

(3) The commission shall prescribe the procedure to be followed in calling, holding, conducting and ascertaining the results of the elections provided for herein and may adopt reasonable rules, regulations and orders in regard thereto, but it shall insure that any election held hereunder is held by secret ballot, and that all those entitled to vote therein are given reasonable notice of the time and place of such election and reasonable opportunity to vote therein, provided, however, that the commission shall appoint a person or firm not a producer, producer-distributor or distributor or the commission or any member or employee thereof to conduct any such election called under the provisions of this section. Expenses of calling, holding, conducting and ascertaining the results of any such election shall be paid by the commission. The person or firm so appointed shall certify the results of the election to the commission promptly after such election is held.

The commission may schedule one election at one time and one place but in no event shall an election be held less than six months following an election; if, because of the size of the market involved, or for other reasons, the commission deems it advisable so to do for the convenience of those entitled to vote in such election, it may hold such election at more than one place within such market, and may designate different times and places within such market at which voting may be done. However, none of the votes shall be canvassed, nor shall any information concerning them be given or disseminated to anyone by the person or firm appointed to conduct the election, until all times fixed for holding such election have elapsed. In the event that any election is conducted at more than one location only one ballot box shall be used by the person or firm appointed by the commission.

(4) Determinations respecting numbers of producers and producer-distributors in any market shall all be made by the commission as of the end of the second calendar month preceding the month in which an election hereunder is called. All persons who were producers or producer-distributors in such market at the end of such second preceding calendar month shall be entitled to sign any such petition, and to vote in any election called hereunder, and shall be counted, regardless whether at the time of signing any such petition, or of its presentation, or of any election held hereunder, they are producers or producer-distributors in the market. Any who were not at the end of such second preceding calendar month producers or producer-distributors in the market shall not be counted in number, in determining the results of any election held hereunder, and shall be eligible neither to sign any such petition nor to vote in any such election, even though they may become producers or producer-distributors in such market after the end of such second preceding calendar month.

The number of producers and producer-distributors voting in the election shall be determined by the commission. In making such determination, the commission may obtain information from all available sources, including, but not limited to, its own records and reports, the books and records of producers in the market, and the books and records of producer-distributors and distributors in the market, whether such books and records are kept, or are available, within or without the geographical limits of the market. It shall make all such determinations as promptly as reasonably possible and with as much accuracy as is reasonably possible in order to make such determinations without undue delay, and its decisions in regard thereto shall be final.

(5) Whenever, under this section, the commission shall commence exercising, or withdraw the exercise of, its supervisory and regulatory powers in any market, it shall do so by order, and the time when such commencement or such withdrawal shall be effective shall be the date when the results of any election conducted under the provisions of this section are filed with the commission by the person or firm authorized to conduct such election.

History.—§22, ch. 19231, 1939; CGL 1940 Supp. 3219(58b); §2, ch. 61-314.

501.21 Duration of commission.—A continuing emergency for the regulation of the business and industry herein named shall be presumed and deemed continuing and existing, calling for the need for the existence of this chapter, and the same shall be effective until such date as it is repealed or amended by some subsequent act of the legislature, whenever any such continued emergency may be deemed essential to the continued validity of any of the provisions hereof.

History.—§23, ch. 19231, 1939; CGL 1940 Supp. 8219(58).

501.23 Penalty for violations.—A violation of any provision of this chapter or of any rule or order of the commission lawfully made, except as otherwise expressly provided by this chapter, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, and each day during which such violation shall continue shall be deemed a separate violation.

History.—§8, ch. 19231, 1939; CGL 1940 Supp. 7677(5).
cf.—§775.06, Alternative punishment.

CHAPTER 502

MILK, CREAM AND MILK PRODUCTS

502.01 Standards for milk, fresh milk concentrate, and milk products.—For the purpose of this chapter the standards for milk, fresh milk concentrate, and milk products shall be as follows:

"Milk" is defined to be whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows properly fed and kept, excluding that obtained within fifteen days before, and five days after calving, or such longer period as may be necessary to render such milk practically colostrum-free; and which contains not less than eight and fifty one-hundredths per cent solids not fat, and three and one quarter per cent butter fat.

"Fresh Milk Concentrate" is defined to be the product resulting from the removal of a portion of the normal water of fresh fluid milk. This product when recombined with the amount of water removed shall have all of the natural characteristics and qualities of fresh fluid milk. This product shall be subject to all and every provision of law applicable to "Milk" in respect to its production, sale, transportation, preparation or delivery for transportation or sale.

"Milk products" shall mean milk fat, cream, blend of milk and cream, skimmed milk, chocolate milk, chocolate milk drink, buttermilk, cultured buttermilk, evaporated milk (unsweetened), condensed milk (sweetened), condensed skimmed milk, condensed skimmed milk (sweetened), powdered whole milk, powdered skimmed milk, low-fat or non-fat milk, butter, renovated or processed butter, renovated or neutralized cream, cheese, filled cheese, cottage cheese, whey, and fresh milk concentrate.

"Butterfat" is the fat of milk and has a Reichert-Meissel number of not less than twenty-four and a specific gravity of not less than 0.909 (40 degrees C/40 deg. C.).

"Cream" is defined to be that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, which is fresh and clean, obtained from fresh milk produced by healthy cows, properly fed and located or kept, and which contains not less than eighteen per cent of milk fat and not more than two-tenths per cent of sour reacting substance calculated in terms of lactic acid, except sour cream having an acidity test of not lower than three-tenths per cent and known as sour cream for manufacture of butter.

"A blend of milk and cream" is defined as a blend of milk and cream that shall contain a minimum of ten per cent butterfat and a maximum of twelve per cent butterfat with a maximum of two per cent added milk solids not fat. The product must be homogenized and pasteurized.

"Skimmed milk" is defined to be milk from which practically all the butter fat has been removed.

"Chocolate milk" is defined to be whole or skimmed milk to which has been added in a sanitary manner a chocolate or cocoa syrup composed of wholesome ingredients and which contains not less than two per cent butterfat.

"Chocolate milk drink" is defined as skimmed milk to which has been added in a sanitary manner a chocolate or cocoa syrup composed of wholesome ingredients and which contains not more than one per cent butterfat.

"Buttermilk" is defined to be the product

which remains when butter fat is removed from milk or cream, sweet or sour, in the process of churning. It contains not less than eight and five-tenths per cent of milk solids not fat.

"Cultured buttermilk" is defined to be the product obtained by souring skimmed, or partially skimmed milk, by means of a suitable culture of lactic bacteria and churning. It contains not less than eight and five-tenths per cent of milk solids not fat.

"Evaporated milk" (unsweetened) is defined to be milk from which a large portion of water has been evaporated and which contains not less than twenty-five and five-tenths per cent of milk solids and not less than seven and eight-tenths per cent butter fat.

"Condensed milk" (sweetened) is defined to be milk from which a large portion of water has been evaporated, to which sugar has been added, and which contains not less than twenty-eight per cent of milk solids and not less than eight per cent butter fat.

"Condensed skimmed milk" is defined to be skimmed milk from which a large portion of water has been evaporated, and which contains not less than twenty per cent of milk solids.

"Condensed skimmed milk" (sweetened) is defined to be skimmed milk from which a large portion of water has been evaporated, to which sugar (sucrose) has been added and contains not less than twenty-four per cent of milk solids.

"Powdered whole milk" is defined to be whole milk from which practically all the water has been removed, and which contains not less than twenty-six per cent of butter fat and not more than five per cent of moisture.

"Powdered skimmed milk" is defined to be skimmed milk from which practically all the water has been removed, and which contains not more than five per cent of moisture.

"Low-fat or non-fat milk" (skimmed milk) is defined to be fresh skimmed milk with not more than one and twenty-five hundredths per cent of butterfat and a maximum of two per cent added milk solids not fat. The addition of two thousand units of natural vitamin A and four hundred units of natural vitamin D per quart is optional. This product must be homogenized and pasteurized. Label must indicate accurately the contents of package.

"Recombined or reconstructed milk" is defined to be a substance produced by recombining any milk product or milk products with other milk products or with any other substance and which conforms in any manner to the requirements of milk. It is unlawful to sell recombined or reconstructed milk in the state.

"Butter" is defined to be the clean, non-rancid product made by gathering in any manner the fat of fresh or ripened cream or milk into a mass which also contains a small portion of other milk constituents, with or without salt or added harmless coloring matter, and contains not less than eighty per cent of milk fat with Reichert-Meissel number not less than twenty-four and a specific gravity of not less than 0.905 and not more than sixteen per cent of moisture.

"Renovated or processed butter" is defined to be a clean, sound product made in the semblance of butter from melted, clarified, or refined butter fat, without the addition or use of any substance other than water, milk, cream or salt, and contains, all tolerances provided for, less than sixteen per cent of water and not less than eighty per cent of milk fat with Reichert-Meissel number not less than twenty-four and a specific gravity of not less than 0.905.

"Renovated or neutralized cream" is defined to be cream that has been treated with an alkali or other chemicals for the purpose of imitating fresh cream. Renovation and neutralization of cream is unlawful in the state except for manufacturing purposes.

"Cheese" is defined to be the sound, solid and ripened product made from pasteurized milk or pasteurized cream by coagulating the casein thereof with rennet or lactic acid with or without the addition of ripening ferments and seasonings, and which contains in the water-free substance not less than fifty per cent of milk fat with Reichert-Meissel number not less than twenty-four and a specific gravity of not less than 0.905.

"Filled cheese" is defined to be cheese made from skimmed milk or partly skimmed milk with the addition of some vegetable or animal fat.

"Cottage cheese" is defined to be the sound, solid, fresh product made from skimmed milk, whole milk or cream, by coagulating the casein thereof with rennet or lactic acid, and by expelling the water by aid of heat.

"Whey" is defined to be the product remaining after the removal of fat and casein from milk in the process of cheese making.

"Imitation butter" is defined to be any product containing any fat other than that derived from milk or cream and made in the appearance of butter or designed to be used for any of the purposes for which butter is used.

History.—§2, ch. 6203, 1911; RGS 2048; §1, ch. 8534, 1921; CGL 3216, 3217; §1, ch. 13696, 1929; §1, ch. 14762, 1931; CGL 1936 Supp. 3219(1); §1, ch. 26968, 1951; am. §10, ch. 27991, 1953.

cf.—§1.01, General definitions.
Ch. 501, Milk commission.

502.02 Regulation of sales of milk or milk products.—No person by himself or by his agents or servants, shall sell, offer for sale, expose for sale, or have in his possession with intent to sell, any product defined by this chapter that does not conform to the standard of the definitions of milk and milk products contained in this chapter; provided that nothing in this chapter shall apply to producers of milk in Florida who produce and dispose of the milk from five cows or less by sale, or otherwise, in such county or adjoining county where such milk is produced.

History.—§1, ch. 6203, 1911; RGS 2047; CGL 3215; §2, ch. 13696, 1929; §2, ch. 14762, 1931; CGL 1936 Supp. 3219(2).

502.03 Labels to be placed upon containers.—Every person who ships or sells milk and cream produced in the state or brought from points outside of the state shall cause the same to be labeled or identified in such manner as may be prescribed by the commissioner of agriculture as will advise the purchaser or consumer of the nature and kind of milk or cream and will indicate the state in which same was produced, and all distributors or receivers of milk and cream shall furnish all customers, wholesale or retail, with information to be placed upon the containers in which the milk and cream is handled showing the source of production of the milk and cream as herein required. In addition to the requirements for labeling milk and cream, when any milk products are offered for sale or exposed for sale they shall be labeled so as to indicate the true contents of the can, bottle or package. For example, buttermilk, if churned, shall be labeled "churned buttermilk"; cultured buttermilk shall be labeled "cultured buttermilk"; renovated butter shall be labeled "renovated butter," etc.

History.—§3, ch. 13696, 1929; §3, ch. 14762, 1931; CGL 1936 Supp. 3219(3).

502.04 Grade to be shown by label.—All milk, and cream shall, when sold in bottles or other receptacles to consumers or to dealers for resale to consumers, be plainly and conspicuously labeled in such manner as may be prescribed by the commissioner of agriculture as will show the grade under which it is sold and the source of production of same, indicating the name and address of the producer or distributor, providing that no such milk or cream shall be offered for sale until upon examination by authorized officials it is found to meet requirements of this chapter or the municipality in which it is offered for sale.

History.—§4, ch. 13696, 1929; §4, ch. 14762, 1931; CGL 1936 Supp. 3219(4); am. §1, ch. 24277, 1947.
cf.—§500.11, Misbranding.

502.05 Imitation butter or filled cheese not to be colored.—No imitation butter or filled cheese shall be colored with any substance, and no such imitation product shall be made by mixing animal fats, vegetable oils, or any substance for the purpose or with the effect of imparting to the mixture the color of yellow butter or cheese.

History.—§5, ch. 14762, 1931; CGL 1936 Supp. 3219(5).

502.06 Imitation butter and filled cheese to be sold under proper name.—Imitation butter and filled cheese shall be sold only under their proper names, and no person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any such product, the words "butter," "creamery," "cheese" or "dairy," or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation of any other words or symbols or combination thereof commonly used in the sale of butter or cheese.

History.—§6, ch. 14762, 1931; CGL 1936 Supp. 3219(6).
cf.—§502.28, Selling oleomargarine.

502.07 Placard to be displayed where imitation butter served.—Every person owning or in charge of any place where food or drink is sold who uses or serves therein imitation butter or filled cheese, shall display at all times opposite each table or place of service a placard for each imitation with the words "Imitation _____ served here," without other matter, printed in black Roman letters not less than three inches in height and two inches in width, on a white card twelve by twenty-two inches in size. The blank after the word "Imitation" in the above form shall be filled with the name of the product imitated.

History.—§7, ch. 14762, 1931; CGL 1936 Supp. 3219(7).
cf.—§502.28, Penalty for selling oleomargarine.
§1.01(3), "Person" defined.

502.08 Report of dealers in imitation butter.—Every person who deals in or manufactures imitation butter or filled cheese shall make upon blanks furnished by the commissioner of agriculture such reports and furnish such statistics as may be required by the commissioner of agriculture and certify to the correctness of the same.

History.—§8, ch. 14762, 1931; CGL 1936 Supp. 3219(8).

502.09 Labeling of imitation butter in package form.—Imitation butter and filled cheese in package or wrapped form which are required by this chapter to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters of not less than eight point heavy Gothic type on the principal label with the following items:

(1) The true name, brand or trademark of the article.

(2) The quantity of the contents in terms of weight, measure or numerical count. Under this requirement, reasonable variations shall be permitted, and small packages shall be excepted in accordance with the rules of the commissioner of agriculture.

(3) The name and place of the manufacturer and distributor.

The above items shall be printed in such a way that there shall be a distinct contrast between the color of the letters and that of the background upon which they are printed.

History.—§9, ch. 14762, 1931; CGL 1936 Supp. 3219(9).

502.10 Only milk fats to be added to milk, etc.—No milk, cream, skimmed milk, buttermilk, condensed or evaporated milk, condensed skimmed milk, ice cream, or any fluid derivatives of any of them shall be made from or have added thereto any fat or oil other than milk fat, and no product so made or prepared shall be sold, offered or exposed for sale, or possessed with the intent to sell, under any trade name or other designation of any kind without stating on the label the kind of fat used.

History.—§10, ch. 14762, 1931; CGL 1936 Supp. 3219(10).

502.11 Repasteurization prohibited; domestic and foreign milk not to be mixed.—It is

unlawful for any milk, either imported or domestic, to be repasteurized, and it is unlawful also to mix domestic milk with milk brought in from any point outside of the state prior to sale to distributors, retailers, or consumers.

History.—§5, ch. 13696, 1929; §11, ch. 14762, 1931; CGL 1936 Supp. 3219(11).

502.12 License required for dealers in milk and milk products.—It is unlawful for any person except the initial producer doing business in the state, to receive, offer for sale, transport, prepare or deliver for transportation or sale, as milk processor or dealer, any milk or milk products, except evaporated milk, condensed milk in hermetically sealed cans for resale, powdered whole milk, powdered skimmed milk, butter, renovated or processed butter, cheese, filled cheese, and imitation butter without first obtaining from the commissioner of agriculture a state license as a dealer in milk and milk products.

Applications for state license as provided under this chapter shall plainly state under oath of the owner or manager of the individual, company, firm, association or corporation applying for same that all milk or milk products which they desire to sell in this state are to be produced from healthy herds and under proper sanitary conditions, and the commissioner of agriculture may require a statement under oath from the proper official or officials of any state, county or municipality outside of this state when milk produced outside of the state is proposed to be sold in the state certifying to the condition of production or handling of such milk or milk products as shall be proposed to be shipped from their jurisdiction into the state to be handled by the applicant, and also as to the health of any and all herds from which all milk or milk products are to be shipped into this state from points outside of the state. Upon filing of such application the commissioner of agriculture shall issue to the applicant a state license upon receipt by him of the sum of twenty-five dollars. All licenses issued shall become void after September thirtieth, of each year, after which new licenses shall be obtained upon the payment of the fee provided for the next ensuing year; provided, that nothing contained in this section shall apply to any common carrier.

No payment of fees provided for herein shall be required while §501.09(4) is in force, but same are expressly suspended for such period of time.

History.—§6, ch. 13696, 1929; §12, ch. 14762, 1931; CGL 1936 Supp. 3219(12); am. §2, ch. 26968, 1951; §24, ch. 57-1.
cf.—§501.09 Issuance, revocation, etc., of milk dealer's license.

502.13 Commissioner of agriculture may revoke license.—The commissioner of agriculture may, at any time, for just cause, and after reasonable notice and hearing, revoke any license that may have been issued under §502.12 when it shall have been made to appear that any licensee has violated any provisions of this chapter or any reasonable rule or regulations prescribed for its enforcement.

History.—§7, ch. 13696, 1929; §13, ch. 14762, 1931; CGL 1936 Supp. 3219(13); am. §7, ch. 22858, 1945.

502.14 Permit required to operate milk-gathering station, etc.—No person shall take charge, either as superintendent, manager, or otherwise of any milk-gathering station, manufacturing plant, or milk receiving plant where milk or cream is received from producers for sale or resale or for manufacture, unless in possession of a permit issued by the commissioner of agriculture.

History.—§14, ch. 14762, 1931; CGL 1936 Supp. 3219(14).

502.15 Permit to test milk or cream.—No person shall test milk or cream by the Babcock or other volumetric method, for the purpose of determining the amount of milk fat contained therein, where the result of such test is used as a basis for payment for such milk or cream or for official inspection, or for public record, unless in possession of a permit issued by the commissioner of agriculture.

History.—§15, ch. 14762, 1931; CGL 1936 Supp. 3219(15).

502.16 Application for and issuance of permits.—Application for a permit, referred to in §§502.14-502.15, shall be made upon a form prescribed by the commissioner of agriculture. The applicant shall furnish satisfactory evidence of good moral character and shall give proof of his ability to perform the functions for which a permit is applied, to the satisfaction of the commissioner of agriculture. The commissioner of agriculture in his discretion may combine in one permit authority to take charge of a milk-gathering station and manufacturing plant and to test milk or cream by the Babcock or other volumetric method. A permit shall cover a period of one year, and may be renewed for successive periods of one year each. Each permit shall be kept at the place where the permittee is employed and shall be open to inspection.

History.—§16, ch. 14762, 1931; CGL 1936 Supp. 3219(16); am. §7, ch. 22858, 1945.

502.17 Revocation of permits.—A permit of the type referred to in §§502.14-502.16 may be revoked by the commissioner of agriculture at any time, after a hearing upon due notice to the permittee, for false statements in the application, dishonesty, incompetency, inaccuracy, or a violation of the provisions of this chapter.

History.—§17, ch. 14762, 1931; CGL 1936 Supp. 3219(17).

502.18 Disposition of milk or milk products not complying with this chapter.—When the commissioner of agriculture or his authorized inspectors shall find in any milk plant, creamery, dairy, milk house, delivery truck or wagon any milk or cream that does not comply with the provisions of this chapter, they may add rennet or buttermilk to the milk or cream so as to make it unsalable as sweet milk or sweet cream, or they may empty it into the sewer, or make such disposition as may be deemed proper; or when they find any milk products that

do not comply with the provisions of this chapter or the rules and regulations adopted by the commissioner of agriculture, they may confiscate those milk products.

History.—§18, ch. 14762, 1931; CGL 1936 Supp. 3219(18).

502.19 Commissioner of agriculture to supervise the enforcement of the law.—The provisions of this chapter shall be enforced under the supervision of the commissioner of agriculture, by inspectors of the department of agriculture. It may also be enforced by health officers of the various municipalities and counties of the state, as to dairy products sold or offered for sale within the jurisdiction of such municipality or county. Provided nothing contained herein shall limit the authority conferred on municipalities by §502.24.

History.—§8, ch. 13696, 1929; §19, ch. 14762, 1931; CGL 1936 Supp. 3219(19); am. §2, ch. 24277, 1947.
cf.—Ch. 381, State board of health.

502.20 Duty of commissioner of agriculture.—The commissioner of agriculture shall enforce the provisions of this chapter and employ field and other agents and clerical assistance at such times and for such periods as may be necessary to enable him to enforce the provisions of this chapter and he may incur and pay any of the expenses thereof out of the general inspection trust fund, on vouchers approved by the supervising inspector and commissioner of agriculture, including traveling expenses, and the same are appropriated for that purpose out of said general inspection trust fund.

History.—§9, ch. 13696, 1929; §20, ch. 14762, 1931; CGL 1936 Supp. 3219(20); §2, ch. 61-119.

502.21 Rules and regulations.—The commissioner of agriculture shall from time to time as he may deem expedient and necessary, make and promulgate rules and regulations for carrying out and enforcing the provisions and requirements of this chapter, which rules and regulations shall be issued by him in pamphlet form for distribution to the public upon request therefor.

History.—§10, ch. 13696, 1929; §21, ch. 14762, 1931; CGL 1936 Supp. 3219(21).

502.22 Unlawful to resist inspectors.—It is unlawful for any person to obstruct or resist any authorized inspector designated by the commissioner of agriculture or acting for any municipality or county in the state while such inspector is in reasonable performance or discharge of any duty imposed upon, authorized or required of him by the provisions of this chapter, or by any rule or regulation prescribed hereunder; provided however nothing herein contained shall impair the powers and duties of the state board of health as to matters not expressed or by necessary implication placed under the supervision of the commissioner of agriculture.

History.—§11, ch. 13696, 1929; §22, ch. 14762, 1931; CGL 1936 Supp. 3219(22); am. §3, ch. 24277, 1947.

502.23 Purpose of chapter.—This chapter shall be construed as intending to secure to the people of Florida the assurance that milk and milk products sold or offered for sale to the public are produced under sanitary conditions and are wholesome and fit for human consumption and are being offered to the public under their correct designation as to grade and quality and as to source of production.

History.—§13, ch. 13696, 1929; §24, ch. 14762, 1931; CGL 1936 Supp. 3219(23).

502.24 Standards set by municipalities.—When any municipality shall have established any standard of qualification for sale of dairy products within its jurisdiction which is in excess of the requirements of this chapter defining dairy products, nothing in this chapter shall be construed as superseding or rendering ineffective or invalid any local regulation of any such municipality prescribing standards of dairy products and requirements under which same shall be produced in order to be sold within the jurisdiction of the particular municipality, but compliance with the standard fixed by this chapter shall be sufficient as to all inspections made by or under the supervision of the state authorities outside of such particular municipality.

History.—§15, ch. 13696, 1929; §26, ch. 14762, 1931; CGL 1936 Supp. 3219(24).

502.25 Powers of inspectors.—The several officers and inspectors of the commissioner of agriculture, and of the several municipalities or counties of the state may enforce and carry out the provisions of this chapter in all particulars, and to that end they are vested with full power and authority to do all such things as may be necessary to be done in that regard.

History.—§16, ch. 13696, 1929; §27, ch. 14762, 1931; CGL 1936 Supp. 3219(25); am. §4, ch. 24277, 1947.

502.26 Injunction to restrain violation.—In addition to the other remedies provided for by this chapter, the commissioner of agriculture may proceed in any of the courts of this state by injunction to restrain any threatened continued violation of this chapter and each state attorney, county prosecuting attorney and the attorney general shall assist in the enforcement of the provisions of this chapter upon request of the commissioner of agriculture, providing the actual, reasonable and necessary expenses of the said state attorney, county prosecuting attorney and attorney general shall be paid in connection with performance of additional duties imposed upon them by this chapter, and same shall be payable out of the general inspection fund.

History.—§17, ch. 13696, 1929; §28, ch. 14762, 1931; CGL 1936 Supp. 3219(26); am. §5, ch. 24277, 1947.
cf.—Ch. 64, Injunctions.

502.27 Penalty for violations.—Any person who shall violate any of the provisions of this chapter, or shall do or commit any act declared to be unlawful, or shall violate any reasonable rule or regulation made or promulgated by the commissioner of agriculture by virtue of the authority given shall be punished by a fine of not more than five thousand dollars, or by imprisonment of not more than twelve months in the county jail.

History.—§3, ch. 6203, 1911; RGS 5516; CGL 7676; §12, ch. 13696, 1929; §23, ch. 14762, 1931; CGL 1936 Supp. 7677(1).

502.28 Selling oleomargarine.—Whoever knowingly and willfully sells or causes to be sold as butter any spurious preparation purporting to be butter, whether known as oleomargarine or by any other name, shall be punished by imprisonment not exceeding thirty days, or by fine not exceeding one hundred dollars.

History.—§1, ch. 3280, 1889; RS 2662; GS 3591; RGS 5520; CGL 7685.
cf.—§502.07, Placard to be displayed where imitation butter served.
§775.06, Alternative punishment.

502.29 Definitions.—
(1) Whenever used in §§502.29-502.34 the term "person" includes an individual, partnership, corporation or association.
(2) The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, whether in bulk or in containers, hermetically sealed or unsealed; provided, that this definition shall not be held or construed to mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, provided such compound (a) is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician; (b) is packed in individual containers bearing a label in bold type that the contents are to be used for said purposes and, provided further, that nothing in this definition shall be held or construed to prevent the use, blending or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oils than milk or butter fat.

History.—§1, ch. 20496, 1941.

502.30 Filled milk an adulterated food.—"Filled Milk", as herein defined, is an adulterated article of food, injurious to the public health, and its sale constitutes a fraud upon the public.

History.—§2, ch. 20496, 1941.

502.31 Sale of filled milk prohibited.—It shall be unlawful for any person, by himself, his servant or agent, or as the servant or agent of another, to manufacture for sale within this state, or sell or exchange, or have in his possession with intent to sell or exchange, or offer for sale or exchange, any "filled milk" as defined in §502.29.

History.—§3, ch. 20496, 1941.

502.32 Penalties.—Any person who shall violate any provision of §§502.29-502.34 shall upon conviction, be punished by a fine of not less than one hundred dollars nor more than three hundred dollars, or be imprisoned for not less than ten days, nor more than six months, or both such fine and imprisonment.

History.—§4, ch. 20496, 1941.

502.33 Enforcement of law.—
(1) It shall be the duty of the commissioner of agriculture to enforce this law.
(2) In addition to the remedies hereinafter provided, the commissioner of agriculture is hereby authorized to apply to any circuit court for, and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of this law, irrespective of whether or not there exists an adequate remedy at law.
(3) Any "filled milk," manufactured for sale within this state, or sold or exchanged, or possessed with intent to sell or exchange, or offered for sale or exchange, by any person, by himself, his servant or agent, or as the servant or agent of another, shall be liable to seizure and condemnation by the state department of agriculture or any duly authorized officer or employee thereof.
(4) Any "filled milk" seized or condemned under this section shall be disposed of by destruction as the commissioner of agriculture may in his discretion direct.

History.—§§5-7, ch. 20496, 1941.

502.34 Duty of prosecuting attorney.—It shall be the duty of any prosecuting attorney to prosecute any violation of this law without delay.

History.—§8, ch. 20496, 1941.

502.35 Declaration of policy and cooperation between the commissioner of agriculture and the state board of health.—In order to more effectively utilize the agencies of the state, in the public interest and without unnecessary duplication and expense, the relationship between the production, processing and distribution of milk, cream and milk products, and the public health hereby is recognized. It is therefor hereby declared to be the public policy of the state that:
(1) The duty of administration and enforcement of all regulatory legislation now enacted applying to the production, processing and distribution of milk, cream and milk products, shall be performed by the state department of agriculture, except necessary laboratory work which the state board of health is equipped to handle and except as otherwise provided in this chapter.
(2) The administration and enforcement of all regulatory legislation now enacted, applying to the sanitation and sanitary practices of establishments where food and drink including milk, cream and milk products are sold for consumption on the premises where sold, or to the sanitary and healthful condition of such food and drink sold or offered for sale by such establishment, also, such laboratory work of testing and

analyzing milk, cream and milk products, may be performed by the state board of health and local health departments of various municipalities and counties. Provided nothing contained herein shall limit the authority conferred on the commissioner of agriculture by chapter 502, Florida Statutes.

(3) There shall be the fullest cooperation and exchange of information between the state department of agriculture and the state board of health in the making of any surveys, investigations and inquiries to be made for the purpose of determining whether or in what manner the production, processing and distribution of milk, cream and milk products may affect the public health. Whenever the findings in the report of any survey, investigation or inquiry made by the state board of health, or the commissioner of agriculture, show any hazard to public health existing, incident to the production, processing or distribution of milk, cream and milk products, the commissioner of agriculture shall take such action as may be necessary and within the scope of the resources of the state department of agriculture, to remove such hazard. Provided nothing herein contained shall limit the authority of the state board of health to take immediate action when it appears necessary in the interest of public health.

History.—§6, ch. 24277, 1947.

CHAPTER 503

ICE CREAM AND FROZEN DESSERTS

503.01 Definitions and standards.—For the purpose and within the meaning of this chapter, the following definitions and standards shall obtain:

(1) The term "commissioner" means commissioner of agriculture.

(2) "Frozen desserts" means ice cream, frozen custard, ice milk, milk sherbet, ice or ice sherbet, imitation ice cream, and/or frozen desserts mix as defined in this chapter.

(3) "Milk products" means pure, clean and wholesome cream, pure milk fat, sweet butter, milk, evaporated milk, skimmed milk, condensed milk, sweetened condensed milk, condensed skimmed milk, sweetened condensed skimmed milk, dried milk, dried skimmed milk.

(4) "Ice cream" means the pure, clean, frozen product made from a combination of two or more of the following ingredients: Milk products, fresh eggs, frozen eggs or dry egg yolk, water, and sugar, with or without harmless flavoring and with or without harmless coloring, and with or without added stabilizer, composed of wholesome edible material. It contains not more than one-half of one per centum by weight of stabilizer, not less than ten per centum by weight of milk fat, and not less than eighteen per centum by weight of total milk solids; except when fruit, nuts, cocoa or chocolate, maple syrup, cakes or confections are used for the purpose of flavoring, then it shall contain not less than ten per centum by weight of milk fat and not less than eighteen per centum by weight of total milk solids, except for such reduction in milk fat and in total milk solids, as is due to the addition of such flavoring, but in no case shall it contain less than eight per centum by weight of milk fat nor less than fourteen per centum by weight of total milk solids. In no case shall any ice cream contain less than one and six-tenths pounds of total food solids per gallon.

(5) "Frozen custard" means French ice cream, French custard ice cream, ice custard, parfaits and similar frozen products. Frozen custard is a clean, wholesome product made from a combination of two or more of the following ingredients: Milk products, water and sugar, with or without harmless flavoring, and with or without harmless coloring, and with or without added stabilizer, composed of wholesome, edible material. It contains not more than one-half of one per centum by weight of stabilizer, not less than ten per centum by weight of milk fat, not less than eighteen per centum by weight of total milk solids. Frozen custard shall contain not less than five dozen of clean wholesome egg yolks, or one and five-tenths pounds of wholesome, dry egg yolk containing not to exceed seven per centum of moisture or three pounds of wholesome frozen egg yolk containing not to exceed fifty-five per centum of moisture, or the equivalent of egg yolk in any other form, for each ninety pounds of frozen custard. In no case shall any frozen custard contain less than one and six-tenths pounds of total food solids per gallon.

(6) "Ice milk" means the pure, clean frozen product made from a combination of two or more of the following ingredients: Milk products, eggs, water, and sugar with or without harmless flavoring, and with or without harmless coloring, and with or without added stabilizer, composed of wholesome edible material. It contains not more than one-half of one per centum by weight of stabilizer, not less than three and not more than ten per centum by weight of milk fat and not less than fourteen per centum by weight of milk solids. In no case shall any ice milk contain less than one and three-tenths pounds of total food solids per gallon.

(7) "Milk sherbet" means the pure, clean, frozen product made from milk products, water and sugar, with or without harmless fruit or fruit juice flavoring, and with or without harmless coloring, with not less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It contains not less than four per centum by weight of milk solids.

(8) "Ice or ice sherbet" means the pure, clean, frozen product made from water and sugar with or without harmless fruit or fruit juice flavoring, and with or without harmless coloring, with not less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It contains no milk solids.

(9) "Imitation ice cream" means any frozen substance, mixture or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, ice milk, sherbet or ice as defined in this chapter. Imitation ice

cream, as herein defined, shall be construed to not lose its character as such, if and when it is made or used as a component part of a finished drink or any edible substance.

(10) "Frozen desserts mix" means the pure, clean, wholesome, unfrozen product made from a combination of two or more ingredients, with stabilizer, pasteurized, with or without harmless flavoring, with or without harmless coloring, to be used in the manufacture of ice cream, frozen custard, ice milk, milk sherbet, ice or ice sherbet.

History.—§1, ch. 16047, 1933; CGL 1936 Supp. 3218, 3219(28); §7, ch. 22858, 1945; am. §1, ch. 28226, 1953.
cf.—§502.10, No ice cream shall be made from or have added thereto any fat or oil other than milk fat.

503.02 Application for license.—Every manufacturer of frozen desserts and/or frozen desserts mix produced for sale shall file with the commissioner of agriculture, an application for a license upon a form prescribed by the commissioner. The application must show that the frozen desserts and/or frozen desserts mix manufactured by the applicant are composed of pure and wholesome ingredients and are produced under sanitary conditions. The application shall also show the location of each plant at which frozen desserts and/or frozen desserts mix are to be manufactured, and the name of the brand, or brands if any, under which the same are to be sold. The license period shall be for twelve months beginning October first.

History.—§2, ch. 16047, 1933; CGL 1936 Supp. 3219(29). Am. §2, ch. 28226, 1953.

503.03 License fee.—The license fee shall be fifty dollars for each manufacturing plant shown in the application of frozen desserts and/or frozen desserts mix manufacturers doing a wholesale business, and ten dollars for each retail store shown in the application of a retail manufacturer. There shall be no fee for the issuance of a license to a hotel, restaurant or boarding house, for the manufacture of frozen desserts and/or frozen desserts mix sold to the patrons thereof for consumption exclusively on the premises where manufactured. The fee shall be tendered to the commissioner with the application, and upon the issuance of the license shall be remitted by the commissioner to the state treasurer to the credit of the general inspection trust fund and shall be used by the commissioner for the enforcement of this chapter.

History.—§3, ch. 16047, 1933; CGL 1936 Supp. 3219(30). §3, ch. 28226, 1953; §1, ch. 57-17; §2, ch. 61-119.

503.04 Issuance of license.—The commissioner, if satisfied that the manufacturing plant or plants named in the application are maintained in accordance with the standards of sanitation prescribed in the rules and regulations promulgated under authority of this chapter, shall issue a license for the manufacture of frozen desserts and/or frozen desserts mix. No license shall be issued if any statement in the application is false or misleading, or if the brand name or any label or advertisement of the frozen dessert and/or frozen desserts mix involved in the application gives a false indication of origin, character, composition, or name of manufacturer or is otherwise false or misleading in any particular. No license issued hereunder shall be transferrable nor applicable to any location other than that specified therein; provided, that nothing in this chapter shall be construed to prohibit the licensing of manufacturers of ice cream or frozen desserts in mobile units which otherwise meet the requirements of chapters 502 and 503, for the issuance of a license to a frozen desserts manufacturer and which are stored, when not in use, at a fixed, specified location set forth in the application, and provided further that such mobile units shall not be required to have public washing or restroom facilities. Provided also, that the commissioner is authorized to issue temporary permits to applicants, for a period not to exceed two weeks for each individual temporary permit, for the manufacture of ice cream or other frozen desserts on trucks or other units stationed in or adjacent to recognized state, county or district fairs, carnivals, rodeos, agricultural exhibitions and other similar public spectacles, and the commissioner is hereby authorized to promulgate such rules and regulations as may be necessary or suitable governing the manufacture of ice cream and frozen desserts by holders of such temporary permits.

History.—§4, ch. 16047, 1933; CGL 1936 Supp. 3219(31). §4, ch. 28226, 1953; §1, ch. 59-364; §1, ch. 61-134.

503.05 Revocation or suspension of license.—Any license may be revoked by the commissioner, after notice to the licensee by mail or otherwise and opportunity to be heard, when and if it appears that any statement upon which it was issued was false or misleading, or for violation of any of the provisions of this chapter.

A license may also, after such notice and hearing, be suspended for any of the foregoing reasons until the licensee complies with the conditions prescribed by the commissioner for its reinstatement.

History.—§5, ch. 16047, 1933; CGL 1936 Supp. 3219(32). Am. §5, ch. 28226, 1953.

503.06 Review of commissioner's refusal to grant, or revocation of license.—The action of the commissioner in refusing to grant a license, or in revoking or suspending a license, shall be subject to review by certiorari by any judge of the circuit court, in the county of the residence or principal place of business of the licensee in the manner and within the time provided by the Florida appellate rules and the statutes of this state not superseded by or in conflict with said rules.

History.—§6, ch. 16047, 1933; CGL 1936 Supp. 3219(33); §6, ch. 28226, 1953; §32, ch. 63-512.

503.07 Prohibition as to sale.—

(1) No person shall sell, advertise or offer or expose for sale any frozen dessert and/or frozen desserts mix unless the manufacturer thereof is a licensee under the provisions of this chapter.

(2) No person shall sell, offer for sale or advertise for sale any frozen dessert and/or frozen desserts mix, if the brand name of the frozen dessert and/or frozen desserts mix or the label upon it or the advertising accompanying it shall give a false indication of origin, character, composition, or name of manufacturer, or is otherwise false or misleading in any particular.

(3) No person shall sell or offer or expose for sale ice milk, unless contained in a package or enclosed in a wrapper, upon which package or wrapper, shall be conspicuously printed the words, "Ice milk," in not less than fourteen point type.

(4) No person shall sell, advertise or offer or expose for sale any imitation ice cream, either as an integral edible unit or when made or used as a component part of a finished drink or any edible substance.

(5) No person shall sell, advertise or offer or expose for sale a frozen dessert and/or frozen desserts mix if it contains any fats, oils, or paraffin other than milk fats, except such fats or oils as are naturally contained in the flavors used.

History.—§3, ch. 8534, 1921; CGL 3219; §7, ch. 16047, 1933; CGL 1936 Supp. 3219(34); am. §7, ch. 28226, 1953.

503.08 Pasteurization of ice cream, frozen custard, ice milk and sherbert mix.—All frozen desserts mix used in the manufacture of ice cream, frozen custard, ice milk, milk sherbert, ice or ice sherbet, with stabilizer, with or without harmless flavoring, with or without harmless coloring, shall be pasteurized in accordance with the rules and regulations to be adopted as hereinafter provided.

History.—§8, ch. 16047, 1933; CGL 1936 Supp. 3219(35). Am. §8, ch. 28226, 1953.

503.09 Enforcement; rules and regulations.—The commissioner of agriculture is charged with the enforcement of the provisions of this chapter and shall from time to time, after inquiry and public hearing, adopt and promulgate rules and regulations to supplement and give full effect to the provisions of this chapter. Such rules and regulations, among other things, shall establish sanitary regulations pertaining to the manufacture and distribution of frozen desserts and/or frozen desserts mix, including the sanitary condition of buildings, grounds, and equipment where frozen desserts are manufactured, the sanitary conditions of persons in direct physical contact with frozen desserts and/or frozen desserts mix during manufacture, the sanitary condition of containers in which frozen desserts and/or frozen desserts mix are held or shipped and the sanitary conditions of premises, buildings, surroundings and equipment where frozen desserts and/or frozen desserts mix are sold. Such rules and regulations shall be filed and open for public inspection at the principal office of the department and shall have the force of law.

History.—§9, ch. 16047, 1933; CGL 1936 Supp. 3219(36). Am. §9, ch. 28226, 1953.

503.10 Penalty.—Any person, association, partnership, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five dollars, nor more than one hundred dollars; or in the case of an individual, or the officers and members of an association, partnership, or corporation to undergo an imprisonment of not less than thirty days, nor more than sixty days, or both.

History.—§4, ch. 8534, 1921; CGL 7677; §10, ch. 16047, 1933; CGL 1936 Supp. 7677(2); am. §10, ch. 28226, 1953.

cf.—§775.06, Alternative punishment.
§1.01(3), "Person" defined.

CHAPTER 504

FLORIDA EGG COMMISSION

504.01 Definitions.—As used in this chapter:

(1) "Commission" means state egg commission, hereafter created and designated as the Florida egg commission.

(2) "Person" means any natural person, partnership, association, corporation, trust, estate, or other legal entity or business unit.

(3) "Eggs" shall mean eggs that have been produced in the state.

(4) "Handler" and/or "dealer" means any person engaged within this state as a distributor in the business of distributing Florida produced eggs.

(5) "Producer" means any person engaged in the business of producing eggs.

(6) "Primary channels of trade" means that eggs shall be deemed to have been delivered into the primary channel of trade when they are sold or delivered to processors or buyers.

(7) "Ship" or "shipping" means to move, or cause to move eggs in intrastate or interstate or foreign commerce by rail, truck, boat, airplane, or any other means.

(8) "Shipper" means any person engaged in shipping or causing to be shipped eggs in intrastate or interstate or foreign commerce, whether owner or agent or otherwise.

(9) "Case" means standard thirty dozen egg case.

History.—Comp. §1, ch. 57-403.

504.02 State egg commission.—

(1) There is hereby created and established a state egg commission to be known and designated as the Florida egg commission, to be composed of eight members, one member to be an employee of the Florida department of agriculture and the other seven members to be practical poultrymen who are resident citizens of Florida engaged in producing commercial market eggs. The members of the Florida egg commission shall serve for two years.

(2) The members of the egg commission shall be appointed by the governor upon joint recommendation of the commissioner of agriculture of the state and the Florida state poultry producers association.

(3) When terms of office have expired or become vacant by death or for other causes, the governor shall appoint a successor upon joint recommendation of the commissioner of agriculture of the state and the Florida state poultry producers association.

(4) A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission.

(5) Before entering upon the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office presented in §2 of Art. XVI of the constitution of Florida. No member of the commission shall receive any salary or other compensation, but each member shall be reimbursed for traveling expenses as provided in §112.061.

History.—§2, ch. 57-403; (5) §19, ch. 63-400.

504.03 Egg commission offices.—The executive offices of said Florida egg commission shall be established at a place within the state designated by the commission, which designated place may be changed at the discretion of the commission.

History.—Comp. §3, ch. 57-403.

504.04 Egg commission a corporate body.—The Florida egg commission shall be and it is hereby declared and created a corporate body. The said commission shall have the power to contract and be contracted with, to have and possess all the powers of a body corporate for all purposes necessary for fully carrying out the provisions and requirements of this chapter. The said commission shall adopt a corporate seal by which it shall authenticate its proceedings. Copies of the proceedings, records and acts of the commission and certificates purporting to relate the facts concerning such proceedings, records and acts, signed by the chairman of the commission and authenticated by said seal, shall be prima facie evidence thereof in all the courts of the state.

History.—Comp. §4, ch. 57-403.

504.05 Powers and duties of egg commission.—The powers and duties of said commission shall include the following:

(1) To elect a chairman and a vice-chairman and, from time to time, such other officers as it may deem advisable, and, from time to

time, alter, rescind, modify, or amend all proper and necessary rules, regulations and orders for the exercise of its powers and the performance of its duties under this law, which said rules, regulations and orders shall have the force and effect of law when not inconsistent therewith.

(2) To employ a manager, agents, attorneys, employees, advertising agencies and such clerical and other help as it deems necessary, and to outline their powers and duties. It also shall have power to discharge any employee.

(3) To make in the name of the commission such advertising contracts and other agreements as may be necessary, including particularly cooperative agreements with other advertisers of similar or allied products; to make cooperative agreements with the Florida department of agriculture and research and marketing administration of the United States department of agriculture for conducting consumer and producer and dealer information service, as to the food value of eggs, also instruction on grades and packs and how to evaluate their merits; in order to expand the market for Florida produced eggs, use as much of its funds as the commission deems necessary for matching moneys available from the research and marketing administration of the United States department of agriculture.

(4) To keep books, records and accounts of all its doings, which books, records, and accounts shall be open to inspection and audit by the state auditor at all times.

(5) To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this chapter.

(6) To investigate and cause prosecution to be instituted for violations of the provisions of this chapter.

(7) To authorize and arrange for the Florida department of agriculture as the cooperating agent to collect the excise tax on Florida produced eggs levied under the authority of this chapter.

History.—Comp. §5, ch. 57-403.

504.06 Administration.—The administration of this chapter shall be vested in the Florida egg commission which shall prescribe suitable and reasonable rules and regulations for the enforcement of the provisions thereof and for administering the taxes levied and imposed by this law. Any person required to pay taxes levied and imposed by this chapter who refuses to allow full inspection of the premises, or any books, records or documents or other instruments, relating to the liability of the taxpayer for taxes herein imposed, or shall hinder or in anywise delay or prevent such inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished accordingly.

History.—Comp. §6, ch. 57-403.

504.07 Advertising and publicity authorized.—The commission shall plan and conduct campaigns for commodity advertising, publicity, consumer information and sales promotion to increase consumption of eggs and may contract for any advertising, publicity, consumer information and sales promotion services. To accomplish such purposes the commission shall have power, and it shall be the duty of the commission to disseminate information:

(1) Relating to eggs and the importance thereof in the diet of the people, in preserving public health, and the economy thereof in the diet, and the importance in the nutrition of children.

(2) Relating to the manner, method and means used and employed in the production and marketing of Florida produced eggs and to the efforts to safeguard such production and marketing.

(3) Relating to the added costs to the producer and dealer or handler in producing and handling eggs of such high standards of quality as to insure a pure and wholesome product for the consuming public.

(4) Relating to the reasons why the producers and dealers or handlers should receive a reasonable return on their labor and investments.

(5) Relating to the problems of furnishing at all times an abundant supply of fine quality eggs at reasonable prices.

(6) Relating to factors that influence consumer purchasing power and price relative to the costs of other items of food in the diet to create a better consumer demand for eggs.

(7) To decide upon some distinctive and suggestive trade name for Florida produced eggs, and promote the use of same in ways to advertise Florida eggs.

History.—Comp. §7, ch. 57-403.

504.08 Tax on eggs.—There is hereby levied two cents per thirty dozen case of Florida eggs. On the first sale the purchaser shall require that all fees are paid by the seller. Said commission shall have power to cause its duly authorized agent or representative to enter upon the premises of any dealer or handler of eggs, and examine or cause to be examined by such agent any books, papers and records or memoranda bearing on the taxes payable, and secure information directly or indirectly concerned in the enforcement of this chapter.

History.—Comp. §8, ch. 57-403.

504.09 Records to be kept by dealers and handlers.—Every dealer or handler shall keep a complete and accurate record of all eggs handled by him. Such records shall be in such form and contain such other information as the commission shall by rule or regulation prescribe. Such records shall be preserved by said dealers or handlers for a period of one year and shall be offered for inspection at any time upon oral or written demand by the commission or its duly authorized agents or representatives.

History.—Comp. §9, ch. 57-403.

504.10 Reports to be filed by dealers and handlers.—Every dealer or handler shall, at such time or times as the commission or the Florida department of agriculture, acting as the authorized and cooperating agent for the commission, may require any person coming under the provisions of this chapter to submit reports or other documentary information deemed necessary for the efficient and equitable collection of the excise tax imposed by this chapter.

History.—Comp. §10, ch. 57-403.

504.11 Retail sale without payment of tax prohibited.—It shall be unlawful to sell, or offer for sale at retail any lot of Florida produced eggs upon which the egg commission tax has not been paid. Such commission tax to be paid at the time and in combination with the egg inspection fee. Should such commission tax be paid by any dealer either wholesaler or retailer who is not the producer of such Florida eggs, such dealer may bill the producer of such eggs in the amount of said egg commission tax.

History.—Comp. §11, ch. 57-403.

504.12 Florida egg commission trust fund.—

(1) All taxes levied shall be collected by the Florida department of agriculture, acting as the authorized and cooperating agent for the commission, in such manner and method of collection as shall be prescribed by the department of agriculture under the provisions of this chapter and paid into the state treasury on or before the fifteenth day of each month, such moneys to be kept in a special fund to be known as the Florida egg commission trust fund, and all moneys coming into such fund are hereby appropriated and made available for defraying the expenses of the commission and enforcement of this chapter. After the payment of all necessary administrative expenses of the commission and other expenditures provided for in this chapter, the money levied and collected under the provisions of §504.08 shall be used exclusively for the promotion of the Florida egg industry and the conducting of consumer information to promote greater use of Florida produced eggs.

(2) All costs, expenses and obligations incurred under the provisions of this chapter shall be paid out of the Florida egg commission trust fund upon warrants of the comptroller when voucher and vouchers thereof, approved by the commission, are exhibited.

History.—§12, ch. 57-403; §2, ch. 61-119.

504.13 Penalties for failure to pay tax.—

(1) Any dealer or handler who fails to file a report or to pay any tax within the time required by or pursuant to this chapter shall hereby forfeit to the commission a penalty of five per cent of the tax determined to be due, as provided in this chapter, plus one per cent of such amount for each month of delay or fraction thereof after the expiration of the first month after such report was required to be filed or such tax became due; but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of as provided with respect to moneys derived from the taxes levied and imposed by this chapter.

(2) The commission shall collect the penalties levied and imposed by this chapter together with the delinquent taxes by either or all of the following methods:

(a) By voluntary payment by the person liable therefor;

(b) By a suit at law;

(c) By a complaint in chancery to enjoin and restrain any dealer or handler or other person owing said taxes and/or penalties from operating his business or engaging in business as a dealer or handler of eggs until the delinquent taxes and/or penalties are paid. Such action may include an accounting to determine the amount of taxes plus delinquencies due. In such proceedings it shall not be necessary to allege or prove that an adequate remedy at law does exist;

(d) By the use of the method provided for in §205.10 in the collection of delinquent license or privilege taxes by state and county officials.

History.—Comp. §13, ch. 57-403.

504.14 Effective date of commission's rules.—All rules, regulations and orders promulgated by the commission under the provisions of this chapter shall become effective ten days after the same are promulgated unless otherwise ordered by the commission.

History.—Comp. §14, ch. 57-403.

504.15 Violation of chapter a misdemeanor.—Any person violating any provision of this chapter or any rule or regulation of the commission promulgated pursuant to the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding $1,000.00 or imprisonment not exceeding 1 year, or by both such fine and imprisonment in the discretion of the court.

History.—Comp. §15, ch. 57-403.

504.16 Conflict with other laws.—Nothing contained in this chapter shall be construed as affecting in any manner or to any extent whatsoever the provisions of chapter 583.

History.—Comp. §16, ch. 57-403.

CHAPTER 506

STAMPED OR MARKED BOTTLES AND BOXES

506.01 Devices to be filed in offices.—Any person engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, small beer, lager beer, weiss beer, white beer or other beverages or medicine, medical preparations, perfumery, oils, compounds or mixtures, in bottles, siphons, fountains, tins or kegs, with his name or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, siphons, fountains, tins or kegs, or the boxes used by him may file in the office of the clerk of the county in which his principal place of business is situated, or if such person shall manufacture or bottle out of this state, then in any county in this state, and also in the office of the secretary of state, a description of the name, marks or devices so used by him and cause such description to be printed once each week, for three weeks successively, in a newspaper published in the county in which said notice may have been filed.

History.—§1, ch. 4584, 1897; GS 3165; RGS 4991; CGL 7080.
cf.—§1.01(3), "Person" defined.

506.02 Presumptive evidence of unlawful use.—The use by any person other than the person whose device, name or mark shall be or shall have been upon the same, without written consent or purchase, of any marked or distinguished bottle, box, siphon, fountain, tin or keg, a description of which shall have been filed and published, as provided in §506.01, for the sale therein of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or any article of merchandise, medicines, medical preparations, perfumery, oils, compounds, mixtures or preparations, or for the furnishing of such or similar beverages to customers; or the buying, selling, using, disposing of or trafficking in any such bottles, boxes, siphons, fountains, tins or kegs by any person other than said persons having a name, mark or device thereon of such owner without written consent, or the possession by any junk dealer or dealers in secondhand articles of any such bottles, boxes, siphons, fountains, tins or kegs, a description of which shall have been so filed and published as aforesaid, without such written consent, is presumptive evidence of the unlawful use, purchase and traffic in of such bottles, boxes, siphons, fountains, tins or kegs.

History.—§3, ch. 4584, 1897; GS 3166, 3346; RGS 4992, 5189; CGL 7081, 7292.

506.03 Search warrant.—When any person

or his agent shall make oath before any judge or committing magistrate having jurisdiction in the district where the offense is committed that he has reason to believe and does believe that any of his bottles, boxes, siphons, fountains, tins or kegs, a description of which have been filed and published as aforesaid, are being unlawfully used or filled or had by any person, manufacturing or selling soda mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, weiss beer, white beer or other beverages or medicine, medical preparations, perfumery, oils, compounds or mixtures, or that any junk dealer or dealers in secondhand articles, vendor of bottles, or other person, has any such bottles, boxes, siphons, fountains, tins or kegs in his possession or secreted in any place, the said judge or committing magistrate shall thereupon issue a search warrant signed by him with his name of office, to any sheriff and his deputies or any constable, police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the same before the magistrate or some other court having jurisdiction of the offense.

History.—§4, ch. 4584, 1897; GS 8167; RGS 4993; CGL 7082.

cf.—§933.01 et seq., Issuance of search warrants.
§901.01. All judicial officers shall be committing magistrates.
§506.39, Procedure to obtain.

506.04 Deposit on bottles, etc., not a sale of property.—The requiring, taking or accepting of any deposit, for any purpose, upon any bottle, box, siphon, fountain, tin or keg is not a sale of such property, either optional or otherwise, in any proceedings under §§506.01-506.09.

History.—§5, ch. 4584, 1897; GS 8168; RGS 4994; CGL 7083.

506.05 Unlawful use of bottles, boxes, etc., when label is registered; penalty.—No person shall fill with soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, beer, small beer, lager beer, weiss beer, white beer or other beverages, or with medicine, medical preparations, perfumery, oils, compounds or mixtures, any bottle, box, siphon, fountain, tin or keg, which has been marked or distinguished under the provisions of §506.01, or deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark or device thereon, or sell, buy, give, take, or otherwise dispose of, or wantonly destroy, or traffic in the same without the written consent of, or unless the same shall have been purchased from the person whose mark or device shall be or shall have been in or upon the bottle, box, siphon, fountain, tin or keg so filled, trafficked in, used or handled as aforesaid. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment not less than ten days nor more than one year, or by a fine of fifty cents for each and every such bottle, box, siphon, fountain, tin or keg so filled, sold, used, disposed of, bought or wantonly destroyed, or trafficked in, and for each subsequent offense by imprisonment not less than twenty days nor more than one year, or by fine of not less than one dollar nor more than five dollars for each and every bottle, box, siphon, fountain, tin or keg so filled, sold, used, disposed of, bought or wantonly destroyed or trafficked in.

History.—§2, ch. 4584, 1897; GS 8345; RGS 5188; CGL 7291; am. §7, ch. 22858, 1945.

cf.—§775.06 Alternative punishment.

506.06 Unlawful to counterfeit trade-mark.—When any person or any association or union of working men adopts or uses and files as provided in §506.07 any label, trade-mark, term, wording, design, device, color or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other products of labor as having been made, manufactured, produced, prepared, packed or put on sale by such person or association or union of working men, or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, wording, design, device, color or form of advertisement, or knowingly to use, sell, offer for sale, or in any other way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, wording, design, device, color or form of advertisement.

History.—§1, ch. 4974, 1901; GS 8169; RGS 4995; CGL 7084.

506.07 To file for record with secretary of state.—Every person, association or union that adopts or uses a label, trade-mark, term, wording, design, device, color or form of advertisement as provided in §506.06, may file the same for record in the office of the secretary of state, by leaving two copies, counterparts or facsimiles thereof, with said secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade-mark, term, wording, design, device, color or form of advertisement shall be filed, the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing or on whose behalf such label, trade-mark, term, wording, design, device, color or form of advertisement shall be filed, has the right to the use of the same; that no other person, association or union has the right to use either in the identical form or in any such near resemblance thereto as may be calculated to deceive and that the facsimiles or counterparts filed therewith are true and correct.

History.—§3, ch. 4974, 1901; GS 8170; RGS 4996; CGL 7085.

506.08 Fee for filing.—There shall be paid for such filing and recording a fee of two dollars. The secretary of state shall deliver to such person, association or union so filing or causing to be filed any label, trade-mark, term, wording, design, device, color or form

of advertisement so many duly attested certificates of the recording of the same as such person, association or union may apply for, for each of which the secretary shall receive a fee of one dollar. Any certificate of record shall, in all suits and prosecutions hereunder, be sufficient proof of the adoption of such label, trade-mark, term, wording, design, device, color or form of advertisement. The secretary of state shall not record for any person, union or association any label, trade-mark, term, wording, design, device, color or form of advertisement that would probably be mistaken for any label, trade-mark, term, wording, design, device, color or form of advertisement theretofore filed by or on behalf of any other person, union or association.

History.—§3, ch. 4974, 1901; GS 3171; RGS 4997; CGL 7086.

506.09 Courts to grant injunctions.—Every person, association or union adopting or using a label, trade-mark, term, wording, design, device, color or form of advertisement as aforesaid may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant in any suit damages resulting from any manufacture, use, sale or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay such person, association or union all profit derived from such wrongful manufacture, use, display or sale; and such court shall also order that all counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainants, to be destroyed.

History.—§5, ch. 4974, 1901; GS 3172; RGS 4998; CGL 7087.
cf.—Ch. 64, Injunctions.

506.10 Counterfeiting or improperly using trade-marks; penalty.—Whoever counterfeits or imitates any label, trade-mark, term, wording, design, device, color or form of advertisement; or knowingly sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any label, trade-mark, term, wording, design, device, color or form of advertisement, which has been filed for record according to law, or knowingly purchases and keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly purchases with intent to sell or dispose of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than three months.

History.—§2, ch. 4974, 1901; GS 3347; RGS 5190; CGL 7293.
cf.—§831.03, Forging or counterfeiting private labels.

506.11 Unlawful use of trade-mark; penalty.—Every person who shall use or display the genuine label, trade-mark, term, wording, design, device, color or form of advertisement of any person, association or union, when legally filed for record, in any manner, not being authorized so to do by such person, union or association, shall be punished by imprisonment for not more than three months or by a fine of not more than five hundred dollars.

History.—§6, ch. 4974, 1901; GS 3348; RGS 5191; CGL 7294.

506.12 Procuring the filing of labels, etc., by fraudulent representations; penalty.—Any person who shall, for himself or on behalf of any other person, association or union, procure the filing of any label, trade-mark, term, wording, design, device, color or form of advertisement in the office of the secretary of state, by making any false or fraudulent representations or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damage sustained in consequence of such filing, to be recovered by or on behalf of the party injured thereby, in any court having jurisdiction, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding three months.

History.—§4, ch. 4974, 1901; GS 3349; RGS 5192; CGL 7295.

506.13 Using the name or seal of another; penalty.—Any person who shall, in any way, use the name or seal of any person, association or union or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars.

History.—§7, ch. 4974, 1901; GS 3350; RGS 5193; CGL 7296.

506.14 Sale, etc., of milk in marked bottles by person other than owner.—No person, without the written consent of the owner, shall sell or offer for sale or distribute milk, cream, or other milk products, in bottles, cans or crates of another person, whose name, label or mark is permanently fixed thereon; mar, or cover up such label, name or mark; sell, dispose of or traffic in such receptacle, or refuse upon demand to return the same to the owner, except milk or cream bottles permanently marked by the manufacturer "5¢ Store Bottle," and on which a five-cent charge is made whenever the bottle changes hands.

History.—§§1, 2, ch. 17104, 1935; CGL 1936 Supp. 3219(60).
cf.—§501.04, Prohibiting the selling, etc., of milk or cream bottles.

506.15 Possession of marked milk bottles may be presumptive evidence of unlawful use.—The use for the sale and distribution of milk, cream or milk products by any other than the

person whose label, name or mark shall be or shall have been upon the same, or the possession by any dealer in secondhand articles, of any such receptacle without the written consent of the owner is presumptive evidence of the unlawful use or traffic in such article.

History.—§3, ch. 17104, 1935; CGL 1936 Supp. 7677(6).

506.16 Proceedings by owner to recover possession of milk bottles and to protect rights.—The owner of such receptacle as is described in §§506.14-506.15 shall have the right to take and recover the same from any person unlawfully possessing the same, and may maintain actions of replevin, or other appropriate actions, to preserve his rights therein. The court also may grant an injunction restraining any person from doing any of the acts and things herein declared to be unlawful. In any action taken by the owner, and prosecuted to a successful conclusion, for the recovery of such property or to protect his rights therein, he shall be allowed all costs of such proceeding, including a reasonable attorney's fee.

History.—§4, ch. 17104, 1935; CGL 1936 Supp. 3219(61).
cf.—Ch. 64, Injunctions.

506.17 Certain acts not to constitute sale of milk container.—The sale or delivery of milk, cream, or milk products, contained in such bottle, can or crate, or the taking or accepting of any deposit upon delivery of such container does not constitute a sale of such container.

History.—§5, ch. 17104, 1935; CGL 1936 Supp. 3219(62).

506.18 Penalty for violations.—Any person violating the provisions of §§506.14-506.17 shall be deemed guilty of a misdemeanor and shall be punished for the first offense by imprisonment of not less than twenty days nor more than one year or by fine of twenty-five dollars.

History.—§2, ch. 17104, 1935; CGL 1936 Supp. 7677(6).
cf.—§775.06, Alternative punishment.

506.19 Protection of owners of marked or branded field boxes, etc.; recordation.—Any person being the owner of field boxes, crates, containers or receptacles used in the general production, harvesting, packing, transportation or marketing of fruits or vegetables or their by-products in the state may adopt for his exclusive use and ownership a particular mark or brand to designate and distinguish his ownership thereof and may identify his field boxes, crates, containers or receptacles so used with such mark or brand in the form of such combinations, initials, symbols, designs or names as he may desire, by plainly and distinctly stamping, stenciling, painting, cutting, etching or burning the same into or upon both ends or sides of such field boxes, crates, receptacles or containers, and the presence of such identifying mark or brand on any field box, crate, container or receptacle whenever a copy or description thereof shall have been filed and recorded in the office of the secretary of state as herein provided for, shall, in any court and in any proceedings in this state be prima facie evidence of the ownership of such boxes, crates, containers or receptacles by the person in whose name such mark or brand may have been recorded; provided, that such mark or brand shall have been recorded with the secretary of state as herein provided and shall bear the registered number herein provided for.

History.—§1, ch. 16018, 1933; §1, ch. 16859, 1935; CGL 1936 Supp. 7087(1), (13).

506.20 Filing and recording of marks and brands on field boxes.—Any person desiring to avail himself of the benefits of §§506.19-506.28 may make application to the secretary of state, and shall file with such secretary a true copy and description of such identifying mark or brand, which, if entitled thereto under the provisions of §§506.19-506.28, shall be filed and recorded by such secretary of state in a book to be provided and kept by him for that purpose, and the name of the owner of such brand or mark shall be likewise entered into such record, and such secretary shall then assign or designate a permanent registered number to the owner of such brand or mark, said number to be assigned progressively as marks and brands are received and recorded, and the registered number so assigned shall then become a part of the registered brand or mark and shall plainly and distinctly be made to appear on such field boxes, crates, receptacles and containers, together with the identifying mark or brand referred to in §506.19 hereof. The secretary of state shall determine if such brand or mark so applied for is not a duplication of any brand or mark previously recorded by him, or does not so closely resemble the same as to be misleading or deceiving. If the brand or mark applied for does so resemble or is such a duplication of previously recorded brands or marks as to be misleading or deceiving, the application shall be denied and the applicant may file some other brand or mark in the manner described above.

History.—§2, ch. 16018, 1933; §2, ch. 16859, 1935; CGL 1936 Supp. 7087(2), (14).

506.21 Filing fee; issuance of certificate of recordation.—The application for filing and recording shall be accompanied by a fee of two dollars and thereupon, if consistent with the provisions of §506.20 the secretary of state shall issue to the person applying for registration and recordation of such mark or brand a certificate of such recordation and of the register number assigned thereto and thereafter he shall issue such certificates, in any number, to any person applying therefor, upon the payment of a fee of one dollar for each certificate so issued, and such certificate shall, in all proceedings in all of the courts of this state be taken as proof of the adoption and recordation of such identifying mark or brand.

History.—§3, ch. 16018, 1933; §3, ch. 16859, 1935; CGL 1936 Supp. 7087(3), (15).

506.22 Transfer, release or sale of registered mark or brand.—The owner of any such registered mark or brand may transfer, release or sell the same by an instrument in writing

evidencing such transfer, release or sale, and upon application to the secretary of state where such mark or brand is registered for the recordation of such instrument in writing, and upon the filing of the same with such secretary and the payment of a fee of two dollars the secretary shall cause such instrument or transfer, release or sale to be placed on record in a book provided and kept by him for that purpose, and certificates of such transfer, upon application therefor, shall be issued by him in like manner, upon the payment of like fees, as provided for the issuance of certificates under the provisions of §506.21.

History.—§4, ch. 16018, 1933; §4, ch. 16859, 1935; CGL 1936 Supp. 7087(4), (16).

506.23 Application of law.—The provisions of §§506.19-506.28 shall not be construed to apply when fruits, vegetables, or their by-products, are wrapped or packed in such accepted or prescribed standard containers as are prescribed and designated by the bureau of standards, United States department of agriculture, and are used only as receptacles or containers for fruits, vegetables, or their by-products when offered for transportation or sale only.

History.—§10, ch. 16018, 1933; §10, ch. 16859, 1935; CGL 1936 Supp. 7087(5), (17).

506.24 Unauthorized possession of field box, etc.; penalty.—Any person who shall have in his unauthorized possession any field box, crate, receptacle or container marked or branded with any mark or brand registered under the provisions of §§506.19-506.28, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than one year.

The possession by any person of any field box, crate, container or receptacle so marked or branded, in the absence of written authority therefor, shall be prima facie evidence of the violation of the provisions of this section; provided, that the owner of such recorded or registered mark or brand may, in writing, authorize and designate any person to use or have in his possession any such field boxes, crates, containers or receptacles.

History.—§5, chs. 16018, 16019, 1933; §5, ch. 16859, 1935; CGL 1936 Supp. 7433(3), (8), (16).
cf.—§775.06, Alternative punishment.

506.25 Alteration or obliteration of mark or brand on field box, etc.—If any person shall alter, change, remove or obliterate the registered mark or brand on any field box, crate, container or receptacle other than his own or shall cause or procure the same to be done, with intent to claim the same, or to prevent identification thereof by the true owner, or use or have in his possession, any such field box, crate, container or receptacle on which the registered mark or brand has been altered, changed, removed or obliterated, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in §506.24.

History.—§6, chs. 16018, 16019, 1933; §6, ch. 16859, 1935; CGL 1936 Supp. 7433(4), (9), (17).

506.26 Purchase of marked field box, etc., from one other than owner.—It is unlawful for any person to receive or to purchase any field box, crate, container or receptacle marked or branded with registered mark or brand as herein provided, from any person other than the registered owner thereof or his duly authorized agent, and proof of such receipt or purchase shall be prima facie evidence in any court of this state that such receiver or purchaser received or purchased the same with knowledge that it was stolen or embezzled property, and upon conviction thereof, such receiver or purchaser shall be punished as for receiving stolen or embezzled property.

History.—§7, chs. 16018, 16019, 1933; §7, ch. 16859, 1935; CGL 1936 Supp. 7433(5), (10), (18).
cf.—§811.16, Punishment for receiving stolen property.

506.27 Refusal to deliver marked field box, etc., to owner upon demand.—The refusal of any person in possession thereof to deliver any field box, crate, container or receptacle so marked or branded and registered as herein provided, to the registered owner of the same or his duly authorized agent, upon the demand of such registered owner or authorized agent, when said demand is accompanied with a display of the certificate of recordation and number of the same, as furnished to the registered owner by the secretary of state, shall be prima facie evidence in any court of this state of a fraudulent intent to convert said field box. crate, container or receptacle to the use of the person or persons, so in possession of the same, and to deprive the registered owner thereof, and any person convicted of a violation of the provisions of this section shall be subject to the penalty as provided in §506.24.

History.—§8, chs. 16018, 16019, 1933; §8, ch. 16859, 1935; CGL 1936 Supp. 7433(6), (11), (19).

506.28 Sending marked field box, etc., out of state; penalty.—Any person who shall take or send out of the state, or cause to be taken or sent out of the state, any field box, crate, container or receptacle so registered or branded as herein provided without the permission of the owner thereof shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year.

History.—§9, chs. 16018, 16019, 1933; §9, ch. 16859, 1935; CGL 1936 Supp. 7433(7), (12), (20).
cf.—§775.06, Alternative punishment.

506.29 Short title.—Sections 506.30-506.45 shall be known and designated as the Florida milk and ice-cream container law and may be so cited and referred to in all processes and proceedings taken under it and in all courts and places.

History.—§1, ch. 21969, 1943.

506.30 Application of law.—Any person or corporation engaged in manufacturing milk,

cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream; or any person or corporation engaged in bottling or selling milk, cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream, in ice-cream containers, packages, wrappers, cabinets, refrigerators, bottle, barrel, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacles or containers upon which his or its name, or other marks or devices used by him or it, are branded, stamped, engraved, etched, blown, embossed, impressed or otherwise produced, may register his or its name, mark or device as hereinafter provided, and upon compleˈting the registration and publication on any such name, mark or device, shall thereupon be deemed the proprietor of such name, mark or device and of every bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container upon which such name, mark or device may be branded, stamped, engraved, etched, blown, embossed, impressed or otherwise produced.

History.—§2, ch. 21969, 1943.

506.31 Registration of names, marks, devices, etc.—Any such names, marks or devices may be registered by filing in the office of the clerk of the circuit court of the county in which the principal office of the person or corporation seeking registration is situate, and in the office of the secretary of state, a description of such names, marks or devices; provided, that if any such person or corporation has no principal office in this state, then such person or corporation may register such name, mark or device by filing descriptions thereof in the office of the clerk of the circuit court of any county in which such person or corporation does business, and in the office of the secretary of state.

History.—§3, ch. 21969, 1943.
cf.—§15.09 Fees collected by secretary of state.

506.32 Notice of intention to register.—Any person or corporation seeking to register such names, marks or devices shall first cause such description to be printed once in each week, for two weeks successively, in a newspaper published in the county in which said description may be filed as aforesaid.

History.—§4, ch. 21969, 1943.

506.33 Certified copies of registration; use, etc.—A copy of such description, duly certified by the clerk of the circuit court of the county where such description has been filed, and a copy of such description, duly certified by the secretary of state, shall be received as evidence of such filing and also of the matters therein stated in all courts and places.

History.—§5, ch. 21969, 1943.
cf.—§15.09 Secretary of State's certification fee.

506.34 Proof of publication; notice of intention.—The affidavit of the printer or publisher of a newspaper published within this state, or of his foreman or clerk, showing the publication of the description required by §506.32, annexed to a printed copy of the notice as published, shall be received as evidence of the publication, and also of the matters therein stated, in all courts and places.

History.—§6, ch. 21969, 1943.

506.35 Containers; illegal use.—No person or corporation other than the owner or proprietor of such name, mark or device shall fill or cause to be filled with milk, cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream, or shall sell, buy, give, take, possess, use, dispose of or traffic in any box, siphon, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container which is so marked or distinguished with or by any name, mark or device, a description of which shall have been filed as provided in §506.31; or shall deface, obliterate, destroy, cover up or otherwise remove or conceal any such name, mark or device thereon, without the written consent of, or unless the same shall have been purchased from, the owner or proprietor thereof; provided, however, that no person or corporation to whom such milk, cream, ice cream, coated ice cream, imitation ice cream, ice-cream mixtures or compounds or any other similar product frozen substantially to the consistency of ice cream, shall have been delivered in bottles, boxes, tins, ice-cream containers, packages, wrappers, cabinets, refrigerators, equipment or other receptacles or containers by the owners or proprietors thereof, shall be deemed to have violated the provisions of this law by having in his possession any such marked receptacles, unless such person or corporation, willfully and with the intention of unlawfully converting, retains such receptacles for a period longer than is reasonably necessary after the contents placed therein by the owner or proprietor thereof have been removed therefrom.

History.—§7, ch. 21969, 1943.

506.36 Penalties for illegal use.—Any person, acting for himself or as the agent of any person, firm or corporation, who shall violate the provisions of this law, shall be punished for the first offense by imprisonment for not less than ten days nor more than one year, or by a fine of five dollars for each and every such bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container so filled, sold, bought, given, taken, possessed, used, disposed of, or trafficked in, or by both such fine and imprisonment in the discretion of the court before whom the offense shall be tried.

History.—§8, ch. 21969, 1943.

506.37 Containers; obtaining possession.—The owner or proprietor or his or its agents may take possession of any such bottles, boxes, tins, ice-cream container, packages, wrapper, cab-

inets, refrigerators, equipment or other receptacles or containers used in violation of this law, whether such receptacles or containers be full or partly full of any liquid, beverage or other substance, or empty, and shall not be liable in damages therefor, or for any trespass arising out of such taking possession. And if the party or parties having possession of such receptacles or containers refuses to empty the same of the contents contained therein immediately upon notice and demand by the owner or proprietor thereof or his or its agent, then such owner, proprietor or agent may empty such receptacle or container and shall not be liable therefor.

History.—§9, ch. 21969, 1943.

506.38 Complaints before justice of peace.—When any person shall complain on oath or affirmation to any justice of the peace that any person or corporation has violated any of the provisions of this law, the court to whom such complaint is presented shall issue process at the suit of the state, which process may be either a summons or a warrant against the person or corporation so charged, which process, when in the nature of a warrant, shall be returnable forthwith, and when in the nature of a summons shall be returnable in not less than two nor more than ten days, and shall be served at least one day before its return. Such complaint and such process shall state in general terms a violation of this law. On the return of such process, or at any time to which the trial of the case shall be adjourned, the justice of the peace issuing the same shall proceed in a summary manner to hear testimony and determine and give judgment in the case without the filing of any pleadings, and if the defendant or defendants be convicted, shall impose the penalty or penalties by this law provided. It shall not be necessary to take or keep any record of the evidence or testimony taken on such trial. Service of summons upon a person other than a corporation may be made either personally or by leaving a copy at his dwelling house or usual place of abode; service upon a corporation may be made by delivering a copy of the summons to any officer or employee of such corporation who may be found in this state.

History.—§10, ch. 21969, 1943.

506.39 Search warrants; procedure to obtain.—Whenever any person shall make oath before any justice of the peace that he has reason to believe and does believe that any bottles, boxes, tins, ice-cream containers, packages, wrappers, cabinets, refrigerators, equipment or other receptacles or containers, the property of any person or corporation who has complied with the provisions of sections three and four of this law, are being filled, sold, bought, given, taken, possessed, used, disposed of, or trafficked in by any person or corporation in violation of this law, such justice of the peace shall issue a search warrant to discover and obtain such receptacles or containers, and to bring before such justice of the peace the person or persons in whose possession such bottles, boxes, tins, ice-cream containers, packages, wrappers, cabinets, refrigerators, equipment or other receptacles or containers may be found, and if any such receptacles or containers are found in the possession of any such person or persons in violation of the provisions of this law, the justice of the peace who issued the process shall proceed to trial and judgment in the manner provided for in §506.38, and upon judgment, shall also award possession of the receptacles or containers so taken under such warrant to the owners or proprietors thereof.

History.—§11, ch. 21969, 1943.

506.40 Presumptive evidence of violations.—The presence upon any bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container, or any name, mark or device which has been registered and published as provided for in §§506.31 and 506.32, shall be presumptive evidence in any proceeding or trial, that the owner or proprietor of such mark or device is the owner or proprietor of such bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container.

History.—§12, ch. 21969, 1943.

506.41 Deposit for container not a sale.—The requiring, taking or accepting of any deposit upon delivery of any bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container, bearing a name, mark or device which has been registered and published as provided for by §§506.31 and 506.32 shall not be deemed a sale thereof, either optional or otherwise.

History.—§13, ch. 21969, 1943.

506.42 Penalties, generally; judgments, etc.—Any person or corporation which violates the provisions of this law, or of any of the amendments hereof or supplements hereto, shall be liable to a penalty of five dollars for the first offense, for each bottle, box, tin, ice-cream container, package, cabinet, refrigerator, equipment or other receptacle or container so filled, sold, bought, given, taken, used, disposed of, trafficked in or possessed in violation of the provisions of this law; and a penalty of double that amount for the second and each subsequent offense; which penalty may be recovered by an action for the recovery of a debt, by the owner or proprietor of any such bottle, box, tin, ice-cream container, package, wrapper, cabinet, refrigerator, equipment or other receptacle or container, or his agent in any court of this state having cognizance thereof. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contains a statement of the nature of the alleged violation and of the section of this law alleged to have been violated, and upon the attention of the court being called to any such formal or tech-

nical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleadings or process the same may be amended in the discretion of the court, as in any other action or proceeding in said court.

History.—§14, ch. 21969, 1943.

506.43 Executions on judgments.—When judgment shall be rendered against any defendant other than a corporation, execution shall be issued against his goods or chattels without any order of the court for that purpose first had and obtained. In case judgment shall be rendered against a body corporate, execution shall be issued against the goods and chattels of said corporation as in other actions of debt.

History.—§15, ch. 21969, 1943.

506.44 Prior registrations recognized.—Any person or corporation having heretofore filed in any of the offices mentioned in §506.31, a description of the names, marks or devices, upon his or its property therein mentioned, and having caused the same to be published, according to the law existing at the time of such filing and publication, shall not be required to again file and publish such description in order to be entitled to the benefits of this law, but may avail himself or itself of any or all of the provisions, modes of procedure and methods of protection provided for herein, marks or devices under and according to the provisions of this law.

History.—§16, ch. 21969, 1943.

506.45 Statutes and laws unaffected.—Any proceeding now pending under any other law which this law may repeal shall not abate, but may be proceeded into final judgment as if this law had not been passed; and provided, further, that nothing in this law contained shall be construed to repeal or modify or affect any existing laws for the protection of producers or shippers of milk or concerning milk cans.

History.—§18, ch. 21969, 1943.

CHAPTER 509

HOTEL AND RESTAURANT COMMISSION

(Consolidation of Chapters 509, 510, 511)

509.012 Hotel and restaurant commission.—There is created a hotel and restaurant commission, for which the usual facilities for transacting its business shall be furnished the same as for other executive departments of the state government.

History.—§1, ch. 6475, 1913; RGS 210; CGL 243, §1, ch. 16042, 1933; CGL 1936 Supp. 243; §9, ch. 26945, 1951; §1, ch. 28129, 1953; transferred from §509.01, 1955.

509.022 Appointment of hotel and restaurant commissioner; term of office; bond and salary.—The governor shall appoint a hotel and restaurant commissioner whose term of office shall begin and run concurrently with the regular terms of office of the successive governors of this state and who shall give bond in the sum of ten thousand dollars for the faithful performance of his duties, to be approved by the governor. He shall receive a salary as provided in the general biennial appropriations act, or as hereafter provided by law, and shall be reimbursed for travel in connection with the duties of the office in accordance with the provisions of §112.061.

History.—§1, ch. 6952, 1915; RGS 211; §1, ch. 9264, 1923; §1, ch. 11335, 1925; §5, ch. 12053, 1927; CGL 244; §1, ch. 15720, 1931; §1, ch. 15859, 1933; §2, ch. 16042, 1933; §1, ch. 17062, 1935; CGL 1936 Supp. 244; §1, ch. 20299, 1941; am. §1, ch. 23929, 1947; §9, ch. 26945, 1951; §1, ch. 28129, 1953; transferred from §509.02, 1955.
cf.—§113.07 Bonds of officials.

509.032 Duties.—

(1) GENERAL.—The hotel and restaurant commissioner shall carry out and execute all of the provisions of this chapter and all other laws now in force or which may hereafter be enacted relating to the inspection or regulation of public lodging and public food service establishments for the purpose of safeguarding the public health, safety and welfare. The commissioner shall be responsible for ascertaining that no establishment licensed by this commission shall engage in any misleading advertising or unethical practices as defined by this chapter and all other laws now in force or which may hereafter be enacted. He shall keep accurate account of all expenses arising out of the performance of his duties and shall file monthly itemized statements of such expenses with the comptroller, together with an account of all fees collected under the provisions of this chapter.

(2) INSPECTION OF PREMISES.—The hotel and restaurant commissioner shall inspect, or cause to be inspected, at least three times annually on and after July 1, 1963, and at least four times annually on and after July 1, 1964, every public lodging and food service establishment in this state, and for that purpose he shall have the right to entry and access to such establishments at any reasonable time.

(3) AUTHORIZED TO MAKE RULES.—The hotel and restaurant commissioner shall make such rules and regulations as are neces-

sary to carry out the provisions of this chapter in accordance with its true intent.

History.—§§1, 2, 9, ch. 6952, 1915; RGS 212, 213, 2130; §2, ch. 9264, 1923; CGL 245, 246, 3359; §§3, 4, ch. 16042, 1933; CGL 1936 Supp. 245, 246; §9, ch. 26945, 1951; §1, ch. 28129, 1953; (1), (2) §§1, 8, ch. 29821, 1955; (1), (2) §1, ch. 57-389; (2) §1, ch. 63-420.

Note.—Tr. from §§509.03, 509.04, 511.11.

cf.—§282.011 Miscellaneous appropriations.
§534.45 Additional duties of hotel commission.

509.061 Office in capitol.—The hotel and restaurant commissioner shall be provided with suitable office, office furnishings and all other necessary supplies and equipment for the proper conduct of the business of his department, said office to be located in the state capitol building; or, with the consent of the governor, in any building adjacent to the capitol building.

History.—§31, ch. 6952, 1915; RGS 214; CGL 247; §5, ch. 16042, 1933; CGL 1936 Supp. 247; am. §2, ch. 23929, 1947; §9, ch. 26945, 1951; §1, ch. 28129, 1953; transferred from §509.05, 1955.

509.071 Biennial appropriation; deposit of funds.—There shall be included in the general biennial appropriations act an appropriation for the maintenance of the hotel and restaurant commission and the carrying into effect of all laws, rules and regulations pertaining to the construction, maintenance and operation of public lodging and public food service establishments. All funds collected by the hotel and restaurant commissioner and the amounts paid for licenses and fees shall be deposited with the state treasurer to the credit of the general revenue fund.

History.—§30, ch. 6952, 1915; RGS 2151; §9, ch. 9264, 1923; §7, ch. 12053, 1927; CGL 3380; §33, ch. 16042, 1933; CGL 1936 Supp. 3380; am. §1, ch. 22835, 1945.
Am §126, ch. 26869, 1951; transferred from §511.32, 1955.
Am §2, ch. 57-389.

509.081 Appointment and employment of personnel.—The hotel and restaurant commissioner may appoint and employ such office help, deputy commissioners, supervising architects or engineers, and attorneys as are necessary to carry out the provisions of this chapter. Such employees shall be under the control and direction of the commissioner and shall receive such compensation as shall be fixed by the commissioner, and shall be reimbursed for traveling expenses as provided in §112.061.

History.—§27, ch. 6952, 1915; RGS 2147; §8, ch. 9264, 1923; CGL 3376; §29, ch. 16042, 1933; §4, ch. 17062, 1935; CGL 1936 supp. 3376; §9, ch. 29645, 1951; §4, ch. 28129, 1953; §3, ch. 57-389; §19, ch. 63-400.
Note.—Tr. from §511.28.

509.091 Notice of hotel commissioner; form and service.—All notices to be served by the hotel commissioner, provided for in this chapter, shall be in writing and shall be either delivered personally, or by a deputy hotel commissioner, or by registered letter, to the owner, agent, lessee or manager of such building or premises, or the owner, agent, lessee or manager of such hotel, apartment house, rooming house or restaurant.

History.—§28, ch. 6952, 1915; RGS 2148; CGL 3377; §30, ch. 16042, 1933; CGL 1936 Supp. 3377; transferred from §511.29, 1955.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

509.092 Public lodging and public food service establishments; rights as private enterprises.—Public lodging and public food service establishments are declared to be private enterprises and the owner or manager of public lodging and public food service establishments shall have the right to refuse accommodations or service to any person who is objectionable or undesirable to said owner or manager.

History.—Comp. §4, ch. 57-389.

509.101 Proprietors or managers may make rules; maintenance of register.—

(1) Every proprietor or manager of a public lodging or public food service establishment may prescribe and establish reasonable rules and regulations for the government and management of any such lodging or food service establishment, and its occupants and employees; and every lodger, boarder, guest, tenant, or person staying, sojourning, eating or employed in said lodging or food service establishment shall conform to and abide by said rules and regulations so long as he shall remain in or at said lodging or food service establishment. These rules and regulations shall be held or deemed to be a special contract and agreement between such proprietor or manager and each and every lodger, boarder, guest, tenant, employee or person staying or sojourning, ordering, eating, being served or using the facilities of or at any public lodging or food service establishment, and shall regulate, fix and control the liabilities, responsibilities and obligations of each, both and all parties. Any rules or regulations promulgated pursuant to this section shall be printed in the English language and posted together with a copy of §§509.111, 509.151, and 509.161 in each bedroom of lodging establishments and also in the office, hall or lobby of such lodging and food service establishments.

(2) It shall be the duty of all public lodging establishment operators to maintain at all times a register signed by or for guests who occupy rooms within the establishment, showing the dates upon which the rooms were occupied by such guests and the rates charged for their occupancy. This register shall be available for inspection by the hotel and restaurant commission at any time. Operators shall not be required to keep available registers which are more than two years old.

History.—§2, ch. 1999, 1874; RS 871; GS 1229; RGS 2353; CGL 3757; §38, ch. 16042, 1933; transferred from §510.02, 1955; §5, ch. 57-389.

509.111 Liability for property of guests and tenants.—

(1) The proprietor or manager of a hotel, apartment house, rooming house, motor court, trailer court or boarding house in this state shall, in no event, be liable or responsible for any loss of any moneys, securities, jewelry or precious stones of any kind whatever belonging to any lodger, boarder, guest, tenant or occupant of or in said hotel, apartment, rooming house, boarding house, motor court or trailer

court, unless the owner thereof shall make a special deposit of said property and take a receipt in writing therefor from the proprietor or manager or a clerk in the office of said establishment, which receipt shall set forth the value of said property; provided, however, that no proprietor or manager or clerk in the office of a hotel, apartment house, rooming house, motor court, trailer court or boarding house in this state shall be obliged to receive from any one lodger, boarder, guest, tenant or occupant of or in said hotel, apartment house, rooming house, motor court, trailer court or boarding house, a deposit of any money, securities, jewelry or precious stones of any kind whatever, exceeding a combined total value of one thousand dollars or shall he be liable in damages in a sum in excess thereof unless such proprietor, manager, or clerk accept voluntarily such chattels for safekeeping, having a combined total value in excess of one thousand dollars, then and in such event he shall be liable in damages in a sum equal to the damage sustained by such lodger, boarder, guest, tenant or occupant.

(2) The proprietor or manager of a hotel, apartment house, rooming house, motor court, trailer court or boarding house in this state, shall, in no event, be liable or responsible to any lodger, boarder, guest, tenant or occupant for the loss of wearing apparel, goods or other property, except as provided in subsection (1) hereof, unless it shall be made to appear by proof that such loss occurred as the proximate result of fault or negligence of such proprietor or manager or an employee thereof, and in case of fault or negligence he shall not be liable for a greater sum than one hundred dollars unless the lodger, boarder, guest, tenant or occupant, shall, prior to the loss or damage, file with the proprietor, manager or clerk of said establishment an inventory of his effects and the true value thereof, and such proprietor, manager or clerk is given the opportunity to inspect such effects and check them with such inventory; provided however, that the proprietor, manager or clerk of a hotel, apartment house, rooming house, motor court, trailer court, or boarding house in this state, shall, in no event, be liable or responsible to any guest, lodger, boarder, tenant or occupant for the loss of wearing apparel, goods or other property or chattels, scheduled in such inventory in a total amount exceeding five hundred dollars.

History.—§4, ch. 1999, 1874; RS 873; GS 1231; RGS 2355; §11, ch. 9264, 1923; §1, ch. 12052, 1927; CGL 3759; §40, ch. 16042, 1933; CGL 1936 Supp. 3759; am. §1, ch. 23931, 1947; sub. §(2) am. §2, ch. 28129, 1953; transferred from §510.04, 1955.

509.131 Duties and requirements placed on owners and tenants.—The duties and requirements of owners set forth in this chapter are the duties and requirements placed upon the owner, agent or manager of the property in charge of same, and said owner, agent or manager shall be subject to the penalty herein set forth for a failure to perform or carry out said duties and requirements. The duties and requirements of tenants set forth in this chapter are the duties and requirements placed upon the tenant of said building and operating or controlling same by himself or others, and said tenant shall be subject to the penalty herein set forth for a failure to perform or carry out said duties and requirements.

History.—§28, ch. 6952, 1915; RGS 2149; CGL 3378; §31, ch. 16042, 1933; CGL 1936 Supp. 3378; transferred from §511.30, 1955.

509.141 Ejection of undesirable guests; notice, procedure, etc.—

(1) The manager, assistant manager, desk clerk or other person in charge or in authority in any hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall have the right to remove, cause to be removed, or eject from such hotel or apartment house, tourist camp, motor court, restaurant, rooming house or trailer court in the manner hereinafter provided, any guest of said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, who, while in said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises is intoxicated, immoral, profane, lewd, brawling, or who shall indulge in any language or conduct either such as to disturb the peace and comfort of other guests of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court or such as to injure the reputation or dignity or standing of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, or who, in the opinion of the management, is a person whom it would be detrimental to such hotel, apartment house, tourist camp, motor court, restaurant, rooming house, or trailer court for it any longer to entertain.

(2) The manager, assistant manager, desk clerk or other person in charge or in authority in such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall first orally notify such guest that the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court no longer desires to entertain him or her and request that such guest immediately depart from the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court. If such guest has paid in advance the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall, at the time oral or written request to depart is made, tender to said guest the unused or unconsumed portion of any such advance payment. Said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court may, if its management so desires, deliver to such guest written notice in form as follows:

"You are hereby notified that this establishment no longer desires to entertain you as its guest and you are requested to leave at once and to remain after receipt of this notice is a misdemeanor under the laws of this state."

(3) And any guest who shall remain or attempt to remain in such hotel, apartment house,

tourist camp, motor court, restaurant, rooming house or trailer court after being requested, as aforesaid, to depart therefrom, shall be guilty of a misdemeanor, and shall be deemed to be illegally upon such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises.

(4) In case any such guest, or former guest, of such public lodging or public food service establishment, as above defined in subsections (1)-(3), or any other person, shall be illegally upon any such public lodging or public food service establishment premises, the management or any employee of such public lodging or public food service establishment may call to its assistance any policeman, constable, deputy sheriff, sheriff, or other law enforcement officer of this state, and it shall be the duty of each member of the aforesaid classes of officers, upon request of such public lodging or public food service establishment's management or employee to place under arrest and take into custody for violation of this section any such guest, where any such guest commits the misdemeanor set forth in subsection (3) in the presence of said officer, or, in the event a warrant has been issued by the proper judicial officer for the arrest of any such guest, the officer shall serve said warrant and arrest and take such person into custody. Upon such arrest of any such guest, the said guest will be deemed to have given up any right to occupancy or to have abandoned his right of occupancy of said premises, and the operator of the public lodging establishment may then proceed to make such premises available to other guests; provided, however, the operator of said establishment shall employ all reasonable and proper means to adequately care for the personal property which may be left on the premises by such guest who has been removed in accordance with the provisions of this section and shall refund any unused portion of moneys paid by such guest for occupancy of such premises.

History.—§§1-3, ch. 22023, 1943; (4) §1, ch. 63-96.
Note.—Tr. from §510.08.

509.151 Obtaining lodging with intent to defraud; penalty.—Any person who shall obtain food, lodging or other accommodations at any hotel, motel, apartment house, rooming house, inn, boarding house, trailer park or restaurant, with intent to defraud the owner or keeper thereof, shall be guilty of a misdemeanor and shall, upon conviction, be punished by imprisonment in the county jail not to exceed 3 months or by fine not exceeding $100.00; provided, that if any owner or keeper, including manager or assistant manager, in the absence of the owner or keeper, of such establishment has probable cause to believe, and does believe, that any person has obtained food, lodging or other accommodations at such establishment with intent to defraud the owner or keeper thereof, and upon demand for payment being made, and there being no dispute as to the amount owed, failure to make payment shall constitute prima facie evidence of intent to defraud; provided, further, that the provisions of this section shall not apply where there has been an agreement in writing for delay in payments.

History.—§§1-3, ch. 6954, 1915; RGS 5157; CGL 7260; §45, ch. 16042, 1933; CGL 1936 Supp. 7260; §1, ch. 63-546.
Note.—Tr. from §511.38.

509.161 Rules of evidence in prosecutions.—In prosecutions under §509.151, proof that lodging, food or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or by absconding without paying or offering to pay for such food, lodging or accommodations, or by surreptitiously removing or attempting to remove baggage, or if any owner or keeper, including manager or assistant manager, in the absence of the owner or keeper, of such establishment has probable cause to believe, and does believe, that any person has obtained food, lodging or other accommodations at such establishment with intent to defraud the owner or keeper thereof upon failure to make payment upon demand being made therefor, and there being no dispute as to the amount owed, shall constitute prima facie evidence of the fraudulent intent mentioned in this chapter.

History.—§2, ch. 6954, 1915; RGS 5158; CGL 7261; §46, ch. 16042, 1933; CGL 1936 Supp. 7261; §2, ch. 63-546.
Note.—Tr. from §511.39.

509.162 Obtaining lodging or food with intent to defraud; detaining of violator and arrest by police officer.—Any peace officer or owner or keeper, including manager or assistant manager, in the absence of the owner or keeper, of any hotel, apartment house, tourist camp, motel, rooming house, trailer court or restaurant, who has probable cause to believe, and does believe:

(1) That any person has obtained food, lodging or other accommodations at such establishments with intent to defraud the owner or keeper thereof, as referred to in §509.161, or

(2) That any person has taken personal property belonging to said establishments illegally from the premises,

may take such person into custody on the premises and detain him for such reasonable period of time as may be necessary to take him before the nearest magistrate.

History.—§3, ch. 63-546.

509.171 False representation concerning hotels, etc., prohibited; penalty.—Any person who knowingly makes any false statement or false representation to another concerning any hotel, inn or apartment house with the intention of inducing such other person to enter, lodge at or become a guest of any other hotel, inn or apartment house, or who by any false statement or misrepresentation induces any person not to enter, lodge at or become a guest of any hotel, inn or apartment house, shall be guilty of a misdemeanor and shall, upon conviction, be punished by imprisonment in the county jail not to exceed six months or by fine not to exceed five hundred dollars.

History.—§1, ch. 20847, 1941; transferred from §511.43, 1955.

509.181 Compensation for false representation prohibited; penalty.—It shall be a misdemeanor for any person engaged in the operation of any hotel, inn or apartment house to pay to any person any compensation for diverting through fraud or other misrepresentation, prospective patrons of a given hotel, inn, or apartment house to any other hotel, inn or apartment house and shall, upon conviction, be punished by imprisonment in the county jail not to exceed six months or by fine not to exceed five hundred dollars.

History.—§2, ch. 20847, 1941; transferred from §511.44, 1955.

509.191 Sale of unclaimed articles, disposition of proceeds.—

(1) Every manager or proprietor of any hotel, apartment house, rooming house or boarding house in this state who shall have any unclaimed article left in the hotel, apartment house, rooming house or boarding house of which he is manager or proprietor by any guest or tenant, for a period of ninety days, may at the expiration of such ninety days, proceed to sell such articles at public auction, and out of the proceeds of such sale may retain any amount due said hotel, apartment house, rooming house or boarding house by the person leaving such articles, together with the expense of the sale thereof; but no such sale shall be made until notice of the time and place of such sale shall be mailed to such owner, thirty days prior to such sale, where the address of such owner can be ascertained by the manager or proprietor of such hotel, apartment house, rooming house or boarding house; nor shall any such sale be made until the notice of the time and place of such sale be advertised in a newspaper published at or nearest the place where such articles were left and where such sale is to take place, once a week for four consecutive weeks, or by three notices posted in a public place. Such notice shall contain a description of the article or articles to be sold and the time and place of sale. Such proprietor or manager shall keep an account of the amount received at such sale for every article sold thereat, and of the balance, if any, remaining after the amount due such proprietor or manager, together with the expense of such sale, has been paid, and shall at any time within one year after such sale refund any surplus so retained to any such owner of such articles, his heirs, or assigns, upon satisfactory proof of ownership.

(2) In case such balance shall not be claimed by the rightful owner within one year after such sale, as specified in subsection (1) hereof, then the manager or proprietor of the hotel, apartment house, rooming house or boarding house shall pay such balance to the state treasurer to the credit of the general revenue fund.

History.—§§1, 2, ch. 6196, 1911; RGS 2357, 2358; CGL 3761, 3762; §§42, 43, ch. 16042, 1933; §125, ch. 26869, 1951; transferred from §§510.06, 510.07, 1955.

509.201 Room rates; posting in rooms; advertising; penalties.—

(1) For every public lodging establishment renting by the day or week there shall be posted in a plainly legible fashion, in a conspicuous place in each room or apartment the rates at which each room or apartment is rented. Such posting shall show the maximum amount charged for occupancy per person, (if the rate varies with the number of occupants); shall show the amount charged for extra conveniences, more complete accommodations, or additional furnishings; and shall show the dates during the year when such charges prevail. Copies of the posted rate schedules for all similar rooms in each establishment shall be filed with the hotel and restaurant commissioner at least five days before such rates are to become effective and shall be kept current. The rates posted in the rooms or apartments must coincide with those on file in the commissioner's office, and no establishment shall charge more than the rates posted in the rooms and filed with the commissioner.

(2) (a) No person shall display or cause to be displayed any sign or signs which may be seen from a public highway or street, which sign or signs include in dollars and cents a statement relating to the rates charged at a public lodging establishment unless such sign or signs include in letters and figures of similar size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect. The said rates shall in each instance coincide with the rates posted in each room of the establishment and with those filed with the hotel and restaurant commissioner as required by subsection (1).

(b) No person shall publish or cause to be published any advertisement other than those referred to in paragraph (a) hereof which includes in dollars and cents a statement relating to rates charged at a public lodging establishment unless such advertisement shall include in letters or figures immediately adjacent to said rate, whether the rates quoted are for single or multiple occupancy where such fact affects the rates charged. Said advertisement shall also include: the number of apartments or rooms in the establishment at the published rates, the dates during which such rates are in effect and an indication as to whether there are other rates in effect in said establishment. The said rate shall in each instance coincide with the rates posted in such rooms of the establishment and with those filed for these rooms with the hotel and restaurant commission as required by subsection (1). With regard to the advertisements referred to in this paragraph the type size of the required additional information shall be at least one-twelfth of the size of the rate figures advertised or equal to the type size used in the body of the advertisement, whichever is larger.

(c) The provisions of paragraph (b) here-

of shall not be applicable to advertisements or listings in guides or directories which are published by nonprofit hotel, motel, motor court, apartment, or similar organizations or associations nor to advertisements of a classified nature placed in the classified section of newspapers and other similar type publications. Paragraph (b) hereof is applicable to any type of display advertisement regardless of where it might be printed in a magazine, newspaper or other similar publication, and is applicable to all other advertisements whether published orally or by writing or printing of any kind on any material.

(d) There shall not be published with regard to any public lodging establishment any advertisement that contains false or misleading statements as to any matter whatsoever.

(3) Any owner, agent, lessee, or manager of any public lodging establishment who violates, or causes to be violated, any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not to exceed six months or by fine not to exceed five hundred dollars. In addition to the criminal penalty, the license of any public lodging establishment may be suspended or revoked by the hotel and restaurant commissioner, or he may impose fines on the responsible person, in accordance with the procedure prescribed by §509.261, when the owner, agent, licensee, or manager of such establishment is determined by the commissioner to have violated any provision of this section. It shall not be necessary for the offender to be convicted of the crime fixed by this section as a condition precedent to the suspension or revocation of such license, or the imposition of a civil penalty by the commissioner.

History.—§§1-4, 6, ch. 26907, 1951; transferred from §511.45 as amended by §1, ch. 29822, 1955; (1), (2)(b), (c), (3) by §6, ch. 57-389.

509.211 Safety regulations.—

(1) Every public lodging or public food service establishment shall have signs displayed in all hallways indicating all fire escapes, stairways and exits.

(2) Whenever it shall be proposed to erect a building three stories or more in height intended for use as a public lodging establishment in this state, the owner, contractor or builder of such establishment shall construct said establishment so that one main hall, on each floor above the ground floor, shall extend to the outside wall at each end; or such main hall may turn at either or both ends, provided the distance from the main hall to the outside of the building, at any point, is no more than the depth of the room facing the outside of the building, and provided further that the hall so turned shall extend to an exterior wall in which a door or window must be provided; provided, further, however, that the commissioner, upon recommendation of the supervising architect, may waive the requirement of halls running to the exterior wall of the building in those instances where such construction provides two means of exit from all areas on the floor; and provided that, in two-story construction of individual units not exceeding five-room count in a multiple unit building, it may be permitted to have one means of ascent or descent to the level of egress provided two-hour fire rated partitions and floor construction is employed within the unit and the unit is separated from all other units by four-hour fire rated floor, walls and ceiling. No heating, cooking or electrical distribution equipment shall be permitted in the space directly under the stairs.

(3) No building of four or more stories in height shall be constructed for or converted for use as a public lodging establishment unless it be of noncombustible material or fireproof construction. This provision shall not apply to buildings now being used for such purposes.

(4) Before the erection or remodeling of any building for use as a public lodging or public food service establishment is begun, the registered architect's plans or registered engineer's plans, with detailed specifications, shall be approved by the supervising architect or engineer of the hotel and restaurant commission; all plans, specifications and drawings submitted for the purpose of securing building permits from any state, county or municipal building inspector, or other officer having like jurisdiction, shall bear the signature and seal of the architect or engineer and supervising architect or engineer of the hotel and restaurant commission before said building permit is issued; when such plans and specifications are submitted to the supervising architect or engineer of the hotel and restaurant commission for approval, they shall be accompanied by a remittance of an amount equal to the license fee prescribed for an establishment of such size as provided in this chapter, except that permit fees for remodeling not affecting the room count or seating capacity shall be as set forth below, based on the cost of construction:

Cost of Work	Lodging Establishment Total Fees	Food Service Establishment Total Fees
$ 2,000 or less	$ 8.00	$ 12.00
5,000 or less	12.00	16.00
10,000 or less	20.00	20.00
20,000 or less	26.00	26.00
Over 20,000	36.00	36.00

In the event the remodeling also includes additional room count or seating capacity, then, in either of such events, the permit fee payable to the commission for such alterations shall be based on the above enumerated fees or upon the fee determined by the additional room count or seating capacity, whichever is the higher fee. Provided further, that new construction or remodeling costing ten thousand dollars or less need not be accompanied by plans of a registered architect or engineer but scaled drawings shall be submitted to the hotel commission's architect or engineer for approval, as a condition precedent to securing a building permit.

(5)(a) Within sixty days after receipt of notice from the hotel and restaurant commissioner every public lodging establishment or public food service establishment in this state consisting of two stories in height must provide at least two means of exit, which shall consist of either fire escapes or stairways accessible to all occupants of the second floor which shall extend from the second floor to the ground or ground floor.

(b) Within sixty days after receipt of notice from the hotel and restaurant commissioner, every public lodging establishment or public food service establishment in the state consisting of more than two stories in height, shall be equipped with two means of exit, one of which shall be a complete fire escape consisting of iron, steel, concrete or other fireproof material, extending from the uppermost floor to the ground or ground floor and connecting with each floor above the ground floor by means of landings not less than six feet in length or four feet in width which shall be secured to the stairs not less than two feet in width with steps not less than six inches in tread with not more than a forty-five degree angle, such landing or stairs if constructed on the exterior of the building, to be guarded by an iron, steel, or concrete railing not less than thirty inches in height.

(c) Where, in the opinion of the supervising architect or engineer of the hotel and restaurant commission it is evident on inspection that strict compliance with the above two paragraphs, (a) and (b), regarding construction of second means of exit of buildings would in no substantial way increase or improve the safety of a building, the supervising architect or engineer shall suggest that the licensee appeal to a board made up of at least two supervising architects or engineers and the commissioner for relief from the provisions of this section.

(d) Egress to all such fire escapes shall at all times be kept free and clear of all obstructions and doors leading to such fire escapes shall be constructed of fire resistant materials, equipped with automatic closing devices and panic bolts and such doors shall only open outward to fire escapes on the exterior of the building.

(e) Fire escapes installed inside any such building shall be constructed of fireproof material including walls, floors, ceiling, windows, casements, stairs, hand railings and doors and all other parts comprising same. All egress to inside fire escapes shall be guarded by doors with an automatic closing device, panic bolts and such doors shall only open toward the descent of the fire escape.

(f) All fire escapes shall be constructed, installed, and placed under the supervision of the hotel commissioner, who shall enact rules and regulations governing the same, which shall be in substantial conformity to the now existing code of national fire underwriters, relating to fire exits.

(g) All inside fire escapes shall be kept artifically lighted day and night by a circuit or means, separate and apart from the circuit or means providing for the general lighting of the said building.

(6) At every opening to a fire escape a red light shall be kept burning at all times and said light shall be connected to a circuit or means of lighting, separate and apart from the circuit or means providing for the general lighting of said building; there shall be posted and maintained in conspicuous places in each hall and in each guest room except in the hall or rooms on the ground floor of such buildings, plainly written notices reading "fire escapes are indicated by red lights."

(7) Every public lodging or food service establishment shall be provided with one fire extinguisher of a style and size approved by the national board of fire underwriters on each floor containing twenty-five hundred square feet or less of floor area, and one additional fire extinguisher on each floor for each twenty-five hundred square feet or less of additional floor space. Such extinguishers shall be placed in a convenient location in a public hallway outside of the sleeping rooms at or near the head of the stairs and shall always be in a condition for use.

(8) Each bedroom or apartment in each public lodging establishment shall be equipped with a good substantial lock and key on each door opening to the outside or to an adjoining room or apartment, or to a hallway.

(9)(a) The hotel and restaurant commissioner shall inspect or cause to be inspected by a competent engineer, every elevator used to carry passengers and freight, in public lodging and public food service establishments in this state, and when it is found that elevators are in an unsafe condition, the hotel commissioner shall require that such elevators be put in safe condition. Thereupon the owner, manager or lessee of the building or the party in charge thereof, wherein such elevators may be located, shall immediately repair and put such elevator or elevators in a safe condition.

(b) This section shall not apply to hotels, apartment houses, rooming houses or restaurants which now or hereafter maintain elevator service contracts or elevator public liability insurance; provided such public lodging and public food service establishments shall annually file with the hotel and restaurant commissioner a copy of an inspection report made under said service contract, or elevator insurance policy.

(10) All elevator shafts located in public lodging and public food service establishments in this state shall be of noncombustible material, and they shall be constructed in accordance with rules and regulations made and promulgated by the hotel commissioner.

(11) The plans and specifications of all cooperative and condominium apartments for residential use, irrespective of intended occupancy

by the owner of such apartments, shall be submitted to the supervising architect of the commission for approval prior to the permit for such construction being issued by any governmental authority, and said apartments shall be constructed in accordance with the requirements of public lodging establishments within the jurisdiction of the hotel and restaurant commission under chapter 509 and the rules and regulations promulgated thereunder. The regular construction permit fees shall be paid the commission for approval of such plans by the supervising architect and for inspection during construction; provided, however, such apartments shall not be required to be licensed under chapter 509 so long as the owners of such apartments actually occupy them or none of the apartments are rented to tenants or guests.

History.—§5, ch. 1999, 1874; RS 874, GS 1232; §§17-23, ch. 6952, 1915; RGS 2137-2143, 2356; §7, ch. 9264, 1923; CGL 3366-3372, 3760; §§19-25, 41, ch. 16042, 1933; CGL 1936 Supp. 3366-3372; §§3-5, ch. 23930, 1947; §10, ch. 26484, 1951; §3, ch. 28129, 1953; §4, ch. 29821, 1955; §7, ch. 57-389; (2) §1, ch. 63-67; (4) §1, ch. 63-312; (11) n. §1, ch. 63-426.

Note.—Tr. from §§510.05, 511.18-511.24.

cf.—§399.14, Exempting hotel elevators from jurisdiction of industrial commission inspection.

509.221 Sanitary regulations.—

(1) In all cities, towns and villages where a system of waterworks is maintained for public use every public lodging establishment and public food service establishment therein operated shall, within sixty days after a receipt of notice from the hotel and restaurant commissioner, be equipped with suitable water closets or closets for the accommodation of its guests, and such water closets or closets shall be connected by proper plumbing with sewerage and means of flushing such water closets or closets with the water of said system, in such manner as to prevent sewer gas or effluvia from arising therefrom. Provided, that each hotel, rooming house and restaurant shall maintain not less than one toilet for each sex, properly designated; and provided that each hotel and rooming house shall maintain one public bath on each floor for every fifteen guests, or major fraction of that number, rooming on that floor not provided with private or connecting bathrooms. Public baths shall not be required in hotels where each room is provided with bath.

(2) Every public lodging establishment and every public food service establishment shall be properly plumbed, lighted, heated, cooled or ventilated, and shall be conducted in every department with strict regard to the health, comfort, and safety of the guests or tenants; provided that such proper lighting shall be construed to apply to both daylight and artificial illumination, that such proper plumbing shall be constructed and plumbed according to proper sanitary principles, and that such proper ventilation, or cooling, shall be construed to mean at least one door and one window in each room.

(3) No room shall be used for a sleeping room which does not have an opening to the outside of the building, air shafts or courts. All operating windows in such rooms shall be properly screened and in each sleeping room there must be at least one window with opening so arranged as to provide easy access to the outside of building or courts.

(4) All hotels, rooming houses and restaurants in this state shall provide in the main public washroom clean towels for each guest; any standard commercial paper towels may be used; and in each bedroom furnish each guest with two clean individual towels so that no two or more guests will be required to use the same towel unless it has first been washed. Such individual towels shall not be less than ten inches wide and fifteen inches long after being washed.

(5) All hotels shall provide each bed, bunk or cot or other sleeping place for the use of guests with pillow slips and under and top sheets of material containing 64 x 64 thread count or better; each sheet to be made ninety-nine inches long and of sufficient width to completely cover the mattress and springs; provided, that a sheet shall not be used which measures less than ninety inches after being laundered. Sheets and pillow slips after being used by one guest, must be washed and ironed before they are used by another guest, a clean set being furnished each succeeding guest.

(6) All bedding, including mattresses, quilts, blankets, pillows, sheets and comforts used in any hotel, apartment house, rooming house or restaurant in this state, must be thoroughly aired, disinfected and kept clean; provided, that no bedding, including mattresses, quilts, blankets, pillows, sheets or comforts shall be used which are worn out or are unfit for further use. No mattress on any bed in any hotel, apartment house, rooming house or restaurant shall be used which is made of moss, sea grass, excelsior, husks or shoddy. Any room in any hotel, apartment house, rooming house or restaurant infested with vermin or bedbugs shall be fumigated, disinfected and renovated until said vermin and bedbugs are exterminated.

(7) It is unlawful for any person to operate any place of business within the state where food is cooked or prepared without keeping all outside doors, windows and other similar openings of said place of preparation screened with wire netting of not less than sixteen mesh screening or protected by properly installed fans.

(8) The owner, tenant, operator or person in charge of any public lodging establishment or public food service establishment shall keep all flies out of said place.

(9) No person suffering from any contagious or communicable disease shall be employed in any hotel, restaurant, apartment house or rooming house to prepare or handle food, drink, dishes, towels, or linens, or in any other capacity whereby such disease might be communicated to guests or tenants. All employees shall

furnish health certificates including a Wassermann test, signed by a registered licensed physician of the state, whenever the hotel and restaurant commissioner or his deputy, in his discretion, deems it necessary for the protection of public health.

History.—§§12-16, 24-26, 32, ch. 6952, and, §§1-5, ch. 6953, 1915; RGS 2132-2136, 2144-2146, 2152-2156, 5642; §§5, 6, 10, ch. 9264, 1923; §§3, 4, ch. 12053, 1927; CGL 3361-3365, 3373-3375, 3381-3385, 7836; §§14-18, 26-28, 34-37, ch. 16042, 1933; CGL 1936 Supp. 3361-3365, 3373-3375, 3381, 3382, 3384, 3385; transferred from §§511.13-511.17, 511.25-511.27, 511.33-511.37, 511.42, 1955; §8, ch. 57-389; (2) by §1, ch. 59-152.

509.231 Use of butter substitutes; penalty.—Any keeper of any hotel, boarding house, restaurant, lunch or sandwich stand or counter who shall knowingly and wilfully without giving notice to guests at the table, supply oleomargarine or other spurious preparation purporting to be butter for the use of guests, shall be subject to punishment by imprisonment not exceeding thirty days, or by fine not exceeding one hundred dollars.

History.—§2, ch. 8280, 1881; RS 2663; GS 3592; RGS 5521; CGL 7686; §47, ch. 16042, 1933; CGL 1936 Supp. 7686. Transferred from §511.40, 1955.

cf.—§502.07, Placard to be displayed where imitation butter served.
§502.08, Report of dealers in imitation butter.
§502.28, Penalty for selling spurious preparation as butter.

509.241 Licenses required; public lodging and food service establishments.—

(1) PUBLIC LODGING ESTABLISHMENTS; DEFINITION; LICENSES; EXCEPTION.—

(a) All buildings, groups of buildings, or other structures kept, used, maintained, advertised as, or held out to the public to be places where sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, and apartments, except as hereinafter exempted, are defined and shall be licensed as public lodging establishments. Any reference in the laws of Florida to hotels, motels, motor courts, apartment houses, rooming houses, or similar establishments shall be construed to mean a public lodging establishment as herein defined unless a different intent is clearly evident.

(b) The following are exempted from the provisions of paragraph (a) hereof:

1. All individually or collectively owned one, two, or three family dwelling houses or dwelling units and all of such houses or units which are not operated as a group, unless they are regularly rented to transients or held out to, or advertised to the public as places regularly rented to transients. For the purpose of this chapter transients are persons who are not legal residents of the community and who rent for periods of six months or less.

2. Dormitories and other living or sleeping facilities maintained by public or private schools, colleges, or universities primarily for the use of students, faculty or visitors.

3. All hospitals, nursing homes, sanitariums, and other similar places.

4. All places renting three rooms or less, unless they are advertised or held out to the public to be places that are regularly rented to transients.

(2) PUBLIC FOOD SERVICE ESTABLISHMENTS; DEFINITION; LICENSES; EXCEPTIONS.—

(a) Every building, vehicle, or other structure of similar purpose, or any rooms or divisions in a building, vehicle, or other structure of similar purpose, or any place whatsoever, that is maintained and operated as a place where food is regularly prepared, served or sold for immediate consumption on or in the vicinity of the premises is defined as, and shall be licensed as a public food service establishment. This shall specifically include establishments preparing food to be called for or taken out by customers, to be delivered to factories, construction camps, airlines and other similar locations for consumption at any place. Any reference to a restaurant in the laws of Florida shall be construed to mean a public food service establishment as herein defined unless a different intent is clearly evident.

(b) The following are exempted from the provisions of paragraph (a) hereof:

1. Places maintained and operated by public or private schools, colleges, or universities, primarily for the use of students and faculty.

2. Eating places maintained and operated by churches and religious or fraternal organizations primarily for the use of their members and associates.

3. Eating places located on airplanes, trains, buses, or watercraft which are common carriers.

4. Eating places maintained by hospitals, nursing homes, sanitariums and other similar places.

5. Theatres licensed under the provisions of §205.61, or any other license or occupational tax law enacted in lieu thereof, where the primary use is a theatre and patron service is limited to food items customarily served to the admittees of such theatres.

(3) LICENSES; ANNUAL RENEWALS.—For every establishment coming within the provisions of subsections (1) and (2) of this section, the required license shall be obtained from the hotel and restaurant commissioner. Such license shall not be transferable, and it shall be a misdemeanor for such an establishment to operate without a license. The commissioner may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with the law and rules and regulations of the hotel and restaurant commission. Licenses shall be renewed annually, and the commissioner shall adopt an appropriate regulation establishing a staggered schedule for license renewals which will avoid the necessity of all licenses being renewed on the same day of the year. Due regard shall be given in making the schedule to obtaining a relatively even distribution of license renewals coming due, and, thereby, to equalizing the work load of the commissioner's office staff.

(4) APPLICATION FOR LICENSE; PENALTY FOR FAILURE TO APPLY.—It shall be the duty of every individual who enters the public lodging or public food service business to make application for the licensing of his establishment prior to the commencement of operation. Failure to make application and payment of fee required within thirty days following commencement of operations or within thirty days following the expiration date of an existing license shall constitute a misdemeanor and shall be punishable as such.

History.—§§3-5, 8, ch. 6952, 1915; RGS 2124-2126, 2129; §§3, 4, ch. 9264, 1923; §6, ch. 12053, 1927; CGL 3353-3355, 3358; §1, ch. 13659, 1929; §§6-8, 13, ch. 16042, 1933; CGL 1936 Supp. 3353, 3354; §1, ch. 23930, 1947; sub §§(1), (2) am. §§5, 6, ch. 29821, 1955; sub. §(3) am. by §1, ch. 29820, 1955; transferred from §§511.01-511.03, 511.10, 1955; §9, ch. 57-389; (c) and (d) of (1) r. by §1, ch. 57-824; (1)(a) a. by §1, ch. 61-81.

509.242 Public lodging establishments; classifications.—

(1) Establishments which desire a specific classification (apartment, hotel, motel, apartment hotel, apartment motel, etc.) may apply and receive a specific classification from the hotel and restaurant commission, provided the establishments fulfill the following requirements for each classification:

(a) *Hotel.*—Any building or group of buildings containing sleeping room accommodations for twenty-five or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated, or by the industry, is declared to be a hotel.

(b) *Apartment hotel.*—Any establishment which meets the requirements of a hotel, but also has units with kitchen equipment and housekeeping facilities, is declared to be an apartment hotel.

(c) *Motel.*—(Motor hotel, motor court, court, tourist court, motor lodge, etc.).—Any building or group of buildings, usually one story but limited to three stories, which offers units easily accessible to the travelers with an exit to the outside of each unit, daily or weekly rates, off-street parking for each unit, a central motel office on the property with specified hours of operation, a bath or connecting bath for every rental unit, and at least six rental units, recognized as a motel in the community in which it is situated and by the industry, is declared to be a motel.

(d) *Apartment motel.*—Any establishment which meets the requirements of a motel, but has at least forty per cent of the units as apartments with kitchen facilities is declared to be an apartment motel. A motel with less than forty per cent of its units in apartments is declared to be a "motel with apartments."

(e) *Resort motel, beach motel, fishing camp motel.*—Establishments requesting such classifications must meet the requirements of a motel and may have both motel rooms and apartment units.

(f) *Apartment.*—Any building or group of buildings intended for living accommodations, each with or without kitchen equipment and house-keeping facilities, and providing the services generally provided by an apartment house and recognized as an apartment house in the community in which it is situated, or by the industry, is declared to be an apartment house.

(g) *Rooming houses, guest houses, cabins.*—All establishments not within the foregoing category shall be classified as rooming houses, guest houses, cabins, tourist camps, or otherwise according to choice, but shall not be allowed a classification that could be confused with one of the foregoing. Converted dwelling houses, unless they can qualify for another classification, shall be classified under this paragraph.

(2) When twenty-five per cent or more of the units in any establishment fall within a classification different from the particular classification applicable to it, such establishment shall obtain a separate classification for such twenty-five per cent or more units, unless otherwise provided herein. When an establishment has a different classification of units in a separate building which is operated in connection with the principal establishment and is in the immediate vicinity, such as a hotel with a motel section, two classifications shall be required.

Establishments may advertise or display signs which advertise a specific classification, provided they have applied and received the specific classification and fulfill the requirements of that classification.

History.—§2, ch. 57-824; (1)(f) a. by §2, ch. 61-81.

509.251 License fees.—

(1) AMOUNT OF LICENSE FEE; PUBLIC LODGING ESTABLISHMENT.—The license fee to conduct a public lodging establishment shall be in accordance with the following schedule:

1 — 4	rooms	$ 4.00
5 — 9	"	6.00
10 — 19	"	10.00
20 — 29	"	13.00
30 — 39	"	15.00
40 — 49	"	18.00
50 — 69	"	24.00
70 — 99	"	33.00
100 — 199	"	42.00
200 — 299	"	51.00
300 — 399	"	60.00
400 — 499	"	72.00
500	rooms or more	90.00

The license fee shall be paid to the hotel and restaurant commissioner before a license is issued, and such license shall be conspicuously displayed in the office or lobby of the place for which issued.

(2) PUBLIC LODGING ESTABLISHMENTS; FRACTIONAL LICENSE FEES; INSPECTION DURING CONSTRUCTION.—

(a) Public lodging establishments that apply for licenses at times other than the annual renewal date fixed by the commissioner for such establishments shall be required to pay the full annual fee if application is made more than six months before the next renewal date fixed by the commissioner; if such application

is made less than six months before the next renewal date fixed by the commissioner, the license fee shall be one-half of the annual fee.

(b) Provided, that all hotels, apartment houses, rooming houses or other structures in course of construction shall be subject to and required to pay the same schedule of license fees for inspection during construction as they are required to pay for inspection when in operation as such.

(3) AMOUNT OF LICENSE FEE; PUBLIC FOOD SERVICE ESTABLISHMENT.—The license fee for conducting a public food service establishment shall be in accordance with the following schedule:

	Persons	
Accommodations for	1 — 29	$ 6.00
"	" 30 — 74	9.00
"	" 75 — 149	15.00
"	" 150 — 249	24.00
"	" 250 — 349	33.00
"	" 350 — 499	45.00
"	" 500 or more	60.00

The rates for the following described establishments are:

Establishments offering counter service	$ 9.00
Establishments offering take out service	9.00
Establishments offering curb service	15.00
Establishments offering catering service	24.00

The foregoing fees shall be in addition to the fees based on seating accommodations where establishments offer one or more of such types of service and also furnish seating accommodations.

The rates for the following described establishments are:

Establishments in the form of mobile food dispensing vehicles, license fee per annum, each vehicle	$30.00
Establishments for temporary food service, operating in the same location for temporary periods during a license year, for each such period	6.00
Establishments for temporary food service, operating in more than one location in the state during a license year, total license fee per annum	30.00

Vending machines dispensing food shall not be within the jurisdiction of the hotel and restaurant commission; provided, however, locations, not otherwise licensed under chapter 509, having the following described vending machine facilities dispensing food shall constitute a public food service establishment under §509.241 (2) (a), and shall be subject to the jurisdiction of the hotel and restaurant commission and shall pay an annual license fee as specified below:

(a) Any public location with vending machines dispensing prepared meals (meat, vegetables or salads), and having seating accommodations, shall pay to said commission the license fee provided for such establishments with seating accommodations as set forth above.

(b) Any public location with vending machines dispensing prepared meals (meat, vegetables or salads), shall, if without seating accommodations, pay an annual license fee of nine dollars as an establishment offering take-out service.

A license fee shall be paid to the hotel and restaurant commission before a license is issued, and the license shall be framed and displayed in a conspicuous manner.

(4) PUBLIC FOOD SERVICE ESTABLISHMENTS; FRACTIONAL LICENSE FEES; INSPECTION DURING CONSTRUCTION.—

(a) Public food service establishments that apply for licenses at times other than the annual renewal date fixed by the commissioner for such establishments shall be required to pay the full annual fee if application is made more than six months before the next renewal date fixed by the commissioner; if such application is made less than six months before the next renewal date, the license fee shall be one-half of the annual fee.

(b) Provided, that all restaurants, lunch or sandwich stands or counters or other structures in course of construction shall be subject to and required to pay the same schedule of license fees for inspection during construction as they are required to pay for inspection when in operation as such.

(c) Any public food service establishment that is operated in conjunction with a public lodging establishment shall obtain the appropriate license for both establishments.

History.—§§6, 7, ch. 6952, 1915; RGS 2127, 2128; §§1, 2, ch. 12053, 1927; CGL 3356, 3357; §9-12, ch. 16042, 1933; §§2, 3, ch. 17062, 1935; CGL 1936 Supp. 3356(1), 3357, 3357(1); §§1, 2, ch. 28276, 1953; §§2-5, ch. 29820, 1955; §1, ch. 57-272; (1) §1, ch. 61-353; (3) §1, ch. 63-350.

Note.—Tr. from §§511.06-511.09.

509.261 Revocation or suspension of licenses; fines; procedure. —

(1)(a) The hotel and restaurant commission may suspend or revoke the license of any public lodging or public food service establishment that has operated or is operating in violation of any of the provisions of this chapter or the rules and regulations promulgated by the hotel and restaurant commissioner relating thereto; such public lodging establishment or public food service establishment shall remain closed during the suspension or revocation of such license.

(b) Proceedings for the revocation of any such license shall be commenced by serving a copy of written notice. All notices to be served by the hotel and restaurant commissioner, provided for in this chapter, shall be delivered personally, or by a deputy commissioner, or by registered letter, to the owner, agent, lessee or manager of such building or premises, setting forth the facts constituting the alleged violation, the law or regulation alleged to have been violated, and the time and place of hearing thereon. Any such owner, agent, lessee, or manager shall at any such hearing have the right to cross-examine witnesses, produce wit-

nesses in his defense and appear personally or by counsel. No such hearing shall be held within five days from date of service or mailing of notice unless the violation is of such a nature that extreme danger is imminent to the health, safety, or welfare of the people; then in such an event the hotel and restaurant commissioner may immediately suspend any such license, but in any such case, the owner, agent, lessee or manager shall upon request, be entitled to a hearing at a time and place fixed by the hotel and restaurant commissioner within three days from the date of suspension.

(c) Proceedings of the hotel commission may be reviewed by certiorari to the circuit court of the circuit in which such licensed establishment is located and appeals from any decision of the circuit court may be taken to the appropriate district court of appeal in the same manner and subject to like conditions as appeals in chancery are taken.

(2) In lieu of the suspension or revocation of licenses, the commissioner, after complying with the procedural requirements prescribed by paragraph (b) hereof, may impose fines against licensees for violations of this chapter or rules and regulations relating thereto. No fine so imposed shall exceed five hundred dollars for each offense, and all amounts collected shall be deposited with the state treasurer to the credit of the general revenue fund.

(3)(a) No license shall be suspended under this section for a period of more than twelve months. Every revocation under this section shall be for one year. No new license shall be issued to the licensee or to any other firm or corporation in which the licensee or anyone of its stockholders are interested, during such suspension or revocation. Every public lodging establishment and public food service establishment, the license for which has been suspended or revoked under the provisions of this section, shall remain closed during such suspension or revocation.

(b) The hotel commissioner is hereby given full power and authority to suspend or revoke any license issued by him for the operation of any hotel, apartment house or rooming house or restaurant, whenever the owner, lessee, or manager, or any other person having, exclusively or with others, either direct or indirect charge, control or management of such hotel, apartment house, rooming house, or restaurant, knowingly lets, leases or gives space or concession for gambling purposes or where gambling is to be carried on, in any manner or by any means denounced by any statute of this state, in such hotel, apartment house, rooming house or restaurant or in or upon any premises which are used in connection with, and are under the same charge, control or management as, such hotel, apartment house, rooming house or restaurant. The suspension or revocation shall be of the license in effect at the date of such suspension or revocation, even though such license may be a renewal of the license which was in effect when the cause for such suspension or revocation arose, and even though it may have been issued to a licensee other than the person, firm or corporation who held the license at the time such cause for such suspension or revocation arose.

(c) Proceedings for suspension or revocation under this section, and for review of such proceedings, shall be in accordance with those provisions of §509.261, which govern proceedings for suspension and revocation for the causes specified in said section.

(d) Every proceeding for suspension or revocation under this section shall be commenced within sixty days after the cause for suspension or revocation specified in paragraph (3)(b) arises.

(4) In addition to the grounds of revocation or suspension as set forth in this section, the hotel and restaurant commission may suspend or revoke the license of any public lodging or public food service establishment in accordance with the requirements of this section and §§120.20 through 120.28, when:

(a) Any person interested in the operation of any such establishment, whether owner, agent, lessee, or manager, has been convicted within the last past five years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in narcotics, or any other crime involving moral turpitude. The term convicted shall include an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

(b) Such establishments have been condemned by the local health authority for failure to meet sanitation standards, or where said premises are condemned by the local authority because said premises are unsafe and unfit for human occupancy.

(5) The hotel and restaurant commission shall have authority to issue subpoenas to compel the attendance of witnesses at any hearing and subpoenas duces tecum to compel the production of any records material to any such hearing. Said subpoenas shall be served by a deputy commissioner or by any sheriff or deputy sheriff of the several counties of this state.

History.—§48, ch. 16042, 1933; CGL 1936 Supp. 3355(2); §1, ch. 21660, 1943; §2, ch. 23930, 1947; §§1-5, ch. 26939, 1951; §1, ch. 28224, 1953; §1, ch. 29823, 1955; §10, ch. 57-389; (1)(c) §40, ch. 63-512; (3)(d) §1, ch. 63-69; (4) n. §1, ch. 63-68; (5) n. §1, ch. 63-70.

Note.—Tr. from §§511.05, 511.051.

cf.—Ch. 35; §5, A. V const., district courts of appeal.

509.271 Prerequisite for issuance of city or county occupational license.—No municipality or county shall originally issue an occupational license to any business coming under the provisions of this chapter until a license has been procured for such business from the hotel and restaurant commissioner.

History.—§49, ch. 16042, 1933; CGL 1936 Supp. 3355(1); §7, transferred from §511.04 as amended by §7, ch. 29821, 1955.

509.281 Prosecution for violation; duty of prosecuting attorneys; penalties.—The hotel commissioner or hotel inspector, upon ascertaining by inspection, that any hotel, rooming

house or restaurant is being carried on contrary to the provisions of this chapter shall make complaint and cause the arrest of the person so violating the same, and the county prosecuting attorney, county solicitor or state attorney in such case, upon request of said commissioner or inspector shall prepare all necessary papers and conduct said prosecution for any violation of the provisions of this chapter. The hotel commission shall proceed in the courts by mandamus or injunction, whenever such proceedings may be necessary to the proper enforcement of the provisions of this chapter or of the rules, regulations and orders lawfully entered and promulgated by the said hotel commissioner under authority of this chapter.

Any owner, manager, agent or person in charge of a hotel, apartment house, rooming house, restaurant, lunch or sandwich stand or counter who shall obstruct or hinder any deputy hotel commissioner in the proper discharge of his duties imposed by law or who shall fail or neglect or refuse to pay the license fee for inspection required by law, or who shall fail or refuse to perform or carry out any duty imposed upon him by law, or the rules and regulations authorized thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $10.00 nor more than $50.00, or shall be imprisoned in the county jail for not less than 10 days nor more than 90 days. Every day that such a hotel, rooming house, apartment house, restaurant, lunch or sandwich stand or counter shall be operated in violation of law, or rules and regulations authorized thereunder shall constitute a separate offense.

History.—§11, ch. 6952, 1915; RGS 2131; CGL 3360; transferred from §511.12 as amended by §9, ch. 29821, 1955.

509.291 Advisory council; composition; purpose; meetings; duties; etc.—

(1) There shall be an advisory council of eight members composed of the president and executive officer of the following organizations: Florida restaurant association, inc., Florida hotel association, inc., Florida apartment house association, inc., and Florida motel or motor court association, inc. Other incorporated associations having similar interests and statewide membership may be represented on the council and shall be entitled to the same privileges upon making application and receiving the approval of the hotel and restaurant commissioner.

(2) The purpose of the advisory council is to promote better relations, understanding and cooperation between the industries represented on the council and between such industries and the hotel and restaurant commission; to suggest means of better protecting the health, welfare and safety of persons utilizing the services offered by the industries represented on the council; and to give the commissioner the benefit of its knowledge and experience concerning the industries and individual businesses affected by the laws, rules and regulations administered by the commissioner.

(3) (a) The advisory council may be called into session by the hotel and restaurant commissioner at his discretion, or it may call itself into session if a majority of the council agrees that a meeting is necessary.

(b) Regardless of whether a meeting is called by the commissioner or by the council, the council must hold one regular meeting each year and may not hold more than one special meeting in each calendar month. All such meetings shall be held during one day.

(4) The members of the council shall receive no compensation for the performance of their duties hereunder, but the commissioner and the members of the council who are the presidents of their respective associations shall be reimbursed for travel expenses as provided in §112.061, when they attend a meeting called in conformity with the requirements of this section. The executive officers of the several associations shall not be reimbursed for travel expense incurred in attending such meetings.

History.—§1, ch. 28129, 1953; transferred from §509.052 as amended by §2, ch. 29821, 1955; (1) by §11, ch. 57-389.

509.292 Misrepresenting seafood; penalty.— No keeper of any hotel, boarding house, restaurant, lunch or sandwich stand, counter or of any place that is maintained and operated as a place where food is regularly prepared and sold for immediate consumption on or in the vicinity of the premises, shall knowingly and wilfully misrepresent the identity of any seafood or seafood products to any of the patrons or customers of such eating establishments. The identity of said seafood or seafood products shall be deemed misrepresented if:

(1) Its description is false or misleading in any particular;

(2) It is served, sold or distributed under the name of another seafood or seafood product;

(3) It purports to be or is represented as a seafood or seafood product for which a definition of identity and standard of quality has been established by custom and usage unless it conforms to such definition and standard;

(4) Any words, statements or other information used to describe said seafood or seafood products are not so used as to render it likely to be read and understood by the ordinary individual.

(5) Any person described in this section who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine not exceeding $500.00, or by imprisonment for a term not exceeding 6 months, or by both such fine and imprisonment.

History.—Comp §1, ch. 57-412.

509.301 Advisory council for industry education; compensation; purpose; meeting; duties, etc.—

(1) There is hereby created an advisory council for industry education which shall consist of twelve members composed of the following: eight members consisting of presi-

dent and executive officer of the following organizations: Florida restaurant association, inc., Florida hotel association, inc., Florida apartment house association, etc., and Florida motel or motor court association, inc.; one member who shall be the dean of the school of business of Florida state university; three members appointed by the hotel and restaurant commissioner from the field of education, consisting of one member as a representative of management, one member as a representative of junior colleges, and one member as a representative of vocational training.

(2) The purpose of this advisory council is to revitalize the lodging and food service industry by promoting and developing an efficient educational program within the industry itself as well as within the educational institutions that will best equip and train the personnel performing the services offered by the industries.

(3) The advisory council may be called into session by the hotel and restaurant commissioner at his discretion or it may meet from time to time whenever necessary to effectuate the purposes of this act.

(4) The members of the advisory council shall receive no compensation for the performance of their duties except that the members shall be reimbursed for traveling expenses as provided in §112.061, when attending a meeting called in conformity with the provisions of this act; provided, however, that the executive officers of the several associations referred to in subsection (1) shall not be reimbursed for traveling expenses incurred when attending such meetings.

History.—§1, ch. 61-257.

509.302 Director of education, personnel, employment duties, compensation.—

(1) The advisory council shall employ a director of education for the lodging and food service industry. With the concurrence of the board of control, the director shall establish his office in the school of business at Florida state university.

(2) The qualifications of the director shall include the ability to present program plans to industry members, federal agencies, boards of education, college presidents and foundation trustees. He shall possess a sound knowledge and philosophy of educational methods in this field as determined by the advisory council and the board of control.

(3) The director's basic role is to develop and blend together an educational program offered for the entire industry with proper emphasis on each of the types of educational programs required. Such programs shall include:

(a) Vocational training for the technicians in vocational programs.

(b) Training for supervisors and department heads in junior colleges.

(c) A degree program in management for top administrative positions.

(d) In-service, continuing education.

(4) The director shall formulate programs in accordance with and subject to the advice and recommendations of the advisory council and the board of control.

(5) The advisory council shall employ two field representatives as part of the over-all program for on-the-job training, which representative shall function under the director, one for lodging facilities and one for food service establishments. In addition the council shall employ a secretary for the director.

(6) The director, the field representatives, and the secretary shall receive an annual salary as determined by the advisory council and the board of control.

History.—§2, ch. 61-257.

CHAPTER 513

TOURIST CAMPS

513.01 Tourist and trailer camps defined.—A tourist camp is a place where two or more tents, tent houses, or camp cottages are located and offered by a person or municipality for sleeping or eating accommodations, most generally to the transient public, and where there is direct remuneration in money to the owner, or indirect benefit to the owner in connection with a related business. A trailer camp is a place set aside and offered by any person or municipality, most generally to the transient public, for the parking and accommodation of two or more automobile trailers which are to be occupied for sleeping or eating, for either a direct money consideration or for indirect benefit to the owner in connection with a related business.

History.—§1, ch. 12419, 1927; CGL 4140; §1, ch. 19365, 1939.

513.02 Permit for establishment; revocation.—No person or municipality shall establish or maintain any tourist camp or trailer camp in this state without first obtaining a permit therefor from the state board of health, and the state board of health may revoke any permit issued to any person or municipality operating or maintaining a tourist camp or trailer camp upon the failure of such person or municipality to comply with the provisions of this chapter or the rules and regulations made and promulgated by the state board of health. Renewal of permit shall be as the state board in its discretion may require.

History.—§2, ch. 12419, 1927; CGL 4141; §1, ch. 19365, 1939.
cf.—§1.01(3), "Person" defined.

513.03 Application for permit.—Application for permit shall be made in writing to the state board of health. The application shall state the location of the existing or proposed camp, type of camp, the approximate number of persons or trailers to be accommodated, the probable duration of use, and any other information the state board of health may require.

History.—§3, ch. 12419, 1927; CGL 4142; §1, ch. 19365, 1939.

513.04 Issuance of permit.—If the state health officer is satisfied, after causing an inspection to be made, that the existing or proposed tourist or trailer camp is so located, constructed, and equipped as not to be a source of danger to the health of others or its occupants he shall issue in the name of the state board of health the necessary permit in writing on a form to be prescribed by the state board of health.

History.—§4, ch. 12419, 1927; CGL 4143; §1, ch. 19365, 1939.

513.05 Supervision by state board of health; rules and regulations.—The state board of health shall have general supervision of the health and sanitary conditions of all tourist and trailer camps located in the state, and shall make, promulgate and enforce such rules and regulations pertaining to the location, construction, equipment and operation of such camps as may be necessary.

History.—§5, ch. 12419, 1927; CGL 4144; §1, ch. 19365, 1939.

513.06 Laws and rules and regulations to be posted in camps.—The state board of health shall see that there is posted in one or more places in each tourist camp and trailer camp, a copy of the provisions contained in this chapter, and such rules and regulations as the state board of health may make or promulgate relating to the health and sanitation in such camps.

History.—§12, ch. 12419, 1927; CGL 4150; §1, ch. 19365, 1939.

513.07 Parking of trailers on water sheds prohibited.—It is unlawful to park an automobile trailer house for occupancy on the water shed of any stream or water course used as a source of public water supply except under such regulations as the state board of health may prescribe.

History.—§1, ch. 19365, 1939; CGL 1940 Supp. 4150(1).

513.08 Use of toilets on trailers prohibited in the state.—It is unlawful to use any toilet, commode or receptacle for receiving the bowel movements in connection with or installed in an automobile trailer, cottage or house when said trailer is being drawn along the public highways of the state or is at rest on said highways or right-of-ways of same. It is unlawful to use such toilets or devices within a trailer camp having a permit from the state board of health except where the owner or operator consents and has suitable arrangements approved in writing by the state board of health to handle the wastes from such toilets. It is unlawful to empty a receptacle containing human excreta or urine from a trailer house except into a sewerage system, or into a privy of the type approved by the state board of health. Trailer camp owners or operators shall provide means for the emptying of

such receptacles and their cleaning as may be specified in the rules and regulations of the state board of health.

History.—§1, ch. 19365, 1939; CGL 1940 Supp. 4150(2).

513.09 Maintaining camp without permit or after revocation of same; penalty.—Any person, or in case of a corporation or municipality, the officers thereof, who shall maintain a tourist camp or trailer camp without first obtaining a permit as provided by §513.02, or who shall maintain the same after revocation thereof, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding three hundred dollars or by imprisonment not exceeding three months.

History.—§2, ch. 12419, 1927; CGL 7844; §1, ch. 19365, 1939.

513.10 Enforcement and penalties.—This chapter and regulations adopted hereunder may be enforced in the manner provided in §381.031 (4). Such regulations shall be a part of the sanitary code of Florida created by §381.031 (1) (g) 12. Violations of this chapter and the rules and regulations adopted hereunder shall be subject to the penalties provided in §381.411.

History.—§1, ch. 19365, 1939; CGL 1940 Supp. 7849(a); §1, ch. 59-214.

513.12 Obtaining accommodations with intent to defraud; penalty.—Any person who shall obtain quarters or living accommodations at any tourist camp, with intent to defraud the owner or keeper thereof, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding ten dollars or by imprisonment not exceeding ten days; provided, that the provisions of this section shall not apply where there has been an agreement in writing for delay in payment for a period to exceed ten days.

History.—§10, ch. 12419, 1927; CGL 7849.
cf.—§775.06 Alternative punishment.

CHAPTER 514

PUBLIC BATH HOUSES AND SWIMMING OR BATHING PLACES

514.01 Operators of bath houses to maintain life lines and rafts.—Any person operating or maintaining public bath houses, bathing pavilions, or other similar places, where bathing suits are furnished for hire or rent, at the seaside resorts in the state, shall maintain at all times proper and safe life lines and life rafts for the protection of the bathers at such seaside resorts.

History.—§1, ch. 6189, 1911; RGS 2363; CGL 8767.
cf.—§1.01(3) "Person" defined.

514.02 Supervision by state board of health.—The state board of health shall have supervision over the sanitation, healthfulness and cleanliness of swimming pools, bath houses, public swimming and bathing places and all related appurtenances and may make and enforce such rules and regulations pertaining thereto as it shall deem proper.

History.—§1, ch. 7825, 1919; CGL 8768.

514.03 Permit necessary to operate swimming pool, etc.—It is unlawful for any person, institution, municipality or county to construct or to add to or modify, or to operate or to continue to operate any swimming pool, public bath house, bathing or swimming place, or any structure intended to be used for swimming or bathing purposes without an unrevoked permit so to do from the state board of health. This permit shall be obtained in the following manner: any person, institution, municipality or county desiring to construct, add to or modify, or to operate and maintain any swimming pool, bathhouse, bathing or swimming places or structures intended to be used for swimming or bathing purposes within the state shall file application for permission so to do with the state board of health, which application shall be accompanied by detailed maps, drawings, specifications and descriptions of the structure, its appurtenances and operation, description of the source or sources of water supply, amount and quality of water available and intended to be used, method and manner of water purification, treatment, disinfection, heating, regulating and cleaning; measures to insure personal cleanliness of bathers; method and manner of washing, disinfecting, drying and storing bathing apparel and towels, and all other information and statistics that may be required by the state board of health; whereupon, the state board of health shall cause an investigation to be made of the proposed or existing pool or public bathing places and if it determines as a fact that the same is or may reasonably be expected to become unclean or unsanitary or may constitute a menace to public health, it shall deny the application for permit; if it determines as a fact that the same is or may reasonably be expected to be conducted continuously in a clean and sanitary manner and will not constitute a menace to public health, it shall grant the application for permit under such restrictions as it shall deem proper.

History.—§2, ch. 7825, 1919; CGL 8769.

514.04 Inspectors may enter premises.—For the purpose of this chapter the state board of health or its inspectors at any reasonable time may enter upon any and all parts of the premises of such bathing and swimming places to make examination and investigation to determine the sanitary condition of such places and whether the provisions of this chapter or rules and regulations of the state board of health pertaining thereto are being violated. The state board of health may from time to time at its discretion publish the reports of such inspections in its monthly bulletin.

History.—§3, ch. 7825, 1919; CGL 8770.

514.05 Permit may be revoked.—Any permit granted by the state board of health as provided in this chapter shall be revokable or subject to suspension at any time, if it shall determine as a fact that the swimming or bathing place or places are being conducted in a manner unsanitary, unclean or dangerous to public health.

History.—§4, ch. 7825, 1919; CGL 8771.

514.06 Injunction to restrain violations.—Any swimming pool, public swimming or bathing place or places, constructed, operated or maintained contrary to the provisions of this chapter are declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined in an action brought by the local or state board of health.

History.—§5, ch. 7825, 1919; CGL 8772.
cf.—Ch. 64, Injunctions.

514.07 Violation of law relating to sanitation, etc., of swimming pools, etc.—Any person, whether as principal or agent, employer or employee, who violates any of the provisions of §§514.02-514.06, shall be guilty of a misdemeanor, and each day that conditions or actions, in violation of §§514.02-514.06 shall continue, shall be deemed a separate and distinct offense, and for each offense, upon conviction, he shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or shall be imprisoned in the county jail for a term of not exceeding six months.

History.—§6, ch. 7825, 1919; CGL 7838.
cf.—§775.06 Alternative punishment.

514.08 Failure to provide life lines and rafts at seaside resorts; penalty.—Any person operating or maintaining public bath houses, bathing pavilions, or other similar places, where bathing suits are furnished for hire or rent, at the seaside resorts in the state, failing to maintain at all times proper and safe life lines and life rafts for the protection of the bathers at such seaside resorts shall be subject to a fine of not more than five hundred dollars, or to imprisonment in the county jail of not more than six months.

History.—§2, ch. 6189, 1911; RGS 5643; CGL 7837.
cf.—§775.06 Alternative punishment.

CHAPTER 516

SMALL LOAN BUSINESS

516.01 Definitions; businesses excluded.—(1) DEFINITIONS.—As used in this chapter:

(a) The word "person" shall include individuals, partnerships, associations, trusts, corporations and any other legal entities;

(b) The word "license" shall mean a permit issued under authority of this chapter to make and collect loans in accordance with the provisions of this chapter at a single place of business;

(c) The word "licensee" shall mean a person to whom one or more licenses have been issued;

(d) The words "the licensing official" shall mean the comptroller of the state;

(e) The word "department" shall mean the office of the comptroller.

(2) BUSINESSES EXCLUDED.—This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, industrial loan and investment companies, to any registrant under chapter 519 or any bona fide pawnbroking business transacted under a pawnbroker's license. No pawnbroker may be licensed to transact business under this chapter.

History.—§19, ch. 10177, 1925; CGL 4016; §6, ch. 20728, 1941; am. §7, ch. 22858, 1945; §1, ch. 57-201.

516.02 Loans; rate of interest; license.—No person shall engage in the business of making loans of money, credit, goods or choses in action in the amount, or to the value of six hundred dollars or less, and charge, contract for, or receive a greater rate of interest than ten per cent per annum therefor, except as authorized by this chapter, and without first obtaining a license from the comptroller of the state, hereinafter called the licensing official.

History.—§1, ch. 10177, 1925; CGL 3999; §2, ch. 57-201.

516.03 Application for license; fees; etc.—(1) APPLICATION.—Application for a license to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the licensing official, and shall contain the name, residence and business addresses of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof, also the county and municipality with the street and number or approximate location, where the business is to be conducted and such further relevant information as the licensing official may require. At the time of making such application the applicant shall pay to the licensing official the sum of one hundred dollars as an annual license fee for a period terminating on the last day of the current calendar year, and a further fee of one hundred dollars for investigating the application and the applicants.

(2) FEES.—Fees herein provided for shall be collected by the licensing official and shall be turned into the state treasury to the credit of the general revenue fund. The licensing official shall have full power to employ such examiners or clerks to assist the licensing official as may from time to time be deemed necessary and fix their compensation. A sufficient appropriation for carrying out the provisions of this chapter shall be included in the biennial appropriations act.

History.—§2, ch. 10177, 1925; CGL 4000; §1, ch. 20728, 1941.
Sub §(2) am. §127, ch. 26869, 1951; §3, ch. 57-201.

516.05 Issuance of license; denial; review; etc.—

(1) INVESTIGATION OF APPLICATION.—Upon the filing of such application and the payment of such fees, the licensing official shall make an investigation of the facts concerning the application and the requirements provided for in subsection (2) of this section. At least ten days before entering the order granting or denying the application, he shall mail a notice of the receipt of the application to the local small loan exchange (if there be one) in

the community where the applicant proposes to do business. If any licensee or registrant files an objection to the issuance of the license to said applicant, or if the licensing official has any doubts of the applicant meeting the standards of subsection (2), he shall set a date and time for a hearing on such application not less than forty days nor more than sixty days from the date of mailing such notice. In addition to such hearing, the licensing official may make such further and other investigation relative to the application and the requirements as he may deem fit.

(2) ISSUANCE OR DENIAL OF LICENSE. —If the licensing official shall find (a) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof, if the applicant is a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purposes of this chapter, and (b) that allowing such applicant to engage in the business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, (in making such determination the licensing official shall take into consideration the services rendered borrowers of the said community by the registrants, if any, under chapter 519 as well as licensees, if any, under this chapter in said community) and (c) that the applicant has available for the operation of such business at the specified location liquid assets of at least ten thousand dollars, if the specified location is in a community of twenty-five thousand or less population, according to the last United States census, or twenty-five thousand dollars, if the specified location is in a community of more than twenty-five thousand population, according to said census, he shall thereupon file his findings of fact with the department and enter an order granting such application and issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the location specified in the said application (provided that nothing in this chapter shall be construed to prevent a licensee from lending to residents of any part of this state or any other state or country nor to prohibit the making of loans by mail when authorized by the department). Said license shall remain in full force and effect until surrendered by the licensee or revoked or suspended as provided by law or as may be prohibited by the provisions of this chapter. If the licensing official shall not so find, he shall thereupon enter an order denying such application and notify the applicant of the denial and return the sum paid as a license fee, retaining the one hundred dollars investigation fee to cover the cost of investigating the application. The licensing official shall approve or deny every application for license hereunder within ninety days from the filing thereof with the said fees.

(3) EXISTING LICENSES — PURCHASE OF ASSETS.—Any licensee having a license under this chapter at the effective date of this amendment shall be conclusively presumed to have established the convenience and advantage of its business to the community wherein it is licensed. In the event any person shall purchase substantially all of the assets of any existing licensed office, the purchaser, if not a licensee hereunder, upon application, shall be granted a ninety-day temporary license hereunder, applicable to the same location, within ten days of such purchase, and the licensing official shall cause an investigation to be made as provided by subsection (1) to determine whether a license shall be issued, provided such purchaser shall not be required to meet the provisions of subsection (2) (b) of this section. Where the purchaser is a licensee hereunder the licensing official shall issue a license within ten days of such purchase if the purchaser meets the requirements of this chapter provided that such purchaser shall not be required to meet the requirements of subsection (2) (b) of this section and the licensee selling such assets shall surrender its license for such location to the licensing official.

(4) RIGHT OF REVIEW.—If the application is denied, the licensing official shall within ten days thereafter file in his office a written record which shall include a transcript of the evidence, the findings with respect thereto, the order and the reasons supporting the denial and forthwith serve upon the applicant a copy thereof. Such order and findings or an order granting an application may be reviewed by appeal to the circuit court.

(5) PUBLIC RECORDS.—All findings of facts and orders filed with the department shall be a public record.

History.—§4, ch. 10177, 1925; CGL 4002; §2, ch. 20728 1941; §4, ch. 57-201.

516.07 Revocation, reinstatement, surrender, etc., of license; right of review.—

(1) REVOCATION OF LICENSE. — The licensing official may, upon ten days' notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to comply with any order of the licensing official lawfully made pursuant to and within the authority of this chapter; or that

(b) The licensee either knowingly or without the exercise of due care to prevent the same has violated any provision of this chapter or any regulation lawfully made by the licensing official under and within the authority of this chapter; or that

(c) Any fact or condition existed at the time of the original application for such license which clearly would have warranted the licensing official in refusing originally to issue such license.

(2) SUSPENSION OF LICENSE. — If the licensing official shall find that probable cause for revocation of any license exists and that enforcement of this chapter requires immediate suspension of such license pending investigation, he may, upon three days' notice and a hearing, enter an order suspending such license for a period not exceeding thirty days.

(3) LICENSES AFFECTED BY REVOCATION OR SUSPENSION.—The licensing official may revoke or suspend only the particular license with respect to which ground for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation are of general application to all offices or to more than one office operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licensees as such grounds apply to, as the case may be.

(4) SURRENDER OF LICENSE. — Any licensee may surrender any license by delivering it to the licensing official with a written notice that he thereby surrenders it, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(5) PRE-EXISTING CONTRACTS.—No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(6) REINSTATEMENT OF LICENSE. — Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked or suspended in accordance with the provisions of this chapter, but the licensing official shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the licensing official in refusing originally to issue such license under this chapter.

(7) RIGHT OF REVIEW. — Whenever the licensing official shall revoke or suspend a license issued pursuant to this chapter, he shall forthwith enter an order to that effect and file in his office a written record which shall include a transcript of the evidence, the findings with respect thereto, the order, and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof, which order may be reviewed as provided by law.

History.—§6, ch. 10177, 1925; CGL 4004; §3, ch. 20728, 1941.

516.08 License to be posted.—The license shall be kept conspicuously posted in the place of business of the licensee.

History.—§7, ch. 10177, 1925; CGL 4005.

516.09 License, removal, other business.—

(1) PLACE OF BUSINESS.—Not more than one place of business for the making of loans under this chapter shall be maintained under the same license, but the licensing official shall issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing issuance of a single license.

(2) REMOVAL.—No change in the place of business of a licensee to a location outside of the original city or town shall be permitted under the same license. When a licensee wishes to change his place of business within the same city or town, he shall give written notice thereof to the licensing official who shall investigate the facts, and if he shall find that the proposed location is reasonably accessible to borrowers under existing loan contracts, he shall enter an order permitting the change and shall file his findings with the department and shall amend the license accordingly. If the licensing official shall not so find, he shall file his findings with the department and shall enter an order denying the removal of the license to the requested location.

(3) OTHER BUSINESS IN THE SAME OFFICE.—A licensee may conduct the business of making loans under this chapter within a place of business in which other business is solicited or engaged in, unless the licensing official shall find, after a hearing, and based on written findings of fact, that the conduct of such other business by the licensee results in an evasion of this chapter. Upon such finding, the licensing official shall order the licensee, in writing, to desist from such evasion, provided, however, that no license shall be granted to or renewed for any person or organization engaged in the pawnbroker business.

History.—§8, ch. 10177, 1925; CGL 4006; §5, ch. 57-201.

516.11 Investigation by licensing officials.—

(1) EXAMINATIONS.—For the purpose of discovering violations of this chapter or securing information lawfully required by him hereunder, the licensing official may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person who shall be engaged in the business described in §516.02. If the licensing official shall have reason to believe that any act or business is being done, or is about to be done, which is illegal under this chapter, he may make all examinations and take all steps authorized under this subsection, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. Any person who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the amount or of the value of six hundred dollars or less, whether as principal, agent, broker, or otherwise shall, for the purposes of this subsection, be presumed to be engaged in such business. For the purposes of this section the licensing official and his duly designated representatives shall have and be given free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults, of all such persons. The licensing official and all persons duly designated by him shall have authority to require the attendance of witnesses and to examine under oath all persons whomsoever whose

testimony he may require relative to such loans or such business or to the subject matter of any examinations, investigation or hearing.

(2) ANNUAL EXAMINATION.—At least twice each year, but no oftener than is reasonably necessary in order to verify reasonably founded suspicions of violations, the licensing official or his duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers and records of such licensee in so far as they pertain to the business licensed under this chapter. Every licensee shall pay to the licensing official an examination fee based upon the amount of outstanding loans due the licensee at the time of said examination, as follows:

Amount Outstanding	Examination Fee
From $0 to $25,000.00	$ 30.00
From $25,000.01 to $50,000.00	40.00
From $50,000.01 to $100,000.00	60.00
From $100,000.01 to $250,000.00	75.00
From $250,000.01 and over	100.00

(3) LIEN FOR FEES.—The above examination fees shall be secured by a lien upon the assets of the licensee and if not paid within thirty days from and after the licensee is billed therefor by the licensing official the license of the licensee shall stand suspended until said examination fee is paid in full.

History.—§10, ch. 10177, 1925; CGL 4008; §4, ch. 20728, 1941; §6, ch. 57-201.

516.12 Records to be kept by licensee.—

(1) BOOKS AND RECORDS.—The licensee shall keep and use in his business such books, accounts, and records in accordance with sound and accepted accounting practices, to enable the licensing official to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the licensing official hereunder. Every licensee shall preserve such books, accounts and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein.

(2) ANNUAL REPORTS. — Each licensee shall annually on or before the first day of April file a report with the licensing official for the preceding calendar year. Such report shall give information with respect to the financial condition of such licensee and shall include the name and address of the licensee; balance sheets at the beginning and end of the accounting period; a statement of income and expense for said period; a schedule of assets used and useful in the small loan business; an analysis of charges, size of loans and types of security on loans of six hundred dollars or less; an analysis of delinquent accounts; an analysis of suits, repossessions and sales of chattels and such other relevant information as he may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the licensing official, who shall make and publish annually an analysis and recapitulation of such reports.

History.—§11, ch. 10177, 1925; CGL 4009; §5, ch. 20728, 1941; §7, ch. 57-201.

516.13 False publications prohibited.—No licensee subject to this chapter shall advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner whatsoever, any false, misleading or deceptive statement concerning the business authorized under this chapter.

History.—§12, ch. 10177, 1925; CGL 4010; §8, ch. 57-201.

516.14 Interest rates.—

(1) Every licensee may lend any sum of money not exceeding six hundred dollars on such security, if any, satisfactory to both the borrower and the licensee and may charge, contract for and receive thereon interest at a rate not to exceed three per cent per month on that part of the unpaid principal balance not exceeding three hundred dollars and two per cent per month on that part of the unpaid balance in excess of three hundred dollars but not exceeding six hundred dollars, provided that at the expiration of a period of twelve months following the last contractual installment date the interest on any balance still unpaid shall not exceed ten per cent per year. Interest shall not be payable in advance or compounded and shall be computed on unpaid balances on the basis of the number of days actually elapsed and, for the purpose of such computations, a month shall be any period of thirty consecutive days. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges which have accrued within two months on the prior loan and, for the purposes of this chapter, such loan contract shall be deemed a new and separate loan transaction. In addition to the interest herein provided for, no further or other charges or amount whatsoever for any examination, service, brokerage, commission or other thing or otherwise shall be directly or indirectly charged, contracted for or received, except the documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording or releasing in any public office, any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter, or actual and reasonable attorney fees as determined by the court in which suit is filed and court costs, including actual and reasonable expenses of repossession, storing and selling of any property pledged as security, as determined by the court in which suit is filed. If interest or charges in excess of those permitted by this chapter shall be charged, contracted for or received, except as the result of a bona fide or accidental error, the contract or loan shall be void and the li-

censee shall have no right to collect or receive any principal, interest or charges whatsoever. In the event of an accidental or bona fide error, the licensee shall refund or credit the borrower with the amount of such overcharge within five days of the discovery of such error.

(2) No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated to him, directly or contingently or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section.

(3) No licensee shall directly or indirectly charge, contract for or receive any interest or consideration greater than ten per cent per annum upon the loan, use or forbearance of money, goods, or things in action or upon the loan, use or sale of credit, of the amount or value of more than six hundred dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower, or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than six hundred dollars for principal.

History.—§13, ch. 10177, 1925; CGL 4011; §9, ch. 57-201.

516.15 Duties of licensee.—Every licensee shall:

(1) Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged. Upon such statement there shall be printed in English a copy of §516.14;

(2) Give to the borrower a plain and complete receipt for all payments made on account of any loan at the time payments are made;

(3) Permit payment of the loan in whole or in part prior to its maturity with interest on such payment to the date thereof;

(4) Upon repayment of the loan in full mark indelibly every paper signed by the borrower with the word "Paid" or "Cancelled" and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given by the borrower as security.

History.—§14, ch. 10177, 1925; CGL 4012.

516.16 Confession of judgment; power of attorney; contents of notes and security.—No licensee shall take any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay or security that does not state the actual amount of the loan, the time for which it is made, and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

History.—§15, ch. 10177, 1925; CGL 4013.

516.17 Assignment of wages, etc., given to secure loans.—No assignment of or order for the payment of any salary, wages, commissions or other compensation for services, earned or to be earned, given to secure any such loans shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower be valid unless it be in writing signed in person by the borrower; or, if the borrower is married, unless it be signed in person by both husband and wife; provided, that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to such assignment, order, mortgage or lien.

History.—§16, ch. 10177, 1925; CGL 4014; am. §1, ch. 28011, 1953.
cf.—§519.11 Wage assignments.

516.18 Rate of interest or consideration.—

(1) No person engaged in the business of making loans of money, except as authorized by this chapter, shall directly or indirectly charge, contract for or receive any interest or consideration greater than ten per cent per annum upon the loan, use or forbearance of money, goods or things in action, or upon the loan, or use of credit, of the amount or value of six hundred dollars or less.

(2) The foregoing prohibition shall apply to any lender who, as security for any such loan, use or forbearance of money, goods or things in action, or for any such loan or use of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for services or otherwise seeks to obtain a greater compensation than is authorized by this chapter.

(3) No loan for which a greater rate of interest or charge than is allowed by this chapter that has been contracted for or received, wherever made, shall be enforced in this state, and every person in anywise participating therein in this state shall be subject to the provisions of this chapter.

History.—§17, ch. 10177, 1925; CGL 4015; §10, ch. 57-201.
cf.—Ch. 687, Interest and usury.

516.19 Penalty for violations.—Any person who shall violate any of the provisions of §§516.02, 516.09, 516.13, 516.14 or 516.18 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

History.—§18, ch. 10177, 1925; CGL 7880.
cf.—§775.06, Alternative punishment.

516.20 Interest defined.—

(1) Any profit or advantage of any kind whatsoever that any licensee may contract for, collect, receive or in anywise obtain by a collateral sale, purchase, or agreement, in connection with any loan of six hundred dollars or less, shall be deemed to be interest or consid-

eration for the purposes of regulation under this chapter. Such transactions shall be governed by and subject to the provisions of this chapter, except commissions received as a person licensed by the insurance commission of Florida on insurance written as hereinafter permitted, shall be deemed to be interest or consideration for the purposes of regulation under this chapter. However, security consisting of tangible property offered as security may be reasonably insured against loss for a reasonable term, considering the circumstances of the loan, and such insurance shall not be deemed such collateral sale, purchase, or agreement when the policy is payable to the borrower or any member of his family, even though the customary mortgagee clause is attached or the licensee is a coassured; provided, that such insurance is sold at standard rates through a person duly licensed by the insurance commissioner of Florida.

(2) No licensee shall enter into any contract for a loan for a period of longer than twenty-four months from the date the loan is made.

History.—§7, ch. 20728, 1941; §11, ch. 57-201.

516.21 Restriction of borrower's indebtedness.—No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than ten per cent per annum upon any loan, or upon any part or all of any aggregate indebtedness of the same borrower, of the amount of more than six hundred dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife jointly or severally, to owe directly or contingently or both to the licensee at any time a sum of more than six hundred dollars for principal; provided, however, that if the proceeds of any loan of six hundred dollars or less are used to discharge a pre-existing debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan with interest at a rate not exceeding ten per cent per annum and the acceptance of one or more such guaranties in any aggregate amount shall not affect the rights of such licensee to make the charges against the primary borrower authorized by §516.14, nor shall the limitation apply to the isolated acquisition directly or indirectly by purchase or by discount of bona fide obligations of a borrower. Provided, however, in the event a licensee shall make a bona fide purchase of substantially all of the loans, made under this chapter, from another licensee, or other lender not affiliated with the purchaser and such licensee or other lender shall have an existing loan outstanding to one or more of the borrowers whose loans are purchased, such licensee making such purchase shall be entitled to liquidate and collect the balances due on such loans, including all lawful charges and interest at the rates or amounts agreed upon in such loan contracts.

History.—§8, ch. 20728, 1941; §12, ch. 57-201.

516.22 Regulations; orders and certified copies.

(1) REGULATIONS.—The licensing official shall have the power and authority to issue regulations. Such regulations shall be referenced to the section or sections which set forth the legislative standard which they interpret or apply.

(2) ORDERS.—Every regulation shall be promulgated by an order. Any ruling, demand, requirement or similar administrative act may be promulgated by an order. Every order shall be in writing, shall state its effective date and the date of the promulgation, and shall be entered in an indexed permanent book which shall be a public record. A copy of every order promulgating a regulation and of every order containing a requirement of general application shall be mailed to each licensee under this chapter at least fifteen days before the effective date thereof.

(3) CERTIFIED COPIES OF OFFICIAL DOCUMENTS.—On application of any person and payment of the costs thereof, at the same rate and fees as allowed clerks of the circuit court by statute, the licensing official shall furnish under his seal and signed by him or his deputy a certified copy of any license, regulation or order. In any court or proceeding such copy shall be prima facie evidence of the fact of the issuance of such license, regulation or order.

History.—§9, ch. 20728, 1941; §13, ch. 57-201.
cf.—§28.24 Fees of clerks of circuit court.

516.23 Injunctions; receivers.—In addition to all other powers granted to him under this chapter, the licensing official may, (1) whenever he has reasonable cause to believe any person is violating or is about to violate any provision of this chapter or any order or regulation, lawfully made pursuant to the authority of this chapter, enter an order requiring such person to desist from such violation; (2) and the licensing official may bring an action in the name of the state in the circuit court of the county in which the licensed place of business is located on the relation of the attorney general and the licensing official against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper. (3) In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, said circuit court shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant including books, papers, documents, and records appertaining thereto or so much

thereof as the court may deem reasonably necessary to prevent further violation of this chapter through or by means of the use of said property and business. Such receiver when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court.

History.—§9, ch. 20728, 1941.

516.25 Proceeding for review.—In addition to any other remedy he may have, any licensee and any person considering himself aggrieved by any action of the licensing official hereunder may, within thirty days from the entry of the order complained of, or within sixty days of the action complained of if there is no order, bring an action in the circuit court of the county in which the licensed place of business is located to review such action. In such action the proceedings shall be, in all respects, de novo. In such action the record, transcript, evidence, findings, and order of the licensing official shall be admissible as evidence.

History.—§10, ch. 20728, 1941.

516.26 Purchase or assignment of wages, salaries, etc.—That hereafter the payment of six hundred dollars or less in money, credit, goods or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under, and the enforcement and interpretation of, any law, civil or criminal, relating to loans, interest charges or usury, be deemed a loan secured by such assignment and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall, for the purpose of regulation under, and the interpretation and enforcement of, such law, be deemed interest upon such loan from the date of such payment until the date such compensation is payable. Each such transaction shall be governed by and subject in all respects to all provisions of law relating to loans, interest, charges, usury, and to the same extent as if it had been in form a loan of the sum paid for the assignment.

History.—§1, ch. 20209, 1941; §14, ch. 57-201.

516.27 Pre-existing contracts.—This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any obligor, provided further, that nothing contained herein shall be construed so as to impair or affect the obligation of any contract of loan which was lawfully entered into prior to the effective date of this law.

History.—Comp. §15, ch. 57-201.

516.28 Transfers from chapter 519, Florida Statutes.—If such applicant is presently holding a license under the provisions of chapter 519 at the address for which application is now being made, it will not be necessary for such applicant to establish the convenience and advantage to the community for a license to be issued, assuming the other requirements of this law are met, if the license under chapter 519 is to be surrendered at the time the license under this chapter is issued.

History.—Comp. §16, ch. 57-201

516.29 Suspension or revocation of license for unreasonable collection tactics.—The comptroller shall have the authority to suspend or revoke the license of any licensee found guilty by the comptroller of using unreasonable collection tactics.

History.—Comp. §20, ch. 57-201.

516.30 Period of transition allowed.—Upon this law taking effect the department is hereby authorized to permit or allow a period of sixty days for the transition of the business of the then licensees.

History.—Comp. §17, ch. 57-201.

CHAPTER 517

SALE OF SECURITIES

517.01 Short title.—This chapter may be cited as the uniform sale of securities law.

History.—§22, ch. 14899, 1931; CGL 1936 Supp. 6002(1).

517.02 Definitions.—When used in this chapter the following terms shall, unless the text otherwise indicates, have the following respective meanings:

(1) "Security" shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, whiskey warehouse receipt, or other commodity warehouse receipt, or right to subscribe to any of the foregoing; certificates of interest in a profit-sharing agreement, or the right to participate therein; certificate of interest in an oil, gas, petroleum, mineral or mining title or lease, or the right to participate therein; collateral trust certificate, preorganization certificate, preorganization subscription, or any transferable share, investment contract, or beneficial interest in title to property, profits or earnings; interests in or under a profit-sharing or participation agreement or scheme, or any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, certificate or receipt for a security or for subscription to a security.

(2) "Person" shall include a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust and any unincorporated organization. As used herein the term "trust" shall not include a trust created or appointed under or by virtue of a last will and testament, or by a court of law or equity, or any public charitable trust.

(3) "Sale" or "sell" shall include every disposition, or attempt to dispose, of a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sale" or "sell" shall also include a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell, directly or by an agent, or a circular letter, advertisement or otherwise; provided, that a privilege pertaining to a security giving the holder the privilege to convert such security into another security of the same issue shall not be deemed a sale of such other security within the meaning of this definition and such privilege shall not be construed as affecting the status of the security to which such privilege pertains with respect to exemption or registration under the provisions of this chapter, but when such privilege of conversion shall be exercised such conversion shall be subject to the limitations hereafter provided in subsection (9) of §517.06; and, provided, further, that the issue or transfer of a right pertaining to a security and entitling the holder of such right to subscribe to another security of the same issuer, when such right is issued or transferred with the security to which it pertains, shall not be deemed a sale of such other security within the meaning of this definition and such right shall not be construed as affecting the status of the security to which such right pertains with respect to exemption or registration under the provisions of this chapter; but the sale of such other security upon the exercise of such right shall be subject to the provisions of this chapter.

(4) "Dealer" shall include every person other than a salesman who in this state engages for all or part of his time directly or through an agent in the business of:

(a) Selling any security issued by another person or purchasing or otherwise acquiring securities from another for the purpose of reselling them or offering them for sale to the public;

(b) Offering, buying, selling or otherwise dealing or trading in securities as agent or principal for a commission or at a profit;

(c) Dealing in futures or differences in market quotations of prices or values of any securities or accepts margins on purchases or sales or pretended purchases or sales of securities.

(d) "Dealer" shall include "investment adviser" and "investment counsel" and "investment counsellor" which is hereby defined to be every person who in this state for compensation engages in the business of advising others, either directly or indirectly or through publications or writings, as to the value of securities, or as to the advisability of investment in or purchasing securities, and every person other than a certified public accountant who issues or promulgates analyses or issues reports concerning securities, provided, the term "dealer" shall not include any licensed practicing attorney who renders or performs any of said services in connection with the regular practice of his profession, nor to a wholesaler selling exclusively to dealers, nor to a person buying and selling securities exclusively through a registered dealer or stock exchange. "Dealer" shall include every person using bonds in lieu of money in the payment of taxes or in the redemption of delinquent taxes or tax certificates, except taxes assessed against the property of the person so using.

(5) "Issuer" shall mean and include every person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust or unincorporated association or partnership of any kind to be formed shall be deemed as an issuer.

(6) "Salesman" shall include every natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer, to sell securities in any manner in this state. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer shall not be salesmen within the meaning of this definition.

(7) "Broker" shall mean dealer as herein defined.

(8) "Agent" shall mean salesman as herein defined.

(9) "Commission" shall mean the securities commission of this state.

(10) "Mortgage" shall be deemed to include any trust instrument to secure a debt.

History.—§1, ch. 14899, 1931; §1, ch. 17253, 1935; CGL 1936 Supp. 6002(2); §1, ch. 19190, 1939; am. §1, ch. 21709, 1943; am. §1, ch. 24066, 1947.

Am. §11, ch. 25035, 1949.

517.03 Securities commission; power to make rules and regulations.—A commission is created to be known as Florida securities commission, who shall administer and provide for the enforcement of all the provisions of this chapter. The commission shall make, adopt, promulgate, amend and repeal all rules and regulations necessary or convenient for the carrying out of the duties, obligations and powers conferred on said commission and perform any other acts necessary for the proper administration and enforcement of this chapter. The commission shall consist of the comptroller, the treasurer and the attorney general of the state, any two of whom shall constitute a quorum. The commission shall have its office in the city of Tallahassee in rooms to be provided by the state for that purpose and all of its records shall be there kept. It shall hold meetings upon such days as may be determined by the commission and may hold special meetings upon the call of the chairman or any two members. It shall keep a complete record of all its meetings, of its acts, and of the business it transacts, and may prepare all necessary regulations and blank forms for the conduct of its business.

History.—§2, ch. 14899, 1931; CGL 1936 Supp. 6002(3); §1, ch. 59-423.

517.04 Employment of additional help by commission; expenses; reports.—The commission may employ from time to time such clerks and employees as are necessary for the administration of this chapter.

The commission and each of the employees shall take and subscribe and file the oath of office prescribed by law.

All fees and charges of any nature collected by the commission shall be paid into the state treasury and credited to the general revenue fund and an appropriation shall be made biennially of necessary funds for the administration of the provisions of this chapter. The commission or any person appointed or employed by the commission shall be reimbursed, in addition to their salary or compensation, for traveling expenses as provided in §112.061.

The commission shall report to the governor annually. The report shall contain an account of the work of the commission during the period covered and such data and information as may be deemed necessary or appropriate.

History.—§3, ch. 14899, 1931; §2, ch. 17253, 1935; CGL 1936 Supp. 6002(4); am. §128, ch. 26869, 1951; §19, ch. 63-400.

517.05 Exempt securities.—Except as otherwise expressly provided, the provisions of this chapter shall not apply to any of the following classes of securities:

(1) Any security issued or guaranteed by the United States or any territory or insular possession thereof, or by the District of Columbia, or by any state of the United States or political subdivision or agency thereof.

(2) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale or offer of sale thereof maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this state

as a valid obligation by such foreign government or by such state, province or political subdivision thereof issuing the same.

(3) Any security issued by and representing an interest in or a direct obligation of a national bank or issued by any federal land bank or joint-stock land bank or national farm loan association under the provisions of the federal farm loan act of July 17, 1916, or by any corporation created and acting as an instrumentality of the government of the United States pursuant to authority granted by the congress of the United States.

(4) Any security issued or guaranteed either as to principal, interest or dividend by a corporation owning or operating a railroad or any other public service utility; provided, that such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a public commission, board or officer of the government of the United States, or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power or other rolling stock mortgaged, leased or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state, or of the Dominion of Canada, to secure the payment of such equipment securities: also bonds, notes or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove in subsection (4) described; provided, that the collateral securities equal in fair value at least one hundred twenty-five per cent of the par value of the bonds, notes or other evidences of indebtedness so secured.

(5) Any security issued by a corporation organized exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(6) Securities appearing in any list of securities dealt in on the stock exchange of New York, Boston, Chicago, or any other city of the United States of more than one million inhabitants, the board of trade of the city of Chicago or of the American stock exchange, and which securities have been so listed pursuant to official authorization by such exchange, and also all securities senior to any securities so listed, or represented by subscription rights which have been so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as such listings shall remain in effect. The commission may deny this exemption with reference to any particular security listed on any of such exchanges, by order published in such manner as the commission shall find proper.

(7) Securities appearing in any list of securities dealt in on any other recognized and responsible stock exchange which has been previously approved by the commission, and which securities have been so listed pursuant to official authorization by such exchange, and also all securities senior to any securities so listed, or represented by subscription rights which have been so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect. The commission at any time may withdraw approval theretofore granted by it to any exchange, and upon such withdrawal no security listed on such exchange shall be longer entitled to the benefit of such exemption. The commission may also deny this exemption with reference to any particular security listed on any such exchanges, by order published in such manner as the commission shall find proper.

(8) Any security issued by and representing an interest in or a direct obligation of any state bank, trust company or savings institution incorporated under the laws of and subject to the examination, supervision, and control of this state; or issued by any building and loan association of this state under like supervision.

(9) Any security, other than common stock, providing for a fixed return, which has been outstanding and in the hands of the public for a period of not less than five years, upon which no default in payment of principal or failure to pay the return fixed, has occurred for a continuous immediately preceding period of five years.

(10) All agricultural cooperatives organized under chapter 618, and operating wholly within the state and all its stockholders are bona fide legal residents of the state, and no nonresident promoter is interested therein, shall be exempt from compliance with any of the provisions of the Florida securities law, same being chapter 517.

History.—§4, ch. 14899, 1931; §3, ch. 17253, 1935; CGL 1936; Supp. 6002(5); (11) §1, ch 26965, 1951; (6) §1, ch. 29863, 1955; (9) by §1, ch. 59-256; (9) r, (10), (11) renumbered by §1, ch. 61-78; (10) a. by §1, ch. 61-103.

517.06 Exempt transactions.—Except as hereinafter expressly provided, the provisions of this chapter shall not apply to the sale of any security described in subsections (1) through (14).

In any of the transactions referred to in subsections (8), (10) and (11), written notice is required to be given to said Florida securities commission in advance of the sale of securities in such exempt transactions, such notice to be on forms prescribed by the Florida securities commission and to contain such information as the Florida securities commission shall deem necessary to affirmatively show particular

transactions to be in fact exempt transactions and permissible under this section. A twenty-five dollar filing fee shall accompany each notice. The names of all persons who will be connected with the offering of such securities for sale shall be filed with such notice and the commission may require all funds received from such sales placed in escrow pending further order of the commission. No sales shall be made by any person not listed in such notice.

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy.

(2) By or for the account of a pledge holder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale of securities when made by or on behalf of a vendor not the issuer or underwriter thereof, who, being the bona fide owner of such securities disposes of his own property for his own account and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(4) The distribution by a corporation, actively engaged in the business authorized by its charter, of securities to its stockholders or other securities holders as a stock dividend or other distribution out of earnings or surplus; or the issuance of securities to the security holders or other creditors of a corporation in the process of a bona fide reorganization of such corporation made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the issuance of additional securities of a corporation sold or distributed by it among its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(5) The sale, transfer or delivery of securities to a bank, savings institution, trust company, or other trust, insurance company, corporation, pension plan, or to a broker or dealer.

(6) The transfer or exchange by one corporation to another corporation of their own securities in connection with a consolidation or merger of such corporations.

(7) Bonds or notes secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the bonds or notes secured thereby, are sold to a single purchaser of a single sale; provided, however, that such bonds or notes are not offered for sale in connection with an express recourse agreement or guarantee as to the repayment of principal or interest, or both.

(8) Bonds or notes secured by mortgage upon real estate or tangible personal property situated within the state where the bonds or notes are sold to not more than twenty purchasers and the total face amount of all bonds or notes secured by a single mortgage does not exceed ten thousand dollars when said bonds and notes are sold by the issurer thereof. Successive filings by any one issuer may not be made under this subsection.

(9) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion; provided, that the security in exchange to make such conversion so surrendered has been registered under the law or was, when sold, exempt from the provisions of the law.

(10) Not exceeding twenty-five subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof under the laws of this state or not exceeding twenty-five subscriptions for shares of and the beneficial interests in a trust or partnership organized under the laws of this state, when no expense is incurred, or no commission, compensation or remuneration is paid or given for or in connection with the sale or disposition of such securities.

(11) The sale of its shares by a corporation organized and existing under the laws of this state when the total number of shareholders does not and will not after such sale exceed twenty and the total face amount or total sales price of such shares does not and will not after such sale exceed ten thousand dollars; provided, that such securities are issued and disposed of without the payment of any commission, compensation or remuneration and for the sole account of the issuer in good faith and not for the purpose of evading the provisions of this chapter.

(12) The sale or distribution of securities of any public utility corporation operating in this state, or the securities of any public utility controlling such first mentioned public utility which is subject to regulation by the public service commission of any state or by the interstate commerce commission or by any other similar state or federal regulatory body, when such securities are "exempt securities" under §517.05 and such sale or distribution is made by the corporation issuing such securities or any subsidiary thereof, through the employees of the public utility so operating in this state.

(13) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state, at a profit to such bank or trust company of not more than two per cent of the total sale price of such securities; provided, that there is no solicitation of this business by such bank or trust company where such bank or trust company acts merely as agent in the purchase or sale of such securities.

(14) The purchase or sale of securities on

order of and as the agent for another, by a dealer registered in the office of the Florida securities commission pursuant to the provisions of §517.12; provided, that this exemption shall apply solely and exclusively to such registered dealers and shall not authorize or permit the purchase or sale of securities on order of and as agent for another, by any person other than a dealer so registered; and provided, further, that such purchase or sale shall not be directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

History.—§5, ch. 14899, 1931; §4, ch. 17253, 1935; CGL 1936 Supp. 6002(5), (6); §2, ch. 19190, 1939; am. §2, ch. 21709, 1943; am. §7, ch. 22858, 1945; am. §2, ch. 24066, 1947.
Sub. §(4) am. §2, ch. 29863, 1955; (8)-(10) and (15) by §1, ch. 59-170; (5) a. by §1, ch. 61-405; (7) a. by §1, ch. 61-455. Intro. para., (7), (15) r. §1, ch. 63-564.

517.07 Registration of securities.—No securities except of a class exempt under any of the provisions of §517.05 or unless sold in any transaction exempt under any of the provisions of §517.06 shall be sold within this state unless such securities shall have been registered as hereinafter defined. Registration of stock shall be deemed to include the registration of rights to subscribe to such stock if the notice under §517.08 or the application under §517.09 for registration of such stock includes a statement that such rights are to be issued. A record of the registration of securities shall be kept in a register of securities to be kept in the office of the commission, in which register of securities shall also be recorded any orders entered by the commission with respect to such securities. Such register, and all information with respect to the securities registered therein shall be open to public inspection.

History.—§6, ch. 14899, 1931; CGL 1936 Supp. 6002(7); am. §3, ch. 24066, 1947.
Am. §11, ch. 25035, 1949.

517.08 Registration by notification.—

(1) SECURITIES ENTITLED TO REGISTRATION BY NOTIFICATION.—The following classes of securities shall be entitled to registration by notification in the manner provided in this section:

(a) Securities issued by a corporation, partnership, association, company, syndicate or trust owning a property, business or industry which has been in continuous operation not less than three years, and which has shown during a period acceptable to the commission, which period shall be not less than two years nor more than ten years next prior to a date not more than six months preceding the submission date of the registration statement provided by this section, average annual net earnings, after deducting all prior charges not including the charges upon securities to be retired out of the proceeds of sale, as follows:

1. In the case of interest-bearing securities, not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest-bearing obligations of equal rank.

2. In the case of preferred stock, not less than one and one-half times the annual dividend requirements on such preferred stock and on all other outstanding stock of equal rank.

3. In the case of common stock, not less than five per cent upon all outstanding common stock of equal rank, together with the amount of common stock then offered for sale reckoned upon the price at which such stock is then offered for sale or sold.

4. The ownership by a corporation, partnership, association, company, syndicate, or trust of more than fifty per cent of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of the property, business or industry of such corporation, and shall permit the inclusion of the earnings of such corporation applicable to the payment of dividends upon the stock so owned in the earnings of the corporation, partnership, association, company, syndicate or trust issuing the securities sought to be registered by notification.

(b) Bonds or notes secured by first mortgage on real estate leased to a corporation for a term of years at a net rental sufficient to pay the interest and to retire the principal of all bonds or notes secured by said mortgage during the term of the lease, where the lease is irrevocable and is pledged under the mortgage securing said bonds or notes; provided, any class of stock of the lessee is exempt under any of the provisions of §517.05 except subsections (5) and (9) thereof or will fall within subsection (1) (a) of this section.

(c) Bonds or notes secured by first mortgage on real estate in any state or territory of the United States or in the District of Columbia or in the Dominion of Canada where such real estate consists of agricultural lands used and valuable for agricultural purposes (not including oil, gas or mining property) and where the aggregate face value of the bonds or notes, not including interest notes or coupons, secured on such property does not exceed seventy per cent of the then fair market value of said lands plus sixty per cent of the insured value of any improvements thereon.

(d) Bonds or notes secured by first mortgage on real estate in any state or territory of the United States or in the District of Columbia or in the Dominion of Canada where such real estate consists of improved city, town or village property and where the aggregate face value of such bonds or notes, not including interest notes or coupons, secured on such property does not exceed seventy per cent of the then fair market value of said property, including any improvements appurtenant thereto, and when said property is used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value, after deducting operating expenses and taxes, at least equal to the annual interest plus not less than three per cent of the principal of said mortgage indebtedness.

(e) Bonds or notes secured by a mortgage constituting a first lien on a leasehold of real estate in any state or territory of the United

States or in the District of Columbia where such real estate consists of improved city, town or village property and where the aggregate face value of such bonds or notes, not including interest notes or coupons, secured by such first mortgage does not exceed seventy per cent of the then fair market value of said leasehold and when said property is so used as to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest plus not less than three per cent of the principal of said mortgage indebtedness provided, all advertisements, circulars and letters advertising the sale of said bonds or notes, and all receipts of payments therefor, and said bonds and notes shall bear in bold type not less than eighteen point upon the face thereof a legend stating that said bonds or notes are secured by mortgage on a leasehold, and all other written or printed offerings shall contain a statement to the same effect.

(f) Bonds or notes secured by a first mortgage upon real estate in any state or territory of the United States or in the District of Columbia:

1. Where the mortgage is a first mortgage upon city, town or village real estate, or leaseholds, upon which real estate or leaseholds a building or buildings is or are about in good faith forthwith to be created according to the expressed terms of the mortgage;
2. Where reasonably adequate provision has been made for financing the full completion of said building clear of any lien superior to said mortgage;
3. Where the aggregate face value of the bonds or notes, not including interest notes or coupons, secured by such first mortgage does not exceed seventy per cent of the fair market value of such mortgaged property, including the building or buildings to be erected thereon as aforesaid;
4. And where said mortgaged property is to be used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or will have a fair rental value, after deducting operating expenses and taxes, at least equal to the annual interest plus not less than three per cent of the principal of said mortgage indebtedness; provided, that all advertisements, circulars and letters advertising the sale of said bonds or notes and all receipts of payments therefor shall bear in bold type not less than eighteen point upon the face thereof a legend stating that said bonds or notes are construction bonds or notes, and all other written or printed offerings of said bonds or notes shall bear a statement to the like effect; and provided, further, that where said bonds or notes are secured wholly or partly by first mortgage on leaseholds, the value of such leaseholds is required to meet the ratio of property value to face value obligations above in this subsection provided, and all advertisements, circulars and letters advertising the sale of said bonds or notes, and all receipts of payments therefor, and said bonds and notes shall bear in bold type not less than eighteen point upon the face thereof a legend stating that said bonds or notes are secured wholly or partly by mortgage on a leasehold as the case may be, and all other written or printed offerings of said bonds or notes shall contain a statement to the same effect.

(2) PROCEDURE FOR REGISTRATION BY NOTIFICATION.—

(a) Securities entitled to registration by notification shall be registered by the filing by the issuer or by any registered dealer interested in the sale thereof in the office of the commission of a statement with respect to such securities containing the following:

1. Name of issuer, location and, if incorporated, place of incorporation;
2. A brief description of the security, including amount of the issue;
3. Amount of securities to be offered in the state;
4. A brief statement of the facts which show that the security falls within one of the classes in this section defined;
5. The maximum price at which the securities are to be offered for sale to the public.

(b) In the case of securities falling within the class defined by subsection (1), paragraph (a) or (b), a copy of the circular to be used for the public offering shall be filed in the office of the commission with the statement or within two days thereafter or within such further time as the commission shall allow.

(c) In the case of securities falling within the classes defined by subsection (1), paragraphs (c), (d), (e), (f) and (g), the circular to be used for the public offering shall be filed with the statement.

(d) The filing of such statement in the office of the commission and the payment of the fee hereinafter provided shall constitute the registration of such security. Upon such registration, such securities may be sold in this state by any registered dealer; subject however, to the further order of the commission as hereinafter provided.

(e) If, at any time in the opinion of the commission, the information contained in the statement or circular filed is or has become misleading, incorrect, inadequate or incomplete, or the sale or offering for sale of the security may work or tend to work a fraud, the commission may require from the person filing such statement and/or the issuer such further information as may in its judgment be necessary to establish the classification of such security as claimed in said statement or to enable the commission to ascertain whether the registration of such security should be revoked on any ground specified in §517.11, and the commission may also suspend the right to sell such security pending further investigation by entering an order specifying the grounds for such action, and by notifying by mail, or personally, or by telephone confirmed in writing, or by telegraph, the person filing such statement and every registered dealer who shall have notified the commission of an

intention to sell such security. The refusal to furnish information required by the commission within a reasonable time to be fixed by the commission may be a proper ground for the entry of such order of suspension. Upon the entry of any such order of suspension no further sales of such security shall be made until the further order of the commission.

(f) In the event of the entry of such order of suspension the commission shall upon request give a prompt hearing to the parties interested. If no hearing is requested within a period of twenty days from the entry of such order, or if upon such hearing the commission shall determine that any such security does not fall within a class entitled to registration under this section, or that the sale thereof should be revoked on any ground specified in §517.11, it shall enter a final order prohibiting sales of such security, with its findings with respect thereto; provided, that if the finding with respect to such security is that it is not entitled to registration under this section, the applicant may apply for registration by qualification by complying with the requirements of §517.09. Until the entry of such final order the suspension of the right to sell, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice. Appeals from such final order may be taken as hereinafter provided. If, however, upon such hearing the commission shall find that the security is entitled to registration under this section, and that its sale will neither be fraudulent nor result in fraud, they shall forthwith enter an order revoking such order of suspension and such security shall be restored to its status as a security registered under this section as of the date of such order of suspension.

(g) At the time of filing the statement, as prescribed in this section, the applicant shall pay to the commission a fee of one-twentieth of one per cent of the aggregate sales price of the securities to be sold in this state for which the applicant is seeking registration, but in no case shall such fee be less than twenty dollars.

History.—§7, ch. 14899, 1931; CGL 1936 Supp. 6002(8); §1, ch. 20960, 1941; am. §7, ch. 22000, 1943; am. §4, ch. 24066, 1947; §11, ch. 25035, 1949; §10, ch. 26484, 1951. (2) §3, ch. 29863, 1955; (1) §1, ch. 61-487; (2)(d) §1, ch. 63-321.

517.09 Registration by qualification.—

(1) All securities required by this chapter to be registered before being sold in this state, and not entitled to registration by notification or by announcement, shall be registered only by qualification in the manner provided by this section.

(2) The commission shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which it may require such applications to be submitted. Applications shall be in writing and shall be duly signed by the applicant, and sworn to by any person having knowledge of the facts, and filed in the office of the commission and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

(3) The commission may require the applicant to submit to the commission the following information respecting the issuer and such other relevant information as the commission may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of the directors, trustees and officers, if the issuer be a corporation or association or trust; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The purposes of incorporation (if incorporated) and the general character of the business actually to be transacted by the issuer, and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on a day not more than sixty days prior to the date of filing such balance sheet, or such longer period of time, not exceeding six months, as the commission may permit at the written request of the issuer on a showing of good cause therefor; a detailed statement of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which application is made and a copy of any circular, prospectus, advertisement or other description of such securities then prepared by or for such issuer or by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this state.

(e) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business.

(f) A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(g) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration in payment for which such securities have been or are to be issued.

(h) The amount of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(i) If the issuer is a corporation, there shall be filed with the application a certified copy of its articles of incorporation with all amendments and of its existing bylaws, if not already

on file in the office of the commission or of the secretary of state of this state. If the issuer is a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership or an unincorporated association, or joint stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office of the commission or of the secretary of state of this state.

(4) All of the statements, exhibits and documents of every kind required by the commission under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commission.

(5) With respect to securities required to be registered by qualification under the provisions of this section, the commission may by order duly recorded fix the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, not to exceed twenty per cent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.

(6) At the time of filing the information, as hereinbefore prescribed in this section, the applicant shall pay to the commission a fee of one-tenth of one per cent of the aggregate sales price of the securities to be sold in this state, for which the applicant is seeking registration, but in no case shall such fee be less than forty dollars or more than one thousand dollars.

(7) If upon examination of any application the commission shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, and that the terms of sale of such securities would be fair, just and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities, and thereupon such security so registered may be sold by the issuer or by any registered dealer, subject, however, to the further order of the commission.

History.—§8, ch. 14899, 1931; CGL 1936 Supp. 6002(9); §2, ch. 20960, 1941; am. §5, ch. 24066, 1947. Sub. §§(3) (d) (f), (6) am. §4, ch. 29863, 1955; (7) by §1, ch. 59-172; (7) §1, ch. 63-321.

517.091 Registration by announcement.—

(1) Securities that have been oustanding and in the hands of the public for not less than one year as the result of prior original marketing by the issuer, or by an underwriter on behalf of an issuer, shall be entitled to registration by announcement in the manner and subject to the conditions provided by this section.

(2) Securities entitled to registration by announcement can be registered only by a dealer registered in the office of the commission as provided by §517.12, by such a dealer filing in the office of the commission a written announcement of intention to trade in the securities, which announcement may be given by telegram sent to the commission by the dealer, containing the following:

(a) Name of issuer and location of its headquarters or principal office;

(b) A brief description of the security;

(c) A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.

(3) The filing of such announcement in the office of the commission shall constitute the registration of the security, and such dealer shall pay to the commission a filing fee of ten dollars within thirty-six hours after the time of such filing. Upon such registration, such securities may be sold in this state by any registered dealer at a price or prices reasonably related to the current market price of such security at the time of sale; subject however, to any and all rights and authority granted the commission and to any person or purchaser under chapter 517 in respect of securities registered in the office of the commission by notification or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter, and no security, the registration of which has been revoked by the commission, shall be registered under this section; provided, that no security, the registration of which has been revoked by the commission, or application for registration which has been denied by said commission, or withdrawn by the applicant, shall be registered under this section.

(4) Nothing in this section shall be held or construed to require registration of securities under this section after said securities have been registered by notification or qualification as provided in §517.08 or §517.09. Securities registered pursuant to §517.08 or §517.09 become eligible for trading in the secondary market at current market prices upon completion of the original offering when said securities are outstanding and in the hands of the public.

History.—§6, ch. 24066, 1947; §24, ch. 57-1; (3) A., (4) N. §1, ch. 59-176; (3) §1, ch. 63-321.

517.10 Consent to service.—Upon any application for registration by notification under §517.08 made by an issuer, and upon any application for registration by qualification under §517.09, whether made by an issuer or registered dealer, where the issuer is not domiciled in this state, there shall be filed with such application the irrevocable written consent of the issuer that in suits, proceedings and actions growing out of the violation of any provision of this chapter, the service on the chairman, or if he is absent from his office, on any other member of the commission, of any notice, process or pleading therein, authorized by the laws of this state, shall be as valid and binding as if due service had been made on the issuer.

Any such action shall be brought either in the county of the plaintiff's residence or in the county in which the commission has its office. The written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the commission it shall be by duplicate copies, one of which shall be filed in the office of the commission and another immediately forwarded by the commission by registered mail to the principal office of the issuer against which said process or pleadings are directed.

History.—§9, ch. 14899, 1931; CGL 1936 Supp. 6002(10). cf.—§§1.01(13) defines registered mail to include certified mail with return receipt requested.

517.11 Revocation of registration of securities.—The commission may revoke the registration of any security by entering an order to that effect, with its findings in respect thereto, if upon examination into the affairs of the issuer of such security it shall appear that the issuer:

(1) Is insolvent;

(2) Has violated any of the provisions of this chapter or any order of the commission of which such issuer has notice; or

(3) Has been or is engaged or is about to engage in fraudulent transactions;

(4) Is in any other way dishonest or has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(5) Is of bad business repute;

(6) Does not conduct its business in accordance with law;

(7) Has its affairs in an unsound condition;

(8) Has not based the enterprise or business or the security upon sound business principles.

In making such examination the commission shall have access to and may compel the production of all the books and papers of such issuer, and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located, approved by the commission.

Whenever the commission may deem it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the commission shall point out or to be brought down to the latest practicable date.

If any issuer shall refuse to permit an examination to be made by the commission it shall be proper ground for revocation of registration.

If the commission shall deem it necessary it may enter an order suspending the right to sell securities pending any investigation, provided that the order shall state the commission's grounds for taking such action.

Notice of the entry of such order shall be given by mail, or personally, or by telephone confirmed in writing, or by telegraph, to the issuer and every registered dealer who shall have notified the commission of an intention to sell such security.

Before such order is made final, the issuer or dealer applying for registration shall on application be entitled to a hearing.

History.—§10, ch. 14899, 1931; CGL 1936 Supp. 6002(11).

517.12 Registration; dealers; salesmen.—

(1) No dealer or salesman shall engage in business in this state as such dealer or salesman or sell any securities, including securities exempted in §517.05, except in transactions exempt under §517.06, unless he has been registered as a dealer or salesman in the office of the commission pursuant to the provisions of this section.

(2) An application for registration in writing shall be filed in the office of the commission in such form as the commission may prescribe, duly verified by oath, which shall state the principal office of the applicant, wherever situated and the location of the principal office and all branch offices in this state, if any, the name or style of doing business, the names, residences and business addresses of all persons interested in the business as principals, copartners, officers and directors, specifying as to each his capacity and title, the general plan and character of business and the length of time the dealer has been engaged in business. The commission may also require such additional information as to applicant's previous history, record and association, as it may deem necessary to establish the good repute in business of the applicant. The commission may also require applicants to be licensed as a dealer or as a salesman to submit to and pass successfully oral or written examination to determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities as a dealer or as a salesman.

(3) There shall be filed with such application an irrevocable written consent to the service of process upon the commission in actions against such dealer in manner and form as hereinabove provided in §517.10.

(4) If the commission shall find that the applicant is of good repute and has established

financial responsibility and has complied with the provisions of this section, including the payment of the fee hereinafter provided, he shall register such applicant as a dealer upon his filing a bond in the sum of five thousand dollars running to the governor of the state, conditioned upon the faithful compliance with the provisions of this chapter by said dealer and by all salesmen registered by him while acting for him. Such bond shall be executed as surety by a surety company authorized to do business in this state; provided, that nothing herein contained shall be held or construed to repeal, alter or in any manner change the provisions of §§517.13-517.15.

(5) Upon the written application of a registered dealer and general satisfactory showing as to good character and the payment of the proper fee the commission shall register as salesmen of such dealer such natural persons as the dealer may request. Such registration shall cease upon the termination of the employment of such salesmen by such dealer.

(6) The names and addresses of all persons approved for registration as dealers or salesmen and all orders with respect thereto shall be recorded in a register of dealers and salesmen kept in the office of the commission which shall be open to public inspection. Every registration under this section shall expire on the 31st day of December in each year, but new registrations for the succeeding year shall be issued upon written application and upon payment of the fee as hereinafter provided, without filing of further statements or furnishing any further information, unless specifically required by the commission. Applications for renewals must be made not less than thirty nor more than sixty days before the first day of the ensuing year, otherwise they shall be treated as original applications. The annual registration fee shall be one hundred dollars for dealers and twenty dollars for salesmen. Each dealer shall pay fifty dollars annually for each additional or branch office in the state. Dealers and salesmen may obtain registration after July first at one-half the fee hereinabove stated.

(7) Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with respect to such change.

(8) Any issuer of a security required to be registered under the provisions of this law, selling such securities except in exempt transactions as defined by §517.06 shall be deemed a dealer within the meaning of this section and required to comply with all the provisions hereof.

History.—§11, ch. 14899, 1931; §6, ch. 17253, 1935; CGL 1936 Supp. 6002(12); §3, ch. 20960, 1941; am. §3, ch. 21709, 1943; (2) §1, ch. 57-288; (4) §1, ch. 59-169; (8) §1, ch. 63-321. **cf.**—§1.01(13) defines registered mail to include certified mail with return receipt requested.

517.13 Form of bond to be given by dealers.—The surety bond required of dealers in certain securities under §517.12 shall be in substantially the following form:

"State of Florida,
County of_____,

KNOW ALL MEN BY THESE PRESENTS, That_____ of the State of_____, having a place of business in_____, Florida, as principal, and the_____ of _____ and authorized to conduct and carry on a general surety business in the State of Florida, as surety, are held and firmly bound unto _____ Governor of the State of Florida and his successors in office in the sum of five thousand dollars lawful money of the United States of America for the payment whereof well and truly to be made, subject to the terms and provisions hereinafter set forth, the said principal and the said surety bind themselves, their successors and assigns, executors and administrators, jointly and severally, firmly by these presents.

Signed and Sealed this ____ day of_____ A. D. 19____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS the Florida securities commission of the State of Florida, under the provisions of chapter 517, Florida Statutes, has registered the said _____ principal herein named as a dealer to sell in the State of Florida those certain securities mentioned in the application of the said _____ principal herein named for registration, to wit:

_____

_____

AND WHEREAS the said dealer is authorized by said laws to appoint salesmen to represent and assist said dealer in the sale of said securities,

NOW THEREFORE, if the above bounden _____ principal herein named, shall truly report to the Florida securities commission the names and addresses of all salesmen so appointed and employed in the sale of said securities, and said_____ principal herein named as such dealer and each and every salesman registered by said dealer shall well and truly comply with the provisions of chapter 517, Florida Statutes, then this obligation to be void, otherwise to remain in full force and effect.

PROVIDED HOWEVER, AND UPON THE FOLLOWING EXPRESS CONDITIONS:

Provided always that nothing herein shall be construed to make the total maximum liability hereunder of the above named principal or surety more than five thousand dollars regardless of the number of acts of omission or commission of the above named principal or its salesmen.

PROVIDED FURTHER, that before any person, firm or corporation shall have any right of action or any right whatsoever against the principal or the surety upon this bond and before any such right of action or any such right whatsoever shall exist or arise, such person, firm

or corporation, within the period of one year after the termination of this bond must have given to the surety and the principal written notice of claim under this bond and it is hereby stipulated and agreed that the giving of such notice of claim under this bond within said period of one year shall be a condition precedent to any right of action or right whatsoever against the principal or the surety and the failure to give such notice as aforesaid shall render this obligation null and void and of no effect as to such persons, firm or corporation.

PROVIDED FURTHER, that the liability of the surety on this bond is limited to actual cases of fraud or dishonesty committed by the principal or its salesmen in the sale of said securities.

PROVIDED FURTHER, that either the principal or the surety may cancel this bond as an entirety by giving sixty days written notice to the Florida securities commission at Tallahassee, Florida, and if canceled by the surety, copy of said notice of cancellation shall be sent by registered mail to the principal hereunder. Said notice to the Florida securities commission shall also be sent by registered mail. In case of such cancellation by either the principal or the surety no further obligation shall be incurred under this bond after the expiration of said sixty days, but the liability of the principal and surety shall apply as above set out as to any acts or omissions which may have occurred prior to the effective date of such cancellation.

The period for which this bond shall remain in force and effect, unless previously canceled as hereinabove provided for, shall be from date of issuance through December 31st of that year, at the expiration of which time it shall ipso facto cease and terminate as to all future transactions only."

Which bond shall be duly executed in accordance with all laws governing surety bonds executed by surety companies under the laws of Florida.

History.—§1, ch. 16174, 1933; CGL 1936 Supp. 6002(12a). Am. §5, ch. 29863, 1955.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

517.14 Deposits in lieu of bond.—In lieu of bond the applicant may, if he so desires, deposit with the Florida securities commission, United States government bonds of the value of five thousand dollars, or cash in the sum of five thousand dollars or other securities satisfactory to the commission; provided, that the total liability under such bond or deposit shall be five thousand dollars and when the bonding company as surety on said bond shall have paid as much as five thousand dollars on its liability under said bond, the bond will be thereby exhausted, and the company absolved from any further liability by reason thereof; and provided, further, that no claim or claims under such bond or deposit of United States government bonds or cash shall be enforceable unless presented to the Florida securities commission within one year after the expiration of the term for which the bond was given, or deposit made, and that if no claim or claims are so presented, then, after the expiration of such year, the bond shall be canceled or the United States government bonds or cash shall be returned to the party depositing same.

History.—§2, ch. 16174, 1933; CGL 1936 Supp. 6002(12b).

517.15 Bonds of dealers in federal, state, etc., securities.—All dealers in securities issued by a public commission, board or officers of the government of the United States or of any state, territory or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada or of any province thereof, where such dealer deals solely and exclusively in the aforesaid securities, may be registered as such dealer when the permit issued to him by the Florida securities commission recites and limits his dealings in securities to the above named securities upon his filing bond executed by a duly authorized surety company in the sum of twenty-five hundred dollars, or upon his making a deposit of securities in like amount and of the character described in §517.14 or of cash, or upon the filing with the commission a bond with two or more good and sufficient personal sureties, which personal bond shall be approved by the clerk of the circuit court of the county where such dealer resides.

History.—§3, ch. 16174, 1933; §9, ch. 17253, 1935; CGL 1936 Supp. 6002(12c).

517.16 Revocation or suspension of dealers' and salesmen's registration.—Registration under §517.12 may be refused or any registration granted may be revoked or suspended by the commission if after a reasonable notice and a hearing the commission determines that such applicant or registrant so registered:

(1) Has violated any provision of this chapter or any regulation made hereunder;

(2) Has made a material false statement in the application for registration;

(3) Has been guilty of a fraudulent act in connection with any sale of securities, or has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any of such securities or has been or is engaged or is about to engage in any practice or sale of securities which is fraudulent or in violation of the law;

(4) Has made any misrepresentation or false statement to, or concealed any essential or material fact from any person in the sale of a security to such person;

(5) Has failed to account to persons interested for all money and property received;

(6) Has not delivered after a reasonable time, to persons entitled thereto, securities held or agreed to be delivered by the dealer or broker, as and when paid, and due to be delivered;

(7) Is selling, or offering for sale securities through any solicitor or agent not registered in compliance with the provisions of this chapter;

(8) Has demonstrated his unworthiness to transact the business of dealer or salesman.

(9) Is, in the case of the dealer, insolvent.

(10) Has not complied with paragraph (a) of this subsection:

(a) If a person simultaneously holds a securities license and a life insurance license, he shall prepare and leave with each prospective buyer a written proposal, on or before delivery of any investment plan. Investment plan shall mean a mutual funds program, and the proposal shall consist of a prospectus describing the investment feature and a full illustration of any life insurance feature. The proposal shall be prepared in duplicate, dated and signed by the licensee. The original shall be left with the prospect and the duplicate shall be retained by the licensee for a period of not less than three years. In lieu of a duplicate copy, a receipt for standardized proposals filed with the commission may be obtained and held by the licensee.

In cases of charges against a salesman notice thereof shall also be given the dealer employing such salesman.

Pending the hearing the commission may order the suspension of such dealer's or salesman's registration; provided, such order shall state the cause for such suspension.

Until the entry of a final order the suspension of such dealer's registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice.

In the event the commission determines to refuse or revoke a registration they shall enter a final order with their findings on the register of dealers and salesmen; and suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all his salesmen.

It shall be sufficient cause for refusal or cancellation of registration in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer or salesman.

History.—§12, ch. 14899, 1931; §7, ch. 17253, 1935; CGL 1936 Supp. 6002(13); (9) n. §6, ch. 29863, 1955; (10) n. by §1, ch. 61-448; intro. para. §1, ch. 63-344.

517.17 Burden of proof.—It shall not be necessary to negative any of the exemptions provided in this chapter in any complaint, information, indictment or any other writ or proceedings brought under this chapter and the burden of establishing the right to any exemption shall be upon the party claiming the benefit of such exemption. Any person claiming the right to register any securities by notification under §517.08 shall also have the burden of establishing the right so to register such securities.

History.—§13, ch. 14899, 1931; CGL 1936 Supp. 6002(14).

517.18 Escrow agreement.—If the statement containing information as to securities to be registered, as provided for in §517.09, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, formula or good will, or for organization or promotion fees or expenses, or for good will or going concern value or other intangible assets, the amount and nature thereof shall be fully set forth and the commission may require that such securities so issued in payment of such patent right, copyright, trademark, process, formula or good will, or for organization or promotion fees or expenses, or for other intangible assets shall be delivered in escrow to the commission or other depository satisfactory to the commission under an escrow agreement that the owners of such securities shall not be entitled to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six per cent shown to the satisfaction of said commission to have been actually earned on the investment in any common stock so held; and in case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

History.—§14, ch. 14899, 1931; CGL 1936 Supp. 6002(15)

517.19 Injunction to restrain violations.—When it shall appear to the commission, either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement, or distribution of any securities within this state, including any security exempted under the provisions of §517.05, and including any transaction exempted under the provisions of §517.06, any person:

(1) Shall have employed, employs, or is about to employ, any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise;

(2) Or shall have made, makes, or attempts to make in this state fictitious or pretended purchases or sales of securities;

(3) Or shall have engaged in, engages in, or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities:

(a) Which is in violation of law,

(b) Or which is fraudulent,

(c) Or which has operated or which would operate as a fraud upon the purchaser;

any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities, practices, transactions and courses of business are declared to be and are referred to as fraudulent practice;

(4) Or that any person is acting as dealer or salesman within this state without being

duly registered as such dealer or salesman as provided in this chapter.

The commission may investigate, and whenever it shall believe from evidence satisfactory to it:

(5) That any such person has engaged, is engaged or is about to engage in any of the practices or transactions referred to as fraudulent practices;

(6) Or is selling or offering for sale any securities in violation of this chapter or is acting as a dealer or salesman without being duly registered as provided in this chapter; the commission may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such fraudulent practices or acting in violation of this chapter, to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings the commission may apply for and on due showing be entitled to have issued the court's subpoena requiring forthwith the appearance of any defendant and his employees, salesmen or agents and the production of documents, books and records that may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action the equity courts shall have jurisdiction of the subject matter and a judgment may be entered awarding such injunction as may be proper.

(7) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the commission, to impound and to appoint a receiver for the property, assets and business of the defendant, including but not limited to the books, records, documents, and papers appertaining thereto. Such receiver, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up and liquidation of said property and business as shall from time to time be conferred upon him by the court. In any such action the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's custody or possession of the said property, assets and business, or, in its discretion, may with the consent of the presiding judge of the circuit, require that all such suits be assigned to the chancellor appointing the said receiver.

History.—§15, ch. 14899, 1931; CGL 1936 Supp. 6002(16); (7) n. §1, ch. 63-326.

517.20 Hearing; appointment of examiner; witnesses.—When it is proposed to conduct an investigation, examination, or hearing under the provisions of §§517.11, 517.16 or 517.19 or any amendment to said sections, the commission, or its chairman may appoint an examiner, who shall be a discreet person without bias or prejudice in said cause, to take the proof in the matter by depositions. The examiner may administer oaths, examine witnesses, rule on the admissibility of evidence, subject to review by the court or commission, give notices of the time and place of hearings, and adjourn the same from time to time and place to place, report the testimony so taken in writing to the commission, and certify to all of his acts. The examiner shall give all parties a reasonable opportunity to present all pertinent and relevant testimony and to cross-examine all adverse witnesses; but may refuse, subject to review by the court or commission, to hear cumulative, irrelevant, incompetent or immaterial testimony unless the party offering it shall pay the expense incurred thereby in advance. Evidence of witnesses outside of the state may be taken by interrogatories in the manner prescribed by the regulations of the commission. The commission may define the rules of evidence applicable to such hearings, examinations and investigations consistent with due process of law, and a fair and impartial determination of the facts. The reasonableness of such rules shall be subject to review by the court.

Subpoenas for witnesses, whose evidence is deemed material to any investigation, examination or hearing, authorized by this chapter, may be issued by the commission or its chairman and under the seal of the commission, or by any circuit clerk, county judge, or clerk of the county court or county judge's court, or examiner appointed hereunder, commanding such witnesses to be or appear before the commission, the examiner, or any authorized representative of the commission, at a time and place to be therein named, and to bring such books, records and documents as may be specified, or to submit such books, records and documents to inspection; and such subpoenas may be served by the examiner, or authorized representative of the commission, or by any sheriff or deputy.

Where any witness who has been served with a subpoena fails or refuses to be or appear at the time and place named, or fails or refuses to answer any lawful questions propounded, or produce the books, records or documents required, or is guilty of disorderly or contumacious conduct at the hearing, the facts shall be made known to a circuit judge of the county who shall forthwith issue an attachment for such witness, and cause him to be brought before the judge. Upon appearance, if the witness shall fail to purge himself of such failure, refusal or conduct, the judge shall proceed further as in cases of contempt of court; and said witness shall pay the costs of said attachment.

Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination, investigation, or hearing, is held at the place of business or residence of the witness, but no witness shall be required to attend a hearing outside of the

county wherein he resides, or may for the time be domiciled, without his consent, unless it be shown to a county or circuit judge that such person is attempting to avoid appearing as a witness.

The fees of witnesses and officers shall be paid by the commission upon presentation of vouchers approved by the examiner or representative; and compensation of the examiner shall be paid by the commission.

In hearings to revoke the license of any dealer or salesman under the provisions of §517.16, a copy of the charges against such dealer or salesman shall be served upon him by registered United States mail or in accordance with the provisions of chapters 47 and 48, relating to personal service. The charges shall designate a time, not less than ten days from the date on which said copy of the charges is mailed or served as aforesaid, upon which date the dealer or salesman may file written answer thereto. When issues of fact are thus made up, or when said dealer or salesman fails to file such answer, the commission or its chairman may appoint an examiner, as provided in this section, to take the proof in the matter by depositions and to report same to the commission for determination.

When testimony and evidence are taken before an examiner pursuant to the provisions of this section, the examiner shall at the earliest possible time report such testimony and evidence to the commission and the commission may thereupon proceed to determine the matter involved without further hearing, unless it elects to hear the matter further.

History.—§3, ch. 19190, 1939; CGL 1936 Supp. 6002(16a). 6th unnum. par. by §1, ch. 59-171.

cf.—§30.23 Fees of sheriffs and constables.
§90.14 Compensation of witnesses in various courts.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

517.21 Remedies available in case of unlawful sale.—(1) Every sale made in violation of any of the provisions of this chapter shall be voidable at the election of the purchaser; and the person making such sale and every director, officer or agent of or for the seller, if the director, officer or agent shall have personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser in an action at law in any court of competent jurisdiction upon tender of the securities sold or of the contract made, for the full amount paid by such purchaser, with interest, together with all taxable court costs and reasonable attorney's fees; provided, that no action shall be brought for the recovery of the purchase price after two years from the date of such sale and provided further, that no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within thirty days from the date thereof to accept an offer in writing of the seller to take back the security in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed:

(a) In case such securities consist of interest bearing obligations at the same rate as provided in such obligations; and

(b) In case such securities consist of other than interest bearing obligations at the rate of six per cent per annum; less, in every case, the amount of any income from said securities that may have been received by such purchaser.

(2) Any person having a right of action against a dealer or salesman under this section shall have a right of action under the bond provided in §517.12.

(3) A registration by notification made in good faith and after the commission, on application, shall have given tentative consent to such registration, shall not, as to sales made prior to revocation of such registration, result in the liabilities prescribed in this section, although the securities may not be entitled to such registration.

History.—§16, ch. 14899, 1931; CGL 1936 Supp. 6002(17).

517.22 Statutory or common law remedies.—Nothing in this chapter shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the sale of securities, or the right of the state to punish any person for any violation of any law.

History.—§18, ch. 14899, 1931; CGL 1936 Supp. 6002(18).

517.23 Civil remedies of purchasers.—The same civil remedies provided by laws of the United States now or hereafter in force, for the purchasers of securities under any such laws, in interstate commerce, shall extend also to purchasers of securities under this chapter.

History.—§5, ch. 16174, 1933; CGL 1936 Supp. 6002(26).

517.24 Review of final order of commission.—Any person aggrieved by a final order of the commission may have said order reviewed by certiorari by the circuit court of Leon county within the time and in the manner provided by the Florida appellate rules. An appeal may be taken from the judgment of the circuit court to the appropriate district court of appeal in the manner above provided.

History.—§19, ch. 14899, 1931; CGL 1936 Supp. 6002(19); §38, ch. 63-512.

cf.—Ch. 59 Appellate proceedings in chancery.

517.25 Jurisdiction of courts.—When not in conflict with the constitution or laws of the United States, the courts of this state have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as they may have under similar cases instituted under the laws of the state.

History.—§6, ch. 16174, 1933; CGL 1936 Supp. 6002(27).

517.26 Insurers or agents not subject to this chapter.—Nothing in this chapter shall be construed to make the soliciting, writing, or issuing of contracts of insurance, surety or indemnity, by insurers or agents duly qualified and licensed under the laws of Florida, subject thereto.

History.—§5, ch. 17253, 1935; CGL 1936 Supp. 6002(22a).

517.27 Uniformity of interpretation.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—§21, ch. 14899, 1931; CGL 1936 Supp. 6002(21)

517.28 Rules and regulations with respect to interstate commerce.—The securities commission may make any reasonable rules and regulations which it may deem necessary to cooperate effectively with the federal trade commission, or any other agency of the United States government which may have supervision or control over the sale of securities in interstate commerce under any law of the United States and may apply to intrastate sales or offerings such federal laws and regulations applicable to such sales or offerings in interstate commerce, as the commission may deem necessary for the proper conduct of such intrastate sales or offerings, and not in conflict with the laws of this state.

History.—§4, ch. 16174, 1933; CGL 1936 Supp. 6002(25); am. §7, ch. 22858, 1945.

517.29 Securities approved under prior law.—All securities which have been approved under any statutes prior to July first, 1931, shall be legally salable, unless otherwise ordered by the commission under this chapter.

History.—§23, ch. 14899, 1931; CGL 1936 Supp. 6002(22).

517.30 Penalty for violation of chapter.—Whoever violates any of the provisions of this chapter shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the state penitentiary for not more than five years. The statute of limitations for prosecution of offenses committed under this chapter shall be five years.

History.—§17, ch. 14899, 1931; §8, ch. 17253, 1935; CGL 1936 Supp. 7976(1).
Am. §1, ch. 26970, 1951.
cf.—§775.06, Alternative punishment.
§817.34, False entries by company offering stock or securities for sale.

517.31 False and fraudulent statements; penalty.—Whoever, in any matter within the jurisdiction of the Florida securities commission knowingly and wilfully and with intent to defraud falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.

History.—Comp. §1, ch. 57-748.

517.311 False representations; deceptive words; enforcement.—

(1) It is unlawful for any person, in issuing or selling any security within the state, including any security exempted under the provisions of §517.05 and including any transactions exempted under the provisions of §517.06, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended or approved by the state or any agency or officer thereof, or the United States or any agency or officer thereof.

(2) It is unlawful for any person registered or required to be registered under any section of this chapter, including such persons and issuers within the purview of §§517.05 and 517.06 to represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that his abilities or qualifications have in any respect been passed upon by the state or any agency or officer thereof, or the United States, or any agency or officer thereof.

(3) No provision of subsection (1) or subsection (2) shall be construed to prohibit a statement that a person or security is registered under this chapter if such statement of registration is required by the provisions of this chapter or rules and regulations promulgated thereunder, if such statement is true in fact, and if the effect of such statement of registration is not misrepresented.

(4) It is unlawful for any person registered or required to be registered under the provisions of this chapter, including §§517.05 and 517.06, to adopt as a part of the name or title of such company or of any security of which it is the issuer, any word or words which the commission finds and by order declares to be deceptive or misleading. The commission is authorized to bring an action in the manner set out in §517.19 to restrain and enjoin violations of this chapter, including the provisions of this section.

History.—§1, ch. 63-98.

517.32 Exemption from excise tax, certain obligations to pay.—There shall be exempt from all excise taxes imposed by chapter 201, all promissory notes, nonnegotiable notes and other written obligations to pay money bearing dates subsequent to July 1, 1957, when the maker thereof is a security dealer registered by the securities commission under chapter 517, when such promissory note, nonnegotiable note or notes or other written obligation to pay money shall be for the duration of thirty days or less and secured by pledge or deposit, as collateral security for the payment thereof, security or securities as defined in §517.02, provided all excise taxes imposed by chapter 201, shall have been paid upon such collateral security.

History.—Comp. §1, ch. 57-823.
cf.—ch. 201, Excise tax on documents.
§201.21 Notes and other written obligations exempt under certain conditions.

517.33 Destroying certain records; reproduction.—

(1) The security commission is authorized to photograph, microphotograph, or reproduce on film or prints, documents, records, data, and information of a permanent character which are over ten years old and which the commission may deem no longer necessary to preserve.

(2) The commission is authorized to destroy any of said documents after they have been

photographed and after audit of the office has been completed for the period embracing the dates of said instruments.

(3) Duly certified or authenticated photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility as evidence.

History.—§1, ch. 63-354.

CHAPTER 518

INVESTMENT OF FIDUCIARY FUNDS

518.01 Investments of funds received from veterans administration.—Subject to the conditions herein contained, and except as otherwise authorized by law, guardians holding funds received from or currently in receipt of funds from the veterans administration to the extent of those funds alone, may invest such funds only in the following:

(1) UNITED STATES GOVERNMENT OBLIGATIONS.—In bonds or other obligations, either bearing interest or sold on a discount basis, of the United States, or the United States treasury or those for the payment of the principal and interest of which the faith and credit of the United States is pledged, including such bonds or obligations of the District of Columbia.

(2) BONDS AND OBLIGATIONS OF STATES AND TERRITORIES.—In bonds or other interest-bearing obligations of any state of the United States, or of the territory of Hawaii or the territory of Puerto Rico; provided such state or territory has not, within ten years previous to the date of making such investment, defaulted for more than ninety days in the payment of any part of the principal or interest of any of its bonded indebtedness.

(3) BONDS, AND OTHER OBLIGATIONS OF POLITICAL SUBDIVISIONS WITHIN THE STATE OF FLORIDA.—In bonds or other interest-bearing obligations of any incorporated county, city, town, school district or road and bridge district located within the state and which has according to the federal census next preceding the date of making the investment, a population of not less than two thousand inhabitants and for which the full faith and credit of such political subdivision has been pledged; provided, that such political subdivision or its successor through merger, consolidation, or otherwise, has not within five years previous to the making of such investment, defaulted for more than six months in the payment of any part of the principal or interest of its bonded indebtedness.

(4) BONDS AND OBLIGATIONS OF POLITICAL SUBDIVISIONS LOCATED OUTSIDE THE STATE OF FLORIDA.—In bonds or other interest-bearing obligations of any incorporated county, city or town located outside of the state, but within another state of the United States, which county, city or town has, according to the federal census next preceding the date of making the investment a population of not less than forty thousand inhabitants and the indebtedness of which does not exceed seven per cent of the last preceding valuation of property for the purposes of taxation; provided, that the full faith and credit of such political subdivision shall have been pledged for the payment of the principal and interest of such bonds or obligations, and provided further, that such political subdivision or its successor, through merger, consolidation or otherwise, has not within fifteen years previous to the making of such investment, defaulted for more than ninety days in the payment of any part of the principal or interest of its bonded indebtedness.

(5) BONDS OR OBLIGATIONS OF FEDERAL LAND BANKS.—In the bonds or other interest-bearing obligations of any federal land bank organized under any act of congress enacted prior to June 14, 1937; provided such bank is not in default in the payment of principal or interest on any of its obligations at the time of making the investment.

(6) BONDS OF RAILROAD COMPANIES.—Bonds bearing a fixed rate of interest secured by first mortgage, general mortgage, refunding mortgage or consolidated mortgage which is a lien on real estate, rights or interest therein, leaseholds, right-of-way, trackage or other fixed assets; provided, that such bonds have been issued or assumed by a qualified railroad company or guaranteed as to principal and interest by indorsement by a qualified railroad company or guaranteed as to principal and interest by indorsement, which guaranty has been assumed by a qualified railroad company.

In bonds secured by first mortgage upon terminal, depot or tunnel property, including buildings and appurtenances used in the service or transportation by one or more qualified railroad companies; provided that such

bonds have been issued or assumed by a qualified railroad company or guaranteed as to principal and interest by indorsement by a qualified railroad company, or guaranteed as to principal and interest by indorsement, which guaranty has been assumed by a qualified railroad company.

As used in this subsection, the words "qualified railroad company" means a railroad corporation other than a street railroad corporation which, at the date of the investment by the fiduciary, meets the following requirements:

(a) It shall be a railroad corporation incorporated under the laws of the United States or of any state or commonwealth thereof or of the District of Columbia.

(b) It shall own and operate within the United States not less than five hundred miles of standard gauge railroad lines, exclusive of sidings.

(c) Its railroad operating revenues derived from the operation of all railroad lines operated by it, including leased lines and lines owned or leased by a subsidiary corporation, all of the voting stock of which, except directors' qualifying shares, is owned by it, for its fiscal year next preceding the date of the investment, shall have been not less than ten million dollars.

(d) At no time during its fiscal year in which the investment is made, and its five fiscal years immediately prior thereto, shall it have been in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness.

(e) In at least four of its five fiscal years immediately preceding the date of investment, its net income available for fixed charges shall have been at least equal to its fixed charges, and in its fiscal year immediately preceding the date of investment, its net income available for fixed charges shall have been not less than one and one-quarter times its fixed charges.

As used in this subsection, the words "income available for fixed charges" mean the amount obtained by deducting from gross income all items deductible in ascertaining the net income other than contingent income interest and those constituting fixed charges as used in the accounting reports of common carriers as prescribed by the accounting regulations of the interstate commerce commission.

As used in this subsection, the words "fixed charges" mean rent for leased roads, miscellaneous rents, funded debt interest and amortization of discount on funded debt.

(7) BOND OF GAS, WATER OR ELECTRIC COMPANIES.—In bonds issued by, or guaranteed as to principal and interest by, or assumed by, any gas, water or electric company, subject to the following conditions:

(a) Gas, water or electric companies by which such bonds are issued, guaranteed or assumed, shall be incorporated under the laws of the United States or any state or commonwealth thereof or of the District of Columbia.

(b) The company shall be an operating company transacting the business of supplying water, electrical energy, artificial gas or natural gas for light, heat, power and other purposes, and provided that at least seventy-five per cent of its gross operating revenue shall be derived from such business and not more than fifteen per cent of its gross operating revenues shall be derived from any other one kind of business.

(c) The company shall be subject to regulation by a public service commission, a public utility commission or any other similar regulatory body duly established by the laws of the United States or any state or commonwealth or of the District of Columbia in which such company operates.

(d) The company shall have all the franchises necessary to operate in the territory in which at least seventy-five per cent of its gross revenues are obtained, which franchises shall either be indeterminate permits of, or agreements with, or subject to the jurisdiction of a public service commission or other duly constituted regulatory body, or shall extend at least five years beyond the maturity of the bonds.

(e) The company shall have been in existence for a period of not less than eight fiscal years, and at no time within the period of eight fiscal years immediately preceding the date of such investment shall such company have failed to pay punctually and regularly the matured principal and interest of all its indebtedness, direct, assumed or guaranteed, but the period of life of the company, together with the period of life of any predecessor company, or company from which a major portion of its property was acquired by consolidation, merger or purchase, shall be considered together in determining such required period.

(f) For a period of five fiscal years immediately preceding the date of the investment, net earnings shall have averaged per year not less than two times the average annual interest charges on its entire funded debt, applicable to that period and for the last fiscal year preceding the date of investment, such net earnings shall have been not less than two times such interest charges for that year.

(g) The bonds of any such company must be part of an issue of not less than one million dollars and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the company issuing or assuming them or must be underlying mortgage bonds secured by property owned and operated by the companies issuing or assuming them. The aggregate principal amount of bonds secured by such first or refunding mortgage, plus the principal amount of all the underlying outstanding bonds, shall not exceed sixty per cent of the value of the physical property owned, which shall be book value less such reserves for depreciation or retirement, as the company may have established, and subject to the lien of such mortgage or mortgages securing the total mortgage debt. If such mortgage is a refunding mortgage, it must provide for the retirement on or before

the date of maturity of all bonds secured by prior liens on the property.

As used in this subsection, the words "gross operating revenues and expenses" mean, respectively, the total amount earned from the operation of, and the total expenses of maintaining and operating, all property owned and operated by, or leased and operated by, such companies, as determined by the system of accounts prescribed by the public service commission or other similar regulatory body having jurisdiction.

As used in this subsection, the words "net earnings" mean the balance obtained by deducting from its gross operating revenues, its operating and maintenance expenses, taxes (other than federal and state income taxes), rentals, and provisions for depreciation, renewals and retirements of the physical assets of the company, and by adding to such balance its income from securities and miscellaneous sources, but not, however, exceeding fifteen per cent of such balance.

(8) BONDS OF TELEPHONE COMPANIES.—In bonds issued by, or guaranteed as to principal and interest by, or assumed by, any telephone company, subject to the following conditions:

(a) The telephone company by which such bonds are issued shall be incorporated under the laws of the United States or of any state or commonwealth thereof or of the District of Columbia, and shall be engaged in the business of supplying telephone service in the United States and shall be subject to regulations by the federal communications commission, a public service commission, a public utility commission or any similar regulatory body, duly established by the laws of the United States or of any state or commonwealth or of the District of Columbia in which such company operates.

(b) The company by which such bonds are issued, guaranteed or assumed shall have been in existence for a period of not less than eight fiscal years, and at no time, within the period of eight fiscal years immediately preceding the date of such investment, shall such company have failed to pay punctually and regularly the matured principal and interest of all its indebtedness, direct, assumed or guaranteed, but the period of life of the company, together with the period of life of any predecessor company, or company from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining such required period. The company shall file with the federal communications commission, or a public service commission or similar regulatory body having jurisdiction over it, and make public in each year a statement and a report giving the income account covering the previous fiscal year, and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(c) For a period of five fiscal years immediately preceding the investment, the net earnings of such telephone company shall have averaged per year not less than twice the average annual interest charges on its outstanding obligations applicable to that period, and for the last fiscal year preceding such investment, such net earnings shall have been not less than twice such interest charges for that year.

(d) The bonds must be part of an issue of not less than five million dollars and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the company issuing or assuming them, or must be underlying mortgage bonds similarly secured. As of the close of the fiscal year preceding the date of the investment by the fiduciary, the aggregate principal amount of bonds secured by such first or refunding mortgage, plus the principal amount of all the underlying outstanding bonds, shall not exceed sixty per cent of the value of the real estate and tangible personal property owned absolutely, which value shall be book value less such reserves for depreciation or retirement as the company may have established, and subject to the lien of such mortgage, or mortgages, securing the total mortgage debt. If such mortgage is a refunding mortgage, it must provide for the retirement, on or before the date of their maturity, of all bonds secured by prior liens on the property.

As used in this subsection, the words "gross operating revenues and expenses" mean, respectively, the total amount earned from the operation of, and the total expenses of maintaining and operating all property owned and operated by, or leased and operated by, such company as determined by the system of accounts prescribed by the federal communications commission, or any other similar federal or state regulatory body having jurisdiction in the matter.

As used in this subsection, the words "net earnings" mean the balance obtained by deducting from the telephone company's gross operating revenues its operating and maintenance expenses, provision for depreciation of the physical assets of the company, taxes (other than federal and state income taxes), rentals, and miscellaneous charges, and by adding to such balance its income from securities and miscellaneous sources but not, however, to exceed fifteen per cent of such balance.

(9) FIRST MORTGAGES. — In mortgages signed by one or more individuals or corporations, subject to the following conditions:

(a) If the taking of the mortgages as an investment for any particular trust, estate or guardianship will not result in more than forty per cent of the then value of the principal of such trust, estate or guardianship being invested in mortgages.

(b) Within thirty days preceding the taking of a mortgage as an investment the property encumbered or to be encumbered thereby shall be appraised by two or more reputable persons especially familiar with real estate values. The fair market value of the property as disclosed by the appraisal of such per-

sons shall be set forth in a writing dated and signed by them and in such writing they shall certify that their valuation of the property was made after an inspection of the same, including all buildings and other improvements.

(c) The mortgage shall encumber improved real estate located in the state and in or within five miles of the corporate limits of a city or town having a population of two thousand or more, according to the federal census next preceding the date of making any such investment.

(d) The mortgage shall be or become, through the recordation of documents simultaneously filed for record, a first lien upon the property described therein prior to all other liens, except taxes previously levied or assessed but not due and payable at the time the mortgage is taken as an investment.

(e) The mortgage shall secure no indebtedness other than that owing to the executor, administrator, trustee, or guardian taking the same as an investment.

(f) The amount of the indebtedness secured by the mortgage shall not exceed sixty per cent of the fair market value (as determined in accordance with the provisions of paragraph (b) of this subsection) of the property encumbered or to be encumbered by said mortgage.

(g) If the amount of the indebtedness secured by the mortgage is in excess of fifty per cent of the fair market value (as determined in accordance with the provisions of paragraph (b) of this subsection) of the property encumbered or to be encumbered by said mortgage, then the mortgage shall require principal payments, at annual or more frequent intervals, sufficient to reduce by or before the expiration of three years from the date the mortgage is taken as an investment, the unpaid principal balance secured thereby to an amount not in excess of fifty per cent of the fair market value of said property, as determined in accordance with the provisions of paragraph (b) of this subsection.

(h) The mortgage shall contain a covenant of the mortgagor to keep insured at all times the improvements on the real estate encumbered by said mortgage, with loss payable to the mortgagee, against loss and damage by fire, in an amount not less than the unpaid principal secured by said mortgage.

(i) Provided, however, that the foregoing limitations and requirements shall not apply to notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, and that notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, are declared to be eligible for investment under the provisions of this chapter.

(10) LIFE INSURANCE.—Annuity or endowment contracts with any life insurance company which is qualified to do business in the state under the laws thereof.

(11) USE OF PUBLISHED STATEMENTS.—In determining the qualification of investments under the requirements of this section, published statements of corporations or statements of reliable companies engaged in the business of furnishing statistical information on bonds, may be used.

(12) SAVINGS AND LOAN ASSOCIATIONS.—In savings share or investment share accounts of any federal savings and loan association chartered under the laws of the United States, and doing business in this state, and in the shares of any Florida building and loan association which is a member of the federal home loan bank system.

(13) SAVINGS ACCOUNTS, CERTIFICATES OF DEPOSIT; STATE AND NATIONAL BANKS.—In savings accounts and certificates of deposit in any bank chartered under the laws of the United States and doing business in this state, and in savings accounts and certificates of deposit in any bank chartered under the laws of this state.

History.—§1, ch. 17949, 1937; CGL 1940 Supp. 7100(9). §1, ch. 28154, 1953; (13) n. §1, ch. 63-111.

cf.—§665.43, Investment of municipal funds in federal savings and loan associations, etc.
§665.44, Political subdivisions authorized to invest in share accounts of federal savings and loan associations, etc.
§665.45, Investment of funds of insurance companies in federal savings and loan associations, etc.
§665.46, Investment of funds of banks in federal savings and loan associations, etc.
§744.10, Investment of the money of infants by guardians.

518.06 Investment of fiduciary funds in loans insured by federal housing administrator.—Banks, savings banks, trust companies, building and loan associations, insurance companies and guardians holding funds received from or currently in receipt of funds from the veterans administration to the extent of those funds alone, may:

(1) Make such loans and advances of credit, and purchases of obligations representing loans and advances of credit, as are insured by the federal housing administrator, and obtain such insurance;

(2) Make such loans secured by real property or leasehold as the federal housing administrator insures or makes a commitment to insure, and obtain such insurance.

History.—§1, ch. 17130, 1935; CGL 1936 Supp. 7100(1); §1, ch. 17980, 1937; am. §2, ch. 28154, 1953.

518.07 Investment of fiduciary funds in bonds, etc., issued by federal housing administrator.—Banks, savings banks, trust companies, building and loan associations, insurance companies, guardians holding funds received from or currently in receipt of funds from the veterans administration to the extent of those funds alone, the state and its political subdivisions, all institutions and agencies thereof (with the approval of the officials or boards having supervision or management of same) may invest their funds and moneys in their custody or possession, eligible for investment, in notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, and in debentures issued by the federal housing administrator, and in

securities issued by national mortgage associations.

Such notes, bonds, debentures and securities made eligible for investment may be used wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or departments, or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated securities.

History.—§2, ch. 17130, 1935; CGL 1936 Supp. 7100(2); §2, ch. 17980, 1937; am. §3, ch. 28154, 1953.

518.08 Applicability of laws requiring security, etc.—No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments, or limiting investments of capital or deposits, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to §§518.06-518.07.

History.—§3, ch. 17130, 1935; CGL 1936 Supp. 7100(3).

518.09 Housing bonds legal investments and security.—The state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, all insurance companies, insurance associations and other persons carrying on an insurance business, and guardians holding funds received from or currently in receipt of funds from the veterans administration to the extent of those funds alone may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the housing authorities law of this state (chapter 421), or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits; it being the purpose of this section to authorize any person, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any bonds or other obligations; provided, however, that nothing contained in this section shall be construed as relieving any person from any duty of exercising reasonable care in selecting securities.

History.—§§1-3, ch. 19512, 1939; CGL 1940 Supp. 7100-(3nn); am. §4, ch. 28154, 1953.
cf.—§18.11 Security to be given.

518.10 Fiduciary defined as used in §§518.11-518.14.—For the purpose of §§518.11-518.14, a fiduciary is defined as an executor, administrator, trustee, guardian, (except any guardian holding funds received from or currently in receipt of funds from the veterans administration to the extent of those funds alone), or other person, whether individual or corporate, who by reason of a written agreement, will, court order or other instrument, has the responsibility for the acquisition, investment, reinvestment, exchange, retention, sale or management of money or property of another.

History.—Comp. §5, ch. 28154, 1953.

518.11 Investments by fiduciaries; prudent man rule.—In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, executors, administrators, trustees, and other fiduciaries shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

History.—Comp. §6, ch. 28154, 1953.

518.12 Instrument creating or defining powers, duties of fiduciary not affected.—Nothing contained in §§ 518.10 through 518.14, shall be construed as conferring a power of sale upon any fiduciary not possessing such power or as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of §518.11.

History.—§7, ch. 28154, 1953; §1, ch. 57-120.

518.13 Authority of court to permit deviation from terms of instrument creating trust not affected.—Nothing contained in § § 518.10 through 518.14 shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

History.—Comp. §8, ch. 28154, 1953.

518.14 Scope of § § 518.10-518-13.—The provisions of § § 518.10-518.13 shall govern fiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made.

History.—Comp. §9, ch. 28154, 1953.

518.15 Bonds or motor vehicle tax anticipation certificates legal investments and security. —Notwithstanding any restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in bonds or motor vehicle anticipation certificates issued under authority of §18, Art. XII of the state constitution, and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in §18.10, it being the purpose of this act to authorize any person, firm or corporation, association, political subdivision, body and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or anticipation certificates, up to the amount as authorized by law to be invested in any type of security, including United States government bonds.

History.—Comp. §1, ch. 27990, 1953.

518.16 Chapter cumulative. — This chapter shall be cumulative to any other law providing for investments and security for public deposits.

History.—Comp. §2, ch. 27990, §11, ch. 28154, 1953.

CHAPTER 519

DISCOUNT CONSUMER FINANCING

519.01 Definitions.—As used in this chapter:

(1) The word "person" shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities;

(2) The words "certificate of authority" shall mean a certificate of authority issued under the regulations of this chapter, to make loans in accordance with the provisions of this chapter at a single place of business;

(3) The word "registrant" shall mean a person to whom one or more certificates of authority have been issued;

(4) The word "comptroller" shall mean the comptroller of the state;

(5) The word "department" shall mean the office of the comptroller.

History.—§1, ch. 25343, 1949; (3), (4) A., (5) N. by §1, ch. 57-164.

519.02 Declaration of legislative intent.—It is the intent of the legislature in enacting this law to create the business of discount consumer credit financing with respect to the business of making certain loans, and to bring under effective supervision those engaged in the business of discount and installment loans, to establish a system of regulation for the purpose of insuring honest and efficient finance service, to fix reasonable charges for borrowers, to permit a fair return, and to provide the administration necessary for effective enforcement.

History.—Comp. §2, ch. 25343, 1949.

519.03 Scope; certain transactions deemed loans; insurance exception.—No person shall engage in the business of making loans which provide an amount of proceeds of six hundred dollars or less, exclusive of interest and initial charges included in the amount of the loan obligation, and contract for, exact, or receive, directly or indirectly, or in connection with any such loan, any charges, whether for interest, compensation, consideration, or expenses, which in the aggregate are greater than the lender would be permitted by law to charge if he were not a registrant hereunder, except as provided in and authorized by this chapter and without first having obtained a certificate of authority from the comptroller. The payment of six hundred dollars or less in money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purpose of regulation under this chapter be deemed a loan of money secured by such sale, assignment or order. However, the registrant may require reasonable insurance against loss of tangible personal property offered as security for a loan, if obtained at standard rates through a duly licensed insurance agent of this state and the cost of such insurance or any part thereof shall not be deemed a charge or amount prohibited by this chapter nor deemed to be a charge subject to the provisions of §519.06.

History.—§3, ch. 25343, 1949; §10, ch. 26484, 1951; §2, ch. 57-164.

519.04 Exemptions.—This chapter shall not apply to any person, partnership, association or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, trust companies, building and loan associations or licensed pawnbrokers, or to any licensed small loan lender, or to any loan or investment company, a substantial part of the business of which consists of receiving funds not subject to check and evidenced by installment or fully paid certificates of indebtedness or investment, and making loans and discount, nor shall any pawnbroker be permitted to obtain a certificate of authority to do business under this chapter.

History.—§4, ch. 25343, 1949; §3, ch. 57-164.

519.05 Evasions.—The provisions of this chapter shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever.

History.—Comp. §5, ch. 25343, 1949.

519.06 Penalty for violation of §519.03.—Any person, and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any provisions of §519.03 of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than one thousand dollars or by imprisonment of not more than six months, or by both

such fine and imprisonment in the discretion of the court. Any contract of loan in the making or collection of which any act shall have been done which violates §519.03 of this chapter shall be void and the lender shall have no right to collect, receive, or retain any principal, interest or charges whatsoever.

History.—Comp. §6, ch. 25343, 1949.

519.07 Application, fee, investigation; issuance of certificate, etc.—

(1) Application for a certificate of authority to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the comptroller, and shall contain the name, residence and business addresses of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof, also the county and municipality with the approximate location, where the business is to be conducted and such further relevant information as the licensing official may require. At the time of making such application the applicant shall pay to the comptroller the sum of one hundred dollars as a fee for investigating the application and the additional sum of one hundred dollars as a fee for a certificate of authority for a period terminating on the last day of the current calendar year.

(2) All fees herein provided for shall be collected by the comptroller and shall be turned in to the state treasury to the credit of the general revenue fund. The comptroller shall have full power to employ such examiners or clerks to assist the comptroller as may from time to time be deemed necessary and fix their compensation. A sufficient appropriation for carrying out the provisions of this chapter shall be included in the biennial appropriations act.

(3) Upon the filing of such application and the payment of such fees, the comptroller shall make an investigation of the facts concerning the application and the requirements provided for in subsection (4). At least ten days before entering the order granting or denying the application, he shall mail a notice of the receipt of the application to the local small loan exchange in the community where the applicant proposes to do business. If any registrant or licensee files an objection to the issuance of the certificate of authority to said applicant, or if the comptroller has any doubts of the applicant meeting the standards of subsection (4), he shall set a date and time for a hearing on such application not less than forty days nor more than sixty days from the date of mailing such notice. In addition to such hearing, the comptroller may make such further and other investigation relative to the application and the requirements as he may deem fit.

(4) If the comptroller shall find (a) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof, if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purposes of this chapter, and (b) that allowing such applicant to engage in the business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, (in making such determination the comptroller shall take into consideration the services rendered borrowers of the said community by the licensees, if any, under chapter 516 as well as registrants, if any, under this chapter in said community) and (c) that the applicant has available for the operation of such business at the specified location liquid assets of at least ten thousand dollars, if the specified location is in a community of twenty-five thousand or less population, according to the last United States census or twenty-five thousand dollars, if the specified location is in a community of more than twenty-five thousand population, according to said census, he shall thereupon file his findings of fact with the department and enter an order granting such application and issue and deliver a certificate of authority to the applicant to make loans in accordance with the provisions of this chapter at the location specified in the said application (provided that nothing in this chapter shall be construed to prevent a registrant from lending to residents of any part of this state or any other state or country, nor to prohibit the making of loans by mail when authorized by the department). Said certificate of authority shall remain in full force and effect until surrendered by the registrant or revoked or suspended as provided by law, or as may be prohibited by the provisions of this chapter. If the comptroller shall not so find, he shall thereupon enter an order denying such application and notify the applicant of the denial and return the sum paid as a fee for the certificate of authority, retaining the one hundred dollars investigation fee to cover the cost of investigating the application. The comptroller shall approve or deny every application for license hereunto within ninety days from the filing thereof with the said fees.

(5) If such applicant is presently holding a license under the provisions of chapter 516 at the address for which application is now being made, it will not be necessary for such applicant to establish the convenience and advantage to the community for a license to be issued, assuming the other requirements of this chapter are met, if the license under chapter 516 is to be surrendered at the time the license under this chapter is issued.

(6) Any registrant having a certificate of authority under this chapter at the effective date of this amendment shall be conclusively presumed to have established the convenience and advantage of its business to the community wherein it has a certificate of authority. In the event any person shall purchase substantially all of the assets of any existing registrant's

office and the registrant selling such assets surrenders its certificate of authority for such office to the comptroller, the comptroller shall:

(a) Upon application, grant to any purchaser, not a registrant hereunder, a ninety-day temporary certificate of authority applicable to the same location within ten days from the date of such application, thereupon the comptroller shall cause an investigation to be made as provided by subsection (1) to determine whether a permanent certificate of authority shall be issued provided, however, the purchaser shall not be required to meet the provisions of subsection (4) (b);

(b) Upon application, grant a certificate of authority to any purchaser, which is a registrant hereunder, within ten days of such application, provided the purchaser shall meet the requirements of this chapter except such purchaser shall not be required to meet the provisions of subsection (4) (b) of this section.

(7) If the application is denied, the comptroller shall within ten days thereafter file in his office a written record which shall include a transcript of the evidence, the findings with respect thereto, the order and the reasons supporting the denial and forthwith serve upon the applicant a copy thereof. Such order and findings or an order granting an application may be reviewed as provided by law.

(8) All findings of facts and orders filed with the department shall be a public record.

(9) Not more than one place of business for the making of loans under this chapter shall be maintained under the same certificate of authority, but the comptroller shall issue additional certificates of authority to the same registrant upon compliance with all the provisions of this chapter governing issuance of a single certificate of authority.

(10) No change in the place of business of any registrant shall be permitted unless he give written notice to the licensing official and if the licensing official shall find the proposed location is reasonably accessible to the borrowers under existing contracts he shall permit the change of location within the original community for which the certificate was issued.

(11) A registrant may conduct the business of making loans under this chapter within a place of business in which other business is solicited or engaged in, unless the comptroller shall find, after a hearing, and based on written findings of fact, that the conduct of such other business by the registrant results in an evasion of this chapter. Upon such finding, the comptroller shall order the registrant, in writing, to desist from such evasion, provided, however, that no certificate of authority shall be granted to or renewed for any person or organization engaged in the pawnbroker business.

History.—§7, ch. 25343, 1949; §4, ch. 57-164.

519.08 Maximum charge.—Every registrant hereunder, notwithstanding anything contained in the usury law, may, if agreed upon in writing, contract for, collect or receive on loan obligations made on such security, if any, satisfactory to both the borrower and registrant in which the proceeds, exclusive of interest and the initial charges, is in the amount of six hundred dollars or less, if repayable in substantially equal monthly or other periodic installments, charges not in excess of the following:

(1) An initial charge in an amount not exceeding ten dollars per one hundred dollars of the amount of the loan, repayable over a period of one year, and proportionately at that rate for a greater or lesser sum or for a longer or shorter period, which charge may be computed on the amount of the loan from date thereof until date of maturity of the final installment notwithstanding any agreement to pay the loan obligation in installments, such charge to be added to the amount of the loan at the time it is made, and two dollars on each ten dollars of this charge shall constitute, in whole or in part, reimbursement of expenses incurred and compensation for services rendered in connection with the making of the loan and the remainder of the initial charge shall be interest; provided, however, that when the balance of any loan is repaid before maturity, whether by payment in cash, new loan, renewal, or otherwise, the unearned part of the interest for the period following the next scheduled payment date, shall be returned or credited to the borrower. The amount of the refund shall represent at least as great a proportion of the total interest as the sum of the periodical time balances after the date of prepayment bears to the sum of all the periodical time balances under the schedule of payments in the original contract, provided, further, however, if the loan is repaid within ninety days from the date of making, then such refund shall be computed on the full amount of the initial charges.

(2) A monthly service charge, to cover services rendered and expenses incurred in connection with the loan transaction, may be contracted for and collected until the loan is fully paid for each month, and the fraction of a month at the end of the loan, provided such charge shall not be in excess of twenty cents for each full twenty-five dollars of the original loan obligation and not in excess of two dollars and forty cents per month. Such service charge shall not be collected at the time the loan is made, provided, however, the service charge covering the number of monthly payments required by the loan contract may be aggregated and included in the face amount of the loan obligation. In the event the balance of any loan is repaid before maturity, whether it be payment in cash, a new loan, renewal or otherwise, the amount of the unearned monthly service charges shall be canceled or credited to the borrower.

(3) If payment of all unpaid installments on which no delinquent charges, as provided for in subsection (4), has been charged and collected is deferred one or more full months, the

registrant may charge and collect an amount which shall be equal to the difference between the refund that would be required for prepayment in full as of the scheduled due date of the first deferred installment and the amount which will be required for prepayment in full as of one month prior to such date, multiplied by the sum of the number of months in which no scheduled payment has been made and in which no payment is to be required by reason of the deferment. Such charge may be collected at the time of deferment or may be collected at any time thereafter.

If a refund of interest is required during a period in which no scheduled payment is required by reason of a deferment, the borrower shall also receive a pro rata refund of the deferment charge, computed to the nearest number of full months.

(4) In addition to the charges and fees herein provided for, no further or other amount whatsoever shall be directly or indirectly charged, contracted for or received, except that a registrant hereunder may, if agreed to in writing, contract for, impose and collect a delinquent charge of five cents per dollar for each full dollar of an installment which is delinquent for five or more days, which charge may be imposed only once on each delinquent installment. However, such restriction shall not apply to the actual fees paid a public official or agency of a state for filing, recording or releasing any instrument securing the loan, or actual and reasonable attorney fees as determined by the court in which suit is filed and court costs including reasonable expenses of repossession, storing, and selling of any property pledged as security as determined by the court in which suit is filed. If any amount in excess of the charge permitted by this chapter is charged, contracted for or received, except as the result of an accidental or bona fide error, the contract of loan shall be void and the registrant shall have no right to collect or receive any principal, charges, or recompense whatsoever. In the event of an accidental or bona fide error, the registrant shall refund or credit the amount to the borrower within five days of the discovery of such error.

(5) No registrant shall permit any person as borrower, endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife, jointly or severally, to become obligated, directly or contingently or both, for more than one contract of loan at the same time for the purpose or with the effect of obtaining a higher rate of charge than would otherwise be permitted by this chapter; but such limitation shall not apply to the acquisition by purchase of bona fide obligations of the borrower incurred for goods or services, and provided further, if a registrant purchases all or substantially all the loan contracts of another registrant or licensee under chapter 516 and has at the time of purchase loan contracts with one or more of the borrowers whose loans are purchased, the purchaser shall be entitled to collect principal and charges thereon according to the terms of each loan contract.

History.—§8, ch. 25343, 1949; §5, ch. 57-164.

519.09 Provision against manipulation.— The comptroller shall have authority to issue a rule, regulation, specific ruling, cease and desist order, suspension, or revocation order to stop any registrant who abuses or proposes to abuse or manipulate the schedule of charges herein permitted contrary to the constructive purposes and standards set forth in this chapter.

History.—Comp. §9, ch. 25343, 1949.

519.10 Loan contracts; requirements, length of loan; advertising.—

(1) Every registrant shall: (a) At the time any loan is made, deliver to the borrower, or if there are two or more borrowers to one of them, a statement in the English language disclosing the amount and date of the loan contract or note and a schedule of the installments or description thereof, or a copy of the note in lieu of such statement; (b) for each cash payment made on account of any such loan, issue to the person making it at the time payment is made a receipt which need show only the total amount of such cash payment, provided the registrant shall not be required to give a receipt for payments made by check or money order, and the use of a coupon book system shall be in compliance herewith; (c) permit payment to be made in advance in any amount on any contract of loan at any time, but the registrant may apply such payment first to all accrued charges in full at the agreed rate or schedule up to the date of such payment; (d) upon repayment of the loan in full, marked plainly every obligation and security signed by the obligor with the word "paid" or "canceled," and within a period of thirty days, restore any pledge, return any note and any assignment and where a mortgage has been recorded, deliver to the borrower or agent a written release thereof.

(2) No person subject to this chapter shall enter into any loan contract under which any scheduled repayment of principal is due more than twenty-four months from the date of the loan contract. Nothing herein shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract.

(3) No person subject to this chapter shall advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner whatsoever, any false, misleading or deceptive statement concerning the business authorized under this chapter.

History.—§10, ch. 25343, 1949; §6, ch. 57-164.

519.11 Wage assignments.—

(1) No assignment of or order for the payment of any salary, wages, commissions or other compensation for services, earned or to be earned, given to secure any such loans shall be

valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower be valid unless it be in writing, signed in person by the borrower; or, if the borrower is married, unless it be signed in person by both husband and wife; provided that written assent of a spouse shall not be required when husband or wife have been living separate and apart for a period of at least five months prior to such assignment, order, mortgage or lien.

History.—§11, ch. 25343, 1949; am. §1, ch. 28245, 1953.
cf.—§516.17 Assignment of wages, etc., given to secure loans.

519.12 Comptroller to administer and enforce; books; records; reports; investigations, etc.—

(1) Each registrant shall keep and use in his business such books and accounting records, in accordance with sound and accepted accounting practices so as to enable the comptroller to determine whether such registrant is complying with the provisions of this chapter. Each registrant shall maintain a separate ledger card or other separate record for the account of each borrower, which shall set forth separately the amount of cash advanced to or on behalf of the borrower, the total initial charge, and the aggregate amount of monthly service charges when included in the loan obligation. Such record may set forth pre-computed declining balances based on the scheduled payments, without a separation of the initial charge and monthly service charge. In the event the balance of any loan is repaid before maturity, whether by cash, a new loan, renewal or otherwise, the registrant shall show separately on such record the amount of refund or credit of unearned interest and monthly service charges. Each registrant shall preserve such books, accounts and records for at least two years after the making of the final entry on any loan recorded therein.

(2) Each registrant shall file annually during April of each year a report under oath with the comptroller setting forth such relevant information as he reasonably may require concerning the business and operations during the preceding calendar year for each registered place of business conducted by such registrant within the state. Among other things, such report shall identify the registrant and the registered place of business and set forth a list of all assets used and useful in conducting the business, both tangible and intangible, the gross income and expenses including all taxes for the year, the earnings for the year and the rate thereof in relation to all assets. The income and expenses may be reconciled to the surplus account. The report shall also set forth the number and dollar size of loans made during the year and outstanding at the beginning and end of the year; it shall require a summary of delinquency and seizure of chattels in use by the borrower and court actions shall be given. Such report shall be in the form prescribed by the comptroller who shall make and publish annually an analysis and recapitulation of such reports for the entire state.

(3) At least twice each year, but no oftener than is reasonably necessary in order to verify reasonably founded suspicions of violations, the comptroller or his duly authorized representatives shall make an examination of the place of business of each registrant and of the loans, transactions, books, papers and records of such registrant so far as they pertain to the business licensed under this chapter. Every registrant shall pay to the comptroller an examination fee based on the amount of outstanding loans due the registrant at the date of each examination, as follows:

Outstanding loans	*Examination fee*
From $0 to $25,000.00, a fee of	$ 30.00
From $25,000.01 to $50,000.00, a fee of	40.00
From $50,000.01 to $100,000.00, a fee of	60.00
From $100,000.01 to $250,000.00, a fee of	75.00
Over $250,000.00, a fee of	100.00

The said examination fee shall be a first lien upon the assets of the registrant and if not paid within thirty days from and after the completion of the examination the license of the said registrant shall stand suspended until said fee is paid in full.

(4) For the purpose of discovering violations of this chapter or of securing information lawfully required hereunder, the comptroller or his duly authorized representative may at any time investigate the business and examine the books, accounts, papers and records used therein, of (a) any registrant, (b) any other person engaged in the business described in §519.03 or participating in such business as principal, agent, broker or otherwise, and (c) any person whom the comptroller has reasonable cause to believe is violating or is about to violate any provision of this chapter, whether or not such person shall claim to be within the authority or beyond the scope of this chapter. For purposes of this section, any person, except those expressly exempted from the provisions of this chapter, who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the amount or of the value of six hundred dollars or less, exclusive of interest and initial charges taken at the time the loan is made, shall be presumed to be engaged in the business described in §519.03.

(5) Whenever the comptroller has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, he may in addition to all actions provided for in this chapter and without prejudice thereto, after ten days written notice, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought on the relation of the attorney general and the comptroller to enjoin such person from engaging

in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up and liquidation of such property and business as shall from time to time be conferred upon him by the court.

(6) The comptroller shall have power and authority to make regulations. Such regulations shall be referenced to the section or sections which set forth the legislative standard which they interpret or apply. Every regulation shall be promulgated by an order, any ruling, demand requirement or similar administrative act may be promulgated by an order. Every order shall be in writing, shall state its effective date and the date of the promulgation and shall be entered in an indexed permanent book which shall be a public record. A copy of every order promulgating a regulation and of every order containing a requirement of general application shall be mailed to such registrant under this chapter at least fifteen days before the effective date thereof.

(7) The comptroller may, upon ten days written notice to the registrant stating the contemplated action and the specific grounds therefor, and upon reasonable opportunity to be heard, revoke or suspend any certificate of authority issued hereunder if he finds that: (a) the registrant has failed to pay the annual license tax; or that (b) the registrant, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter; or that (c) any fact or condition exists which if it had existed at the time of the original application clearly would have warranted the comptroller in refusing originally to issue such certificate of authority.

(8) The comptroller shall have the authority to suspend or revoke the license of any registrant found guilty by the comptroller of using unreasonable collection tactics.

History.—§12, ch. 25343, 1949; §10, ch. 26484, 1951; §7, ch. 57-164.

519.13 Surrender of certificate of authority.—Any registrant may surrender any such certificate of authority by delivering it to the comptroller with written notice of its surrender, but such surrender shall not affect his civil or criminal liabilities for acts committed prior thereto, nor his right to collect upon any obligation lawfully created prior to such surrender.

History.—Comp. §13, ch. 25343, 1949.

519.14 Judicial review.—In addition to any other remedy he may have, any registrant or any person considering himself aggrieved by any order of the comptroller hereunder may, within the time and in the manner provided by the Florida appellate rules, have the order reviewed by certiorari by the appropriate circuit court. The decision of the comptroller shall remain in full force until revised by final judgment of the court, unless the operation of said order shall be suspended pending said appeal upon proper order of the court. On such review, the record, transcript, evidence and findings and order of the comptroller shall be admissible as evidence, and the burden of proof upon a review of the findings of the comptroller shall be upon the party seeking the review. An appeal may be taken by either party from the order or decree of the circuit court to the appropriate district court of appeal as in other appeals in chancery.

History.—§14, ch. 25343, 1949; §10, ch. 26484, 1951; §6, ch. 63-512.
cf.—§28.24 Compensation of clerk of circuit court.

519.15 Comptroller may appoint personnel to administer chapter.—For the purpose of administering and enforcing this chapter the comptroller may appoint a director of consumer finance and such examiners, statisticians, clerks and other employees as may be necessary. The comptroller may delegate to said director and other employees any of the powers, authority and jurisdiction conferred by this chapter on said comptroller, except those provided for in subsection (7) of §519.12.

History.—Comp. §15, ch. 25343, 1949.

519.17 Loans made elsewhere.—No loan made outside this state in the amount or value of six hundred dollars or less for which a greater rate of interest, consideration or charges than is permitted by §519.08 has been charged, contracted for, or received, shall be enforced in this state, and every person in anywise participating therein in this state shall be subject to the provisions of this chapter.

History.—§17, ch. 25343, 1949; §8, ch. 57-164.

519.18 Chapter to be cumulative.—This chapter shall be deemed cumulative and in addition to any other statutes now or hereafter in effect relating to the subject matter hereof, but shall not apply to any person, firm or corporation receiving, accepting, discounting, selling, assigning or otherwise dealing in retain title contracts involving the financing of motor vehicles.

History.—Comp. §19, ch. 25343, 1949.

519.19 Short title.—This chapter shall be known and may be known and cited as the Florida consumer finance law.

History.—Comp. §20, ch. 25343, 1949.

CHAPTER 520

RETAIL INSTALLMENT SALES

PART I MOTOR VEHICLES SALES FINANCE ACT

PART II RETAIL INSTALLMENT SALES ACT

PART III INSTALLMENT SALES FINANCE ACT

PART I

MOTOR VEHICLES SALES FINANCE ACT

520.01 Motor vehicles sales finance act.—Sections 520.01-520.13 may be cited as "The motor vehicle sales finance act."

History.—Comp. §14, ch. 57-799.

520.02 Definitions.—In this act unless the context or subject matter otherwise requires:

(1) "Motor vehicle" means any device or vehicle, including automobiles, motorcycles, motor trucks, trailers, and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power, but does not include traction engines, road rollers, implements of husbandry and other agricultural equipment and such vehicles as run only upon a track.

(2) "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller not principally for the purpose of resale, and who executes a retail installment contract in connection therewith or a person who succeeds to the rights and obligations of such person.

(3) "Retail installment seller" or "seller" means a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.

(4) "Retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time sale price payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, official fees and the finance charge shall together constitute the time sale price.

(5) "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

(6) "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if such sale had been a sale for cash instead of a retail installment transaction. The cash sale price may include any taxes, registration, certificate of title, license and other fees and charges for accessories and their installation and for delivery, servicing, repairing, or improving the motor vehicle.

(7) "Official fees" mean the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title or a lien created by a retail installment contract.

(8) "Finance charge" means the amount agreed upon between the buyer and the seller, as limited herein, to be added to the cash sale price, the amount, if any, included for insurance and other benefits, if a separate charge is made therefor, and official fees, in determining the time sale price.

(9) "Sales finance company" means a person engaged in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, or industrial bank, if so engaged. The term does not include the pledge of an aggregate number of such

contracts to secure a bona fide loan thereon.

(10) The "holder" of a retail installment contract means the retail seller of the motor vehicle under the contract or, if the contract is purchased by a sales finance company or another assignee, the sales finance company or other assignee.

(11) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(12) "Purchase price" means the time balance shown in the contract plus the down payment.

(13) "Administrator" means the state comptroller.

(14) Words in the singular include the plural and vice versa.

History.—§1, ch. 57-799; (2)-(5), (8)-(10) by §1, ch. 59-456; (2) §1, ch. 61-117; (1) §1, ch. 63-101.

520.03 Licensing of sales finance companies required.—

(1) No person shall engage in the business of a retail installment seller or of a sales finance company in this state without a license therefor as provided in this act; provided, however, that no bank, trust company or industrial bank authorized to do business in this state shall be required to obtain a license under this act.

(2) The application for such license shall be in writing and in the form prescribed by the administrator. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and residence address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, and such other pertinent information as the administrator may require.

(3) The license fee for each calendar year or part thereof shall be the sum of twenty-five dollars for the principal place of business of each sales finance company, and the sum of ten dollars for the principal place of business of each retail installment seller of motor vehicles. A separate license fee of like amount shall be paid for each branch of the sales finance company maintained in this state. Fees collected under this section shall be deposited in the state treasury and are hereby appropriated to the comptroller to be used in administering this act.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the administrator shall endorse the change of location on the license without charge.

(5) Upon the filing of such application, and the payment of said fee, the administrator shall issue a license to the applicant to engage in the business of a sales finance company or of a retail installment seller under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character, or to corporations whose officers are of good moral character.

History.—§2, ch. 57-799; (1)-(3) and (5) by §2, ch. 59-456.

520.04 Denial, suspension or revocation of licenses.—

(1) A license may be denied, suspended or revoked by the administrator on the following grounds:

(a) Material misstatement in application for license;

(b) Wilful failure to comply with any provision of this act relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(3) No license shall be denied, suspended or revoked except after hearing thereon. The administrator shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order denying, suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the administrator and shall not be effective until after thirty days written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. If the licensee fails or refuses to obey the order after such thirty days period has elapsed, the administrator may file a petition with the circuit court for an injunction to enforce the order. A copy of the administrator's findings and conclusions of law shall be set forth in such petition. The court hearing such petition shall have the power to issue an appropriate injunction restraining and enjoining such licensee from engaging in

the act or acts forbidden by the order of the administrator. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

(4) Any person aggrieved by any such order of suspension or revocation of a license may apply for a review thereof by petition for certiorari by the circuit court of Leon county within the time and in the manner provided by the Florida appellate rules and the statutes of this state not superseded by or in conflict with said rules.

History.—§3, ch. 57-799; (3) §3, ch. 59-456; (4) §7, ch. 63-512. cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

520.041 Books, accounts, records, etc.—

(1) Every licensee shall maintain, at the place of business designated in the license certificate, such books, accounts and records of the business conducted under the license issued for such place of business as will enable the administrator to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of this act.

(2) A licensee, operating two or more licensed places of business in this state, may maintain the general control records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the administrator designating therein the office at which such control records are maintained.

(3) All books, accounts and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the administrator for at least two years after making the final entry therein.

(4) The administrator is hereby authorized and empowered to prescribe the minimum information to be shown in the books, accounts and records of licensees so that such records will enable the administrator to determine compliance with the provisions of this act.

History.—§4, ch. 59-456.

520.05 Investigations and complaints.—

(1) The administrator shall, at intermittent periods, make such investigations and examinations of any licensee or other person as he deems necessary to determine compliance with this act. For such purposes, he may examine the books, accounts, records and other documents or matters of any licensee or other person. He shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the administrator has reason to believe the licensee is not complying with the provisions of this act. The expenses of the administrator incurred in each such examination of a sales finance company licensed under this act shall be paid by such sales finance company so examined within thirty days after demand therefor by the administrator, and shall not exceed thirty-five dollars per day for each eight hour man-day for time actually consumed in making such examination, plus the traveling expense and per diem subsistence allowance provided for state employees in §112.061. Expense thus recovered shall be deposited in the state treasury as a reimbursement to the biennial appropriation for expenses incurred in enforcing this act. The licensee shall not be required to pay a per diem fee and expenses of an examination which shall consume more than thirty man-days in any one year unless such examination or investigation is due to fraudulent practices of the licensee, in which case such licensee shall be required to pay the entire cost regardless of time consumed.

(2) Any retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the administrator a written complaint setting forth the details of such alleged violations and the administrator upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History.—§4, ch. 57-799; (1) by §5, ch. 59-456.

520.06 Powers of administrator.—

The administrator shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this act. The administrator shall have the power to administer oaths and affirmations to any person whose testimony is required.

If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the circuit court, for the witness to appear before the administrator and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.

If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the administrator may apply to any judge of the circuit court for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedi-

ence to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine, not exceeding $100.00, or by imprisonment in the county jail, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

The administrator may issue and promulgate such rules and regulations as he may deem necessary in the administration of this act and not inconsistent with the provisions of this act.

History.—Comp. §5, ch. 57-799.

520.07 Requirements and prohibitions as to retail installment contracts.—

(1)(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least eight point type. The contract shall contain in a size equal to at least ten point type:

1. A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

2. The following notice:

Notice to the Buyer

a. Do not sign this contract before you read it or if it contains any blank spaces. b. You are entitled to an exact copy of the contract you sign.

(c) The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded-in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(d) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification number or marks.

(2) The contract shall contain the following:

(a) The cash sale price of the motor vehicle;

(b) The amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods;

(c) The difference between paragraphs (a) and (b);

(d) The amount, if any, included for insurance and other benefits specifying the types of coverage and benefits;

(e) The amount of license, taxes and official fees, if any;

(f) The principal balance, which is the sum of paragraphs (c), (d) and (e) of subsection (2);

(g) The amount of the finance charge;

(h) The time balance, which is the sum of paragraphs (f) and (g), payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

The above items need not be stated in the sequence or order set forth; additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

(3) The amount, if any included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department. If dual interest insurance on the motor vehicle is purchased by the holder it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance.

Nothing in this act shall impair or abrogate the right of a buyer as defined herein, to procure insurance from an agent and company of his own selection as provided by the insurance laws of this state; and nothing contained in this act shall modify, amend, alter or repeal any of the insurance laws of the state, including any such laws enacted by the 1957 Florida legislature.

(4) If any insurance is cancelled, or the premium adjusted, unearned insurance premium refunds received by the holder shall be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

(5) The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default for a period not less than ten days in an amount not in excess of five per cent of each installment or five dollars, whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of reasonable attorney's fees where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract plus the court costs.

(6) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of paragraph (c) of subsection (1), of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed, did not contain any blank spaces except as herein provided, and of compliance with this section in any action or proceeding by or against the holder of the contract.

(7) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

History.—§6, ch. 57-799; (4), (5) by §6, ch. 59-456.

520.08 Finance charge limitation.—

(1) Notwithstanding the provisions of any other law, the finance charge, exclusive of insurance, and other benefits and official fees, shall not exceed the following rates:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—$8 per $100 per year.

Class 2. Any new motor vehicle not in Class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made—$11 per $100 per year.

Class 3. Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made—$15 per $100 per year.

Class 4. Any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than four years prior to the year in which the sale is made—$17 per $100 per year.

(2) Such finance charge shall be computed on the principal balance as determined under §520.07(2) on contracts payable in successive monthly payments substantially equal in amount. Such finance charge may be computed on the basis of a full month for any fractional month period in excess of ten days. A minimum finance charge of twenty-five dollars may be charged on any retail installment transaction.

(3) When a retail installment contract provides for unequal or irregular installment payments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) having due regard for the schedule of payment.

(4) Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

History.—§7, ch. 57-799; (3) by §7, ch. 59-456.

520.09 Credit upon anticipation of payments.—Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may pay in full at any time before maturity the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge after first deducting from such finance charge an acquisition cost of twenty-five dollars, as the sum of the monthly time balances after the month in which prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the contract. Where the amount of credit is less than one dollar no refund need be made.

History.—Comp. §8, ch. 57-799.

520.10 Refinancing retail installment contract.—The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments, or deferred payment or payments, or renew or restate the unpaid time balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed as follows: In the event the unpaid time balance of the contract is extended, deferred, renewed or restated, the holder may compute the refinance charge on such amount by adding to the unpaid time balance the cost for insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges after deducting any refund which may be due the buyer at the time of the renewal or restatement by prepayment pursuant to §520.09, at the rate of the finance charge specified in §520.08 (1) and by reclassifying the motor vehicle by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under §520.08 (2) and acquisition costs under the refund schedule in §520.09 shall not apply in calculating refinance charges on the

contract extended, deferred, renewed or restated. If all unpaid installments are deferred for not more than two months, the holder may, at his election, charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under §520.09 as of the scheduled due date of the first deferred installment, and the refund required for prepayment in full as of one month prior to said date, times the number of months in which no scheduled payment is made.

History.—§9, ch. 57-799; §8, ch. 59-456.

520.11 Repossession.—

(1) When the buyer is in default in the payment of any sum due under the contract or in the performance of any other condition or promise, the breach of which is by the contract expressly made a ground for the retaking of the motor vehicle, the holder may retake possession thereof either peaceably or by legal process. Upon such retaking, the rights and obligations of the holder and of the buyer are as provided in this section.

(2) Upon such retaking, the holder and the buyer may mutually agree that the holder may retain the motor vehicle as his own or may sell the motor vehicle for his own account without complying with or being bound by the provisions of this section and thereupon the buyer and the holder shall each be discharged of all obligations under the contract.

(3) Unless the holder and the buyer enter into an agreement as provided in subsection (2), the holder shall, within five days after the retaking, furnish to the buyer, either personally or by registered or certified mail addressed to the buyer at the buyer's last known address, a written statement advising the buyer of the buyer's right to demand a public sale of the motor vehicle and of the buyer's right to redeem the motor vehicle. Said statement shall advise the buyer of the amount required to be paid to redeem the motor vehicle and the name and address of the holder to which payment of such amount is to be made. Said statement shall advise the buyer that if the buyer does not redeem the motor vehicle, the holder may, at the option of the holder, and shall, upon demand of the buyer as provided in subsection (4), sell the motor vehicle at public sale. Said statement shall advise the buyer that if there is a public sale of the motor vehicle, the proceeds of the sale shall be applied first to the payment of such costs, expenses and attorneys' fees in connection with the retaking, storing and sale of the motor vehicle as may be allowed by the court if the retaking was by legal process or, if the retaking was not by legal process, to the payment of the actual and necessary expenses of storing the motor vehicle, not to exceed one dollar per day, and to the actual cost of publishing the notice of sale in a newspaper as required in subsection (4), and then to the satisfaction of the balance due under the contract and that after such application any surplus shall be paid to the buyer and that the buyer shall remain liable for any balance remaining unpaid after such application. The holder shall retain the motor vehicle within the county and state in which it was located when retaken for ten days after furnishing such statement to the buyer, during which period the buyer may demand a public sale as provided in subsection (4) or may, upon payment or tender of payment of all sums remaining unpaid under the contract, less the refund credit to which the buyer would be entitled upon anticipation of payments as provided in §520.09, and upon performance or tender of performance of such other condition or promise, the breach of which constituted the default for which the motor vehicle was retaken, and upon payment or tender of payment of such costs, expenses and attorneys' fees in connection with the retaking and storing of the motor vehicle as may be allowed by the court if the retaking was by legal process or, if the retaking was not by legal process, upon payment or tender of payment of the actual and necessary expenses of storing the motor vehicle, not to exceed one dollar per day, redeem the motor vehicle and become entitled to take possession of it, whereupon the buyer shall be discharged of all obligations under the contract.

(4) If the buyer does not, within the time provided in subsection (3), redeem the motor vehicle or demand a public sale as herein provided, the holder may, at the option of the holder, retain the motor vehicle as his own or sell the motor vehicle for his own account without obligation to account to the buyer and the buyer and the holder shall be discharged of all obligations under the contract or the holder may, at the option of the holder, sell the motor vehicle at public sale in the county and state in which it was located when retaken, such sale to be held not less than five days and not more than thirty days after the expiration of the time for redemption as provided in subsection (3). Provided, if the holder retook possession of the motor vehicle by legal process, the holder may, at the option of the holder, sell the motor vehicle at public sale held not less than five days and not more than thirty days after the entry of a judgment by a court of competent jurisdiction entitling the holder to the possession of the motor vehicle. The holder shall give notice of the sale by publishing one time at least five days before the sale, in a newspaper published in the county where the motor vehicle is to be sold or, if no newspaper is published in such county, in a newspaper having a general circulation in such county, a notice in a form substantially as follows:

"NOTICE OF SALE

To whom it may concern:

You are hereby notified that the following motor vehicle:

(Insert brief description of motor vehicle) will be sold at public sale at ..... o'clock on the ..... day of ....., 19...., at

..... The proceeds of the sale will
(Place of sale)
be applied first to the payment of the costs of retaking, storing and sale of said motor vehicle and the cost of publication of notice of sale and then to the satisfaction of the balance due under the contract with (Insert name and address of buyer) covering the financing of said motor vehicle. Any surplus will be paid to you and you will remain liable for any balance remaining unpaid under said contract.

.....
Name and address of holder"

The holder shall also, at least five days before the sale, furnish a copy of said notice to the buyer, either personally or by registered or certified mail addressed to the buyer at the buyer's last known address. The holder may bid for and be the purchaser of the motor vehicle at the sale. The holder shall not be obligated to resell, as above provided, unless the buyer, within the time for redemption as provided in subsection (3), demands a sale by written notice delivered personally or by registered or certified mail to the holder. If such demand is served, the holder shall sell the motor vehicle within thirty days after the service thereof or, if the holder retook possession of the motor vehicle by legal process, the holder may, at the option of the holder, sell the motor vehicle within thirty days after the entry of a judgment by a court of competent jurisdiction entitling the holder to the possession of the motor vehicle, such sale to be held in the manner, at the place and upon the notice prescribed above. A newspaper publishing the notice of sale required hereunder shall not be liable in damages to any person or persons named therein arising solely from the publication of said notice.

(5) If there is a public sale as provided in subsection (4), the proceeds of the sale shall be applied first to the payment of such costs, expenses and attorneys' fees in connection with the retaking, storing and sale of the motor vehicle as may be allowed by the court if the retaking was by legal process or, if the retaking was not by legal process, to the payment of the actual and necessary expenses of storing the motor vehicle, not to exceed one dollar per day, and to the actual cost of publishing the notice of sale in a newspaper as required in subsection (4) and then to the satisfaction of the balance due under the contract. After such application, any surplus shall be paid to the buyer. The buyer shall remain liable for any balance remaining unpaid after such application only if there is a public sale as provided above and if the contract contains in a size equal to at least ten point type a statement substantially as follows:

Upon default, the motor vehicle purchased hereunder may be repossessed and sold at public sale. The proceeds of such sale shall be applied first to the payment of such costs, expenses and attorneys' fees in connection with the retaking, storing and sale of the motor vehicle as may be allowed by the court if the retaking is by legal process or, if the retaking is not by legal process, to the payment of the actual and necessary expenses of storing the motor vehicle, not to exceed one dollar per day, and to the actual cost of publishing the notice of sale in a newspaper as required in §520.11(4), Florida Statutes, and then to the satisfaction of the balance due under this contract. After such application any surplus shall be paid to the buyer and the buyer shall remain liable for any balance remaining unpaid after such application.

The buyer may have the reasonable value of the motor vehicle at the time of the public sale determined in any action or proceeding brought by the buyer for that purpose within one year after such sale or in any action or proceeding brought by the holder to recover any balance remaining unpaid, the resale price being prima facie but not conclusive evidence of such reasonable value. The reasonable value as determined by a court of competent jurisdiction or the resale price, whichever shall be higher, and a sum equal to the refund credit to which the buyer would be entitled upon anticipation of payments as provided in §520.09, shall be credited to the buyer on account of the buyer's indebtedness.

(6) If there is no public resale as above provided, the holder may retain the motor vehicle as his own or sell the motor vehicle for his own account without obligation to account to the buyer and the buyer and the holder shall be discharged of all obligations under the contract.

(7) The holder may, at the option of the holder, instead of retaking possession institute an action in a court of equity to foreclose the contract and in that event be entitled to all equitable remedies now existing for the foreclosure of liens.

(8) If the holder fails to comply with any of the provisions of this section, the buyer may recover the buyer's actual damages from the holder.

History.—§10, ch. 57-799; §2, ch. 61-117; (4) §1, ch. 63-215.

520.12 Penalties.—

(1) Any person who shall wilfully and intentionally violate any provision of this act or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500.00.

(2) A wilful violation of §§520.03, 520.07 or 520.08 by the seller or holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

History.—§11, ch. 57-799; §9, ch. 59-456.

520.13 Waiver.—Any waiver of the provisions of §§520.01-520.13, except as provided in §520.11(2), as amended by this act, shall be unenforceable and void.

History.—§12, ch. 57-799: §3, ch. 61-117.

PART II

RETAIL INSTALLMENT SALES ACT

520.30 Short title.—This act may be cited as "The retail installment sales act."

History.—§1, ch. 59-414.

520.31 Definitions.—Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(1) "Goods" means all personalty when purchased primarily for personal, family or household use, including certificates or coupons issued by a retail seller exchangeable for personalty or services, but not including other choses in action, personalty sold for commercial or industrial use, money, motor vehicles or construction, mining or quarrying equipment. The term "goods" includes such personalty which is furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property as to become a part thereof, whether or not severable therefrom.

(2) "Motor vehicle" means any device or vehicle operated over the public highways and streets of this state and propelled by other than muscular power, but does not include traction engines, road rollers, implements of husbandry and other agricultural equipment and such vehicles as run only upon a track.

(3) "Services" means work or labor furnished for personal, family or household use, whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement or construction upon or in connection with real property.

(4) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not principally for the purpose of resale.

(5) "Retail seller" or "seller" means a person regularly engaged in, and whose business consists to a substantial extent of, selling goods to a retail buyer.

(6) "Retail installment transaction" or "transaction" means a contract to sell or furnish or the sale of or the furnishing of goods or services by a retail seller to a retail buyer pursuant to a retail installment contract or a revolving account.

(7) "Retail installment contract" or "contract" means an instrument or instruments reflecting one or more retail installment transactions entered into in this state pursuant to which goods or services may be paid for in installments. It does not include a revolving account or an instrument reflecting a sale pursuant thereto.

(8) "Revolving account" or "account" means an instrument or instruments prescribing the terms of retail installment transactions which may be made thereafter from time to time pursuant thereto, under which the buyer's total unpaid balance thereunder, whenever incurred, is payable in installments over a period of time and under the terms of which a time price differential is to be computed in relation to the buyer's unpaid balance from time to time.

(9) "Cash sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if such sale had been a sale for cash. **The cash sale price may include any applicable taxes and charges for delivery, installation, servicing, repairs, alterations, or improvements.**

(10) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting or releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(11) "Time price differential" means the amount, however denominated or expressed, paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charges, attorney's fees, court costs, or official fees.

*(12) "Administrator" means the state comptroller.

History.—§2, ch. 59-414; (1) and (3) a. by §1, ch. 61-398; (12) n. §1, ch. 63-547.

*Becomes effective January 1, 1964.

520.32 Retail installment; license and fee.—(1) For the privilege of conducting, engaging in and carrying on the business of retail seller engaging in retail installment transactions as defined in this act, there is hereby levied and assessed upon every such retail seller, for each store located and operated within this state for the conduct of such business an annual license

fee in the sum of five dollars.

*(2) Licenses shall be issued under and in accordance with the provisions of this act for a period which will expire December 31 next following the date of issuance. Such licenses shall not be transferable or assignable. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the administrator shall endorse the change of location on the license without charge. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character, or to corporations whose officers are of good moral character. Fees collected under this section shall be deposited in the state treasury and are hereby appropriated to the comptroller to be used in administering this act.

History.—§3, ch. 59-414; (2) n. §2, ch. 63-547.
*Becomes effective January 1, 1964.

***520.331 Denial, suspension or revocation of licenses.—**

(1) A license may be denied, suspended or revoked by the administrator on the following grounds:

(a) Material misstatement in application for license;

(b) Wilful failure to comply with any provision of this act relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If the licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(3) No license shall be denied, suspended or revoked except after hearing thereon. The administrator shall give the licensee at least ten days written notice in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order denying, suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the administrator and shall not be effective until after thirty days written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. If the licensee fails or refuses to obey the order after such thirty days period has elapsed, the administrator may file a petition with the circuit court for an injunction to enforce the order. A copy of the administrator's findings and conclusions of law shall be set forth in such petition. The court hearing such petition shall have the power to issue an appropriate injunction restraining and enjoining such licensee from engaging in the act or acts forbidden by the order of the administrator. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

(4) Within thirty days after any such suspension or revocation of a license, the person aggrieved may apply for a review thereof pursuant to and in accordance with the provisions of §120.31.

History.—§3, ch. 63-547.
*Becomes effective January 1, 1964.

***520.332 Power of administrator; rules and regulations.**—The administrator may issue and promulgate such rules and regulations as he may deem necessary in the administration of this act and not inconsistent with the provisions of this act.

History.—§4, ch. 63-547.
*Becomes effective January 1, 1964.

520.34 Retail installment contracts.—

(1) Every retail installment contract shall be in writing and shall be completed as to all essential provisions prior to the signing thereof by the buyer, except as provided in subsection (6). The printed portion of the contract, other than instructions for completion, shall be in at least six point type. The contract shall contain substantially the following notice in size equal to at least ten point type:

Notice to the Buyer

a. Do not sign this before you read it or if it contains any blank spaces. b. You are entitled to an exact copy of the paper you sign. c. You have the right to pay in advance the full amount due and under certain conditions to obtain a partial refund of the time price differential.

The contract shall contain the names of the seller and the buyer, the place of business of the seller, and the residence or place of business of the buyer as specified by the buyer, and shall set forth the following:

(a) The cash price of the goods or services.

(b) The amount of the buyer's down payment, if any, whether made wholly or in part in money or goods.

(c) The difference between paragraphs (a) and (b).

(d) The amount, if any, of official fees and the cost, if any, to the buyer of any insurance (specifying the types of coverage) the buyer

has agreed to procure if the seller has agreed to purchase the insurance and charge the buyer for the cost thereof.

(e) The principal balance owed on the retail installment contract, which is the sum of paragraphs (c) and (d).

(f) The amount or rate of the time price differential.

(g) The time balance owed by the buyer to the seller, which is the sum of paragraphs (e) and (f), and except as hereinafter provided, the maximum number of installment payments required and the amount and date of each payment necessary to pay such time balance.

The foregoing paragraphs need not be stated in the sequence or order set forth above, and additional paragraphs may be included to explain the computations made in determining the amount to be paid by the buyer.

(2) If the time price differential is stated as a rate, paragraph (g) of subsection (1) hereof need not be stated. The maximum number of payments and the amount and date of each payment need not be separately listed if the payments are stated in terms of a series of scheduled amounts and if the amount of the final payment does not exceed the scheduled amount of any preceding installment; in such case the amount of the scheduled final payment may be stated as the remaining unpaid balance. The initial date for the payment of the first installment may be a calendar date or may refer to the time of delivery or installation.

(3) A retail installment contract need not be contained in a single document. If the contract is contained in more than one document, then one such document may be an original document applicable to purchases of goods or services to be made by the retail buyer from time to time and in such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by subsection (1) and shall constitute the retail installment contract for each such purchase.

*(4) Notwithstanding the provisions of any other law the seller under a retail installment contract may charge, receive and collect a time price differential, which shall not exceed the following rates:

On the principal balance, ten dollars per one hundred dollars per year. The time price differential under subsection (4) shall be computed on the principal balance of each transaction, as determined under subsection (1) (e) on contracts payable in successive monthly payments substantially equal in amount for the period from the date of the contract to and including the date when the final installment thereunder is payable. When a retail installment contract is payable other than in successive monthly payments substantially equal in amount, the time price differential may be at the effective rates provided in this subsection, having due regard for the schedule of payments. The time price differential may be computed on the basis of a full month for any fractional month period in excess of ten days. Notwithstanding the other provisions of this subsection, a minimum time price differential not in excess of the following amounts may be charged on any retail installment contract; twelve dollars on any retail installment contract involving an initial principal balance of fifty dollars or more; seven dollars and fifty cents on a retail installment contract involving an initial principal balance of more than twenty-five dollars and less than fifty dollars; and five dollars on a retail installment contract involving an initial principal balance of twenty-five dollars or less.

(5) The seller shall deliver or mail to the buyer, at his address as shown on the contract, a copy of the retail installment contract prior to the day on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold face type and, if contained in the contract, shall appear directly above the buyer's signature.

(6) No retail installment contract shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed except that, if delivery of the goods or services is not made at the time of execution of the contract, the identification of the goods or services and the due date of the first installment may be left blank and later inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's written acknowledgment, conforming to the requirements of subsection (5), of delivery of a copy of a contract shall be presumptive proof, in any action or proceeding, of such delivery and that the contract, when signed, did not contain any blank spaces as herein provided.

(7) The seller under any retail installment contract shall, within thirty days after execution of the contract, deliver or mail or cause to be delivered or mailed to the buyer at his aforesaid address any policy or policies of insurance the seller has agreed to purchase in connection therewith, or in lieu thereof a certificate or certificates of such insurance. The amount, if any, included for insurance shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department; if any such insurance is cancelled, unearned insurance premium refunds received by the holder shall be credited to the final maturing installment of the contract except to the extent applied toward the payment for similar insurance protecting the interests of the seller and the holder or either of them. Nothing in this act shall impair or abrogate the right of a buyer to procure insurance from an agent and company of his own selection, as provided by the insurance laws of this state; and nothing contained in this act shall modify, alter or repeal any of the insurance laws of this state. The term "holder" as used in this act, means the retail seller unless seller has assigned the contract, in which case "holder"

means the assignee of such contract at the time of the determination.

(8) If the buyer so requests, the holder shall give or forward to the buyer a receipt for any payment when made in cash. At any time after the execution of a contract, but not later than two months after the last payment thereunder, the holder shall, upon written request of the buyer, give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once without charge; if any additional statement is requested by the buyer, the holder shall supply such statement to the buyer at a charge not exceeding one dollar for each additional statement so supplied.

(9) After payment of all sums for which the buyer is obligated under a contract, and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods.

(10) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full at any time before maturity the unpaid balance of any retail installment contract and in so paying such unpaid balance shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the time price differential after first deducting therefrom an acquisition cost of fifteen dollars, as the sum of the monthly time balances beginning one month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the contract. Where the amount of such refund credit is less than one dollar no refund need be made.

(11) In a retail installment transaction involving the modernization, rehabilitation, repair, alteration, improvement or construction of real property:

(a) The buyer may be charged for and there may be collected from him, or there may be added to the cash sale price, the reasonable fees and costs actually to be paid for construction authorizations and similar permits issued by public agencies and for title search, title insurance and services of an attorney relating to any real property mortgage, lien or other encumbrance taken, granted or reserved pursuant to the contract.

(b) The seller shall not request or accept a certificate of completion signed by the buyer prior to the actual delivery of the goods and completion of the work to be performed under the contract.

History.—§5, ch. 59-414; (11) n. by §2, ch. 61-398; (4) §5, ch. 63-547.
*Becomes effective January 1, 1964.

520.35 Revolving accounts.—

(1) Every revolving account shall be in writing and shall be completed prior to the signing thereof by the retail buyer. The printed portion, other than instructions for completion, of any revolving account executed on or after the effective date of this act shall be in at least six point type. Any such account shall contain the names of the seller and the buyer, the place of business of the seller, and the residence or place of business of the buyer as specified by the buyer, and substantially the following notice in a size equal to at least ten point type:

Notice to the Buyer

a. Do not sign this before you read it or if it contains any blank spaces. b. You are entitled to an exact copy of the paper you sign. c. You have the right to pay in advance the full amount due.

A copy of any such account executed on or after the effective date of this act (January 1, 1960) shall be delivered or mailed to the retail buyer by the retail seller prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the account shall be in a size equal to at least ten point bold face type and, if contained in the account, shall appear directly above the buyer's signature. No account executed on or after January 1, 1960, shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this subsection, of delivery of a copy of an account, shall be presumptive proof, in any action or proceeding, of such delivery and that the account, when signed, did not contain any blank spaces as herein provided. All accounts executed on or after January 1, 1960, shall state the amount of, or the method of calculating, the time price differential to be charged and paid pursuant thereto or shall state that a time price differential not in excess of that permitted by this law will be charged and paid pursuant to such account.

(2) The retail seller under a revolving account shall promptly supply the retail buyer thereunder with a statement as of the end of each monthly period (which need not be a calendar month), or other regular period agreed upon by the retail seller and the retail buyer, in which there is any unpaid balance thereunder, which shall recite the following:

(a) The unpaid balance under the account at the beginning and end of the period.

(b) Unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise, the cash price and the date of each purchase during the period.

(c) The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period.

(d) The amount of the time price differential if any. The items need not be stated in the sequence or order set forth above; and additional items may be included to explain the computations made in determining the amount to be paid by the retail buyer.

(3) Notwithstanding the provisions of any other law, the seller under a revolving account may charge, receive and collect, a time price differential which shall not exceed fifteen cents per ten dollars per month computed on all amounts unpaid thereunder from month to month (which need not be a calendar month) or other regular period; however, if the amount of the time price differential so computed shall be less than one dollar for any such month, a time price differential of one dollar for any such month may be charged, received and collected. If the regular period is other than such monthly period or if the unpaid amount is less than or greater than five dollars, the permitted time price differential shall be computed proportionately. Such time price differential may be computed for all unpaid balances within a range of not in excess of ten dollars on the basis of the median amount within such range if as so computed such time price differential is applied to all unpaid balances within such range.

History.—§6, ch. 59-414.

520.36 Mail order and telephone sales.—Retail installment contracts negotiated and entered into by mail or telephone without personal solicitation by salesmen or other representatives of the seller, where a catalog of the seller or other printed solicitation of business, which is distributed and made available generally to the public, clearly sets forth the cash price and other terms of sales to be made through such medium, may be made as provided in this section. All of the provisions of this act relating to contracts shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in §520.34(5) and if the contract when received by the seller contains any blank spaces the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in §520.34(5), the seller shall furnish to the buyer a written statement of any items inserted in the blank spaces in the contract received from the buyer.

History.—§7, ch. 59-414.

520.37 Delinquency charges, attorney's fees and court costs.—A retail installment contract may provide for payment by the buyer of a delinquency charge on each installment in default for a period not less than ten days. Such charge may not exceed five per cent of such installment or five dollars, whichever is less. A retail installment contract or a revolving account may provide for the payment of reasonable attorney's fees if referred for collection to an attorney not a salaried employee of the retail seller and for the payment of court costs.

History.—§8, ch. 59-414.

520.38 Transfer of contracts.—Any retail seller may assign, pledge, hypothecate, or otherwise transfer a retail installment contract or revolving account to any person, firm or corporation on such terms and conditions and for such price as may be mutually agreed upon. Filing of the assignment, notice to the buyer of the assignment, and any requirement that any person maintain dominion over the payments under the contract or account or over the goods if repossessed, shall not be necessary to the validity of a written assignment or transfer of a contract or account as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment, payment thereunder made by the buyer to the last known owner of the contract or account shall be binding on all subsequent owners thereof.

History.—§9, ch. 59-414.

520.39 Violations.—

(1) Any person who shall wilfully and intentionally violate any provision of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500.

(2) In case of a wilful violation of this act with respect to any transaction, the retail buyer in such transaction may recover from the person committing such violation (or may set off or counterclaim in any action by such person) an amount equal to the time price differential and any delinquency charge and any attorney's fee and court costs charged and paid with respect to such transaction, but the retail seller may recover from the retail buyer an amount equal to the cash price of the goods or services in such transaction and the cost of any insurance purchased by the retail seller for the retail buyer in connection therewith.

*(3) A wilful violation of §§520.32, 520.34 or 520.35 by the seller or holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

(4) Notwithstanding the provisions of this section, no person shall be subject to any penalty for any failure to comply with any provision of this act until the retail buyer or the state comptroller has notified such person in writing of such failure and unless within thirty days after such notice such failure is not corrected by such person.

History.—§10, ch. 59-414; (3) §6, ch. 63-547.
*Becomes effective January 1, 1964.

520.40 Waiver.—Any waiver by the retail buyer of any provisions of this act or of any remedies granted to the buyer by this act shall be unenforceable and void.

History.—§11, ch. 59-414.

520.41 Prior contracts not affected.—The provisions of this act shall not make unlawful contracts or accounts in effect prior to January 1, 1960.

History.—§13, ch. 59-414.

520.42 Construction.—Nothing in this act shall be construed to affect any transaction covered by chapters 516 and 519 and part I of this chapter, or any transaction by any banking institution or state or federal savings and loan association.

History.—§14, ch. 59-414.

PART III

INSTALLMENT SALES FINANCE ACT

520.50 Short title.—This act may be cited as "the installment sales finance act."

History.—§1, ch. 63-244.

520.51 Definitions.—

(1) "Sales finance company" means a person engaged in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, or industrial bank, if so engaged. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

(2) "Retail installment contract" or "contract" means an instrument or instruments reflecting one or more retail installment transactions entered into in this state pursuant to which goods or services may be paid for in installments. It does not include a revolving account or an instrument reflecting a sale pursuant thereto.

(3) "Goods" means all personalty when purchased primarily for personal, family or household use, including certificates or coupons issued by a retail seller exchangeable for personalty or services, but not including other choses in action, personalty sold for commercial or industrial use, money, motor vehicles or construction, mining or quarrying equipment. The term "goods" includes such personalty which is furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property as to become a part thereof, whether or not severable therefrom.

(4) "Services" means work or labor furnished for personal, family or household use, whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement or construction upon or in connection with real property.

(5) The "holder" of a retail installment contract means the retail seller of the goods or services under the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

(6) "Administrator" means the state comptroller.

History.—§2, ch. 63-244.

520.52 Licenses.—

(1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this act; provided, however, that no bank, trust company or industrial bank authorized to do business in this state, or any small loan lender licensed under chapter 516, or any registrant under chapter 519, shall be required to obtain a license under this act. The application for such licenses shall be in writing and in the form prescribed by the administrator. The license fee for each calendar year or part thereof shall be the sum of twenty-five dollars for the principal place of business of each sales finance company, and separate license fees of like amount shall be paid for each branch maintained in this state by such licensee.

(2) Licenses shall be issued under and in accordance with the provisions of this act for a period which will expire December 31 next following the date of issuance. Such licenses shall not be transferable or assignable. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the administrator shall endorse the change of location on the license without charge. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character, or to corporations whose officers are of good moral character. Fees collected under this section shall be deposited in the state treasury and are hereby appropriated to the comptroller to be used in administering this act.

History.—§3, ch. 63-244.

520.53 Denial, suspension or revocation of licenses.—

(1) A license may be denied, suspended or revoked by the administrator on the following grounds:

(a) Material misstatement in application for license;

(b) Wilful failure to comply with any provision of this act or of part II of chapter 520, relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If the licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any mem-

ber of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(3) No license shall be denied, suspended or revoked except after hearing thereon. The administrator shall give the licensee at least ten days written notice in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order denying, suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the administrator and shall not be effective until after thirty days written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. If the licensee fails or refuses to obey the order after such thirty days period has elapsed, the administrator may file a petition with the circuit court for an injunction to enforce the order. A copy of the administrator's findings and conclusions of law shall be set forth in such petition. The court hearing such petition shall have the power to issue an appropriate injunction restraining and enjoining such licensee from engaging in the act or acts forbidden by the order of the administrator. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

(4) Within thirty days after any such suspension or revocation of a license, the person aggrieved may apply for a review thereof pursuant to and in accordance with the provisions of §120.31.

History.—§4, ch. 63-244.

520.54 Books, accounts, records, etc.—

(1) Every licensee shall maintain, at the place of business designated in the license certificate, such books, accounts, and records of the business conducted under the license issued for such place of business as will enable the administrator to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of parts II and III of this chapter.

(2) A licensee operating two or more licensed places of business in this state, may maintain the general control records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the administrator designating therein the office at which such control records are maintained.

(3) All books, accounts and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the administrator for at least two years after making the final entry therein.

(4) The administrator is hereby authorized and empowered to prescribe the minimum information to be shown in the books, accounts and records of licensees so that such records will enable the administrator to determine compliance with the provisions of parts II and III of this chapter.

History.—§5, ch. 63-244.

520.55 Investigations and complaints.—

(1) The administrator may, at intermittent periods, make such investigations and examinations of any licensee or other person as he deems necessary to determine compliance with parts II and III of this chapter. For such purposes, he may examine the books, accounts, records and other documents or matters of any licensee or other person. He shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the administrator has reason to believe the licensee is not complying with the provisions of parts II and III of this chapter. The expenses of the administrator incurred in each such examination of a sales finance company licensed under this act shall be paid by such finance company so examined within thirty days after demand therefor by the administrator, and shall not exceed thirty-five dollars per day for each eight hour man-day for time actually consumed in making such examination, plus the traveling expense and per diem subsistence allowance provided for state employees in §112.061. Expense thus recovered shall be deposited in the state treasury as a reimbursement to the biennial appropriation for expenses incurred in enforcing this act. The licensee shall not be required to pay a per diem fee and expenses of an examination which shall consume more than thirty man-days in any one year unless such examination or investigation is due to fraudulent practices of the licensee, in which case such licensee shall be required to pay the entire cost regardless of time consumed.

(2) Any retail buyer having reason to believe that part II or III of this chapter relating to his retail installment contract has been violated may file with the administrator a written complaint setting forth the details of such alleged violations and the administrator upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History.—§6, ch. 63-244.

520.56 Powers of administrator.—The administrator shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any

matter over which he has jurisdiction, control or supervision pertaining to this act. The administrator shall have the power to administer oaths and affirmations to any person whose testimony is required.

If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoenas duces tecum, out of the circuit court, for the witness to appear before the administrator and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.

If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the administrator may apply to any judge of the circuit court for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine, not exceeding $100.00 or by imprisonment in the county jail, or by both fine and imprisonment and to compel such witness to pay the costs of such proceeding to be taxed.

The administrator may issue and promulgate such rules and regulations as he may deem necessary in the administration of this act and not inconsistent with the provisions of this act.

History.—§7, ch. 63-244.

520.57 Penalties.—

(1) Any person who shall wilfully and intentionally violate any provision of parts II and III of this chapter or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500.00.

(2) A wilful violation of this act or of part II, chapter 520, relating to retail installment contracts, by the seller or the holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

History.—§8, ch. 63-244.

CHAPTER 521

EXHIBITION OF MOTION PICTURES

521.01 National board of review.—The governor of the state may appoint three competent persons, from the state, to be members of the national board of review.

History.—§1, ch. 8523, 1921; CGL 8584.

521.011 Legislative intent.—It is the intent of the legislature that motion picture film, exhibited in theatres licensed under the provisions of the Florida occupational license tax law applicable to commercial theatres, shall not be lent, leased, displayed, promulgated or exhibited unless the same shall have first been reviewed and approved or licensed as provided for in this act.

History.—§1, ch. 61-4.

521.02 Motion picture films must be approved.—

(1) It is unlawful for any person to lend, lease, display, promulgate, or exhibit in the state in a theatre referred to in §521.011 any motion picture film that has not been first reviewed and approved by the national board of review of motion pictures, inc., its appointees or successors, or the film estimate board of national organizations or licensed by the state department of education of the state of New York. It is the intent of this subsection that no such motion picture film exhibited in such theatre shall be lent, leased, displayed, promulgated, or exhibited except as so approved or licensed, and no motion picture film shall be deemed to be so approved or licensed, within the meaning of this subsection if any cut, elimination or change required by any of said approving or licensing authorities as a condition to approval or licensing has been restored. In any prosecution for a violation of this subsection the burden shall be upon the defendant to establish the approval or licensing hereinabove required.

(2) No person shall exhibit any motion picture film in reliance upon a license issued by the state department of education of the state of New York, without having in his possession a photostatic copy of a certificate issued by said department in connection with the licensing of such film by said department. The failure of a person exhibiting a film so licensed or claimed by him to have been so licensed to produce such a photostatic copy of the certificate for the inspection of the state attorney, county solicitor, or county prosecuting attorney within twenty-four hours after receipt of a written request by such state attorney, county solicitor or county prosecuting attorney for such inspection shall be prima facie evidence that such person did not have such photostatic copy of certificate in his possession at the time he exhibited such film.

History.—§2, ch. 8523, 1921; CGL 3585; §2, ch. 61-4.
cf.—§1.01(3) "Person" defined.

521.021 Circuit court; injunctive jurisdiction.—

(1) The circuit court has jurisdiction to enjoin the threatened exhibition of any film in violation of this act upon complaint filed by the state attorney, county solicitor or county prosecuting attorney in the name of the state upon the relation of such state attorney, county solicitor or county prosecuting attorney.

(2) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the exhibition of any film in violation of §521.02 until final hearing or further order of the court. No such order shall be made unless such judge shall be satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made, provided, however, that such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded. Whenever the relator state attorney, county solicitor or county prosecuting attorney shall request a judge of said court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within three days after the making of such request.

(3) The person sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within two days of the conclusion of the trial.

(4) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody or control of the film affected by the injunction to surrender the same to the sheriff, and requiring the sheriff to take possession of the same, for such disposition as is ordered by the court in its final decree. The sheriff shall file a certificate of his compliance.

(5) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the state attorney or county solicitor or county prosecuting attorney before the issuance of a restraining order provided for by subsection (2) of this section, and neither the state nor the state attorney, county solicitor or county prosecuting attorney shall be liable for costs or for damages sus-

tained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(6) In any action brought under this section, the burden of proof shall be upon the defendant to establish the approval or licensing required by §521.02.

History.—§3, ch. 61-4.

521.03 Exceptions.—This chapter shall not apply to any film used by schools, churches, fraternal organizations or chambers of commerce, or films for scientific or educational purposes, or, further, to the world premiere exhibition of a feature motion picture containing more than eight thousand feet of film which is prereleased for such exhibition and has not been shown commercially prior thereto in any other place. Any film excepted by this section from the operation of this act shall not be exempt from laws relating to obscene materials, matters, articles and things.

History.—§3, ch. 8523, 1921; CGL 3586; §4, ch. 61-4.

521.04 Penalty for violation of §521.02.—Any person violating any provision of §521.02 shall be deemed guilty of a misdemeanor and shall upon conviction be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding $500.00, or both. Any person who, after having been convicted of a violation of said §521.02, thereafter violates any of its provisions is guilty of a felony and upon conviction shall be punished by imprisonment in the state prison not to exceed three years or by fine not exceeding $5,000.00, or both.

History.—§4, ch. 8523, 1921; CGL 7719; §5, ch. 61-4.
cf.—§775.06, Alternative punishment.

521.041 Person defined.—For the purposes of this act, the word "person" includes individuals, firms, associations, corporations, and all other groups and combinations.

History.—§6, ch. 61-4.

CHAPTER 522

COMMISSION MERCHANTS

522.01 Fruit or produce brokers to make return of account sales.—Any person doing in this state the business of fruit or produce broker or commission merchant, receiving pineapples in car lots or less, grown in this state for shipment or consignment, shall make return of all account sales showing the cost and expenses charged against the returns, together with the name and address of the purchaser, within ten days of the sale.

History.—§1, ch. 6235, 1911; RGS 4938; CGL 7025.
cf.—§522.05, Penalty for failure of commission merchant to make returns.
§1.01(3), "Person" defined.

522.02 "Produce or fruit broker" defined.—Any person maintaining an office or soliciting personally or by agent such business in this state shall be presumed to be doing business in this state.

History.—§2, ch. 6235, 1911; RGS 4939; CGL 7026.

522.03 Liability of broker for loss by reason of delayed account sales; measure of damages.—Any person doing the business of fruit or produce broker or commission merchant, receiving pineapples in car lots or less, grown in this state for shipment or consignment, and who has not returned an account sales showing the cost and expenses charged against the returns, also the name and address of the purchaser, within ten days of the sale, shall be liable in damages for any loss by reason of delayed account sales. The loss a shipper or consignor may sustain on cars of pineapples consigned to the said person over what he could have obtained in other markets or by other agencies shall be considered a proximate damage from the delayed account sales. The measure of damages shall be the difference between the prevailing price in the general market at time of receipt by consignee and the price received for such cars or less, of pineapples consigned to said broker or commission merchant between the time the account sales were due and the time received:

History.—§4, ch. 6235, 1911; RGS 4940; CGL 7027.

522.04 Liability of broker in case of failure to return account sales.—In any suit for accounting against any person, doing the business of fruit or produce broker or commission merchant receiving pineapples in car lots or less, grown in this state for shipment or consignment, and who has not returned an account sales showing the cost and expenses charged against the returns, with the name and address of the purchaser, within ten days of the sale, such person shall be held accountable to the shipper or consignee of said car lots, or less, of fruit for the full market price at the time of the receipt by such person of the said shipment or consignment.

History.—§5, ch. 6235, 1911; RGS 4941; CGL 7028.

522.05 Penalty for failure of commission merchant to make returns.— Any person, or agent or servant of such person failing to comply with the provisions of §522.01 shall be fined not to exceed five hundred dollars.

History.—§3, ch. 6235, 1911; RGS 5666; CGL 7869.

522.06 Produce commission merchant to furnish shipper duplicate sales account; shipper to have access to certain records; proviso.—All persons engaged in the business of selling any produce or other article on commission in this state, shall, if the produce or other thing of value be shipped to them by any person from any place in the state, when the same is sold by them, issued in duplicate a sales account which shall prescribe the kind, quantity, quality and price received for the produce or article sold, and with check shall cause same to be delivered by mail or otherwise, within seven days of such sale, to the party furnishing the produce or article for sale, and should such sale be unsatisfactory to the party furnishing said produce or article for sale, then at his request the commission house shall furnish to him, within five days, the name or names, and residences of the purchaser of said produce or article; he shall also have access to the original sales papers and books showing the name and address of the purchaser of the produce or article, to the commission house selling said produce or article, and every reasonable assistance extended to him to his satisfaction in the matter; provided, that the provisions of this section shall not apply to any consignment, or part thereof, sold at retail or in less quantity than original packages, nor to produce consigned to retail merchants, nor to lumber or naval stores.

History.—§§1, 2, ch. 6921, 1915; RGS 4942; CGL 7029.

522.07 Violation of regulations as to sale of produce on commissions.—Any person violating any of the provisions of §522.06 shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding five hundred dollars, or sentenced to the county jail for a period of not longer than six months.

History.—§2, ch. 6921, 1915; RGS 5667; CGL 7870.
cf.—§775.06, Alternative punishment.

CHAPTER 523

NAVAL STORES

523.01 Definitions.—When used in this chapter:

(1) "Naval stores" means spirits of turpentine and rosin.

(2) "Spirits of turpentine" includes gum spirits of turpentine and wood turpentine.

(3) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living pine tree.

(4) "Wood turpentine" includes steam distilled wood turpentine, destructively distilled wood turpentine and sulphate wood turpentine.

(5) "Steam distilled wood turpentine" means wood turpentine distilled with steam from the oleoresin within or extracted from the wood.

(6) "Destructively distilled wood turpentine" means wood turpentine obtained in the destructive distillation of the wood.

(7) "Sulphate wood turpentine" means wood turpentine obtained from the condensates that are recovered in the sulphate process of cooking wood pulp.

(8) "Adulterated spirits of turpentine" means the substance that is produced by mixing with or adding to spirits of turpentine any foreign substance which affects its weight, specific gravity, or purity.

(9) "Adulterated gum spirits of turpentine" means gum spirits of turpentine that has been adulterated or mixed in any proportion with any other foreign substance or adulterants whatever, or with wood turpentine.

(10) "Adulterated wood turpentine" means wood turpentine that has been adulterated or mixed in any proportion with any other foreign substance or adulterants whatever.

(11) "Rosin" includes gum rosin and wood rosin.

(12) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

(13) "Wood rosin" means rosin remaining after the distillation of steam distilled wood turpentine.

(14) "Barrel" means any container of naval stores and includes package, drum, tank, tank car or other receptacle.

(15) "Person" includes partnerships, associations and corporations as well as individuals.

History.—§1, ch. 20935, 1941.

523.02 Label required; contents.—Every person who shall hereafter produce or manufacture for sale or shipment, or for other than his own use or consumption, any spirits of turpentine or rosin in the state, shall plainly and conspicuously mark or write on the outside of the barrel containing the same the true nature of the contents of such barrel, in such manner as to indicate whether the same contains gum spirits of turpentine, wood turpentine, adulterated gum spirits of turpentine, adulterated wood turpentine, gum rosin or wood rosin, as defined by the provisions of this chapter. It shall be unlawful for any person to manufacture or produce any gum spirits of turpentine, or wood turpentine, whether pure or adulterated, or any gum rosin or wood rosin for sale, consignment or shipment, or to sell, ship, consign or in any manner dispose of the same, without plainly marking or writing in the manner aforesaid, upon the outside of the barrel containing the same, the words "gum spirits of turpentine," or "wood turpentine," or "adulterated gum spirits of turpentine," or "adulterated wood turpentine," or "gum rosin," or "wood rosin," as the case may be; and any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars or be imprisoned in the county jail for not more than one year, or both, in the discretion of the court, for each offense.

History.—§2, ch. 20935, 1941.

523.03 Adulterated products; penalty for improper label, etc.—Any person who shall knowingly aid or assist in manufacture or sale, con-

signment or shipment, of adulterated gum spirits of turpentine or adulterated wood turpentine, which shall be placed or contained in a barrel not marked in the manner provided by law to indicate the character of its contents, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished, by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

History.—§3, ch. 20935, 1941.

523.04 Adulterated products; penalty for improper shipping, sale, etc.—It shall be unlawful for any person knowingly to ship, consign, sell, or offer for sale as gum spirits of turpentine, any wood turpentine or adulterated gum spirits of turpentine, or to ship, consign, sell or offer for sale, as wood turpentine, any adulterated wood turpentine, or to ship, consign, sell or offer for sale as gum rosin any wood rosin; and any person who shall violate the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the discretion of the court.

History.—§4, ch. 20935, 1941.

523.05 Adulterated products; penalty for improper receiving, sale, etc.—Any person who shall knowingly purchase or receive, or offer for sale, or sell, any gum spirits of turpentine or wood turpentine, or gum rosin or wood rosin, which has not been marked, branded or stamped in accordance with the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars or imprisoned not more than six months in the county jail, or both, in the discretion of the court.

History.—§5, ch. 20935, 1941.

523.06 Adulterated products; penalty for improper advertising, etc. — Every person hereafter advertising or procuring to be advertised, in this state, any quantity of spirits of turpentine for sale shall plainly specify in such advertisement, in letters of equal size and prominence with the word "turpentine" which of the kinds of turpentine therein enumerated, i.e., whether gum spirits of turpentine or wood turpentine, is so advertised; and any person who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or be imprisoned in the county jail for not more than one year, or both, in the discretion of the court, for each offense.

History.—§6, ch. 20935, 1941.

523.07 Adulteration of rosin, wood rosin; etc.—It shall be unlawful for any person to pack with rosin any foreign substance, or to pack with gum rosin any wood rosin, and it shall be unlawful for any person to knowingly sell or offer for sale any rosin containing any other substance than pure rosin, or to pack rosin in such manner that the sample withdrawn from the package in the usual manner, will fail to disclose the true grade and condition of the contents of the package. Anyone violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned in the county jail not more than three months, or both, in the discretion of the court.

History.—§7, ch. 20935, 1941.

523.08 Naval stores inspectors; prerequisites to appointment.—The governor may appoint a supervising inspector of naval stores, one or more inspectors of naval stores at large, and may appoint in each port in this state to which naval stores are, or may be consigned for sale or shipment, a sufficient number of competent inspectors for the business at such port. The supervising inspector, inspector of naval stores at large and inspectors of naval stores, shall be subject to removal by the governor at any time for cause; and he shall have power at any time to fill vacancies in said offices. A person in order to be eligible to appointment to any of said offices must be a citizen of the state, must be skilled in the inspection of and familiar with the grades of naval stores, and competent to detect adulterations thereof. No person shall be appointed an inspector, inspector at large or supervising inspector of naval stores who, at the time of his appointment, is a producer or factor, or buyer of, or dealer in naval stores, or employed by or connected in business with any producer, factor, buyer or dealer; and it shall be unlawful and a cause for removal from office for any inspector, inspector at large or supervising inspector of naval stores, during his term of office, to become a producer, factor, buyer of or dealer in naval stores, or to be employed by or connected in business with any such producer, factor, buyer or dealer.

History.—§8, ch. 20935, 1941.

523.09 Supervising inspector; powers and duties. — The supervising inspector of naval stores of the state shall have general supervision and direction of all inspectors of naval stores appointed under the provisions of this chapter, including the inspectors of naval stores at large, and it shall be his duty to see that they fairly and honestly perform all the duties imposed upon them and in the manner prescribed by this chapter, or otherwise provided by law, and to report to the governor any delinquencies or irregularity of any such inspector, and shall have power to suspend any inspector for falsely grading or branding spirits of turpentine or rosin, and for failure or neglect to perform the duties imposed on him by the provisions of this chapter, and to investigate complaints made by producers or others, or the conduct of any such inspector in the discharge by him of the duties of his office. The supervising inspector of naval stores shall also have supervision of all naval stores plants, yards, warehouses and other places where naval stores are kept or stored, and it shall be his duty to see that no adulteration of naval stores is permitted in this state, and to collect evidence of

any adulteration which may come to his knowledge or be reported to him whenever the same may occur in this state; and to prosecute, or cause to be prosecuted, all persons violating the laws of this state in regard to the inspection, marking, branding or adulteration of naval stores. Said supervising inspector shall also perform such other duties as may be conferred to determine the correctness of any inspection duties of an inspector except when necessary tor of naval stores shall visit every yard where upon him by law, but he shall not perform the made by an inspector. The supervising inspecnaval stores are stored for sale in the state at least twice each year, and shall thoroughly inspect said yards and examine the books and records of the local inspectors.

History.—§8, ch. 20935, 1941.

523.10 Inspectors; powers and duties.—The inspectors of naval stores shall have power to make inspections of naval stores at the respective ports for which they are appointed, but the inspector of naval stores at large shall have the power to make inspections at any point in the state. The compensation of the inspector of naval stores at large shall be the same for the like service as that hereinafter provided for inspectors of naval stores at ports. The supervisor of naval stores inspectors shall have his office in the port of this state receiving the largest amount of naval stores for sale or shipment.

History.—§8, ch. 20935, 1941.
cf.—§523.22 Disposition of fees.
§523.18 Compensation of naval stores inspectors.

523.11 Bond of inspector and supervisor.—(1) The supervising inspector of naval stores shall give bond in the sum of two thousand dollars with a surety company qualified to do business in the state as surety, conditioned for the faithful discharge of all the duties of his office, and the said bond, before being accepted, shall be approved by the comptroller of the state and filed in the office of the secretary of state.

(2) Before any inspector of naval stores at large or any inspector of naval stores shall be commissioned, he shall qualify and give bond to the state in the sum of two thousand dollars, with a surety company qualified to do business in this state as surety, conditioned on the faithful discharge by him of the duties of his office, which bond shall be approved in like manner as is provided by general law for the approval of bonds of county officers.

History.—§9, ch. 20935, 1941.
cf.—§113.07 Bonds of officials.
§523.22 Disposition of fees.

523.12 Inspectors; recommendations for appointment required.—No person shall be appointed an inspector of naval stores or inspector of naval stores at large under this chapter who has not been recommended to the governor in writing for the appointment by the supervising inspector of naval stores and at least two naval stores dealers doing business in this state.

History.—§10, ch. 20935, 1941.

523.13 Supervisor; inspection fees and compensation.—The supervising inspector of naval stores shall receive as compensation for his services one-half cent for each drum or barrel of rosin of approximately five hundred pounds each, and for each fifty gallons of spirits of turpentine which may be inspected by inspectors appointed under the laws of this state, upon notice given as provided in §523.15, and liability for said fee shall be divided equally between the buyer and seller of such naval stores. In case of naval stores shipped in packages or receptacles other than barrels, his compensation shall be reckoned upon a basis of barrels or fractions thereof in the same manner as is provided for the payment of fees of inspectors under like conditions. The supervising inspector of naval stores shall have the right to recover from any person or corporation liable therefor the fees allowed him under this chapter in an action of assumpsit, or any other appropriate proceedings in any of the courts of this state having jurisdiction thereof.

History.—§11, ch. 20935, 1941.
cf.—§523.22 Disposition of fees.

523.14 Adulterated products; forfeiture; procedure.—Any person who shall knowingly have in his possession, custody or control any spirits of turpentine for sale, consignment or shipment which shall be in any manner adulterated, or any gum rosin or wood rosin that is not marked on the outside of the barrel with the words and in the manner required by this chapter, shall forfeit the same to the state. Upon sworn information thereof from any person, it shall be the duty of the state attorney for the circuit in which such property subject to forfeiture under this section may be found, to proceed forthwith to have the same forfeited and sold in the following manner: He shall file with the circuit court in the jurisdiction in which said property is found an information in the name of the state, setting forth the property whereof forfeiture is claimed, the owner thereof, or the person in whose possession the same is found, and the grounds for forfeiture; upon the filing of such information a summons and a writ of attachment, returnable to the return date not less than ten days from the issuance thereof, shall be thereupon issued without bond or affidavit; such summons and writ of attachment shall be served in the manner provided for services of summons and writs of attachment in civil actions at law; the said writ of attachment shall be levied upon the property which it is sought to forfeit. Thereafter the case shall proceed in the same manner as a civil action at law. In case of attachment, and in the event the property shall be adjudged to be forfeited, the same shall be sold as is provided in the case of sales under execution. Any person claiming to own the property attached, or his agent or attorney, may in such proceeding intervene and defend the said proceedings as in case of attachment. All such proceedings shall be governed in other

respects by the rules of pleading and practice applicable to suits at law in cases of attachment. The proceeds arising from said sales shall be paid into the registry of the court, to be paid by the clerk under the order of the court as follows, to-wit: One-half to the informant, to be paid upon the certificate of the state attorney that the person claiming the same is entitled thereto as the informer, upon whose information said action was begun, and the remainder to be paid to the county treasurer of the county in which the conviction is had as a part of the fine and forfeiture fund. Neither the supervising inspector nor any other inspector shall be permitted to receive any part of the proceeds of any such forfeiture; and if the information be given by any such inspector, the entire proceeds shall be paid into said fine and forfeiture fund. The penalties, punishments and other provisions of this chapter and the enforcement of the same, shall be deemed several, and the enforcement of one shall not preclude or affect the enforcement of any other.

History.—§12, ch. 20935, 1941; §2, ch. 29737, 1955.

523.15 Inspectors; duty to attend at port on notice.—It shall be the duty of any inspector, upon notice given by any producer or agent of any producer, to attend at such time and place at or near the port for which he is appointed, or elsewhere if he be an inspector at large, as he may be required, for the purpose of inspecting spirits of turpentine and grading and weighing rosin, and to ascertain the true amount and quality thereof, and to mark the same by branding, or in some other durable manner, on each barrel, receptacle or package, and to issue at once in triplicate, sworn certificates of inspection, the original to be furnished to the producer or shipper; and the duplicate and triplicate to the buyer or factor and the supervising inspector of naval stores respectively; and the person for whom such inspection is made shall be at liberty to appeal to the supervising inspector to establish the incorrectness of such inspection. If any such article be fraudulently mixed, it shall be condemned by the inspector and sold as provided by §523.14.

History.—§13, ch. 20935, 1941.

523.16 Unlicensed persons not to make inspections.—It shall be unlawful for a person other than a licensed state inspector, or an inspector appointed by the department of agriculture of the United States, to measure and inspect or grade, mark or brand, for a fee, or fees, any naval stores in this state. Any person not a licensed inspector in accordance with the provisions of the laws of this state, or not an inspector appointed by the department of agriculture of the United States, who shall perform the duties of inspector of naval stores, for a fee or fees, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned in the county jail not more than six months, or be punished by both such fine and imprisonment in the discretion of the court.

History.—§14, ch. 20935, 1941.

523.17 Inspectors to conform to U. S. standards.—Insofar as any method, standard, type or grade shall have been or may be established by or under the authority of the department of agriculture of the United States, the inspection and grading of the quality of rosin and spirits of turpentine, or measuring the quantities thereof, shall conform with such method, standard, type or grade.

History.—§15, ch. 20935, 1941.

523.18 Inspectors; inspection fees and compensation.—An inspector of naval stores shall receive for his services in inspecting rosin, including weighing, inspection and cooperage, six cents per barrel of approximately five hundred pounds, and for inspecting turpentine, including measuring of contents, inspection, bunging and cooperage, nine cents per barrel of approximately fifty gallons, and no more, to be paid by the owner or party for whom the inspection is made. When any such rosin or turpentine shall be in any receptacle or package other than a barrel, the inspector for inspecting same shall receive for his services, per barrel or fraction thereof, the contents of such receptacle or package, the same fee or amount of compensation hereinbefore allowed for inspecting each barrel. An inspector shall not be obliged to inspect any article or quantity until the fee therefor shall have first been paid.

History.—§16, ch. 20935, 1941.
cf.—§523.22 Disposition of fees.

523.19 Penalty for removing or changing inspection marks.—When any inspector or inspector of naval stores at large shall have placed his mark or brand on any barrel, receptacle, or package, as provided by law, it shall be unlawful for any person other than a duly qualified inspector of naval stores, appointed under the provisions of the laws of this state, or inspector appointed by the department of agriculture of the United States, to change, remove, alter, erase or in any manner change the same or cause the same to be done, and for each and every violation of this section the person violating the same shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment at the discretion of the court.

History.—§17, ch. 20935, 1941.

523.20 Penalty for illegal or false markings by inspector.—If any inspector, or inspector of naval stores at large, shall knowingly and wilfully place on any barrel, receptacle, or package of spirits of turpentine or rosin, any mark or brand falsely indicating the quality or quantity of the contents thereof, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment at the discretion of the court.

History.—§18, ch. 20935, 1941.

523.21 Inspectors; right to enter premises for inspection.—The supervising inspector of naval stores, inspector of naval stores at large, or any other inspector of naval stores, if he shall have reason to believe that any gum spirits of turpentine, or wood turpentine, has been or is adulterated in any manner, shall have the right to enter the place where the same is stored or kept, and to open any barrel, or barrels, in which the same may be, and to take therefrom a sufficient quantity, not exceeding a pint from every barrel or package, as a sample for analysis and inspection. Each such sample shall be sealed by the supervising inspector or other inspector of naval stores taking the same, who shall at the time write, mark or label the same in such manner as to indicate the time and place of taking the same, and the ownership of the barrel from which it is taken, as well as any other fact necessary to identify the sample so taken with the original. The owner claiming or custodian of such spirits of turpentine shall have the right to be present if he desires in person or by agent at such sampling, and to demand and receive of said supervising inspector or inspector of naval stores, a sample in all respects like that taken by such supervising inspector or inspector of naval stores. The analysis of any such sample so taken by such inspector or supervising inspector, sworn to by any witnesses competent to make such analysis, shall be admissible in evidence in any action wherein the grade or quality of the original from which the sample shall have been taken shall be in issue. A certificate of the result of an analysis made and certified by the state chemist or assistant state chemist shall be prima facie evidence of the nature, composition and character of the contents of the barrel from which said sample was taken, and of the correctness of such analysis and for such purpose admissible in evidence in any court of this state.

History.—§19, ch. 20935, 1941.

523.22 Disposition of fees.—All fees or other compensation collected by the supervising inspector, inspectors at large and inspectors of ports under the provisions of §§523.10, 523.13 and 523.18 shall be deposited by the inspector collecting same with the state treasurer and shall be accounted for as other state funds. The state treasurer shall credit all such receipts to the general revenue fund and the legislature shall provide in its general appropriations act sufficient sums for the salaries and expenses including premiums on bonds required of all naval stores inspectors appointed under this chapter.

History.—Comp. §129, ch. 26869, 1951
cf.—§113.07 Bonds of officials.

CHAPTER 524

ACCOUNTS RECEIVABLE

524.01 Definitions.—

(1) "Account" or "account receivable" means an existing or future right to the payment of money:

(a) Under an existing contract, or under a future contract entered into during the effective period of the notice of assignment,

(b) The assignment of which right is not subject to special statutory provisions of the state or the federal government relative to the rights of creditors of the assignor or of successive assignees from the assignor,

(c) Which right to payment is not secured by a chattel mortgage, a conditional sale, or other instrument and which instrument was given at or before the time the account was assigned and reserves the title to, or creates a lien upon, goods the sale of which gave rise to the account, and

(d) Which right to payment is not represented by:

1. A judgment,
2. A negotiable instrument, or
3. A non-negotiable instrument which so represents the obligation that an assignee who takes possession of it, takes rights superior to those of a prior assignee of the obligation who did not take possession of the instrument.

(2) "Assignee," "assignment," "assignor," and "account debtor" are limited respectively to an assignee, assignment, assignor of, and debtor on, an account receivable.

(3) "Assignee" and "assignor" in §524.02 include both actual and prospective assignees and assignors.

(4) "Assignment" means any transfer of an account, other than by operation of law, including a transfer as security, and the creation by agreement of a lien on an account; and said term means an agreement by an assignor to transfer as security all or substantially all the assignor's accounts arising during a stated period of time or during the existence of the indebtedness for which the accounts are to stand as security.

(5) "Contract" includes express contracts, written or oral, and implied at law or in fact.

(6) "Filing assignee" or "filing assignor" means a person designated as assignee or assignor respectively in a filed notice of assignment.

(7) "Proceeds in any form" of an account means any interest in, or benefit accruing from, an account, including:

(a) A judgment arising from the account,

(b) Proceeds of payment of the account, in whole or in part, in any manner, including any obligation taken as absolute or conditional payment of the account,

(c) Collateral security taken for the account, and

(d) Goods, the sale of which gave rise to the account, returned or not received by the account debtor.

(8) "Protected assignee" means the owner of a protected assignment.

(9) "Value" means any consideration, other than a seal, sufficient to support a simple contract. An assignment is deemed for value if it is taken in payment of, or as security for, an antecedent claim against any person.

History.—§1, ch. 24297, 1947; (1) (a) by §1, ch. 57-22; (4) a. by §1, ch. 61-504.

524.02 Filing of notice of assignment; cancellation; receipts; certificates.—

(1) When the assignor's main executive office in the United States is in fact in this state, whether or not the assignee is located in this state, an assignee may become a filing assignee by filing in the office of the secretary of state of the state the following form of notice of assignment, or any other form containing substantially the same information:

NOTICE OF ASSIGNMENT OF ACCOUNTS RECEIVABLE

For Filing with the Secretary of State

Date_____

_____ has assigned or intends to assign, or has assigned and intends to assign, one or more accounts receivable to _____

(Signed) (Signed)

Assignor Assignee

_____, _____, _____, _____

Street City Street City

_____, _____, _____, _____

County State County State

(2) A notice of assignment, a renewal, an affidavit of continuance or a notice of cancellation shall be deemed filed when it is received by the filing office for filing. The filing office shall mark each notice with a consecutive file number and the time of its receipt for filing and index it alphabetically under the name of the assignor, with a notation of his address.

(3) A filing assignee may at any time file a notice of cancellation, whereupon the notice of assignment shall be ineffective. The filing office shall note the cancellation in the index in connection with the name of the assignor.

(4) The filing office may provide a system of:

(a) Receipts for instruments accepted for filing, and of

(b) Certificates that a designated person is

or is not named as assignor in any notice on file or giving information as to the contents of a file.

(5) The fee for filing or cancelling any instrument or for issuing a receipt or a certificate under this chapter shall be two dollars.

History.—§2, ch. 24297, 1947; (5) by §1, ch. 57-10.

524.03 One year period; renewal; affidavit of continuance.—

(1) Unless sooner cancelled, a notice of assignment shall be effective for one year after the filing of the last renewal thereof, or, if no renewal, after the filing of the notice.

(2) A filing assignee may, at any time during the effective period of his notice of assignment, file a notice of renewal, signed by the assignee and assignor, in the following form or in any other form containing substantially the same information:

RENEWAL OF NOTICE OF ASSIGNMENT OF ACCOUNTS RECEIVABLE

The notice of assignment of accounts receivable, file No. ..... filed ....., (date)

designating ..... as assignor (name and address)

and ..... as assignee is hereby renewed. (name and address)

(3) A filing assignee may during the effective period of his notice file an affidavit of continuance that he legally holds one or more outstanding protected assignments, which affidavit shall be effective for one year from filing but may be renewed from time to time. Such affidavit need not specify what protected assignments are outstanding.

History.—§3, ch. 24297, 1947.

524.04 Protected assignments.—

(1) A written assignment for value, signed by the assignor, becomes protected at the time the assignee:

(a) Files a notice of assignment after taking an assignment or

(b) Takes an assignment during the effective period of the notice.

(2) A protected assignee takes subject to:

(a) Judicial liens on the account at the time his assignment became protected;

(b) An assignment to another person which was protected before his assignment, except that an assignee takes priority over another assignee who files later than he did, regardless of the relative dates of their assignments.

Notwithstanding the provisions of subsection (2)(b), a protected assignee takes subject to:

1. An assignment, prior in time to his, of which he had written notice at the time he took his assignment, and,

2. Any written contract made by him as to priorities.

(3) Subject to subsection (2), above, regardless of notice to the debtor a protected assignee has rights to the account and to the proceeds thereof in any form superior to the rights of the assignor and his creditors and assignees from him and may recover the proceeds from any such person in possession of them.

(4) A protected assignment remains protected while a notice of assignment, a renewal thereof, or an affidavit of continuance is effective.

History.—§4, ch. 24297, 1947.

524.05 Assignor's dealing with returned goods and making adjustments.—Neither dealing by the assignor, with property in his possession the sale of which gave rise to an account, as his own property nor the assignor's granting to the account debtor of credits, allowance, or adjustments shall invalidate the assignment of the account as to the balance due nor the assignment of other accounts, whether or not the assignee consents to or acquiesces in such acts of the assignor. The term "assignor" as used in this section includes any assignee or other successor in interest of the assignor, whose rights are subordinate to those of the assignee mentioned above in this section.

History.—§5, ch. 24297, 1947.

524.06 Rights between account debtor and assignee.—The rights of an assignee against the account debtor shall be subject to any dealing by such debtor in good faith with the assignor or any other assignee or other successor in interest of the assignor until the account debtor receives notice in writing of the particular assignment from or on behalf of the assignee or the assignor or other assignee or other successor in interest of the assignor.

The assignment of an account shall not prejudice any right of set-off or defense which the account debtor has when he receives such notice.

History.—§6, ch. 24297, 1947.

CHAPTER 525

GASOLINE AND OIL INSPECTION

525.01 Gasoline and oil to be inspected.—For the purpose of this chapter all gasoline, naphtha, kerosene, benzine, or other like products of petroleum under whatever name designated, used for illuminating, heating, cooking or power purposes, sold, offered or exposed for sale in this state, shall be subject to inspection and analysis as hereinafter provided. All manufacturers, wholesalers and jobbers, before selling or offering for sale in this state, any gasoline, kerosene or other mineral oil for power, illuminating, cooking or heating purposes, shall file with the commissioner of agriculture an affidavit that they desire to do business in this state, and shall furnish the name, brand or trademark of the oil or oils, which they desire to sell, together with the name and address of the manufacturer thereof, and that such oil or oils are in conformity with the standard prescribed by the commissioner of agriculture.

History.—§1, ch. 7905, 1919; CGL 8956.
cf.—§208.20, Applicability of this chapter to gasoline tax laws.

525.02 Analyses of gasoline and oil.—The commissioner of agriculture shall collect or cause to be collected from time to time by his duly authorized agent or agents, samples of any gasoline, illuminating or heating oils sold, offered or exposed for sale in this state, and cause same to be tested, or analyzed by the state chemist, who shall report his findings to the commissioner of agriculture as other analyses are reported. The certificate of analysis by the state chemist, when properly verified by affidavit of the state chemist, shall be prima facie evidence in any court of law or equity in this state.

History.—§2, ch. 7905, 1919; CGL 8957.
cf.—§208.20, Gasoline tax on motor fuel.

525.03 Purchasers of gasoline, etc., may submit samples to commissioner of agriculture.—Any person purchasing any gasoline, illuminating, or heating oils from any manufacturer or vendor in this state for his own use may submit fair samples of said gasoline, illuminating, or heating oils to the commissioner of agriculture to be tested or analyzed by the state chemist. In order to protect the manufacturer or vendor from the submission of spurious samples the person selecting same shall do so in the presence of two or more disinterested persons, which samples shall be not less than one pint in quantity, and bottled, corked and sealed in the presence of said witnesses, and said samples shall be placed in the hands of a disinterested person who shall forward same at the expense of the purchaser to the commissioner of agriculture, and upon the receipt by him of any sample the commissioner of agriculture may require the state chemist to test or analyze same, and he shall return to such purchaser or purchasers a certificate of analysis, and such certificate when verified by the affidavit of the state chemist shall be competent evidence in any court of law or equity in this state.

History.—§2½, ch. 7905, 1919; CGL 8958.

525.06 Gasoline, etc., below standard, subject to confiscation.—All oils enumerated and designated in this chapter that are used or intended to be used for power, illuminating, cooking or heating purposes, when sold under a distinctive name that shall fall below the standard fixed by the commissioner of agriculture, are declared to be illegal, and shall be subject to confiscation and sale by order of the commissioner of agriculture. All manufacturers, wholesalers and jobbers and distributors who sell, barter or exchange gasoline or other oils within this state, shall post conspicuously at the place of delivery to the consumer a card or sign not smaller than twelve by fifteen inches, setting forth in size type not smaller than one inch in height, in the English language, the degree of gravity of the product sold, offered or exposed for sale.

History.—§6, ch. 7905, 1919; CGL 8962.

525.07 Inspectors; duties, powers; penalties.—The commissioner of agriculture shall inspect, or cause to be inspected, from time to time by his duly authorized agents or inspectors, all measuring devices used in selling or distributing gasoline or kerosene, both wholesale and retail. The commissioner of agriculture shall define and fix the tolerances to be allowed, in excess or deficiency on all such measuring devices; that on all such devices found to be giving accurate measure within the tolerances fixed by the commissioner of agriculture shall be placed a lead and wire seal in such a way that the metering adjustment cannot be changed without breaking the seal. Any device that is found to be giving measure in excess of the tolerances fixed by the commissioner of agriculture shall be considered inaccurate and the commissioner of agriculture or

his agents at their discretion shall either give the operator or owner of measuring device a reasonable time in writing to fix such device or the commissioner or his agents may condemn or prohibit the further use of said device and by the use of a lead and wire seal obstruct the mechanism in such a way that it cannot be operated without breaking such seal and such device shall not again be operated in this state without the written consent of the commissioner of agriculture. Any person, company, firm or corporation who shall operate any pump without the written consent of the commissioner of agriculture, that has been condemned by a duly authorized inspector or agent of the commissioner because of giving short measure in excess of the tolerances fixed by the commissioner shall, upon conviction thereof, be punished as hereinafter provided. Any person, company, firm or corporation who shall install or operate a gasoline or kerosene measuring device in this state which by mechanical means is designed or used for the purpose of giving short measure shall be punished as hereinafter provided. It shall be unlawful for any person, company, firm or corporation, to break, cut, or remove any seal applied by the commissioner of agriculture, or his duly authorized inspectors or agents, to a gasoline or kerosene measuring device and anyone convicted of breaking such seal shall be punished as hereinafter provided. Any person who violates any of the provisions of this section, or any regulation or tolerance issued pursuant thereto, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or sixty days in county jail, or by both such fine or imprisonment.

History.—§7, ch. 7905, 1919; §2, ch. 10134, 1925; CGL 3963, 8119, 8120, 8121, 8122; am. §1, ch. 21883, 1943. Am. §10, ch. 26484, 1951.

525.08 Commissioner of agriculture and assistants to have access to all stores, etc.—In the performance of their duties, the commissioner of agriculture or any of his duly authorized agents shall have free access at all reasonable hours to any store, warehouse, factory, storage house, or railway depot, where oils are kept or otherwise stored, for the purpose of examination or inspection and drawing samples. If such access be refused by the owner, agent or manufacturer of such premises, the commissioner of agriculture, or his duly authorized inspectors or agents, may apply for a search warrant which shall be obtained in the same manner as provided for obtaining search warrants in other cases. The refusal to admit an inspector to any of the above mentioned premises during reasonable hours, shall be construed as prima facie evidence of a violation of this chapter.

History.—§8, ch. 7905, 1919; CGL 3964.
cf.—Ch. 933, Search warrants.

525.09 Inspection fee.—For the purpose of defraying the expenses incident to the inspection, testing and analyzing of oils in this state, there shall be paid to the commissioner of agriculture a charge of one-eighth cent per gallon on all gasoline, kerosene and signal oil sold within this state, which payment shall be made on or before the twenty-fifth day of each month. If any company fails to make the payment herein provided on or before the twenty-fifth day of each month the commissioner of agriculture may add ten per cent to the amount of such taxes already due as a penalty for failure of such company, dealers or agent to make such report and payment on the date herein provided, and shall proceed to collect such tax, together with all cost incident to such collection the same as other delinquent taxes are collected by law. All remittances to the commissioner of agriculture to cover the inspection tax herein provided shall be accompanied by a detailed report under oath showing the number of gallons of gasoline, kerosene and signal oil sold and delivered in each county. No inspection fee shall be charged on oils or gasoline unloaded in any of the Florida ports for shipment into other states.

History.—§9, ch. 7905, 1919; §3, ch. 10134, 1925; CGL 3965; am. §1, ch. 24176, 1947.
cf.—§205.10 Collection of delinquent license tax.

525.10 Moneys to be paid into state treasury; payment of expenses, etc.—All moneys payable under this chapter shall be payable to the commissioner of agriculture and shall be paid by him into the state treasury monthly to constitute, together with other moneys collected for inspections, a fund to be known and designated as the general inspection trust fund, out of which all expenses incurred in the enforcement of this chapter and other inspection laws of this state for which fees are collected, including acquirement of equipment and other property and the distribution of hog cholera serum when approved by the board of commissioners of state institutions as necessary to execute the agricultural fertilizer analysis and general inspection laws more economically and promptly, shall be paid by the state treasurer on warrants issued by the comptroller. No money shall be paid to any inspector or employee created under this chapter except from the funds collected from the administration of this chapter.

History.—§10, ch. 7905, 1919; §1, ch. 15615, 1931; CGL 3966; §2, ch. 61-119.

525.11 Comptroller to pay expenses.—The comptroller shall issue warrants payable out of the general inspection trust fund on vouchers approved by the commissioner of agriculture to cover all expenses incurred in the administration of this chapter.

History.—§11, ch. 7905, 1919; CGL 3967. §10, ch. 26484, 1951; §2, ch. 61-119.

525.13 Report of commissioner of agriculture.—The commissioner of agriculture shall include in his biennial report an account of the operation and expenses under this chapter.

History.—§13, ch. 7905, 1919; CGL 3969.

525.14 Rules and regulations.—The commissioner of agriculture shall promulgate such rules and regulations not inconsistent with the provisions of this chapter as in his judgment

may be necessary to the proper enforcement of this chapter; and define and fix the standards and specifications for all the oils and gases referred to in §525.01. The standards and specifications shall be fixed before any of such oils and gases shall be sold or otherwise dispensed in this state.

History.—§14, ch. 7905, 1919; CGL 3970.

525.15 Inspectors not to be interested in sales.—It is unlawful for any inspector to be interested, directly or indirectly, in the manufacturing or sale of any of the oils herein mentioned.

History.—§15, ch. 7905, 1919; CGL 3971.

525.16 Prosecution of cases by state attorney.—The state attorney, or other prosecuting officer within the jurisdiction of whose court the case may come, shall prosecute all cases certified to him for prosecution by the commissioner of agriculture immediately upon receipt of the evidence transmitted by the commissioner of agriculture, or as soon thereafter as practicable.

History.—§17, ch. 7905, 1919; CGL 3972.

525.17 Penalty for violations.—Any person who shall knowingly violate any of the provisions of this chapter or any rule or regulation promulgated by the commissioner of agriculture, shall, upon conviction thereof, unless otherwise provided, be punished by a fine of not more than one thousand dollars, or by imprisonment in the state prison for not more than twelve months.

History.—§16, ch. 7905, 1919; CGL 8123.
cf.—§775.06, Alternative punishment.

CHAPTER 526
SALE OF LIQUID FUELS; BRAKE FLUID
PART I SALE OF LIQUID FUELS
PART II SALE OF BRAKE FLUID

PART I
SALE OF LIQUID FUELS

526.01 Fraud and deception in sale, etc., of liquid fuel.—

(1) No person shall store, sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever, which may deceive, tend to deceive or has the effect of deceiving the purchaser of said products, as to the nature, quality or quantity of the products so sold, exposed or offered for sale.

(2) Containers of reclaimed, recleaned, reconditioned or re-refined lubricating oils, lubricants or mixtures of lubricants shall be plainly labeled in lettering as large as any other lettering thereon and in any event letters of not less than one-half inch in height showing that contents thereof is a previously used product and shall be designated "RECLAIMED OILS."

History.—§1, ch. 16083, 1933; CGL 1936 Supp. 7315(2). §1, ch. 26883, 1951; am. §1, ch. 28114, 1953.
cf.—§1.01(3), "Person" defined.

526.02 Proper trade name, etc., to appear upon container.—No person shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump, or other distributing device, other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trade-mark, symbol, sign or other distinguishing mark or device appearing upon said container, tank, pump, or other distributing device in which such products are sold, exposed or offered for sale or distributed.

History.—§2, ch. 16083, 1933; CGL 1936 Supp. 7315(3).

526.03 Imitating trade names, etc., liquid fuel prohibited.—It is unlawful for any person to disguise or camouflage his own equipment, by imitating the design, symbol, trade name, or the equipment under which recognized brands of liquid fuels, lubricating oils, and similar products, are generally marketed.

History.—§3, ch. 16083, 1933; CGL 1936 Supp. 7315(4).

526.04 Sale of liquid fuel under trade mark of another prohibited.—No person shall expose or offer for sale or sell under any trade-mark, trade name, or name or other distinguishing mark, any liquid fuels, lubricating oils, greases, or other similar products, other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trade-mark, or name or other distinguishing mark.

History.—§4, ch. 16083, 1933; CGL 1936 Supp. 7315(5).

526.05 Mixing, etc., of liquid fuels of different manufacturers prohibited.—No person shall mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of a manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose, offer for sale, or sell such mixed, blended or compounded products under the trade name, trademark or name or other distinguishing mark of either of said manufacturer or distributors, or as the unadulterated products of such manufacturer or distributor; provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trade-mark, trade name, or symbol to any product or material.

History.—§5, ch. 16083, 1933; CGL 1936 Supp. 7315(6).

526.06 Mixing, blending or compounding liquid fuels of same manufacturer prohibited.—It is unlawful for any person to mix, blend, compound or adulterate the liquid fuel, lubricating oil, grease, or similar product of a manufacturer or distributor with a liquid fuel, lubricating oil, grease or similar product of the same manufacturer or distributor of a character or nature different from the character or nature of the liquid fuel, lubricating oil, grease or similar product so mixed, blended, compounded or adulterated, and expose for sale, offer for sale, or sell the same as the unadulterated product of such manufacturer or distributor, or as the unadulterated product of any other manufacturer or distributor; provided, however, that nothing in this chapter shall be construed to prevent the law-

ful owner of such products from applying his or its own trade-mark, trade name or symbol to any product or material.

History.—§6, ch. 16083, 1933; CGL 1936 Supp. 7315(7).

526.07 Assisting another in deception, etc., prohibited.—No person shall aid or assist any other person in violating any of the provisions of this chapter, by depositing or delivering into any tank, pump, receptacle, or other container, any liquid fuels, lubricating oils, greases or other like products, other than those intended to be stored therein, as indicated by the name of the manufacturer or distributor, or the trade-mark, trade name, name or other distinguishing mark of the product displayed on the container itself or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this chapter.

History.—§7, ch. 16083, 1933; CGL 1936 Supp. 7315(8).

526.08 Participation of officer, etc., of corporation in violations.—If any firm, copartnership, association or corporation violates any of the provisions of this chapter, every director, officer, agent, employee or member participating in, aiding or authorizing the act or acts constituting a violation of this chapter shall be guilty of violating this chapter, and shall be subject to the punishment herein provided.

History.—§8, ch. 16083, 1933; CGL 1936 Supp. 7315(9).

526.09 Commissioner of agriculture to enforce law; rules and regulations.—The commissioner of agriculture shall enforce the provisions of this chapter. The commissioner of agriculture is authorized to adopt, promulgate, and enforce such rules and regulations not inconsistent with the provisions of this chapter as in his judgment may be necessary to the proper enforcement of this chapter.

History.—§11, ch. 16083, 1933; CGL 1936 Supp. 7315(12). Am. §2, ch. 28114, 1953.

526.10 Attorney general, state attorneys, etc., to assist in enforcing law.—The attorney general, each state attorney and each county prosecuting attorney shall assist in the enforcement of the provisions of this chapter, upon request of the commissioner of agriculture; provided that the actual, reasonable and necessary expenses of the attorney general, state attorney and county prosecuting attorney shall be paid in connection with the performance of additional duties imposed upon them by this chapter out of the general inspection trust fund.

History.—§12, ch. 16083, 1933; CGL 1936 Supp. 7315(13). §2, ch. 61-119.

526.11 Penalty for violations.—Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction for a first offense, shall be punishable by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days, and for a second or subsequent offense, by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment for not more than one year.

History.—§9, ch. 16083, 1933; CGL 1936 Supp. 7315(10).
cf.—§1.01(3), "Person" defined.
§775.06, Alternative punishment.

526.111 Prohibited display of gasoline prices; penalty.—

(1) It is unlawful for any person, firm, or corporation to display, or allow to be displayed on his premises, any sign, placard, or other advertisement relating to the retail price of gasoline unless numerals thereon indicating fractions or portions of a whole number are at least half the size of the largest whole number on such sign, and no such price of gasoline shall be advertised without the tax included. No such person, firm, or corporation shall be required to post prices pursuant to this section. No such sign, placard or other advertisement except the price posted on the pump shall be displayed within fifteen feet of the right-of-way of any public street, road or highway.

(2) The penalty for violating the provisions of this section shall be imprisonment in the county jail for a term not more than thirty days or a fine not exceeding one hundred dollars or both such fine and imprisonment.

History.—Comp. §§1, 2, ch. 57-826.

PART II

SALE OF BRAKE FLUID

526.50 Definition of terms.—As used in part II of chapter 526, the following terms shall have the meanings respectively ascribed to them, unless the context otherwise requires:

(1) "Brake fluid" means the fluid intended for use as the liquid medium through which force is transmitted in the hydraulic brake system of a vehicle operated upon the highways.

(2) "Department" means the department of agriculture, acting through the division of standards.

(3) "Person" includes individual, firm, corporation or association.

(4) "Sell" includes give, distribute, barter, exchange, trade, keep for sale, offer for sale or expose for sale, in any of their variant forms.

(5) "Labeling" includes all written, printed or graphic representations, in any form whatsoever, imprinted upon or affixed to any container of brake fluid.

(6) "Container" means any receptacle in which brake fluid is immediately contained when sold, but does not mean a carton or wrapping in which a number of such receptacles are shipped or stored or a tank car or truck.

(7) "Permit year" means a period of twelve months commencing July 1 and ending on the next succeeding June 30.

(8) "Registrant" means any manufacturer, packer, distributor, seller or other person who has registered a brake fluid with the department.

History.—§1, ch. 61-390.

526.51 Registration, renewals and fees; expenses; cancellation, etc.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms to be supplied by the department. The applicant shall give his name and address, the brand name of the brake fluid, state that he owns said brand name and has complete control over the product sold thereunder in Florida and name and address of resident agent in Florida. Application shall be accompanied by a certified report of an independent testing laboratory, setting forth the analysis of said brake fluid which shall show its quality to be not less than the specifications established by the department for brake fluids. A sample of not less than one-half gallon of brake fluid shall be submitted, in a container or containers, labeled exactly as containers of brake fluid will be labeled when sold, and such sample and container shall be analyzed and inspected by the division of standards in order that compliance with the department's specifications and labeling requirements may be verified. Upon approval of such application, the department shall register the brand name of such brake fluid and issue to the applicant a permit authorizing the registrant to sell such brake fluid in this state during the permit year specified in the permit.

(b) Each applicant shall pay a fee of one hundred dollars with each application. A permit may be renewed by application to the department, accompanied by a renewal fee of fifty dollars on or before the last day of the permit year immediately preceding the permit year for which application is made for renewal of registration. To any fee not paid when due, there shall accrue a penalty of twenty-five dollars which shall be added to the renewal fee. Renewals will be accepted only on brake fluids which have no change in formula, composition or brand name. Any change in formula, composition or brand name of any brake fluid shall constitute a new product which shall be registered in accordance with the provisions of part II of chapter 526.

(2) All fees collected under the provisions of this section shall be credited to the general inspection trust fund of the department and all expenses incurred in the enforcement of this part II of chapter 526 shall be paid from said fund.

(3) The department may cancel, refuse to issue or refuse to renew any registration and permit after due notice and opportunity to be heard if it finds that the brake fluid is adulterated or misbranded or that the registrant has failed to comply with the provisions of part II of chapter 526 or the rules and regulations promulgated thereunder.

History.—§1, ch. 61-390; (2) a. by §2, ch. 61-119.

526.52 Specifications, adulteration and misbranding.—

(1) The department shall establish specifications for brake fluid which shall promote the public safety in the operation of automotive vehicles and may amend such specifications by regulation, but in no event shall the specifications for brake fluid fall below the minimum specifications established by the society of automotive engineers for brake fluid, heavy duty type.

(2) A brake fluid is deemed to be adulterated if its contents have been changed after registration, without re-registration, or its quality or characteristics fall below the specification for brake fluid established by the department.

(3) Brake fluid is deemed to be misbranded:

(a) If its container does not bear on its side or top a label on which is printed the name and place of business of the registrant of the product, the words "brake fluid," and a statement that the product therein equals or exceeds the minimum specification of the society of automotive engineers for brake fluid, heavy duty type. By regulation the department may require that the duty type classification appear on the label.

(b) If the container does not bear on its side or top an accurate statement of the quantity of the contents in terms of liquid measure.

(c) If the labeling on the container is false or misleading in any particular.

(4) The words and letters required by this section shall appear on the label in legible type, in English.

History.—§1, ch 61-390.

526.53 Enforcement; inspection and analysis, "stop-sale" and disposition, regulations.—

(1) The department shall enforce the provisions of part II of chapter 526 through the division of standards, and may sample, inspect, analyze and test any brake fluid manufactured, packed or sold within this state. The department, through its agents, shall have free access during business hours to all premises, buildings, vehicles, cars or vessels used in the manufacture, packing, storage, sale or transportation of brake fluid, and may open any box, carton, parcel or container of brake fluid and take therefrom samples for inspection and analysis or for evidence.

(2) When any brake fluid is sold in violation of any of the provisions of part II of chap-

ter 526, all such brake fluid of the same brand name on the same premises on which the violation occurred shall be placed under a "stop-sale" order by the department. The department shall withdraw its "stop-sale" order upon the removal of the violation or upon voluntary destruction of the product, or other disposal approved by the department, under the supervision of the department.

(3) Any brake fluid which becomes the subject of a court proceeding shall be disposed of by order of the court.

(4) The department shall have authority to promulgate and enforce such rules and regulations as are necessary to carry out the provisions of part II of chapter 526.

(5) No labeling relating to any brake fluid shall contain any statement that the brake fluid has been approved by the department, but a statement that the brake fluid has been registered by the department may be included in such labeling.

History.—§1, ch. 61-390.

526.54 Certified copy of analysis as evidence.—A certified copy of the analysis made by the department shall be admitted as prima facie evidence in any court proceeding involving the inspection, analysis, standards or specifications of brake fluid as defined and covered by part II of chapter 526.

History.—§1, ch. 61-390.

526.55 Violation and penalties.—It is unlawful:

(1) To sell any brake fluid that is adulterated or misbranded, not registered or on which a permit has not been issued.

(2) For anyone to remove any "stop-sale" order placed on a product by the department, or any product upon which a "stop-sale" order has been placed.

(3) Any person who violates any of the provisions of part II of chapter 526 or any rule or regulation promulgated thereunder shall be guilty of a misdemeanor, and upon conviction for the first offense shall be punished by a fine of not more than $200.00 or by imprisonment for not more than thirty days and for a second or subsequent offense by a fine of not less than $500.00 nor more than $1,000.00 or by imprisonment for not more than one year.

History.—§1, ch. 61-390.

526.56 Injunction against violations.—In addition to the remedies provided in this law, and notwithstanding the existence of any adequate remedy at law, the commissioner is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this law or for failing or refusing to comply with the requirements of this law or any rule or regulation duly promulgated as in this law authorized, such injunction to be issued without bond.

History.—§1, ch. 61-390.

CHAPTER 527

SALE OF LIQUEFIED PETROLEUM GAS

527.01 Definitions.—The following words and phrases when used in this chapter have the meanings respectively ascribed to them in this section:

(1) LIQUEFIED PETROLEUM GAS.—The term "liquefied petroleum gas" shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

(2) PERSON.—Every individual, firm, partnership, corporation, company, association, organization or cooperative.

(3) DEALER IN LIQUEFIED PETROLEUM GAS.—Any person selling or offering to sell any liquefied petroleum gas to the ultimate consumer for industrial, commercial or domestic use.

(4) DEALER IN APPLIANCES FOR USE OF LIQUEFIED PETROLEUM GAS.—Any person selling or offering to sell, leasing or offering to lease, the apparatus, appliances and equipment necessary for the storage or converting of liquefied petroleum gas into flame for light, heat and power.

(5) ULTIMATE CONSUMER.—The person last purchasing liquefied petroleum gas in its liquid or vapor state for industrial, commercial or domestic use.

(6) INSTALLATION.—The act of installing apparatus, piping and tubing, appliances and equipment necessary for storing and converting liquefied petroleum gas into flame for light, heat and power for use by the ultimate consumer.

(7) APPLIANCES AND APPARATUS FOR USE OF ULTIMATE CONSUMER.—The apparatus, appliances and equipment described in and contemplated by immediately preceding subsection (6).

(8) MANUFACTURER OF APPLIANCES AND EQUIPMENT FOR THE USE OF LIQUEFIED PETROLEUM GAS.—Any person manufacturing and offering for sale or selling in this state tanks, cylinders or other containers and necessary appurtenances thereof for use by dealers in liquefied petroleum gas in their storage, transportation or delivery of such gas to ultimate consumers thereof; and apparatus, appliances and equipment for use by the ultimate consumer for storing and converting liquefied petroleum gas into flame for light, heat or power.

(9) STATE FIRE MARSHAL.—The state treasurer, as ex officio insurance commissioner.

History.—§1, ch. 24302, 1947; §11, ch. 25035, 1949 (6) by §1, ch. 57-174; tr. from §526.12 and a. by §1, ch. 61-158.

527.02 License; fees.—

(1) It shall be unlawful for any person to engage in this state in the business of a dealer in liquefied petroleum gas, in the business of manufacturer of appliances and equipment for the use of liquefied petroleum gas or in the business of dealer in appliances for use with liquefied petroleum gas, or in the business of installation as defined in §527.01, without first obtaining from the state fire marshal a license to engage in one or more of these businesses, which license shall be granted to any applicant who files with the state fire marshal a good and sufficient bond or certificate of insurance as hereinafter specified, and pays for such license annually the following fees, which fees as collected shall be deposited into the fund created by subsection (2) of this section, and such funds are hereby appropriated for the use of the state fire marshal in administering the provisions of this law:

Manufacturer of appliances and equipment for use with liquefied petroleum gas	$125.00
Dealer in appliances and equipment for use of liquefied petroleum gas only	10.00
Dealer in liquefied petroleum gas only	125.00
Installation only	50.00
Dealer in liquefied petroleum gas, in appliances and equipment for use of such gas and installation	125.00

(2) There is hereby created and established in the state treasury a fund to be designated "liquefied petroleum gas administrative trust fund" for the purpose of administering the provisions of this chapter.

History.—§2, ch. 24302, 1947; §2, ch. 57-174; (2) a. by §2, ch. 61-119; tr. from §526.13 and a. by §1, ch. 61-158.
cf.—§527.12, Cease and desist orders; hearing; penalty.

527.03 Annual renewal of license.—All licenses required under this chapter shall be renewed annually subject to the license fees prescribed in §527.02 for the period beginning October 1 and shall expire on the following

September 30 unless sooner suspended, revoked or otherwise terminated.

History.—§3, ch. 24302; 1947; §1, ch. 25105, 1949; §11, ch. 25035, 1949; §1, ch. 29667, 1955; tr. from §526.14 and a. by §1, ch. 61-158.

527.04 **Bond.**—No license shall be issued to an applicant to engage in any of such businesses, except dealers in appliances only, until such applicant shall have filed with the state fire marshal a good and sufficient bond in the penal sum of twenty-five thousand dollars, payable to the governor of Florida, with the applicant as principal, and a surety company authorized to do business in this state as surety thereon, conditioned that the principal shall well and truly comply with the provisions of this chapter and such rules and regulations as the state fire marshal may prescribe with respect to the conduct of such business for which the applicant seeks a license, and to indemnify and save harmless any and all persons from loss or damage by reason of the principal's failure to comply with such provisions, rules and regulations; provided, however, that the aggregated liability of the surety to all persons shall in no event exceed the sum of said bond. Should any bond so required for any reason become insufficient, the state fire marshal may require a new bond to be filed forthwith and should the principal fail to do so, it shall be the duty of the state fire marshal to cancel the license issued to such principal and to give such principal notice of said fact in writing and it shall be unlawful thereafter for such principal to engage in such business without such license; provided, however, that if the applicant shall furnish satisfactory evidence that such applicant is carrying a policy of bodily injury liability and property damage liability insurance covering the products and operations with respect to such business, in an insurance company authorized to do business in the state, for an amount not less than twenty-five thousand dollars and that the premiums on such insurance are paid, then a certificate of such insurance shall be accepted in lieu of the bond hereinabove specified; provided, however, that no new bond or insurance certificate shall be required as long as the original bond and insurance remains sufficient and in full force and effect.

History.—§3, ch. 24302, 1947; §1, ch. 25105, 1949; §11, ch. 25035, 1949; §1, ch. 29667, 1955; tr. from §526.14 and a. by §1, ch. 61-158.

527.05 **Parties to suit; bond as evidence.**—Any person to whom there might accrue a cause of action on any such bond filed with the state fire marshal may bring suit against the principal and surety of such bond, and a copy of such bond duly certified by the state treasurer shall be received in evidence in all the courts of this state without further proof. It shall be the duty of the state treasurer to furnish any person requiring the same a certified copy of such bond upon payment to him of his lawful fee for making and certifying such copy.

History.—§4, ch. 24302, 1947; tr. from §526.15 and a. by §1, ch. 61-158.

527.06 **Rules and regulations.**—

(1) The state fire marshal shall make, promulgate and enforce rules and regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases, and specifying the odorization of said gases and the degree thereof. Said rules and regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

(2) It is hereby declared that rules and regulations in substantial conformity with the published standards of the national board of fire underwriters for the design, installation and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases as recommended by the national fire protection association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

(3) Such rules and regulations shall be adopted by the state fire marshal only after a public hearing thereon. Notice of the hearing shall be given by publication thereof in four or more newspapers of general circulation in this state at least once each week during the four weeks immediately preceding the week in which the hearing is to be held. A copy of such notice of hearing shall be mailed to each licensee under this chapter at least thirty days prior to said hearing. If reasonably possible the proposed rules and regulations or amendment thereto shall be set forth in said notice.

(4) No such rule or regulation shall be effective until after it has been on file as a public record in the office of the state fire marshal and in the office of the secretary of state for at least ten days.

(5) Upon request and payment of the reasonable cost thereof, if required and fixed by the state fire marshal, he shall furnish a copy of any such rules and regulations to any person so requesting.

History.—§5, ch. 24302, 1947; tr. from §526.16 and a. by §1, ch. 61-158.

527.07 **Restriction on use of containers.**—No person, other than the owner and those authorized by the owner so to do, shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container or receptacle for any gas, compound, or for any other purpose whatsoever.

History.—§6, ch. 24302, 1947; tr. from §526.17 and a. by §1, ch. 61-158.

527.08 **Penalty for violation.**—It shall be unlawful for any person to violate any of the provisions of this chapter or of the rules and regulations of the state fire marshal made pursuant to this chapter. Any person violating any of the provisions of this chapter or said rules and regulations made under the provisions of

this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $500.00.

History.—§7, ch. 24302, 1947; tr. from §526.18 and a. by §1, ch. 61-158.

527.09 Injunction.—In addition to the penalties and other enforcement provisions of this chapter, in the event any person engaged in any of the businesses covered by this chapter shall violate any provision of this chapter or any rule or regulation prescribed in pursuance of this chapter by the state fire marshal, said official is authorized to resort to proceedings for injunction in the circuit court of the county where such person shall reside or have his or its principal place of business, and therein apply for such temporary and permanent orders as the state fire marshal may deem necessary to restrain such person from engaging in any such businesses until such person shall have complied with the provisions of this chapter and such rules and regulations.

History.—§7, ch. 24302, 1947; tr. from §526.18 and a. by §1, ch. 61-158.

527.10 Restriction on use of unsafe container or system.—No liquefied petroleum gas shall be introduced into any container or system in this state that has been identified by the state fire marshal or his duly authorized inspectors as not complying with all the requirements of the rules and regulations pertaining to such container or system, until such violations as specified have been satisfactorily corrected and authorization for continued service granted by the state fire marshal. Statement of violations of the rules and regulations that render such a system unsafe for use shall be furnished in writing by the state fire marshal to the ultimate consumer or dealer in liquefied petroleum gas.

History.—§1, ch. 29742, 1955; tr. from §526.181(1) and a. by §1, ch. 61-158.

527.11 Minimum storage.—

(1) All persons who engage in the distribution of liquefied petroleum gases for resale to domestic, commercial or industrial consumers as a prerequisite to obtaining a liquefied petroleum gas license shall install a bulk storage filling plant of not less than twelve thousand gallons (water capacity) within the state.

(2) The dealers specifically exempt from the requirements of subsection (1) are those dealers who have or enter into a written agreement with a wholesaler that the wholesaler will provide liquefied petroleum gas to the dealer for a period of twelve continuous months, provided the said wholesaler shall have at least twelve thousand gallons (water capacity) bulk storage within this state permanently connected for storage and used as such for each said dealer to whom gas is sold; provided however, that no wholesaler will be required under this section to have more than three hundred thousand gallons (water capacity) permanent bulk storage for their entire operations either retailer or wholesaler in the state.

(3) The independent dealers who do not have a written contract with a supplier or wholesaler are exempt from the requirements of subsection (1); provided, in lieu of the requirement set forth in said subsection (1), said independent dealers shall install a bulk storage tank with a capacity (water gallons) of not less than the total of liquefied petroleum gas sold by said independent dealer during the peak month of the preceding calendar year.

(4) The location of any bulk storage container or containers, shall be approved in writing by the state fire marshal before being installed. A sketch of the proposed location shall be furnished to the state fire marshal before said container is installed. After said container is installed and before use the installation of said container must be inspected and approved for use before said container is placed in operation.

(5) A "wholesaler" as used in this section, is any person, as defined by §527.01(2), selling or offering to sell any liquefied petroleum gas for industrial, commercial or domestic use to any person except the ultimate consumer.

History.—§§1, 2, ch. 57-219; tr. from §526.21 and a. by §1, ch. 61-158.

527.12 Cease and desist orders; hearings.—

(1) Whenever the state fire marshal shall have reason to believe that any person is or has been violating the provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, he shall issue and mail to such person a statement of the charges in that respect and written notice of his intention to issue a cease and desist order.

(2) If within twenty days after the date of mailing said statement of charges the licensee has not filed with the state fire marshal at his office in Tallahassee a written answer to such charges coupled with a written request for a hearing thereon, the state fire marshal may proceed to issue an order requiring such person to cease and desist from such violation.

(3) If within such twenty days an answer and request for hearing is filed with the state fire marshal, he shall hold a hearing with respect to the charges within sixty days from the date of the mailing of the notice and charges unless postponed by mutual consent of the parties. The state fire marshal shall give the licensee written notice of the hearing not less than ten days in advance of the hearing date.

(4) At the time and place fixed for such hearing such person shall have an opportunity to be heard and to show cause why an order should not be made by the state fire marshal requiring such person to cease and desist from the acts, methods or practices so complained of.

(5) Statements of charges, notices, orders and other processes of the state fire marshal under this law may be served by registered mail addressed to the licensee at his or its residence or principal office or place of business last of record with the state fire marshal.

Such notice shall be deemed given when so addressed and mailed postage prepaid at a United States post office or branch thereof.

(6) If after such hearing the state fire marshal shall determine that the acts complained of are in violation of the provisions of this law, or the rules and regulations adopted and promulgated in pursuance thereto, he shall reduce his findings to writing and issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from such violation.

History.—§3, ch. 57-174; tr. from §526.22 and a. by §1, ch. 61-158.

527.13 Administrative fine in lieu of suspension or revocation of license.—

(1) If any person violates a cease and desist order the state fire marshal may impose a civil penalty not to exceed $250.00 for each offense, or suspend or revoke the license issued to such person in accordance with the procedure set forth in §527.14. The cost of the proceedings is to be in addition to any penalties imposed. The state fire marshal may allow the licensee a reasonable period, not to exceed thirty days, within which to pay to the state fire marshal the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the state fire marshal at his office at Tallahassee within the period so allowed, the licenses of the licensee shall stand revoked upon expiration of such period and without any further proceedings.

(2) All such fines, monetary penalties and costs received by the state fire marshal shall be deposited in the liquefied petroleum gas administrative trust fund as provided in §527.02(2).

History.—§3, ch. 57-174; tr. from §526.22(9) and a. by §1, ch. 61-158; (2) a. by §2, ch. 61-119.

527.14 Procedure for suspension and revocation of license.—

(1) The violation by any person possessed of a license as provided in §527.02, after a cease and desist order has been entered pursuant to §527.12, shall be cause for revocation or suspension of such license, by the state fire marshal, after such officer shall determine said person guilty of such violation.

(2) Whenever the state fire marshal shall have reason to believe that any person is or has been violating the provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, or is violating or has violated a cease and desist order, he shall issue and mail to such person a statement of the charges in that respect and written notice of his intention to suspend or revoke the license.

(3) If within twenty days after the date of mailing said statement of charges the licensee has not filed with the state fire marshal at his office in Tallahassee a written answer to such charges coupled with a written request for a hearing thereon, the state fire marshal may proceed to suspend or revoke the license.

(4) If within such twenty days an answer and request for hearing is filed with the state fire marshal, he shall hold a hearing with respect to the charges within sixty days from the date of the mailing of the statement of charges unless postponed by mutual consent of the parties. The state fire marshal shall give the licensee written notice of the hearing not less than ten days in advance of the hearing date.

(5) At the conclusion of such hearing and after consideration by the state fire marshal of the evidence produced thereat, should he find in his judgment that said charge of violation has been proved he shall enter his order suspending or revoking the license of the person charged. An order of suspension shall state the period of time of such suspension which period shall not be in excess of one year from the date of such order. An order of revocation may be entered for a period of not exceeding two years; and such order shall effect revocation of license then held by said person and during such period of time no license shall be issued said person. If during the period between the filing of charges and entry of an order of suspension or revocation by the state fire marshal a new license has been issued the person so charged, any order of suspension or revocation shall operate effectively with respect to said new license held by such person. After such hearing, should the state fire marshal determine that the charge has not been sustained he shall enter his order to that effect.

(6) The provisions of this section are cumulative and shall not affect the penalty and injunctive provisions of §§527.08 and 527.09.

History.—§2, ch. 29742, 1955; tr. from §526.181(2) and a. by §1, ch. 61-158.

527.15 Conduct of hearings.—

(1) The hearing may be held in the state fire marshal's office at Tallahassee or at such other place in this state deemed by the state fire marshal to be more convenient to parties and witnesses.

(2) The state fire marshal or an assistant, deputy or examiner designated by him, shall preside at the hearing and shall sit in the capacity of a quasi-judicial officer.

(3) All hearings shall be public.

(4) The state fire marshal shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence and to examine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the state fire marshal to compel attendance of witnesses and production of evidence in his behalf. Testimony may be taken orally or by deposition and any party shall have such right of introducing evidence by deposition as may obtain in the circuit courts of this state.

(5) Upon good cause shown the state fire marshal shall permit to become a party to the hearing by intervention if timely only such persons who were not original parties thereto and whose interests are to be directly and im-

mediately affected by the state fire marshal's order made upon the hearing.

(6) Formal rules of pleading or of evidence need not be observed at the hearing except that the right of any person to invoke such rules and the rule of exclusion of witnesses is preserved.

(7) Unless waived in writing by the other parties to the hearing, the state fire marshal shall cause a full stenographic record of the proceedings at the hearing to be made by a competent reporter and at the cost of the state. If transcribed, a copy of such stenographic record shall be made a part of the state fire marshal's record of the hearing. A transcription shall be made if requested by any party in order that such party may have a copy thereof. A copy of the transcribed stenographic record shall be furnished to any party to the hearing requesting the same, and at such reasonable charge therefor as the state fire marshal may fix. If no stenographic record is made or transcribed the state fire marshal shall prepare an adequate record of the evidence and of the proceedings. The state's portion of the cost of the stenographic record and transcription thereof shall be paid out of the liquefied petroleum gas administrative trust fund provided for in §527.02(2). Any sums received from parties for copies of the stenographic record shall be deposited by the state fire marshal into the state treasury to the credit of such administrative trust fund.

History.—§1, ch. 61-158; (7) a. by §2, ch. 61-119.

527.16 Witnesses and evidence.—

(1) As to the subject of any examination, investigation or hearing being conducted by him the state fire marshal or any assistant, deputy or examiner appointed by him may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence and shall have the power to subpoena witnesses, compel their attendance and testimony and require by subpoena the production of books, papers, records, files, correspondence, documents or other evidence which he deems relevant to the inquiry.

(2) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the circuit court of Leon county or of the county wherein such examination, investigation or hearing is being conducted, or of the county wherein such person resides, on the state fire marshal's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(3) Subpoenas shall be served and proof of such service made in the same manner as if issued by a circuit court. Witness fees and mileage if claimed shall be allowed the same as for testimony in a circuit court.

(4) Any person wilfully testifying falsely under oath as to any matter material to any such examination, investigation or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

(5) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents or other evidence in connection with any examination, hearing or investigation being conducted by the state fire marshal or his examiner on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the state fire marshal and the attorney general, nonetheless comply with such direction but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension or revocation of any license, permission or authority conferred or to be conferred pursuant to this chapter.

(6) Any such individual may execute, acknowledge and file in the office of the state fire marshal a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

(7) Any person who refuses or fails without lawful cause to testify relative to the affairs of any person, when subpoenaed and requested by the state fire marshal to so testify, shall be guilty of a misdemeanor and upon conviction shall be subject to the penalty provided under §527.08.

History.—§1, ch. 61-158.

527.17 Review of order of the state fire marshal.—

(1) All final orders or decisions of the state fire marshal shall be subject to review by certiorari by the circuit court of Leon county. Such review shall be commenced within sixty days after the rendition of such order or decision and in compliance with the Florida appellate rules.

(2) The cost of the record is to be paid by the person seeking review. Any record required to be filed in such review shall be certified by

the state fire marshal or his assistant or deputy. No such appeal shall operate as a supersedeas with respect to any such order of suspension or revocation unless so ordered by the circuit court.

History.—§1, ch. 29742, 1955; §3, ch. 57-174; tr. from §§526.181(3) and 526.22(7), a. §1, ch. 61-158; §24, ch. 63-512.

527.18 **Cumulative effect of law.**—The provisions of this chapter are cumulative and shall not be construed as repealing or affecting any powers, duties or authority of the state fire marshal under any other law of this state.

History.—§10, ch. 24302, 1947; tr. from §526.20 and a. by §1, ch. 61-158.

CHAPTER 531

WEIGHTS, MEASURES AND STANDARDS

531.01 Standards of weights and measures.—The following standards of weights and measures shall be the standard of weights and measures throughout the state:

One standard liquid gallon shall contain two hundred thirty-one solid inches.

The weights and measures shall be as follows:

Wheat, per bushel	60 pounds avoirdupois
Corn, shelled, per bushel	56 pounds avoirdupois
Corn, on cob with shuck	70 pounds avoirdupois
Sorghum seed, per bushel	56 pounds avoirdupois
Barley seed, per bushel	48 pounds avoirdupois
Oats, per bushel	32 pounds avoirdupois
Bran, per bushel	20 pounds avoirdupois
Corn meal, per bushel	48 pounds avoirdupois
Beans, shelled, per bushel	60 pounds avoirdupois
Beans, velvet, in hulls, per bushel	78 pounds avoirdupois
Beans, castor, shelled, per bushel	48 pounds avoirdupois
Millet seed, per bushel	50 pounds avoirdupois
Beggar weed seed, per bushel	62 pounds avoirdupois
Irish potatoes, per bushel	60 pounds avoirdupois
Sweet potatoes, per bushel	56 pounds avoirdupois
Turnips, per bushel	54 pounds avoirdupois
Onions, per bushel	56 pounds avoirdupois
Salt, per bushel	60 pounds avoirdupois
Peanuts, per bushel	22 pounds avoirdupois
Chufas, per bushel	54 pounds avoirdupois
Rye, per bushel	56 pounds avoirdupois
Apples, dried, per bushel	24 pounds avoirdupois
Apples, green, per bushel	48 pounds avoirdupois
Quinces, per bushel	48 pounds avoirdupois
Peaches, dried, per bushel	24 pounds avoirdupois
Peaches, green, per bushel	54 pounds avoirdupois
Cotton seed, per bushel	32 pounds avoirdupois
Cotton seed, Sea Island, per bushel	44 pounds avoirdupois
Plums, per bushel	40 pounds avoirdupois
Pears, per bushel	55 pounds avoirdupois
Guavas, per bushel	54 pounds avoirdupois

History.—§1, ch. 4975, 1901; GS 1241; §1, ch. 7314, 1917; RGS 2372; CGL 3781.

531.02 Standard to govern.—All contracts made within this state for work to be done or anything to be sold or delivered by weight or measure shall be taken and construed according to the standard of weights and measures adopted as the standard of this state.

History.—§2, ch. 4975, 1901; GS 1242; RGS 2373; CGL 3782.

531.03 Requirements before selling.—All merchants, commission merchants, grocers, provision dealers, store keepers and other persons, before selling or offering for sale any grain, flour, meal, grits, corn, wheat, rye, oats, bran, beans, irish potatoes, sweet potatoes or peanuts, already put up, packed or placed in any sack, bag or barrel, in original packages, shall have marked or stamped or stenciled upon such sack, bag or barrel, so sold or offered for sale, with its contents in figures, at least one inch in length, the exact weight in pounds avoirdupois of such bag, sack or barrel, with its contents. If the bag, sack or bar-

rel is of a dark or black color such figures shall be marked, stamped or stenciled in light colored ink or pencil; if the bag, sack or barrel is of a light color, then the marking, stamping or stenciling shall be in black or dark pencil, but in all cases the stamping, marking or stenciling shall be plain, legible, and placed conspicuously on such bag, sack or barrel.

History.—§1, ch. 4996, 1901; GS 1243; RGS 2374; CGL 3783.

531.07 Selling by false weight or measure; penalty.—Whoever knowingly sells by false weight or measure, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one thousand dollars.

History.—§52, Feb. 10, 1832; RS 2723; GS 3715; RGS 5694; CGL 7908.
cf.—§536.20, Selling timber by illegal standard.
§775.06, Alternative punishment.

531.08 Selling by untested weights and measures; penalty.—Whoever refuses to have his weights and measures tested, or refuses to pay the fees for the same, or whoever, after his weights and measures have been tested, fails to make them conform to the standard, and keep them conformed, shall be punished by imprisonment not exceeding sixty days, or by fine not exceeding one hundred dollars.

History.—RS 2724; GS 3716; RGS 5695; CGL 7909.
cf.—§775.06, Alternative punishment.

531.09 Merchant offering to sell grain, etc., without marking sack; penalty.—Any merchant, commission merchant, grocer, provision dealer, storekeeper or other person, or any officer, agent, clerk or employee of any merchant, commission merchant, grocer, provision dealer or storekeeper who shall offer for sale, attempt to sell or sell any of the articles mentioned in §531.03, already put up, placed or packed in any sack, bag or barrel, in original packages, without having such sack, bag or barrel marked, stamped or stenciled as in the manner therein prescribed before offering for sale, attempting to sell or selling the same, shall be punished by fine not exceeding two hundred dollars for each offense, or by imprisonment for not more than three months.

History.—§§2, 3, ch. 4976, 1901; GS 3354; RGS 5198; CGL 7302.

531.10 Merchant selling by short weight; penalty.—Any merchant, commission merchant, grocer, provision dealer, storekeeper, or other person, or any officer, agent, clerk or employee of any merchant, commission merchant, grocer, provision dealer, or storekeeper, who shall sell or dispose of any sack, bag or barrel with its contents, containing any of the articles mentioned in §531.01 upon which the **weight in avoirdupois** of such sack, bag or barrel with its contents has been marked, stamped or stenciled as provided, and the weights so stamped, marked or stenciled shall not be the true and correct weight of such sack, bag or barrel with its contents, but the weight so marked, stamped or stenciled shall be a greater weight than the true and the correct weight of such sack, bag or barrel with its contents, shall be punished for each offense by a fine not exceeding two hundred dollars or by imprisonment for not more than three months.

History.—§3, ch. 4976, 1901; GS 3355; RGS 5199; CGL 7303.

531.12 Selling certain commodities other than by the pound prohibited.—It is unlawful for any dealer to sell, offer for sale, barter, exchange, or otherwise dispose of, any of the different commodities named in §531.01, except by the pound. Any person violating this section shall be guilty of a misdemeanor.

History.—§2, ch. 7314, 1917; RGS 5697; CGL 7911.
cf.—§775.07, Punishment for misdemeanors.

531.13 To regulate the sale of goods marked "Sterling."—Any person who makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, any article of merchandise, marked, stamped or branded with the word "Sterling," or "Sterling Silver," or incased or inclosed in any box, package, cover or wrapper or other thing in or by which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one-thousandths of the component parts of the metal of which the said article is manufactured are pure silver, shall be deemed guilty of a misdemeanor.

History.—§1, ch. 4417, 1895; GS 3351; RGS 5194; CGL 7297.

531.14. To regulate the sale of goods marked "Coin," or "Coin Silver."—Any person who makes or sells, or offers to sell or dispose of or has in his possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "Coin," or "Coin Silver," or incased or inclosed in any box, package, cover or wrapper or other thing in or by which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trademark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is coin or coin silver, unless nine hundred one-thousandths of the component parts of the metal of which the said article is manufactured are pure silver, shall be deemed guilty of a misdemeanor.

History.—§2, ch. 4417, 1895; GS 3352; RGS 5195; CGL 7298.

531.15 Penalty for violations of §§531.13, 531.14.—Whoever violates the provisions of §§531.13 or 531.14 shall be punished by a fine not exceeding one hundred dollars for each offense, or by imprisonment not exceeding sixty days.

History.—§3, ch. 4417, 1895; GS 3353; RGS 5196; CGL 7299.
cf.—§775.06, Alternative punishment.

531.16 State standards of weights and measures; public standards.—The weights and measures received from the United States under joint

resolutions of congress approved June 14, 1836, and July 27, 1866, and/or such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and/or such weights and measures in conformity therewith as shall be supplied by the state shall, when the same have been certified by the national bureau of standards, be the state standards of weights and measures.

History.—§1, ch. 22536, 1945.

531.17 Office standards; verification; certification.—

(1) In addition to the state standards of weights and measures provided for in §531.16, there shall be supplied by the state at least one complete set of copies thereof to be kept at all times in the offices of the commissioner and to be known as office standards, and such other weights, measures and apparatus as may be found necessary to carry out the provisions of this law, to be known as working standards. Such weights, measures and apparatus shall be verified by the commissioner or his inspectors at his direction upon their initial receipts and at least once in each year thereafter the office standards by direct comparison with the state standards and the working standards by comparison with the office standards. When found accurate upon these tests the office and working standards shall be sealed by stamping on them the letters "Fla." and, in the case of working standards, the last two figures of the year, with seals which the commissioner shall have and keep for that purpose. The office or working standards shall be used in making all comparisons of weights, measures and weighing or measuring devices submitted for test in the office of the commissioner and the state standards shall be used only in verifying the office standards and for scientific purposes.

(2) The commissioner shall maintain the state standards in good order and shall submit them at least once in ten years to the national bureau of standards for certification. He shall keep a complete record of the standards, balances and other apparatus belonging to the state.

History.—§2, ch. 22536, 1945.

531.18 Commissioner of agriculture; powers, duties, etc.—The duty of administering this law and enforcing its provisions and requirements shall be and is hereby vested in the commissioner of agriculture of the state who is hereby authorized to employ such agents and persons as in his judgment shall be necessary therefor to act as inspectors in carrying out the provisions of this law and whose salaries shall be fixed by the commissioner. In the administration and enforcement of this law the commissioner may act by and through such persons as he shall designate and/or employ to act as inspectors for that purpose.

History.—§3, ch. 22536, 1945.

531.19 Regulations.—The commissioner shall issue from time to time regulations for the enforcement of the provisions of this law. The said regulations may include specifications and tolerances for all weights, measures and weighing and measuring devices of the character of those specified in §531.20. For the purposes of this law, apparatus shall be deemed to be correct when it conforms to all applicable requirements promulgated as specified in this section; other apparatus shall be deemed to be incorrect.

History.—§4, ch. 22536, 1945.

531.20 Inspecting, trying, approving, etc., weights and measures.—When not otherwise provided by law the commissioner shall have the power and is hereby authorized to inspect, test, try and ascertain if they are correct, all weights, measures and weighing or measuring devices kept, offered or exposed for sale, sold or used or employed in proving the size, quantity, extent, area or measurement of quantities, things, produce or articles for distribution or consumption purchased or offered or submitted for sale, hire or award, or in computing any charge for services rendered on the basis of weight or measure, or in determining weight or measure when a charge is made for such determination; and he shall have the power to and shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered or exposed for sale, or sold, or in the process of delivery, in order to determine whether the same contain the amounts represented and whether they be offered for sale or sold in a manner in accordance with law. He shall as often as he deems necessary and practicable see that all weights, measures and weighing or measuring devices used are correct. He may for that purpose and in the general performance of his official duties enter and go into or upon and without formal warrant, any stand, place, building or premises, or stop any vendor, peddler, delivery vehicle, or any person whatsoever and require him, if necessary, to proceed to some place which the commissioner may specify for the purpose of making the proper tests. Whenever the commissioner finds a violation of the statutes relating to weights and measures, he may cause the violator to be prosecuted.

History.—§5, ch. 22536, 1945.

531.21 Approval of weights, measures, etc.—Whenever the commissioner compares weights, measures of weighing or measuring devices and finds that they correspond, or causes them to correspond, with the standards in his possession he shall seal or mark such weights, measures or weighing or measuring devices with appropriate identification.

History.—§6, ch. 22536, 1945.

531.22 Condemnation of illegal weights and measures.—

(1) The commissioner shall condemn and seize and may destroy incorrect weights, measures or weighing or measuring devices which, in his best judgment, are not susceptible of satisfactory repair; but such as are incorrect and yet in his best judgment may be repaired, he

shall mark or tag as "Condemned for repairs."

(2) The owners or users of any weights, measures or weighing or measuring devices of which such disposition is made shall have the same repaired and corrected within such reasonable time as may be specified by the commissioner and they may neither use nor dispose of the same in any way but shall hold the same at the disposal of the commissioner. Any weights, measures or weighing or measuring devices which have been "condemned for repairs," and have not been repaired as required above shall be confiscated by the commissioner.

History.—§7, ch. 22536, 1945.

531.23 Inspectors; powers, duties, etc.—The powers and duties given to and imposed upon the commissioner by §§531.20-531.22 are hereby given to and imposed upon his inspectors also, when acting under his instructions and at his direction.

History.—§8, ch. 22536, 1945.

531.24 Seizure of illegal weights and measures for evidence.—The commissioner and his inspectors are hereby specifically authorized and empowered to seize for use as evidence, without formal warrant, any false or unsealed weight, measure or weighing or measuring device or package or amount of commodity found to be used, retained or offered or exposed for sale or sold in violation of law.

History.—§9, ch. 22536, 1945.

531.25 Obstruction of commissioner, inspectors, etc., prohibited.—It shall be unlawful for any person to in any way hinder or obstruct the commissioner or his inspectors in the performance of his or their official duties under this law, or to fail or refuse to obey any lawful order of the commissioner or his inspectors given under authority of this law. It shall also be unlawful for any person to in any way impersonate the commissioner or his inspectors by the use or counterfeit of his or their seal or otherwise.

History.—§10, ch. 22536, 1945.

531.26 Packages, containers, etc., to be marked.—It shall be unlawful to keep for the purpose of sale, offer or expose for sale or sell, any commodity in package form unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count, provided, however, that reasonable variations or tolerances shall be permitted and that these reasonable variations or tolerances and also exemptions as to small packages shall be established by rules and regulations made by the commissioner. And provided, further, that this section shall not be construed to apply to those commodities in package form the manner of sale of which is specifically regulated by the provisions of other sections of this law.

History.—§11, ch. 22536, 1945.

531.27 Definitions.—

(1) The words "in package form" as used in this law shall be construed to include a commodity in a package, carton, case, can, box, barrel, bottle, phial or other receptacle, or in coverings or wrappings of any kind, put up by the manufacturer, or when put up out of the presence of the purchaser by the vendor, which may be labeled, branded or stenciled, or otherwise marked, or which may be suitable for labeling, branding or stenciling, or marking otherwise, making one complete package of the commodity. The words "in package form" shall be construed to include both the wholesale and the retail package.

(2) The term "gallon" shall be understood to mean a unit of 231 cubic inches, of which the liquid quart, liquid pint and gill are, respectively, the one-quarter, the one-eighth and the one-thirty-second parts.

(3) The term "bushel," when used in connection with dry measures and standard containers, shall be understood to mean a unit of 2150.42 cubic inches of which the dry quart and dry pint, respectively, are the one-thirty-second and one-sixty-fourth parts.

(4) The term "barrel" when used in connection with flour shall be understood to mean a unit of 196 pounds avoirdupois weight, and fractional parts of a barrel shall be understood to mean like fractional parts of 196 pounds.

(5) The term "barrel" when used in connection with beer, ale, porter and other similar fermented liquor, shall be understood to mean a unit of 31 gallons, and fractional parts of a barrel shall be understood to mean like fractional parts of 31 gallons.

(6) The term "ton" shall be understood to mean a unit of 2,000 pounds avoirdupois weight.

(7) The term "cord" when used in connection with wood shall be understood to mean the amount of wood which is contained in a space of 128 cubic feet when the wood is ranked and well stowed and one-half the kerf of the wood is included.

(8) All contracts concerning the sale of goods shall be construed in accordance with the provisions of this section.

(9) The word "person" as used in this law shall be construed to import both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies and associations. The word "commissioner" wherever used in this law means the commissioner of agriculture of the state.

(10) The words "weight, measures, or (and) weighing or (and) measuring devices" as used in this law shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories, connected with any or all such instruments.

(11) The words "sell" or "sale" as used in this law shall be construed to include barter and exchange.

History.—§§11, 14, 17, ch. 22536, 1945.

531.28 Misleading packages, containers, etc.; standards.—It shall be unlawful to keep

for the purpose of sale, offer or expose for sale, or sell any commodity in package form if its container is so made, formed or filled, or if it is so wrapped as to mislead the purchaser as to the quantity of the contents; or if the contents of its container fall below the standard of fill prescribed by regulations promulgated as provided in this section. For the effectuation of the purposes of this section the commissioner is hereby authorized to promulgate regulations fixing and establishing for any commodity in package form a reasonable standard of fill of container.

History.—§12, ch. 22536, 1945.

531.29 Marking weight or measure on tag or label.—It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity composed in whole or in part of cotton, wool, linen or silk, or any other textile material on a spool or similar holder, or in a container or band, or in a bolt or roll, or in a ball, coil or skein, or in any similar manner, unless the net amount of the commodity in terms of weight or measure shall be definitely, plainly and conspicuously marked on the principal label, if there be such a label; otherwise, on a wrapping, band or tag attached thereto, except when put up in the presence of the purchaser.

History.—§13, ch. 22536, 1945.

531.30 Net weights to apply.—Whenever any commodity is sold on a basis of weight it shall be unlawful to employ any other weight in such sale than the net weight of the commodity; and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this law it shall be understood and construed to mean the net weight of the commodity.

History.—§15, ch. 22536, 1945.

531.31 Penalties for violations.—Any person who, by himself or by his servant or agent, or as the servant or agent of another person, shall offer or expose for sale, sell, use in the buying or selling of any commodity or thing or for hire or award, or in the computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight or measure when a charge is made for such determination, or retain in his possession a false weight or measure, or weighing or measuring device; or who shall dispose of any condemned weight, measure or weighing or measuring device contrary to law, or remove any tag placed thereon by the commissioner or his inspectors at his direction; or who shall sell or offer or expose for sale less than the quantity he represents of any commodity, thing or service, or shall take or attempt to take more than the quantity he represents, when, as the buyer, he furnishes the weight, measure or weighing or measuring device by means of which the amount of commodity, thing or service is determined; or who shall keep for the purpose of sale, offer or expose for sale or sell any commodity in a manner contrary to law; or who shall use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer; or who shall violate any provision of this law, or who shall sell or offer for sale or use or have in his possession for the purpose of selling or using, any device or instrument to be used to or calculated to falsify any weight or measure, shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

History.—§16, ch. 22536, 1945.

531.32 Injunctions against violations; jurisdiction.—In addition to the remedies provided in this law, and notwithstanding the existence of any adequate remedy at law, the commissioner is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this law or for failing or refusing to comply with the requirements of this law or any rule or regulation duly promulgated as in this law authorized, such injunction to be issued without bond.

History.—§18, ch. 22536, 1945; §26, ch. 29737, 1955.

531.33 Salaries and expenses of enforcement.—All expenses incident to and incurred in the administration and enforcement of this law, including the salaries and expenses of such persons as the commissioner shall designate or employ as inspectors for that purpose, shall be paid from the general inspection trust fund of the state in the same manner as other state salaries and expenses are paid.

History.—§19, ch. 22536, 1945; §2, ch. 61-119.

531.34 Standard measures for wheat flour.—

(1) Hereafter the standard measures of wheat flour shall be containers of net avoirdupois weights of two, five, ten, twenty-five, fifty and one hundred pounds.

(2) The term "wheat flour" as used herein means: Plain wheat flour, self-rising wheat flour, phosphated wheat flour, bromated wheat flour, enriched wheat flour, enriched self-rising wheat flour and enriched phosphated wheat flour as defined in the standards of identity promulgated by the federal security agency under date of May 26, 1941 (Volume 6, federal register, pages 2574 to 2582, inclusive), or as they may be amended.

(3) Each container shall have its net weight, and the name and address of the actual manufacturer or distributor printed or plainly marked on it in letters and figures clearly legible.

(4) No person shall pack for sale, sell or offer for sale in Florida any wheat flour except in containers of the standard net weights and

in accordance with the labeling provisions.

(5) The provisions of this section do not apply to the retailing of flour direct from the manufacturer to the consumer, nor to the sale of flour to the bakery trade, nor to the exchanging of wheat for flour, nor to flour packed in cartons, the net contents of which are five pounds or less.

(6) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

(7) This section shall take effect six months after the expiration of the national emergency which was declared to exist by the proclamation of the President of the United States on May 27, 1941.

History.—§§1-5, 7, ch. 22765, 1945.

CHAPTER 532

DEVICES ISSUED IN PAYMENT FOR LABOR

532.01 Parties issuing pay checks liable after certain time for face value.—Any person issuing checks, coupons, punch-outs, tickets, tokens or other device in payment for labor, redeemable either wholly or partially in goods or merchandise, at their or any other place of business, shall, on demand of any legal holder thereof, on or after the thirtieth day succeeding the day of issuance, be liable for the full face value thereof in current money of the United States.

History.—§1, ch. 6914, 1915; RGS 2522; CGL 3944; §1, ch. 18004, 1937.
cf.—§1.01(3), "Person" defined.

532.02 Payable in money to bearer notwithstanding stipulations.—Any checks, punch-outs, coupons, tickets, tokens or other device, issued by any person in payment for labor shall be considered and treated as payable to bearer in current money of the United States, notwithstanding any contrary stipulation or provision which may be therein contained.

History.—§2, ch. 6914, 1915; RGS 2523; CGL 3945.

532.03 Holder, after certain time, may bring suit to recover face value.—In case of failure of any person to pay any legal holder of any check, punch-out, ticket, token or other device issued by them in payment for labor, the full face value thereof in current money of the United States, on or after the thirtieth day succeeding the day of issuance, when so demanded, such holder may immediately bring suit thereon in any court of competent jurisdiction, and, in addition to recovering the full face value thereof, with legal interest from demand, may recover ten per cent of said amount as attorney's fees in the same suit.

History.—§3, ch. 6914, 1915; RGS 2524; CGL 3946; §2, ch. 18004, 1937.

CHAPTER 533

WASTE FROM MINES

533.01 Deposits for mine wastes, etc.—Any person engaged in the business of mining any mineral or subterranean product in this state, shall provide necessary places of deposit for the waste, wash or debris of any mine or mines operated by such person; and shall provide settling pools of sufficient capacity to prevent the escape of waste, wash or debris into any waters of the rivers and streams of the state, except as provided in §533.02.

History.—§1, ch. 6202, 1911; RGS 2446; §1, ch. 10181, 1925; CGL 3853, 3858.
cf.—§1.01(3), "Person" defined.

533.02 Escape of waste, wash and debris.—It is unlawful for any person to permit or allow the escape of waste, wash or debris from any mine or mines operated by such person into any of the streams and rivers of this state, but the escape of water slightly discolored shall not be construed as the escape of waste, wash and debris, nor shall the washing away of water, or debris, due to excessive rains or floods which are beyond the control of persons operating such mine or mines be within the meaning of this chapter.

History.—§2, ch. 6202, 1911; RGS 2447; §2, ch. 10181, 1925; CGL 3854, 3859.

533.03 On affidavit filed with county commissioners, county to institute suit to enjoin.—Upon the presentation to the board of county commissioners of any county of this state of an affidavit, signed by at least ten citizens, owning property in such county, which affidavit shall allege that some person conducting mining operations in this state, giving the name thereof, is not using due diligence to prevent the escape of waste or debris from any mine or mines, operated by such person, into any stream or river of this state, and that such waste or debris is escaping into a stream or river in the county in which the affiants reside, then the board of county commissioners shall immediately institute suit in the name of such county to enjoin such person from allowing waste or debris to escape. No prosecution for perjury shall be had on such affidavit. The joinder of any number of persons as defendants shall be no grounds of objections to the suit, and they may join parties defendants not named in the affidavit if necessary.

History.—§3, ch. 6202, 1911; RGS 2448; CGL 3855.

533.04 Venue in county wherein affidavit presented.—The cause of action shall be considered to arise in the county wherein the affidavit shall be presented to the board of county commissioners, and suit shall be commenced therein regardless of where the mine or mines from which the waste or debris is escaping are located.

History.—§4, ch. 6202, 1911; RGS 2449; CGL 3856.

533.05 Duty of state attorney; attorney's fee.—In the event the regular attorney of the board of county commissioners, represents any person engaged in mining in this state, the state attorney of the circuit in which the county bringing the suit is situated, shall conduct the suit, and if the injunction shall be granted, the county shall recover from the defendant or defendants such reasonable attorney's fee as shall be allowed by the court, which shall be paid to the attorney conducting the suit, in addition to the compensation regularly paid him.

History.—§5, ch. 6202, 1911; RGS 2450; CGL 3857.

533.06 Penalty for violation of §§533.01, 533.02.—Any person violating any of the provisions of §§533.01 or 533.02 shall be punished by a fine of not less than three hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail at hard labor for a period of not more than six months.

History.—§3, ch. 10181, 1925; CGL 7833.
cf.—§775.06, Alternative punishment.

CHAPTER 534

LIVESTOCK; MARKS AND BRANDS; STAMPING BEEF

534.01 Duties of commissioner of agriculture.—The inspection and protection of cattle in the state are hereby placed under the jurisdiction of the commissioner of agriculture, herein called the commissioner.

History.—Original, §1, Nov. 21, 1828; RS 2321; GS 3108; RGS 4859; CGL 6946; repealed by §21, ch. 22856, 1945.
Present section, §1, ch. 22856, 1945.

534.02 Recording of marks and brands.—All persons having cattle in this state shall record their marks and brands in the office of the commissioner and shall advise the commissioner in writing in what county or counties in the state they have or expect to have cattle bearing the mark or brand so recorded. If an offer be made to record a mark or brand previously recorded, the commissioner shall determine whether the county or counties in which such mark or brand will be used is or are near enough to the county or counties in which the previously recorded mark or brand is to be used to probably cause confusion, or to aid theft or dishonesty; and if so, it shall be the duty of the commissioner to decline to admit to record such mark or brand. If conflict should arise between the owner of any presently recorded mark or brand and another claiming the right to record the same mark or brand the commissioner shall, in all cases, give preference to the present owner. The commissioner shall charge and collect at the time of any such record a fee of one dollar for recording each mark and brand. No person, firm or corporation shall use any mark or brand to which another has a prior right of record.

History.—Original, §2, Nov. 21, 1828; RS 2322; GS 3109; CGL 6947; repealed by §21, ch. 22856, 1945.
Present section, §2, ch. 22856, 1945; §§17, 24, ch. 57-1.

534.03 Certified copies of marks and brands.—Certified copies of recorded marks and brands shall be furnished by the commissioner when and as requested and he shall charge and collect one dollar for each certificate. Such certificates shall be admissible in evidence in all courts.

History.—Original, §3, Nov. 21, 1828; RS 2323; GS 3110; RGS 4861; CGL 6948; repealed by §21, ch. 22856, 1945.
Present section, §3, ch. 22856, 1945.

534.04 Rules and regulations.—

(1) The commissioner shall prescribe and enforce suitable rules and regulations for the inspection of cattle, hides and beef to the end that the true ownership thereof may at all times be protected and larceny prevented and for the enforcement of this chapter. The commissioner is hereby authorized to employ all of the necessary inspectors and to use any other designated person to enforce and administer the provisions of this chapter.

History.—Original, §1, ch. 5234, 1903; GS 3111; §1, ch. 5666, 1907; RGS 4862; CGL 6949; repealed by §21, ch. 22856, 1945.
Present section, §4, ch. 22856, 1945.
Sub. §(1) am. §1, ch. 26898, 1951; (2)R. by §24, ch. 57-1.

534.05 Records of cattle driven, shipped or slaughtered in or from cattle districts; powers of commissioner.—The commissioner of agriculture, through his inspectors, shall inspect and record the marks and brands of all cattle driven or shipped from or slaughtered in any cattle district and shall make and keep suitable records thereof in books and records to be prescribed by the commissioner of agriculture. Such records shall include the proper showing of all marks and brands of the cattle involved, the description of unmarked cattle, the name or names of the person or persons driving or slaughtering cattle and the dates thereof. The commissioner of agriculture, through his inspectors, is authorized to halt the movement of cattle anywhere within the state (except by rail) and to demand and receive from the person or persons in charge thereof the evidence of ownership and authority required by this chapter. The person or persons in charge of such cattle shall at all times have and shall exhibit upon request by any person authorized under this chapter his certificate of ownership and authority which shall be signed by the inspector of the district from which said cattle were taken.

History.—Original, §1, ch. 5234, 1903; GS 3112; RGS 4863; CGL 6950; repealed by §21, ch. 22856, 1945.
Present section, §5, ch. 22856, 1945.

534.06 Duties of persons slaughtering cattle.—Any person, firm or corporation slaughtering

cattle in this state shall either take the carcass of such slaughtered cattle with the hide and unmutilated ears to the home or place of business of an inspector of the commissioner of agriculture in the area where said cattle are slaughtered or notify such inspector of the location of such carcass or carcasses and pay said inspector upon inspection the fees provided for under the provisions of this chapter. It shall be the duties of any person, firm or corporation when moving cattle from any cattle district or slaughtering any cattle in all cases and under all circumstances to notify the inspector and to afford ample opportunity for inspection.

History.—Original, §2, ch. 5234, 1903; GS 3113, 3337; §2, ch. 5666, 1907; RGS 4864, 5178; CGL 6951, 7281; repealed by §21, ch. 22856, 1945.
Present section, §6, ch. 22856, 1945.
Am. §2, ch. 26898, 1951.

534.07 Duty of purchasers of cattle.—It shall be the duty of all purchasers of cattle, except for immediate slaughter, to remark and rebrand the same; provided, that this requirement shall not apply where an entire stock of cattle which the mark and brand or marks and brands carried by them shall be sold and conveyed.

History.—Original, §3, ch. 5234, 1903; GS 3114; RGS 4865; CGL 6952; repealed by §21, ch. 22856, 1945.
Present section, §7, ch. 22856, 1945.

534.08 Inspection of marks and brands; what to consist of.—The inspection and record of marks and brands of slaughtered cattle shall include the following:

(1) If the carcass of a cow or carcasses of cattle are offered or the inspector has notice of location of such carcass or carcasses accompanied by the hide and unmutilated ears thereof, he shall make a record of the marks and brands and shall make an ink impression of his stamp on the flesh side of the hide as near the center as practicable and shall make an ink impression of the stamp on each quarter of the carcass or carcasses.

(2) When the carcass of unmarked or unbranded cattle is offered for recording or notice of location thereof given to the inspector, he shall demand of the person so offering the same either a bill of sale showing title in such person or an affidavit duly executed by such person and one other responsible, disinterested person showing the right to slaughter such cattle and upon the delivery of the bill of sale or affidavit to the inspector, he shall make a record of the color of the flesh marks of the hide and stamping the hides and quarters as herein required. In all cases where marks have been altered, inspectors' records and reports shall so state and shall also state if said alterations appear to be recent.

History.—Original, §1, ch. 14740, 1931; CGL 1936 Supp. 6962(1); repealed by §21, ch. 22856, 1945.
Present section, §8, ch. 22856, 1945.

534.09 Inspector's stamp.—It shall be the duty of the commissioner to furnish each inspector with a metal stamp of the following description: One and three-fourths inches in diameter and containing around the border thereof the number of the district and, in the center, shall be the word "Recorded" and the number of the inspector. The commissioner shall furnish to each inspector a sufficient number of blank books, reports and other forms to enable him to discharge his duties.

History.—Original, §1, ch. 14740, 1931; CGL 1936 Supp. 6962(1); repealed by §21, ch. 22856, 1945.
Present section, §9, ch. 22856, 1945.

534.10 Inspectors to visit markets and slaughter houses.—It shall be the duty of the inspectors or any other person designated by the commissioner hereunder to visit all markets and places where slaughtered cattle are offered for sale, at reasonable intervals and keep said markets under close observation and it shall be unlawful for any person, firm or corporation to have the possession of slaughtered beef which has not been stamped as herein provided. Also, all slaughtered beef which has not been stamped as herein provided at markets or other places where slaughtered cattle are held for sale shall be confiscated by the commissioner of agriculture and his inspectors.

History.—Original, §1, ch. 14740, 1931; CGL 1936 Supp. 6962(1); repealed by §21, ch. 22856, 1945.
Present section, §10, ch. 22856, 1945.

534.11 Effect of inspector's stamp and recording of carcass.—After the carcass of any cattle has been duly recorded and stamped according to the terms of this chapter, it shall not be necessary to further retain the hide with such carcass. The stamping shall be treated as a certificate of the previous recording thereof.

History.—Original, §1, ch. 14740, 1931; CGL 1936 Supp. 6962(1); repealed by §21, ch. 22856, 1945.
Present section, §11, ch. 22856, 1945.

534.12 Duties of law enforcement officers.—All law enforcement officers, including citrus inspectors, gasoline inspectors, all other inspectors of the department of agriculture and highway patrolmen in the state, are hereby authorized to stop any person or persons transporting cattle and to inspect the evidence of ownership set forth herein, and any person, firm or corporation transporting cattle without the evidence of authority required herein shall be deemed guilty of a misdemeanor and upon conviction shall be punished according to law.

History.—Original, §2, ch. 14740, 1931; CGL 1936 Supp. 6962(2); repealed by §21, ch. 22856, 1945.
Present section, §12, ch. 22856, 1945.

534.13 Inspection fees.—Fees to be charged for inspection under this chapter shall be as follows:

(1) For recording marks and brands and stamping hides and carcasses of butchered cattle, for each carcass of five or less offered by the same party at one time, twenty-five cents; for more than five and less than twenty, fifteen cents; all over twenty, ten cents.

(2) For inspecting and recording marks and brands of livestock under the terms of this chapter, ten cents per head, regardless of number, to be paid by the owner or seller.

History.—Original, §3, ch. 14740, 1931; CGL 1936 Supp. 6962(3); repealed by §21, ch. 22856, 1945.
Present section, §13, ch. 22856, 1945.
Sub. §(2) am. §3, ch. 26898, 1951.

534.14 Killing cattle without inspection.—It shall be unlawful for any person to kill any

cattle (one or more) in the state without having the same inspected by a regularly appointed inspector; provided, that the butchering of any such animal by the owner or his or her agent, if killed in the presence of one or more disinterested reputable persons, shall not be unlawful.

History.—Original, §4, ch. 14740, 1931; CGL 1936 Supp. 6962(4); repealed by §21, ch. 22856, 1945.
Present section, §14, ch. 22856, 1945.

534.15 Mutilation of marks and brands.—Any person who shall offer for sale any slaughtered beef without subjecting to and procuring inspection of the hides containing the unmutilated ears, or who shall mutilate such ears before inspection, shall be punished as herein provided.

History.—Original, §5, ch. 14740, 1931; CGL 1936 Supp. 6962(5); repealed by §21, ch. 22856, 1945.
Present section, §15, ch. 22856, 1945.
cf.—§534.18, Penalties.
§817.24 et seq., Same.

534.16 Claim of ownership without title.—It shall be unlawful for any person, firm or corporation to have the possession of cattle under claim of ownership when in fact said person, firm or corporation does not own said cattle.

History.—Original, §6, ch. 14740, 1931; CGL 1936 Supp. 6962(6); repealed by §21, ch. 22856, 1945.
Present section, §16, ch. 22856, 1945.

534.17 Appointment of inspectors. — The commissioner of agriculture is authorized to appoint as many inspectors hereunder as he deems advisable and to fix their compensation. Said inspectors shall furnish a surety bond in such amount as required by the commissioner of agriculture. Said inspectors shall collect and promptly remit to the commissioner of agriculture the fees provided for and required to be paid under this chapter, which fees shall be paid into the state treasury and become a part of the general inspection trust fund, from which general inspection trust fund the salaries of inspectors hereunder and all expenses incurred in the enforcement of this chapter shall be paid.

History.—Original, §7, ch. 14740, 1931; CGL 1936 Supp. 6962(7); repealed by §21, ch. 22856, 1945; present section, §17, ch. 22856, 1945; §2, ch. 61-119.

534.18 Penalties.—Any person who shall violate any provision of this chapter, either by doing anything forbidden or failing to do and perform anything required hereby, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than six months.

History.—Original, §8, ch. 14740, 1931; CGL 1936 Supp. 6962(8); repealed by §21, ch. 22856, 1945.
Present section, §18, ch. 22856, 1945.

534.19 Injunctions.—In addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law, the commissioner is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter, or for failing or refusing to comply with the requirements of this chapter, or any rule or regulation duly promulgated as in this chapter authorized, such injunction to be issued without bond.

History.—Original, §9, ch. 14740, 1931; CGL 1936 Supp. 6962(9); repealed by §21, ch. 22856, 1945; present section, §19, ch. 22856, 1945; §27, ch. 29737, 1955.

534.43 Florida beef to be so marked.—Every person, firm or corporation operating a restaurant or any other eating place, or a retail or wholesale meat market, or a packing house, in this state, and who sells beef that was raised, produced and slaughtered in Florida, either cooked or raw, shall mark, stamp, or describe the same by the following words "Produced in Florida," or "Florida Beef" in the manner hereinafter prescribed.

History.—Comp. §1, ch. 25183, 1949.

534.44 Packing houses, etc.; duty to stamp; Florida livestock board to enforce.—Packing houses and wholesale and retail meat markets shall plainly stamp on each carcass or cut of beef before sale, the words prescribed in §534.43, and in all advertising as to the sale of such beef shall include the same words.

It shall be the duty of the Florida livestock board through its agents or inspectors to enforce the provisions of this section.

History.—Comp. §2, ch. 25183, 1949.
cf.—Ch. 585 Division of animal industry, department of agriculture.
§570.03 Boards and offices abolished; transfer of powers, duties, records, property and funds; pending proceedings.

534.45 Restaurants, etc., to designate Florida beef on menus; hotel commission to enforce.—Restaurants or other eating places advertising their meals or food, by menus or otherwise, shall set out plainly in such menu or advertisement as to beef the words prescribed in §534.43.

It shall be the duty of the state hotel commission through its agents or inspectors to enforce the provisions of this section.

History.—Comp. §3, ch. 25183, 1949.
cf.—Ch. 509 Hotel and restaurant commission.

534.46 Penalty for violations.—

(1) Any person violating any of the provisions of §§534.43-534.46 or failing to comply with any of the requirements hereof shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine not exceeding five hundred dollars or be imprisoned in the county jail not exceeding six months.

(2) Nothing in §§534.43-534.46 shall be construed to prohibit the use of additional words in describing the grade, quality or kind of such beef, provided that no words, initials or symbols shall be used to indicate that the beef is other than beef produced in Florida.

History.—Comp. §§4, 5, ch. 25183, 1949.

CHAPTER 536

TIMBER AND LUMBER

536.13 Stamp or brand for logs.—Any person engaged in this state in the business of getting out, buying, selling or manufacturing saw logs, may adopt a stamp or brand for such logs, of such design as he may select.

History.—§1, ch. 4738, 1899; GS 1256; RGS 2393; CGL 3802.

536.14 Brands to be recorded by clerk of circuit court.—A person may execute a written declaration that he has adopted a brand, describing it, and after acknowledgment of such declaration before any officer authorized to take acknowledgments of deeds, may have the same recorded by the clerk of the circuit court in the record of mortgages, in any county in which he may desire to own or have in possession saw logs.

History.—§2, ch. 4738, 1899; GS 1257; RGS 2394; CGL 3803.

536.15 May prevent use by others.—Any person who has had his brand recorded in any county, may prevent other persons from using the same in said county by a writ of injunction, restraining such use.

History.—§4, ch. 4738, 1899; GS 1258; RGS 2395; CGL 3804.
cf.—Ch. 64, Injunctions.

536.16 Prima facie evidence of ownership.—Any log found in any county branded with a brand recorded in said county by any person shall be deemed prima facie to be the property of such person.

History.—§5, ch. 4738, 1899; GS 1259; RGS 2396; CGL 3805.

536.17 Where two or more brands the same.—In case there shall be recorded in the same county two or more brands the same, or substantially the same, the brand first recorded shall be the lawful brand, and the other shall be of no effect under this chapter.

History.—§6, ch. 4738, 1899; GS 1260; RGS 2397; CGL 3806.

536.18 Defacing the mark or brand of lumber and timber.—If any person shall fraudulently alter, change or deface the duly recorded mark, brand, or stamp of any lumber, logs or timber, or shall fraudulently mark, brand or stamp any unmarked or unstamped or unbranded lumber, logs or timber, with intent to claim the same or to prevent identification by the owner or owners thereof, the person so offending shall be punished as if he had committed larceny of the same property.

History.—§1, ch. 4191, 1893; GS 3708; RGS 5659; CGL 7862.

536.19 Unlawful use of recorded log brand or stamp.—Any person who shall unlawfully use any recorded log brand or stamp of another shall be punished, upon conviction thereof, by fine of not exceeding five hundred dollars, or imprisonment for not exceeding ninety days.

History.—§3, ch. 4738, 1899; GS 3709; RGS 5660; CGL 7863.
cf.—§775.06, Alternative punishment.

536.20 Inspection, buying or selling timber by illegal standard; penalty.—Any person buying or selling logs or square timber by any other measure or scale than Doyle's rule and log book, or any timber inspector willfully making return of any inspection scale or measurement of timber except according to said book, shall be punished by fine of not exceeding two hundred dollars for each offense, or by imprisonment for not exceeding six months; provided, when it is mutually agreed between the buyer and the seller, a measure or scale other than Doyle's rule book may be adopted and a survey can be made by a party other than a commissioned inspector.

History.—RS 2720, 2721; §§4, 5, ch. 3898, 1889; GS 3710; RGS 5661; CGL 7864.
cf.—§775.06, Alternative punishment.

536.21 Penalty for false representations, etc.—Any commissioned timber inspector or other person furnishing specifications or certificates of inspection of sawed pine timber in this state, who shall falsely represent, or fail to show on such specification or certificate, the classification of such timber by law, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days.

History.—§6, ch. 4415, 1895; GS 3711; RGS 5662; CGL 7865.
cf.—§775.06, Alternative punishment.

536.22 Lumber, moisture content; enforcement.—

(1) All lumber two inches or less in thickness shall contain not more than nineteen per cent moisture content at the time such lumber is permanently installed into a structure or building used for human habitation. Such lumber shall at no time be less than American lumber standard sizes when such lumber is at nineteen per cent moisture content.

(2) It shall be the duty of every state and county attorney, sheriff, constable, the commissioner of agriculture or his duly authorized representative, and any other appropriate state

and county official to enforce the provisions of this section. The aforementioned officials are authorized to make application for injunction to the proper circuit court and the judge of said court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or both restraining any person from violating or continuing to violate any of the provisions of this section or from failing or refusing to comply with the requirements of this section, said injunction to issue without bond.

(3) The installation of any lumber which does not conform to the provisions contained in subsection (1) shall be prohibited and any person installing such lumber in a structure or building for human habitation shall, upon conviction, be guilty of a misdemeanor.

History.—§§1, 2, ch. 61-209; §1, ch. 63-359.

CHAPTER 540

COMMERCIAL DISCRIMINATION

540.01 Unfair discrimination and competition prohibited; definition of commodity.—

(1) Any person doing business in the state, and engaged in the production, manufacture, sale or distribution of any commodity in general use, that shall, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities, or cities of this state by selling such commodity at a lower rate in one section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is declared unlawful.

(2) As used in this chapter the word commodity shall include any article, product, thing of value, service or output of a service trade.

History.—§1, ch. 6945, 1915; RGS 2517; CGL 3939; §1, ch. 61-323.

cf.—§§350.08, 32, 42, Discrimination in rates by rail carriers.
§§364.09, 12, Discrimnation by telegraph and telephone.
§626.0610, Discrimination by life insurers.
§540.06, Penalty.

540.02 Duty of state attorneys, etc.—The state attorneys, county solicitors and prosecuting attorneys in their counties, and the attorney general shall enforce the provisions of §540.01 by appropriate actions in courts of competent jurisdiction.

History.—§3, ch. 6945, 1915; RGS 2518; CGL 3940.

540.03 Complaints made to secretary of state; duty.—If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this chapter, the secretary of state shall refer the matter to the attorney general who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation.

History.—§4, ch. 6945, 1915; RGS 2519; CGL 3941.

540.04 Secretary of state to revoke permit of corporation found guilty of discrimination.—If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination within the terms of this chapter, the secretary of state shall immediately revoke the permit of such corporation to do business in this state.

History.—§5, ch. 6945, 1915; RGS 2520; CGL 3942.

540.05 Ouster of corporation found guilty.—If after revocation of its permit, such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of this chapter, shall continue or attempt to do business in this state, the attorney general, by a proper suit in the name of the state, shall oust such corporation from all business of every kind and character in this state.

History.—§6, ch. 6945, 1915; RGS 2521; CGL 3943.

540.06 Unfair commercial discrimination prohibited; penalty.—Any person, firm, company, association or corporation violating any of the provisions of §540.01, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual, found guilty of a violation thereof, shall be fined not more than five thousand dollars or be imprisoned in the county jail not to exceed one year.

History.—§2, ch. 6945, 1915; RGS 5668; CGL 7871.
cf.—§775.06, Alternative punishment.

CHAPTER 541

FAIR TRADE LAW*

541.001 Findings of fact.—

(1) It is hereby found, determined and declared that the public interests and general welfare of the state will best be served by permitting the maintenance of minimum resale prices of trade-marked, branded or named commodities which are in free and open competition with commodities of a like kind and quality; and

(2) It is found, determined and declared that without minimum resale price maintenance of trade-marked, branded and named commodities which are in free and open competition with commodities of the same general class, small retail merchants with limited purchasing power cannot survive the price wars or price cutting operations of large retail stores which, after forcing the small retailers out of business by such operations gain a virtual monopoly on the retail channels of commerce, contrary to the general welfare and public interest; and

(3) It is hereby found, determined and declared that predatory cutting of established prices of trade-marked, branded or named products, as a deceptive means of unfairly luring from competitive merchants their customers, and for other purposes, has been the most potent weapon to which the great and destructive trusts have resorted most frequently, thereby to weaken and destroy their smaller competitors financially unable to endure resultant losses. By such misleading practice there is established in the trading area affected a virtual monopoly of distribution interposed between the producer and the public, by which the monopolist may extort at will from the consumer, while dictating prices and product quality dilutions to the producer, all contrary to the general welfare and public interest of the citizens of Florida; and

(4) Such predatory price cutting is injurious to the general public as distinguished from a particular group or class thereof, and is also injurious to the good will and business of the producer and the distributor of commodities bearing a trade-mark, brand or identifying name; and

(5) Prohibiting the unfair and discriminatory practice of price cutting of trade-marked, branded or named commodities which are in free and open competition with commodities of the same general class produced or distributed by others will foster and encourage free and honest competition and will safeguard the general public against the creation or perpetuation of monopolies; and

(6) The public interest and general welfare of the state require the permissive or optional maintenance of minimium resale prices established in accordance with the provisions of this chapter by producers or distributors of trade-marked, branded or named commodities which are in free and open competition, as a permanent public policy of the state, at all times, including periods of deflation or inflation; and

(7) This chapter is enacted as an exercise of the police power of this state, in order to serve the general welfare of the citizens of Florida, and with the further objective of preventing monopoly.

History.—Comp. §1, ch. 25204, 1949.

541.01 Short title.—This chapter may be known and cited as the "Florida fair trade law."

History.—§10, ch. 18395, 1937; §10, ch. 19201, 1939; CGL 1940 Supp. 7100(14).
Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §13, ch. 25204, 1949.

541.02 Definitions.—The following terms, as used in this chapter, are hereby defined as follows:

(1) "Commodity" means any subject of commerce.

(2) "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(3) "Wholesaler" means any person selling a commodity other than a producer or retailer.

(4) "Retailer" means any person selling a commodity to consumers for use.

(5) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization.

History.—§1, ch. 19395, 1937; §1, ch. 19201, 1939; CGL 1940 Supp. 7100(15).
Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §2, ch. 25204, 1949.

541.03 Contract may govern price of sale or resale.—

(1) No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others

*Non-signer clause unconstitutional 73 So. 2d, 680.

shall be deemed in violation of any law of the state by reason of any of the following provisions which may be contained in such contract:

(a) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller;

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller;

(c) That the seller will not sell such commodity

1. To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

2. To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price.

(2) Commodities which bear, or the labels or containers of which bear, trade-marks, brands or names of producers or distributors who shall be controlled by or through any common ownership, for the purposes of this chapter shall be treated as a single commodity having a single producer or distributor.

History.—§2, ch. 18395, 1937; §2, ch. 19201, 1939; CGL 1940 Supp. 7100(16).

Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §§3, 4, ch. 25204, 1949.

541.04 Inducements to evade contract restrictions prohibited.—For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this chapter (except to the extent authorized by the said contract):

(1) The offering or giving of any article of value in connection with the sale of such commodity;

(2) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(3) The sale or offering for sale of such commodity in combination with any other commodity, shall be deemed a violation of such resale price restriction, for which the remedies prescribed by §541.07 shall be available.

History.—§3, ch. 18395, 1937; §3, ch. 19201, 1939; CGL 1940 Supp. 7100(17).

Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §5, ch. 25204, 1949.

541.05 Owner alone may establish resale price.—No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this chapter, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name.

History.—§4, ch. 18395, 1937; §4, ch. 19201, 1939; CGL 1940 Supp. 7100(18).

Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §6, ch. 25204, 1949.

541.06 Exceptions.—No contract containing any of the provisions enumerated in subsection (1), §541.03 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(1) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and when plain notice of the fact is given to the public; provided the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;

(2) When the goods are altered, second-hand, damaged, defaced or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(3) By any officer acting under an order of court.

History.—§5, ch. 18395, 1937; §5, ch. 19201, 1939; CGL 1940 Supp. 7100(19).

Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §7, ch. 25204, 1949.

541.07 Suit at law for violation of chapter.—Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this chapter, whether the person so advertising, offering for sale or selling is or is not a party to such contract, and whether the particular lot of such commodity so advertised, offered for sale or sold was or was not at any time sold to a party to a contract that stipulated the price of such commodity under the provisions of this chapter is unfair competition and is actionable at the suit of any person damaged thereby.

History.—§6, ch. 18395, 1937; §6, ch. 19201, 1939; CGL 1940 Supp. 7100(20).

Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §8, ch. 25204, 1949.

541.08 Law not applicable to certain contracts.—This chapter shall not apply to any contract or agreement between or among producers or distributors or (except as provided in paragraph (c) of subsection (1) of §541.03) between or among wholesalers, or between or among retailers, as to sale or resale prices.

History.—§7, ch. 18395, 1937; §7, ch. 19201, 1939; CGL 1940 Supp. 7100(21).

Original ch. 541 held unconstitutional in Liquor Store v. Continental Distilling Corp.,—Fla.—, 40 So. (2d) 371; present section comp. §9, ch. 25204, 1949.

541.09 Contracts obstructing competition; attorney general to investigate.—If after investigation, the attorney general deems that any contract authorized by the provisions of this chapter prevents competition in the manufacture, making, transportation, sale or purchase of commodities of the same general class or that the commodity covered by the contract is not in free and open competition with a commodity or commodities of the same general class produced or distributed by a competitor of the parties to said contract, he may bring an action in the name of this state to restrain the performance or enforcement of any such contract.

Such action shall be begun in the circuit court of the county of the residence of any party to such contract by service of process upon all parties thereto. Where any of such parties are nonresidents of the state, service of process upon such parties shall be made by registered mail addressed to such parties at the address or addresses stated in said contract or, if not stated therein, then at the last known post office address or principal place of business of said parties returnable not less than thirty days after the mailing of said process; provided, that there shall be publication of notice of the suit in accordance with the laws of the state now existing.

History.—Comp. §10, ch. 25204, 1949.

CHAPTER 542

COMBINATIONS RESTRICTING TRADE OR COMMERCE

542.01 Definitions; trust, commodity.—(1) A trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

(a) To create or carry out restrictions in trade or commerce, or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(b) To increase or reduce the price of merchandise, produce or commodity;

(c) To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce;

(d) To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state; or,

(e) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article, commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

Provided, however, that no agricultural or horticultural nonprofit cooperative association organized and incorporated under the laws of the state nor the members, officers, agents or employees thereof or any of them, as such, shall be deemed to be a trust, a combination in restraint of trade, an illegal monopoly or any attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to be a trust, or be considered illegal or in restraint of trade.

(2) As used in this chapter, the word commodity shall include any article, product, merchandise, thing of value, service or output of a service trade.

History.—§1, ch. 6933, 1915; RGS 5719; §1, ch. 10283, 1925; CGL 7944; (2) n. by §1, ch. 61-324.

cf.—§619.02, Agricultural and horticultural associations not in restraint of trade.
§618.17, Marketing contracts of agricultural cooperative marketing associations.
§617.15, Corporation marketing commercial sponges.
§545.01 et seq., Combinations restricting financing of motor vehicles.
§618.21, Agricultural cooperatives not in restraint of trade.
§544.01 et seq., Combinations against Florida meat.
§543.01 et seq., Combinations restricting use of musical compositions.
§833.02, Combinations against workmen.

542.02 Forfeiture of charter of domestic corporations for violations.—Any corporation holding a charter under the laws of the state which shall violate any of the provisions of this chapter shall forfeit its charter and franchise, and its corporate existence shall cease.

History.—§2, ch. 6933, 1915; RGS 5720; CGL 7945.

542.03 Dissolution proceedings instituted by attorney general, etc.—For a violation of any of the provisions of this chapter by any corporation mentioned herein, the attorney general or any state attorney upon his own motion, and without leave or order of any court or judge, shall institute suit or quo warranto proceedings for the forfeiture of its charter rights and franchises and the dissolution of its corporate existence.

History.—§3, ch. 6933, 1915; RGS 5721; CGL 7946.

542.04 Foreign corporation violating chapter denied right to do business in state.—Every foreign corporation violating any of the provisions of this chapter is denied the right and prohibited from doing business within this state. The attorney general shall enforce this provision by injunction, or other proper proceedings, in the name of the state.

History.—§4, ch. 6933, 1915; RGS 5722; CGL 7947.

542.05 Combinations prohibited; penalty.—Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons or of either two or more of them, for either, any or all of the following purposes:

(1) To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(2) To increase or reduce the price of merchandise, produce or commodities;

(3) To prevent competition in the manufacture, making, transportation, sale, or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce;

(4) To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this state; or,

(5) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract; obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected; or any person who shall aid or advise in the creation or carrying out of any such combination, or knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations, as principal, manager, director, agent, servant, or employee, or in any other capacity, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary for not less than one nor more than ten years. Each day during a violation of this provision shall constitute a separate offense.

Provided, however, that no agricultural or horticultural nonprofit cooperative association organized and incorporated under the laws of the state, nor the members, officers, agents or employees thereof, or any of them as such, shall be deemed to be a combination prohibited under the meaning of this section nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to have created a combination prohibited herein.

History.—§5, ch. 6933, 1915; RGS 5723; §2, ch. 10283, 1925; CGL 7948.

cf.—Cross references under §542.01.
§775.06, Alternative punishment.
§542.10, Contract violating chapter void.

542.06 Sufficiency of indictment.—In any indictment or information for an offense named in this chapter it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with, or in pursuance of it, without giving its name or description, or how, when, or where it was created.

History.—§6, ch. 6933, 1915; RGS 5724; CGL 7949.

542.07 Rule of evidence. — In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists, and that the defendant or defendants belonged to it or acted for or in connection with it, without proving all members belonging to it, or providing or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. General reputation may be given in evidence in all prosecutions of alleged combinations under the provisions of this chapter.

History.—§7, ch. 6933, 1915; RGS 5725; CGL 7950.

542.08 Criminal liability of nonresident.—Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons violating its provisions, whether within or without this state.

History.—§8, ch. 6933, 1915; RGS 5726; CGL 7951.

542.09 Daily penalty for continued violations.—Every person who shall in any manner violate any of the provisions of this chapter, shall, for each day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state in any county where the offense is committed. The attorney general and state attorneys and county solicitors shall prosecute for and recover the same.

History.—§9, ch. 6933, 1915; RGS 5727; CGL 7952.

542.10 Contract in violation of chapter void.—Any contract or agreement in violation of the provisions of this chapter shall be void and not enforceable either in law or equity.

History.—§10, ch. 6933, 1915; RGS 5728; CGL 7953.

542.11 Officers authorized to subpoena witnesses to testify as to violations; testimony of witnesses.—Any court, officer, or tribunal having jurisdiction of the offense defined in this chapter, or the attorney general, or any state attorney or county solicitor or grand jury, may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of this chapter. Any person so summoned and examined shall not be liable to prosecution for any violation of this chapter about which he may testify fully and without reservation.

History.—§11, ch. 6933, 1915; RGS 5729; CGL 7954.

542.12 Contracts in restraint of trade invalid; exceptions.—

(1) Every contract by which anyone is re-

strained from exercising a lawful profession, trade or business of any kind, otherwise than is provided by subsection (2) and (3) hereof, is to that extent void.

(2) One who sells the good will of a business, or any shareholder of a corporation selling or otherwise disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any person deriving title to the good will from him, and so long as such employer continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction be enforced by injunction.

(3) Partners may, upon or in anticipation of a dissolution of the partnership, agree that all or some of them will not carry on a similar business within a reasonably limited time and area.

(4) This section does not apply to any litigation which may be pending, or to any cause of action which may have accrued, prior to May 27, 1953.

History.—Comp. § § 1-4, ch. 28048, 1953.

CHAPTER 543

COMBINATIONS RESTRICTING USE OF MUSICAL COMPOSITIONS

543.01 Monopolies in restraint of trade as to use of copyrighted musical compositions; combinations to fix prices, etc., unlawful.—It is unlawful for authors, composers, publishers, owners, or their heirs, successors or assigns, of copyrighted vocal or instrumental musical compositions to form any society, association, partnership, corporation or other group or entity, called herein a combination, when the members therein constitute a substantial number of the persons within the United States who own or control copyrighted vocal or instrumental and musical compositions, and when one of the objects of such combination is the determination and fixation of license fees or other exactions required by such combination for itself or its members or other interested parties for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit.

The collection or attempted collection of such license fee or other exaction so fixed and determined by any member, agent, or representative of such combination from any person within this state, including theatres, radio receiving, radio broadcasting and radio rebroadcasting stations, moving picture houses, hotels, restaurants, clubs, dance halls, recreation rooms, pavilions, colleges, universities, churches, or any one who uses music in the conduct of his business, or the officers, directors, proprietors, managers, owners or representatives thereof, who render or cause to be rendered or permit to be rendered such copyrighted vocal or instrumental musical compositions privately or publicly for profit through personal performance, or through radio or any instrumentality of sound producing apparatus is unlawful and illegal.

The license fees or other exactions by such combination or its agents, members, or interested parties shall not be collected in any court within the boundaries of this state; and the collection or attempted collection of such license fee or other exaction by such combination or its agents, members or interested parties, shall be a separate offense hereunder; and any such combination of authors, composers or publishers, or their heirs, successors or assigns, is declared to be an unlawful monopoly in this state; and the fixing of prices or exactions for use or rendition of copyrighted musical compositions and the collecting or attempting to collect such license fees or other exactions by it or for its members or other interested parties, is declared illegal and in restraint of trade; and such collection or attempted collection is declared to be an intrastate transaction within this state, and shall be subject to the terms and penalties of this chapter.

History.—§1, ch. 17807, 1937; CGL 1940 Supp. 7954(1); am. §7, ch. 22858, 1945.

cf.—§542.01 et seq., Combinations in restraint of trade.

543.02 Common law rights abolished.—When any phonograph record or electrical transcription, upon which musical performances are embodied, is sold in commerce for use within this state, all asserted common law rights to further restrict or to collect royalties on the commercial use made of any such recorded performances by any person are hereby abrogated and expressly repealed. When such article or chattel has been sold in commerce, any asserted intangible rights shall be deemed to have passed to the purchaser upon the purchase of the chattel itself, and the right to further restrict the use made of phonograph records or electrical transcriptions, whose sole value is in their use, is hereby forbidden and abrogated.

History.—§1, ch. 20868, 1941.

543.03 Rights under copyright laws unaffected.—Nothing in §543.02 or this section shall be deemed to deny the rights granted any person by the United States copyright laws. The sole intendment of this enactment is to abolish any common law rights attaching to phonograph records and electrical transcriptions, whose sole value is in their use, and to forbid further restrictions or the collection of subsequent fees and royalties on phonograph records and electrical transcriptions by performers who were paid for the initial performance at the recording thereof.

History.—§2, ch. 20868, 1941.

543.04 Construction of law as to resale, fixing price, etc.—Nothing in §§543.04-543.18 shall be construed to give to any purchaser of copyrighted musical compositions, as herein provided, the right to resell, copy, print, publish or vend the same; nor to prevent authors and composers from determining and fixing the price to be charged for the use or rendition of their copyrighted musical compositions, provided such authors and composers act independently of any such combination as is in §543.01 declared unlawful.

History.—§2C, ch. 17807, 1937; CGL 1940 Supp. 7954(4); am. §7, ch. 22858, 1945.

543.05 Existing contracts made with unlawful combinations declared void.—All contracts, agreements or licenses now existing within this state, made by any person with any combination declared unlawful under §543.01, are void and nonenforceable in any court within this state, and are declared to have been entered into as intrastate transactions with such unlawful combinations and in restraint of trade. All such contracts, agreements, licenses and the attempted enforcement thereof may be enjoined by any person sought to be bound thereby; and any agent, member or representative of such unlawful combination enforcing or attempting to enforce the terms of such existing contract, agreement or license, shall be guilty of a violation of the terms of this chapter; and for any collection or attempted collection of moneys set out in the illegal contract, agreement or license, shall be subject to the penalties of §543.18.

History.—§3, ch. 17807, 1937; CGL 1940 Supp. 7954(5).

543.06 Broadcasts by radio stations within state.—Any person who owns, leases, operates or manages a radio broadcasting, radio receiving or radio rebroadcasting station within this state, may receive, broadcast and rebroadcast copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any combination declared unlawful by §543.01, without the payment, to such combination or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms hereof.

History.—§4A, ch. 17807, 1937; CGL 1940 Supp. 7954(6).

543.07 Radio stations within state affiliated with stations outside of state using compositions.—When a radio receiving, radio broadcasting or radio rebroadcasting station is affiliated with any person owning, leasing or operating a radio broadcasting station outside this state from whence copyrighted vocal or instrumental musical compositions originate or emanate, and which are received, used, broadcast or rebroadcast within this state, in accordance with the terms of any affiliation agreement or other contract, then such person owning, leasing, operating or managing a radio broadcasting station outside this state, is prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any person who owns, leases, operates, or manages a radio broadcasting, radio receiving or radio rebroadcasting station within this state, any herein declared noncollectible license fee or other exaction, for the purpose of paying or repaying the same outside this state to any combination, or its members, stockholders or other interested parties, declared unlawful by §543.01.

Any person collecting or attempting to collect such license fee or other exaction against such persons within this state for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and noncollectible, shall be deemed guilty of a violation of the provisions of this chapter; and the person from without this state is declared to be an agent and representative of such combination as declared illegal and unlawful by §543.01 and shall be subject to all the penalties hereof.

History.—§4B, ch. 17807, 1937; CGL 1940 Supp. 7954(7).

543.08 Use of compositions by theater, etc., where same unlawfully restricted.—Any person who owns, operates, or manages any theater, moving picture houses, or a similar place for amusement and public performance within this state may receive, use and render, or cause to be received, used and rendered, by the personal performance of artists, singers, musicians, orchestras, bands, or actors, or by loud speakers, radio, sound production or reproduction apparatus or instrumentalities, or electrical transcriptions, or by any other means of rendition whatsoever, copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or con-

trolled by any combination declared unlawful by §543.01 without the payment, to such combination, or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and noncollectible by the terms of this chapter.

History.—§5A, ch. 17807, 1937; CGL 1940 Supp. 7954(8).

543.09 Theaters, etc., using compositions of concerns outside of state.—When such theater, moving picture house, or other place for amusement or performance is affiliated or under contract in any manner whatsoever with any person furnishing in any form or manner copyrighted musical compositions from outside this state, or supplying such persons in this state with radio broadcasts or electrical transcriptions, sound production instrumentalities or apparatus, or artists, performers, musicians, singers, players, orchestras, bands or other artists or talent, wherein or whereby copyrighted vocal or instrumental musical compositions are privately or publicly rendered for profit, then such person outside this state is prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any person who owns, leases, operates or manages such theater, moving picture house, or other place for amusement or public performance within this state, any license fee or other exaction for the purpose of paying or repaying the same to any combination declared unlawful by §543.01 for the use, rendition or performance of such copyrighted musical compositions.

Any person collecting, or attempting to collect, such license fee or other exaction from outside this state against such persons within this state for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and noncollectible, shall be deemed guilty of a violation of the provisions of this chapter; and such person from without this state is declared to be an agent and representative of such combination declared illegal and unlawful by §543.01 and shall be subject to all the penalties hereof.

History.—§5B, ch. 17807, 1937; CGL 1940 Supp. 7954(9).

543.10 Contract with the owners or agents of theaters.—Combinations of owners of copyrighted music as defined and prohibited in this chapter shall have the right to contract with theater owners in the state for the sale of the public performance rights of the music owned or controlled by said combination, despite the provisions of this chapter, provided, however, this section shall not relieve any such combination from any taxes or fees levied by this chapter, nor any provisions relating to filing contracts and other information thereunder.

History.—§1, ch. 20991, 1941.

543.11 Representatives of unlawful combinations; service of process. — Any person within this state who shall act as the representative of any combination declared unlawful in §543.01, shall, for the purpose of this chapter, be deemed an official representative and agent of such unlawful combination and shall be construed to be doing business within this state, and service of any process against such combination may be had upon such representative or the agent of such representative. When so served, such process shall have the same legal effect as if served upon a duly elected officer or managing agent or other official representative upon whom service might otherwise be made upon such combination within this state.

History.—§7A, ch. 17807, 1937; CGL 1940 Supp. 7954(11).

543.12 Collectors of license fees considered part of unlawful combinations.—Any person who negotiates for, or collects, or attempts to collect license fees or other exactions, or who acts as the representative or agent for any combination declared unlawful in §543.01, shall, for the purpose of this chapter, be considered as a part of said unlawful combinations; and such person shall be subject to all the penalties in this chapter provided for violations thereof.

History.—§7B, ch. 17807, 1937; CGL 1940 Supp. 7954(12).

543.13 Injunctions to restrain violations.—The several circuit courts of this state shall have jurisdiction to prevent and restrain violations of §§543.01-543.18, and, on the complaint of any party aggrieved because of the violation of any of the terms of §§543.01-543.18 anywhere within this state, the state attorneys in their respective circuits, under the direction of the attorney general, shall institute proceedings, civil or criminal or both, under the terms hereof against any combination as defined in §543.01, against any of its members, agents or representatives, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination. In civil actions such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order as shall be deemed equitable.

History.—§9, ch. 17807, 1937; CGL 1940 Supp. 7954(13).

543.14 Persons aggrieved authorized to sue.—Any person in this state aggrieved by reason of anything forbidden in §543.01-543.18, may sue therefor in any circuit court in the circuit in which the violation or a part thereof took place, to recover any damages assessed as a result of the violation of the terms of §§543.01-543.18, and shall be entitled to recover his costs, including reasonable attorney's fees to be fixed by the court in such action.

History.—§10A, ch. 17807, 1937; CGL 1940 Supp. 7954(14).

543.15 Civil suits by parties aggrieved.—In the event of the failure of the state attor-

ney and attorney general to act promptly, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of plaintiff and others similarly situated, as the state attorney and the attorney general could have instituted under the terms of this chapter.

History.—§10B, ch. 17807, 1937; CGL 1940 Supp. 7954(15).

543.16 Petition requiring defendant to produce records, etc.—In any proceeding brought under the terms of §§543.01-543.18, any attorney of record for the plaintiff may file with the clerk of the court in which such action is pending, a petition praying that the defendant be required to file with the clerk of said court exact copies of all documentary evidence, records or data in the possession or under the control of said defendant pertaining to the issues as alleged by the plaintiff in the cause; and the circuit court, upon the presentation to it of such petition, shall determine what part, or all, or any of such evidence shall be produced, and enter an order to that effect. A copy of such order shall be mailed to each defendant at his last known address, which shall be deemed sufficient notice and service upon such defendant; or, the same may be served by mail in the same manner upon the attorney of record for the defendant, and this shall be deemed sufficient notice and service upon said defendant.

History.—§11A, ch. 17807, 1937; CGL 1940 Supp. 7954(16).

543.17 Failure of defendant to file records, etc.; penalty.—If said defendant shall fail to file with the clerk of the court in which such action is pending said copy of documentary evidence, records or data, and within the time provided in said order, the court shall adjudge such defendant guilty of contempt and shall assess a fine of one hundred dollars against the defendant for each day that such defendant fails to comply with said order, and judgment shall be entered accordingly. The plaintiff may collect the same against the defendant with interest thereon and costs, including a reasonable attorney's fee. The court shall determine when the judgment is rendered what disposition shall be made of the proceeds collected after the payment of costs and attorney's fees.

History.—§11B, ch. 17807, 1937; CGL 1940 Supp. 7954(17).

543.18 Penalty for violations of §§543.01-543.17.—Any combination as in §543.01 declared to be unlawful, and any other person acting or attempting to act within this state in violation of the terms of §§543.01-543.17, or any representative or agent of any person who aids or attempts to aid any unlawful combinations as defined in §543.01, in the violation of any of the terms of §§543.01-543.17, in any manner whatsoever, shall be punished by a fine of not less than fifty dollars or more than five thousand dollars or by imprisonment in the penitentiary for not less than one or more than ten years.

History.—§8, ch. 17807, 1937; CGL 1940 Supp. 7954(20).
cf.—§775.06, Alternative punishment.

543.19 Public performance rights in copyrighted musical compositions, etc.; definitions.—As used in §§543.19-543.35, "person" means any individual, resident or nonresident, of this state, and every domestic or foreign or alien partnership, society, association or corporation; the words "performing rights" refer to "public performance for profit"; the word "user" means any person who directly or indirectly performs or causes to be performed musical compositions for profit; the term "blanket license" includes any device whereby public performance for profit is authorized of the combined copyrights of two or more owners; the term "blanket royalty or fee" includes any device whereby prices for performing rights are not based on the separate performance of individual copyrights.

History.—§1, ch. 19653, 1939; CGL 1940 Supp. 7954(21).
cf.—§1.01, General definitions.

543.20 Conditions under which sale of performing rights may be made.—It is unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license, or other disposition, unless such person:

(1) Shall first have filed with the comptroller on forms prescribed by the comptroller a list describing each musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this chapter. A filing fee of two cents a composition shall be required by the comptroller for filing any list under this chapter.

(2) Shall simultaneously file an affidavit which shall describe the performing rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition. The affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal.

History.—§2, ch. 19653, 1939; CGL 1940 Supp. 7954(22).

543.21 List of copyrighted compositions.—The list provided for in §543.20 shall be made available by the comptroller to all persons for examination, and taking of copies, in order that any user of such compositions in this state may be fully advised concerning the performing rights therein, and avoid being overreached by false claims of ownership of said performing rights, and also avoid committing innocent infringements of said works. The comptroller may, in order to prevent such overreaching and to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, cause a list of all such copyrighted material filed with him to be published once a year or oftener in a form and medium which he shall deem suitable for said purposes. A duplicate of any list so filed by any such person shall at his request be certified by the comptroller and shall by the comptroller be given or delivered to such person, who shall exhibit the same on demand of anyone to whom such person seeks to sell, license or otherwise dispose of said performing rights.

History.—§3, ch. 19653, 1939; CGL 1940 Supp. 7954(23).

543.22 Unlawful combinations.—It is unlawful for two or more owners of the copyrights of musical compositions or dramatico-musical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their combinations upon a blanket royalty or fee covering more than one, or all, of such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such composition within the state, at the option of the user, the right to perform publicly for profit each such copyrighted musical composition owned by him at a price established for each separate performance of each such composition.

To this end, there shall be filed with the comptroller, either as a part of the list required by §543.20 or as a separate document by such copyright owner, or by such association in behalf of such owner, a schedule of prices for the performing rights to each separate performance for profit of each composition contained in such list, together with an affidavit of the copyright owner of such compositions that the price so stated has been determined by such copyright owner acting for himself and not either directly or indirectly in concert or by agreement with the owner of any other copyrights. Such schedule of prices may contain reasonable classifications determined by use and function, or either, of the users of said compositions, with separate price for each classification; provided, that there is equal treatment of all persons within each classification and that there is no unreasonable discrimination between classifications.

Any copyright owner may at his election fix one price which shall be applicable to each rendition of each of such compositions owned by him except to the extent that he elects to name specific compositions and to fix other prices for each rendition thereof; and said prices shall remain in force and effect until a new schedule of prices with respect to the performing rights to such compositions has been similarly filed in the office of the comptroller, at any time, at the election of such owner, changes in prices to become effective seven days from the date of filing thereof. The schedule of prices provided for herein shall be made available by the comptroller to all persons for examination and the taking of copies, and may be published by him in the same manner as provided in §543.21.

History.—§4A, ch. 19653, 1939; CGL 1940 Supp. 7954(24).

543.23 Blanket license.—Any person issuing a blanket license for performance rights shall file with the comptroller within thirty days from the date such blanket license is issued, a true and complete copy of each such license issued or sold with respect to performance within this state, together with the affidavit of such person that such copy is a true and complete copy of the original and that it sets forth each and every agreement between the parties thereto with respect to such performing rights. The comptroller shall charge for filing such contracts the same fee allowed clerks of the circuit court for similar services.

History.—§4B, ch. 19653, 1939; CGL 1940 Supp. 7954(25). cf.—§28.24 Clerk's fee.

543.24 Charge for performance rights based on program not containing copyrighted compositions.—It is unlawful for any person selling, licensing the use of or in any manner whatsoever disposing of or contracting to dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition, to make any charge or to contract for or collect any compensation as a condition of using said performing rights based in whole or in part on any program not containing any such composition, and any such charge or contract for compensation shall be valid and enforceable only to the extent that it is based and computed upon a program in which such composition is rendered.

History.—§4C, ch. 19653, 1939; CGL 1940 Supp. 7954(26).

543.25 Charge for performance rights on unlisted compositions.—It is unlawful for any person selling, licensing the use of or in any manner whatsoever disposing of or contracting to dispose of in this state public performing rights in or to any musical composition or dramatico-musical composition to make any charge or to contract for or collect any compensation for the use or performance of any such composition that has not been listed with the comptroller as provided in §543.20.

History.—§4D, ch. 19653, 1939; CGL 1940 Supp. 7954(27).

543.26 Secretary of state to accept service of process on owner.—At the time of filing the information required in §§543.20-543.21, the

owner of said performing rights shall execute and deliver to the secretary of state on a form to be furnished by the secretary of state, an authorization empowering the secretary of state to accept service of process on such person in any action or proceeding, whether cognizable at law or in equity, arising under this chapter, and designating the address of such person until the same shall be changed by a new form similarly filed. Service of process may thereafter be effected in this state on such person in any action or proceeding by serving the secretary of state with duplicate copies of such process; and immediately upon receipt thereof the secretary of state shall mail one of the duplicate copies by registered mail to the address of such person as stated on authorization last filed by him. A filing fee of five dollars shall accompany this notice and the secretary of state shall deposit same in the general revenue fund of the state.

History.—§5, ch. 19653, 1939; CGL 1940 Supp. 7954(28).

543.27 Actions with respect to performing rights; prerequisites. — No person may commence or maintain any action or proceeding in any court with respect to such performing rights, or collect any compensation on account of any sale, license or other disposition of such performing rights, in this state, except upon pleading and proving compliance with the provisions of §§543.19-543.35.

Copies, certified by the comptroller as such, of the lists, license agreements, affidavits and other documents filed with the comptroller pursuant to the requirements of §§543.19-543.35, shall be furnished by the comptroller to any person upon request at the prices regularly charged by a clerk of the circuit court for such work. Such certified copies shall be admitted in evidence in any action or proceeding in any court to the same extent as the original thereof.

History.—§6, ch. 19653, 1939; CGL 1940 Supp. 7954(29).
cf.—§§28.24, 696.05, Clerk manual, clerks' fees.

543.28 Gross receipts tax; authority of comptroller.—There is levied, and there shall be collected, a tax, for the act or privilege of selling, licensing, or otherwise disposing of performing rights in compositions in this state, in an amount equal to three per cent of the gross receipts of all such sales, licenses or other dispositions of performing rights in this state, payable annually to the state comptroller on or before the fifteenth day of March of each year, with respect to the gross receipts of the preceding calendar year. A return on a form prescribed by the comptroller shall be made by all persons subject to this tax on or before the fifteenth day of March of every year which shall accompany a remittance of the tax due.

The comptroller through his authorized agents may examine and audit the books and records of any person he may deem subject to the tax or fees under this chapter and may require such persons to appear before him at his office in the capitol, with such records and papers as may be necessary, after giving thirty days notice to such person through said person's authorized agent, the secretary of state.

The comptroller through his authorized agents may examine and audit the books, records and accounts of any licensee or user making payments for use of public performing rights in the state to any person in order that the comptroller may determine or check on gross receipts of those selling or licensing public performing rights in the state. Any person refusing the comptroller or his duly authorized agents access to such books, records and accounts shall be subject to penalties prescribed in §543.35 and may be required to appear in person with all books, papers and accounts required by the comptroller at the comptroller's office in the capitol, within ten days after receipt of notice which the comptroller shall send by "registered mail, return receipt requested."

Should the comptroller determine that any person liable for any tax or fees under this chapter has made an incorrect return or has made no return at all, or has failed to pay any tax or fees due, the comptroller shall after determining the amount of such tax or fees due the state, from the best information at his command, certify such claim for delinquent taxes to said person through his duly designated agent, the secretary of state, and unless payment of such delinquent tax is received within thirty days after delivery of said notice to the secretary of state the comptroller shall apply to a circuit judge in Leon county for the appointment of a receiver to take over and administer all assets of said delinquent taxpayer in the state.

The circuit judge, upon the comptroller's application properly authenticated, shall appoint some agent of the comptroller as receiver, to serve without further compensation, but who shall be reimbursed for traveling expenses as provided in §112.061. After posting such bond as the judge may determine proper, the receiver shall take over and administer the affairs of said delinquent taxpayer within the state, collect amounts and do all things necessary to protect the interests of both the state and the said delinquent taxpayer and from such collections as he may make, he shall first pay the expenses of the receivership and any litigation incident thereto and the tax plus interest at the rate of two per cent per month or fraction thereof from the last day of the year for which the tax was due.

After having satisfied the claims of the state and paid all costs of the receivership, the receiver shall make a return to the court which shall order all assets returned to the taxpayer.

History.—§7, ch. 19653, 1939; CGL 1940 Supp. 7954(30); §19, ch. 63-400.

543.29 Unlawful to publicly perform compositions without owner's consent.—It is unlawful for any person, without the consent

of the owner thereof, if said owner shall have complied with the provisions of this chapter, publicly to perform for profit, in this state, any such composition, or for any person knowingly to participate in the public performance for profit of such composition, or any part thereof.

History.—§8, ch. 19653, 1939; CGL 1940 Supp. 7954(31).

543.30 Illegal collection of license fees, etc.—Any person who negotiates, collects or attempts to collect license fees or other exactions or acts in any capacity whatsoever as a representative or agent for any person owning public performing rights of any copyrighted composition shall be subject to all the penalties in this chapter provided for violations thereof.

History.—§10, ch. 19653, 1939; CGL 1940 Supp. 7954(32).

543.31 Suit by party aggrieved for violations.—Any person in this state aggrieved by reason of any violation of this chapter may sue in the circuit court of the county in which he resides or of the county in which the violation took place to recover any damages as the result of the violation of the terms of §§543.19-543.34, or to require specific performance under the provisions of §§543.19-543.34, and shall be entitled to recover his costs, including reasonable attorney's fees to be fixed by the court.

History.—§11, ch. 19653, 1939; CGL 1940 Supp. 7954(33).

543.32 Injunction to restrain violations.—The several circuit courts of this state shall have jurisdiction to prevent and restrain violations of §§543.19-543.34, and, on the complaint of any party aggrieved because of the violation of any of the terms of said sections anywhere within this state, the state attorneys in their respective circuits, under the direction of the attorney general shall institute proceedings, civil or criminal or both under the terms hereof, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided. In civil actions such proceeding may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order as shall be deemed equitable.

History.—§12, ch. 19653, 1939; CGL 1940 Supp. 7954(34).

543.33 Suit by aggrieved party in own behalf.—In the event of the failure of the state attorney and attorney general to act promptly, as herein provided, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of plaintiff and others similarly situated, as the state attorney and the attorney general could have instituted under the terms of this chapter.

History.—§13, ch. 19653, 1939; CGL 1940 Supp. 7954(35).

543.34 Costs and expenses; appropriations.—Sufficient moneys shall be appropriated for payment of the costs and expenses of enforcing this chapter and all taxes and fees levied and collected shall be paid into the general revenue fund.

History.—§14, ch. 19653, 1939; CGL 1940 Supp. 7954(36). Am. §131, ch. 26869, 1951.

543.35 Penalty for violations of §§543.19-543.34.—Any violation of §§543.19-543.34, shall constitute a misdemeanor, to be punished as provided elsewhere in the laws of this state.

History.—§9, ch. 19653, 1939; CGL 1940 Supp. 7954(40).
cf.—§775.07, Punishment for misdemeanor.

CHAPTER 544

COMBINATIONS AGAINST FLORIDA MEATS

544.01 Certain combinations against public policy. — Every arrangement, contract, agreement, trust or combination between persons made with a view to, or tending to prevent, hinder or obstruct the lawful sale in this state, or any place therein, of beef or other fresh meat of cattle or any other edible animal raised, fattened or fed in the state, or any other beef or fresh meat, or with a view to, or tending to prevent, hinder or obstruct the lawful sale of any cattle or other edible animal in this state, or any place therein, or which shall tend to monopolize or control the sale or price of beef or other fresh meat in this state, or any place therein, is declared to be against public policy.

History.—§1, ch. 4534, 1897; GS 3160; RGS 4986; CGL 7075.
cf.—§542.01 et seq., Combinations in restraint of trade.

544.02 Forfeiture of charter.—Any corporation chartered under the laws of this state, which shall violate any of the provisions of §544.01, shall forfeit its charter and franchises, and its corporate existence shall thereupon cease. Every foreign corporation which shall violate any of the provisions of §544.01 is prohibited from doing business in this state. The attorney general of this state shall enforce this provision by due process of law.

History.—§2, ch. 4534, 1897; GS 3161; RGS 4987; CGL 7076.

544.03 Jurisdiction of circuit court.—The circuit courts of this state are given jurisdiction in chancery, and shall restrain or enjoin any violation of this chapter in their respective circuits, and shall restrain or enjoin any raising or lowering the price of beef or other fresh meat in any place in such several circuits with intent to or tending to prevent, hinder or obstruct the sale of beef or other fresh meat or cattle or any other edible animal raised, fattened or fed in the state, or any other beef or fresh meat, or with intent to or tending to prevent, hinder or obstruct the lawful sale of any cattle or other edible animal in any such place.

History.—§4, ch. 4534, 1897; GS 3162; RGS 4988; CGL 7077.

544.04 Duty of state attorney.—The state attorneys shall institute and prosecute all proper suits in their respective circuits in the name of the state to enforce this chapter. Any citizen of this state also may institute and prosecute suit in his own name to enforce this chapter. In case decree shall be rendered in the circuit court in favor of the plaintiff, whether the state or an individual, the court may decree that the defendant or defendants pay a reasonable fee in the cause for the state attorney or plaintiff's solicitor therein. Nothing herein contained shall operate or be construed to deprive any person of any right to any damages, or of any remedy to recover damages which such person would have without this chapter in or about matter mentioned or included in this chapter.

History.—§4, ch. 4534, 1897; GS 3163; RGS 4889; CGL 7078.

544.05 Compelling testimony of witnesses. —No person shall be excused from attending and testifying, or from producing books, papers, contracts, agreements and documents on subpoena for the state, or as witness for the state, or on cross-examination for the state, in any prosecution, suit or proceeding, criminal or civil, authorized by or based upon this chapter or growing out of any violation thereof, when such prosecution, suit or proceeding is in the name of the state and prosecuted or carried on by the attorney general or state attorney, for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture. But no such person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter or thing concerning which he may so testify or produce evidence; provided, that no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History.—§5, ch. 4534, 1897; GS 3164; RGS 4990; CGL 7079.

544.06 Combinations against Florida meats; penalty.—Any violation of any provisions of law relating to combinations against the sale of Florida meat is declared to be destructive of free competition and a conspiracy against trade, and any person who may engage in such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by fine of not more than five thousand dollars, or by imprisonment for not more than one year.

History.—§3, ch. 4534, 1897; GS 3516; RGS 5402; CGL 7543.
cf.—§775.06, Alternative punishment.

CHAPTER 545

COMBINATIONS RESTRICTING FINANCING OF MOTOR VEHICLES

545.01 Definitions of terms used in chapter. (1) The term "person" as used in this chapter means any individual, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.

(2) The terms "sell," "sold," "buy" and "purchase," as used in this chapter, include exchange, barter, gift, and offer to contract to sell or buy.

(3) The term "manufacturer" means any person engaged, directly or indirectly, in the manufacture of motor vehicles.

(4) The term "wholesale distributor" means any person engaged, directly or indirectly, in the sale or distribution of motor vehicles to agents or to dealers.

(5) The term "dealer" means any person who is engaged in, or who intends to engage in the business of selling motor vehicles at retail in this state. The term "dealer" shall also include "retail agent."

(6) The term "finance company" means any person engaged in the business of financing the sale of motor vehicles, or engaged in the business of purchasing or acquiring conditional bills of sale, or promissory notes, either secured by vendor's lien or chattel mortgages, or arising from the sale of motor vehicles in this state.

History.—§13, ch. 18031, 1937; CGL 1940 Supp. 4151(459).

545.02 Contracts designating finance company through which sale of motor vehicle to be financed declared void.—It is unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or contract for the sale of motor vehicles to any motor vehicle dealer on the condition, or with the agreement or understanding, expressed or implied, that such dealer shall in any manner finance the purchase or sale of any one or number of motor vehicles only through a designated finance company or shall sell and assign the conditional sales contracts or chattel mortgages or other paper arising from the sale of motor vehicles or any one or number thereof only to a designated finance company, when the effect of the condition, agreement or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the finance company who is designated, by virtue of such condition, agreement or understanding to finance the purchase or sale of motor vehicles, or to purchase such conditional sales contract, chattel mortgages or other paper, and any such condition, agreement, or understanding is declared to be void and against the public policy of this state.

History.—§1, ch. 18031, 1937; CGL 1940 Supp. 4151(460).
cf.—§542.01 et seq., Combinations restricting trade or commerce.

545.03 Threats by manufacturer or wholesaler as prima facie evidence of intent to violate law. — Any threat, expressed or implied, made directly or indirectly to any motor vehicle dealer, by any manufacturer, or wholesale distributor on authority or with the knowledge of any such manufacturer, or wholesale distributor, that such person will discontinue to sell, or will terminate a contract to sell motor vehicles to such dealer unless such dealer finances the purchase or sale of motor vehicles only with or through a designated finance company or sells and assigns the conditional sales contracts, chattel mortgages, or other paper arising from his retail sales of motor vehicles only to a designated finance company, shall be prima facie evidence of the fact that such manufacturer or wholesale distributor has sold or intends to sell motor vehicles, on the condition or with the agreement or understanding prohibited in §545.02.

History.—§2, ch. 18031, 1937; CGL 1940 Supp. 4151(461).

545.04 Threats by finance company presumed to be made by manufacturer or wholesaler.—Any threat, express or implied, made directly or indirectly to any motor vehicle dealer by any finance company or agent thereof, who is affiliated with or controlled by any manufacturer or wholesale distributor of motor vehicles, that such manufacturer or wholesale distributor will terminate his contract with or cease to sell motor vehicles to such dealer unless such dealer finance the purchase or sale of motor vehicles only with or through a designated finance company or sells and as-

signs the conditional sale contracts, chattel mortgages, or other paper arising from his retail sales of motor vehicles only to a designated finance company, shall be presumed to be made at the direction of and with the authority of such manufacturer or wholesale distributor of motor vehicles, and shall be prima facie evidence of the fact that such manufacturer or wholesale distributor of motor vehicles has sold or intends to sell motor vehicles on the condition or with the agreement or understanding prohibited in §545.02.

History.—§3, ch. 18031, 1937; CGL 1940 Supp. 4151(462).

545.05 Paying or giving anything to finance company to lessen competition prohibited.—It is unlawful for any manufacturer or wholesale distributor of motor vehicles, to pay or give, or contract to pay or give any thing or service of value to any finance company if the effect of any such payment or the giving of any such thing or service of value may be to lessen or eliminate competition, or tend to create or create a monopoly in the finance company which receives or accepts such thing or service of value.

History.—§4, ch. 18031, 1937; CGL 1940 Supp. 4151(463).

545.06 Acceptance of anything of value by finance company resulting in lessening competition prohibited.—It is unlawful for any finance company to accept or receive, or contract or agree to accept or receive, either directly or indirectly, any payment, thing or service of value from any manufacturer or wholesale distributor of motor vehicles, if the effect of the acceptance or receipt of any such payment, thing, or service of value may be to lessen or eliminate competition, or to create or tend to create a monopoly in the person who accepts or receives such payment, thing, or service of value, or contracts or agrees to accept or receive the same.

History.—§5, ch. 18031, 1937; CGL 1940 Supp. 4151(464).

545.07 Acceptance of benefits by finance company for purpose of lessening competition prohibited.—It is unlawful for any finance company who accepts or receives, either directly or indirectly, any payment, thing, or service of value, as set forth in §545.06, or contracts, either directly or indirectly, to receive any such payment or thing or service of value, to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages or other paper on motor vehicles sold at retail in this state.

History.—§6, ch. 18031, 1937; CGL 1940 Supp. 4151(465).

545.08 Attorney general or state attorney to institute suit upon violation of law.—For a violation of any of the provisions of this chapter by any corporation mentioned herein, the attorney general or the state attorney of the proper county, shall institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation, and for the dissolution of the same under the general statutes of the state.

History.—§7, ch. 18031, 1937; CGL 1940 Supp. 4151(466).

545.09 Attorney general to enjoin violations by foreign corporations; revocation of license by secretary of state.—Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this chapter, is denied the right and prohibited from doing any business in this state, and the attorney general shall enforce this provision by bringing proper proceedings by injunction, or otherwise. The secretary of state may revoke the license of any such corporation or association authorized by him to do business in this state.

History.—§8, ch. 18031, 1937; CGL 1940 Supp. 4151(467).

545.10 Contract in violation of law declared void.—Any contract or agreement in violation of the provisions of this chapter shall be void and shall not be enforceable either in law or equity.

History.—§10, ch. 18031, 1937; CGL 1940 Supp. 4151(468).

545.11 Remedy for persons injured by violation of law.—In addition to the criminal and civil penalties herein provided, any person who is injured in his business or property by any other person, by reason of anything forbidden or declared to be unlawful by this chapter, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, and recover twofold the damages sustained by him, and the costs of suit. When it shall appear to the court before whom any proceeding under this chapter is pending, that the ends of justice require that other parties be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

History.—§12, ch. 18031, 1937; CGL 1940 Supp. 4151(469).

545.12 Penalty for violations of chapter.—Any person who violates any of the provisions of this chapter, any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by this chapter, and any employee, agent, or officer of any such person, who shall participate, in any manner, in making, executing, enforcing, performing or in urging, aiding or abetting in the performance of any such contract, condition, agreement or understanding and any person who pays or gives or contracts to pay or give any thing or service of value prohibited by this chapter, and any person who receives or accepts or contracts to receive or accept any thing or service of value prohibited by this chapter, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars or by imprisonment in the county jail for not less than six months, or more than one year.

History.—§9, ch. 18031, 1937; CGL 1940 Supp. 8135(39).
cf.—§775.06, Alternative punishment.

CHAPTER 548

PUGILISTIC EXHIBITIONS

548.01 Prize fighting, pugilistic exhibitions; penalty.—Any person who shall voluntarily engage in any pugilistic exhibition, fight or encounter, with or without gloves, between man and man, or in an exhibition or fight between man and bull, or between man and any other animal, for money or anything of value, or upon the result of which any money or anything of value is to be collected, acquired, bet or wagered, or to see which any admission fee is charged, directly or indirectly, shall be punished by a fine of not less than two thousand five hundred, nor more than five thousand dollars, or by imprisonment for not more than five years.

History.—§1, ch. 4402, 1895; GS 3253; RGS 5084; CGL 7186.

cf.—§775.06, Alternative punishment.

548.02 Second, stakeholder, etc.; penalty.—Any person who shall act as second, stakeholder, counselor or advisor, or who shall render aid of any such character, for or to the principal or either of them in such exhibition, encounter, or fight shall be deemed a principal in the offense, and shall be punished as prescribed in §548.01.

The sheriff or his deputies, in any county where there is cause to believe that such an encounter or contest is about to occur, shall enter any house or enclosure, or any other place, and arrest, without warrant, any party engaged or about to engage in such contest.

History.—§2, ch. 4402, 1895; GS 3254; RGS 5085; CGL 7187.

548.03 Pugilistic exhibition defined.—By the term "Pugilistic exhibition, encounter or fight, with or without gloves," as used in this chapter, is meant any voluntary fight or personal encounter, by blows, between two or more persons, for money, prize of any character, points, distinction or fame, or other thing of value, or upon the results of which any money or thing of value is bet or wagered, or for which an admission fee is charged, directly or indirectly; provided, that nothing contained herein or in any law or municipal regulation shall be construed as applying to boxing exhibitions held by and under the auspices of the American legion, disabled American veterans, veterans of foreign wars of the United States, Spanish-American war veterans, or companies or detachments of the Florida national guard, Y. M. C. A., junior chamber of commerce, or any college which is a member of any recognized amateur athletic association and the Circulo Cubana club, a charitable organization now in existence, whether an admission fee is charged or not; provided further, that nothing contained herein shall be construed to prohibit any municipality from exercising its police powers to regulate boxing and wrestling exhibitions held under the auspices of the above named organizations.

History.—§3, ch. 4402, 1895; GS 3255; RGS 5086; §1, ch. 12213, 1927; CGL 7188; §1, ch. 14831, 1931; §1, ch. 17179, 1935. Am. §1, ch. 26729, 1951; §1, ch. 57-782.

548.04 Physician.—At any boxing, sparring or wrestling match or exhibition permitted under §548.03 there shall be in attendance a duly licensed physician, whose duty it shall be to observe the physical condition of the boxers or wrestlers and advise the referee or judges with regard thereto; any competent physician who has not had less than three years experience as a practitioner may be licensed. No boxer or wrestler shall be permitted to enter the ring unless, not more than three hours before, a physician shall certify in writing that the boxer or wrestler is physically fit to engage in the proposed contest. The physician's fee shall be paid by the licensee conducting the match or exhibition.

History.—Comp. §1, ch. 57-154.

CHAPTER 549

AUTOMOBILE RACE MEETS

549.01 Holding automobile race meets; notice to sheriff.—Any persons intending to hold any automobile race meet in any public place within the state shall give notice thereof in writing to the sheriff of the county wherein it is proposed to hold such race meet, at least ten days prior to the holding thereof, stating the time when and the place where such race meet is to occur. Notice shall be given to the sheriff of each county into which any such meet shall extend.

History.—§1, ch. 5438, 1905; RGS 2359; CGL 3763.

549.02 Duties of sheriffs. — Every sheriff who shall receive the notice provided for in §549.01, or who shall have other notice or knowledge of the proposed occurrence of any race meet within his county, shall forthwith take such measures as shall be reasonably necessary for the safeguarding of the public and the protection of persons from injury while such race shall be in progress. Every sheriff may appoint a sufficient number of deputies to thoroughly police the course over which such race is to take place, and may designate and maintain the boundaries prescribed for such course by stakes, ropes or otherwise, wherever it may seem necessary.

History.—§2, ch. 5438, 1905; RGS 2360; CGL 3764.

549.03 Sheriff to exclude from course vehicles and persons.—Every sheriff and every deputy appointed by him shall exclude from the course over which any race shall be about to occur, and at least thirty minutes prior to the starting thereof, all animals, vehicles and persons, except those officiating or participating in such race, and their assistants, and shall keep such course free from the intrusion of any animal, vehicle or person, except as above provided, for a period beginning at least thirty minutes prior to the starting of such race and extending during the whole time such race shall be in progress.

History.—§3, ch. 5438, 1905; RGS 2361; CGL 3765.

549.04 Association holding race to pay sheriff's fees.—Every sheriff and deputy sheriff participating in the policing of any race course, as provided in this chapter, shall receive the sum of two dollars per day during the period in which such races are in progress, which shall be paid by the persons holding the races.

History.—§5, ch. 5438, 1905; RGS 2362; CGL 3766.

549.05 Holding race meet without notice to sheriff; penalty.—Any person participating in any automobile race meet in any public place within this state, when the notice required to be given to the sheriff of the county wherein it is proposed to hold such race meet as required by this chapter has not been given, shall be punished by a fine of not exceeding one hundred dollars.

History.—§1, ch. 5438, 1905; RGS 5644; CGL 7839.
cf.—§775.07, Punishment by fine only—imprisonment.

549.06 Failure of person to remove from automobile race course; penalty.—Any person, except those officiating or participating in such race, and their assistants, who, upon being requested so to do by the sheriff or deputy sheriff, shall fail or refuse to move beyond the boundaries of the course over which any automobile race is about to occur, or who shall fail or refuse to remove from within such boundaries any animal or vehicle owned or controlled by him, or who shall knowingly enter within such boundaries after being warned therefrom by such sheriff or deputy sheriff, shall be punished by a fine not exceeding fifty dollars, and shall be subject to immediate arrest and removal by such sheriff or deputy sheriff.

History.—§4, ch. 5438, 1905; RGS 5645; CGL 7840.
cf.—§775.07, Punishment by fine only—imprisonment.

CHAPTER 550

DOG RACING AND HORSE RACING

550.01 State racing commission; creation, members, etc.—A state racing commission is created and established, and said commission is vested with the powers and duties in this chapter specified, and all other powers necessary and proper to enable it to execute fully and effectually all the purposes of this chapter. The commission shall consist of five persons who shall be appointed by the governor and confirmed by the senate. One member of the commission shall be a resident of and appointed from each of the congressional districts as they were defined on June 9, 1937. The members of the commission shall be qualified electors not less than twenty-five years of age, who shall have resided in the state for five years next preceding their appointment. The commissioners shall select from among their number a chairman and secretary. The state treasurer shall be ex-officio treasurer of the commission and the attorney general shall be its official attorney. The secretary shall keep a record of

all proceedings of the commission and shall preserve all books, maps, documents, papers, and records entrusted to its care. The commission shall annually make a full report to the governor. A majority of the commission shall constitute a quorum for all purposes.

The commission may employ an attorney and such assistants and employees as may be necessary at such compensation as the commission may prescribe.

Each commissioner shall take the constitutional oath of office and shall give bond to the governor of the state with personal or corporate surety to be approved by the treasurer in the amount of five thousand dollars, conditioned that he will faithfully and honestly perform the duties of his office. The premium on the bond above mentioned shall be paid by the commission. The state racing commission shall maintain an office in Miami and such branch offices as may be necessary. No person having been connected, either directly or indirectly, with any race track or meet held in the state within the past three years, or having been employed by any owner or operator of any race track in the state within the past three years, shall be eligible to hold the office of racing commissioner.

Beginning in 1965 the terms of office of the members of the state racing commission shall be four years beginning in each instance with the first Tuesday after the first Monday in January and ending on the first Monday in January four years thereafter in each instance as hereinafter specified. The terms of the members presently appointed for the first and fourth congressional districts of the state as defined on June 9, 1937, shall expire on the first Monday in January in 1965; the term of the member presently appointed for the second congressional district of the state as defined on June 9, 1937, shall expire on the first Monday in January in 1966; the term of the member presently appointed for the third congressional district of the state as defined on June 9, 1937, shall expire on the first Monday in January in 1967 and the term of the member presently appointed for the fifth congressional district of the state as defined on June 9, 1937, shall expire on the first Monday in January in 1968. The terms of the members presently appointed for the first and fourth congressional districts as herein defined shall expire on the first Monday in January, 1965, as heretofore provided by law. The terms of the members presently appointed for the second, third and fifth congressional districts as herein defined are hereby extended to expire on the first Monday in January in 1966, 1967 and 1968, respectively.

History.—§1, ch. 14832, 1931; §1, ch. 17276, 1935; CGL 1936 Supp. 4151(19); §1, ch. 20299, 1941; §1, ch. 63-264.

cf.—§551.03, Supervision of operation of frontons.

550.02 The powers and duties of the racing commission.—The state racing commission shall carry out the provisions of this chapter and such commission shall personally or by agents supervise and check the making of parimutuel pools and the distribution therefrom, and:

(1) Fix and set the dates for racing in any county where there are one or more horse tracks or one or more dog tracks seeking to race and holding ratified permits upon which any track can operate in any county, apportioning such dates to the several tracks in such counties as provided by law; provided, however, that where only one licensed dog track is located in a county, such track may operate ninety days during the racing season at the option of said dog track; provided, however, that no horse tracks licensed to engage in the conduct of running races located within one hundred air miles of each other shall operate on the same dates and any track licensed to engage in the conduct of harness races located within one hundred air miles of another permittee or licensee authorized to conduct either harness races or running races shall be apportioned not more than forty days within the legal horse racing season which may be the same dates awarded to a permittee or licensee conducting running races.

(2) Make an annual report to the governor showing its own actions, receipts derived under the provisions of this chapter, the practical effects of the application of this chapter and any suggestions it may approve for the more effectual accomplishments of the purposes of this chapter.

(3) Require an oath to each and every application by the person or executive officer of the association or corporation, stating that such information contained in the application is true.

(4) Make rules and regulations for the control, supervision and direction of all applicants, permittees and licensees, and for the holding, conducting and operating of all race tracks, race meets, races held in this state; provided, such rules and regulations shall be uniform in their application and effect, and the duty of exercising this control and power is made mandatory upon such commission. Said commission may take testimony concerning any matter within its jurisdiction and each member thereof may administer oaths for that purpose. Said commission shall have the power to issue summons and subpoenas for any witness and subpoenas duces tecum in connection with any matter within the jurisdiction of the commission under its seal and signed by any member of the commission or the supervisor or assistant supervisor of racing.

(5) Require of each applicant an application setting forth:

(a) The full name of the person, association or corporation, and if a corporation the name of the state under which the same is incorporated.

(b) If an association or corporation, the nationality, color and residence of the members of the association and the names of the stockholders and directors of the corporation.

(c) The exact location where it is desired to conduct or hold a race meeting.

(d) Whether or not the racing plant is owned or leased, and if leased, the name, color and residence of the fee owner, or if a corporation, of the directors and stockholders thereof;

provided, however, that nothing in this chapter shall prevent a person from applying to the racing commission for a permit to conduct races, regardless of whether the racing plant has been constructed or not, and having an election held in any county at the same time when elections are held for the ratification of any permit in said county.

(e) A statement of the assets and liabilities of the person making such application.

(f) The kind of racing to be conducted and the desired period.

(g) Such other information as the commission may require.

(6) Require of each applicant a deposit of a sufficient sum, in currency or by check certified by a bank licensed to do business in the state with the county commissioners of the county in which the election is to be held, in an amount necessary to pay all expenditures in connection with the holding of the election mentioned in §550.06.

(7) Upon receipt of such application and any amendments properly made thereto, the racing commission shall further investigate the matters contained in the application and if any applicant shall duly fulfill and meet all requirements, conditions and qualifications set forth in this chapter and the rules and regulations of the racing commission hereunder, then the racing commission shall grant the permit to such qualified applicant as hereinabove provided.

(8) In the event the state racing commission shall refuse to grant the permit, then the money deposited with the county commissioners for the holding of such election shall be refunded to the applicant. In the event the state racing commission shall grant the permit applied for, the board of county commissioners shall order an election in said county to decide whether such permit shall be approved and the license issued and race meetings permitted in such county, as hereinafter provided for in §550.07.

(9) Each licensed thoroughbred running track in the state shall be required to run an average of one race per racing day in which horses bred in Florida and duly registered with the Florida thoroughbred breeders' association shall have preference as entries over non-Florida-breds, and to require all licensed thoroughbred race tracks to write the conditions for such races in which Florida-breds are preferred so as to assure that all Florida-bred horses available for racing at such tracks be given full opportunity to run in the class races for which they are qualified, said opportunity of running to be afforded to each class of horses in proportion that the number of horses in this class bears to the total number of Florida-breds available; and provided that no track shall be required to write conditions for a race to accommodate a class of horses for which a race would otherwise not be run at such track during its meeting.

History.—§2, ch. 14832, 1931; §2, ch. 17276, 1935; CGL 1936 Supp. 4151(50); am. §1, ch. 22072, 1943; am. §1, ch. 24348, 1947; §10, ch. 26484, 1951; (4) by §1, ch. 57-180; (4) by §1, ch. 59-406; (9) n. by §1, ch. 61-178.

550.021 Records of racing commission, open for inspection; penalty.—

(1) All books, records, maps, documents and papers of the state racing commission, including those filed with said commission as well as those prepared by or for it, shall at all times be open for the personal inspection of any officer of the state or of any county of Florida, or of any official investigative body or committee, and no person having charge or custody thereof shall refuse this privilege to any such officer or investigative body or committee.

(2) Any member or employee of the state racing commission who violates subsection (1) of this section shall be deemed guilty of a misdemeanor and shall be fined not more than one hundred dollars or imprisoned in the county jail not exceeding three months. That any member of said commission who violates said subsection (1) shall also be deemed guilty of malfeasance and shall be subject to removal from office.

History.—Comp. §§1, 2, ch. 26850, 1951.

550.03 Compensation of members and employees.—The compensation of each member of the racing commission shall be one thousand eight hundred dollars annually, together with traveling expenses as provided in §112.061. The chairman of the commission shall receive an additional one thousand eight hundred dollars per annum, and the secretary of the commission shall receive an additional two thousand four hundred dollars per annum, to be paid out of any funds in the hands of the state treasurer to the credit of the racing commission.

Disbursements from said fund for the compensation and expenses of the commission shall be made in the manner as now provided by law for salaries and expenses of the state government, and a sufficient amount of money to pay said compensation of the commissioners and the expenses of the commission, is appropriated out of any funds hereafter in the hands of the state treasurer to the credit of the state racing commission; provided that all obligations and debts, including salaries and traveling expenses of the commissioners, shall be wholly paid out of funds deposited with the treasurer under the provisions of this chapter, and it is expressly declared that the state, or any funds belonging thereto, shall not at any time, or under any circumstances, be or become liable to any person for any expense incurred or debts owing by the commission or any member, agent, servant, or employee of the commission, and no money shall be paid out by the treasurer for salaries or expenses of the commission except upon voucher of the commission signed by the chairman and countersigned by the secretary, which voucher shall exhibit in detail the items for which the money is paid.

Provided, however, that the Florida state racing commission may extend said limitations of time for horse or dog racing or jai alai operation not to exceed one day at any one track beyond the period otherwise provided by law

so that any such track or fronton may conduct a charity day of racing for any one or more recognized and established charitable institutions located within one hundred miles road travel of the race track or fronton holding such charity day of racing; and further provided that for the purposes of this section the university of Miami, Jacksonville university and other institutions of higher learning, including junior colleges, not already participating in charity or scholarship racing days shall be deemed to be charitable institutions and that a portion of the proceeds available for the charitable purposes in an amount not less than twenty-five per cent may be paid over to and for the benefit of the said charitable institutions of higher learning in said areas, and provided further that the total of all profits derived from the operation of such racing on such charity day including all monies which would otherwise be received by the state racing commission as taxes for such day's operation shall be and become a part of the charity trust fund for which such racing on such days is conducted.

Provided further, that in determining profits derived from such racing on such charity day, which profits shall include all taxes payable to the state or any agency thereof for such day's operations without the initial expense of operational allowance provided by law for dog tracks, said tracks and frontons shall only be entitled to deduct from the profits accruing from all receipts on such charity day of racing their actual operating costs, which costs shall be those expenses incurred by the race track or fronton solely by reason of holding said charity day of racing and shall not be deemed to include such expenses constant from day to day and which would have been incurred had the race on that day not been held; including, but not limited to, such items as capital expenditures; interest on debts; real estate taxes and annual license fees; donations; bad debts; and such other items of daily or prorated expense as the racing commission may by rule prescribe.

History.—§3, ch. 14832, 1931; §3, ch. 17276, 1935; CGL 1936 Supp. 4151(51); §1, ch. 20843, 1941; 3rd para. by §1, ch. 57-283; §2, ch. 61-119; §15, ch. 63-400; §1, ch. 63-444.

cf.—§551.05, Additional salary of secretary of commission.
§550.13 Division among counties of moneys derived under this law.
§550.30 Race track funds guaranteed from general revenue fund.

550.04 Racing meetings authorized; restrictions.—Any person desiring to operate a race track in this state may, subject to the provisions of this chapter, hold and conduct one or more racing meetings at such track each year. Horse race track meetings shall be held only from and including the period extending from the 1st day of December of each year to and including the 20th day of April of the year following, which period shall be known as the horse racing season, and the dog race track meetings shall be held only during the period extending from and including the 1st day of November of each year to and including the 31st day of May of the year following, which period shall be known as winter dog racing season; provided, however, that summer dog track meetings shall be held only during the period beginning with and including June 1st and up to and including the 30th day of September, in counties lying wholly east of the St. Johns river, south of an east-west line from the Matanzas inlet to said river, and north of latitude 28 degrees 35 minutes; and provided further that both horse race meetings and dog race meetings shall be limited to the aggregate number of racing days as provided in §550.08. No racing shall be permitted on Sunday, and no minors except jockey apprentices, exercise boys and grooms shall be permitted to attend said races or to be employed in any manner by the track provided, however, nothing in this chapter shall be construed to prohibit the use of any dog racing plant or facility, for the conducting of "hound dog derbies" or "mutt derbies," from being used on one Sunday during each racing season by any charitable, civic or nonprofit organization for the purpose of conducting "hound dog derbies" or "mutt derbies" where only dogs other than those usually used in dog racing (greyhounds) are permitted to race and where adults and minors may participate as dog owners or spectators, and provided further that during such racing events betting and gambling and the sale or use of alcoholic beverages shall be strictly and absolutely prohibited.

History.—§4, ch. 14832, 1931; §4, ch. 17276, 1935; CGL 1936 Supp. 4151(52); am. §§1, 3, ch. 21636, 1943; am. §§2, 3, ch. 22072, 1943; am. §1, ch. 22599, 1945; am. §1, ch. 24360, §1, ch. 23862, 1947; §2, ch. 57-180; §9, ch. 59-406.

550.05 Application for permit to conduct race meetings.—Between the first day of June and the first day of July of each year, but at no other time, any person possessing the qualifications prescribed in this chapter shall apply to the commission for a permit to conduct race meetings and racing under this chapter. No application thus received by the commission shall be amended after August tenth of each year; and on or before the fifteenth day of August, but not thereafter, of each year, after receipt of any application, the commission shall convene to consider and act upon permits applied for, and all applications not definitely acted upon by the commission on or prior to the fifteenth day of August of each year shall be void.

Upon all applications filed and approved a permit shall be issued to the applicant setting forth the name, the location of the race track, the kind of racing desired to be conducted and a statement showing qualifications of the applicant to conduct racing at said track under this chapter; provided, however, no permit shall be effectual to authorize any race until ratified by a majority of the electors participating in said election, and in the county in which applicant proposes to conduct racing; and provided further that no application shall be considered and no permit shall be issued by the racing commission nor voted upon in any county to conduct running horse races, harness horse races or dog races at a location within one hundred miles of another location for which a permit has been issued

and a racing plant located, said distance to be measured on a straight line from the nearest property line of one racing plant to the nearest property line of the other, except that permits heretofore issued and ratified by a majority of the electors of any county shall not be affected by this proviso.

History.—§5, ch. 14832, 1931; §5, ch. 17276, 1935; CGL 1936 Supp. 4151(53); am. §1, ch. 24349, 1947; 2nd par. by §2, ch. 59-406.

Cf.—§550.33 Quarter horse racing.

550.06 Elections for ratification of permits. —The holder of any permit may have submitted to the electors of the county designated therein the question whether or not said permit shall be ratified or rejected. Such questions shall be submitted to the electors for approval or rejection at a special election to be called for that purpose only. The board of county commissioners of the county designated, upon the presentation to said board at a regular or special meeting of a written application, accompanied by a certified copy of the permit granted by the state racing commission, and asking for an election in the county in which said application was made, shall order a special election in said county for the particular purpose of deciding whether such permit shall be approved and license issued and race meetings permitted in such county by such permittee; and shall cause the clerk of such board to give notice of said special election by publishing the same once each week for two consecutive weeks in one or more newspapers of general circulation in said county; each permit covering each track shall be voted upon separately and in separate elections and no election shall be called more often than once every two years for the ratification of any permit covering the same track.

All elections ordered under this chapter shall be held within ninety days and not less than twenty-one days from the time of presenting such application to said county commissioners, and the inspectors of election shall be appointed and qualified as in cases of general elections and they shall count the votes cast and make due returns of same to the county commissioners without delay. The county commissioners shall canvass the returns, declare the results, and cause the same to be recorded as provided in the general law concerning elections so far as applicable.

Provided, that where a permit has been granted by the commission and no application to the board of county commissioners has been made by the permittee within six months after the granting of the permit, the same shall be void, and the commission shall cancel such permit without notice to the holder thereof, and the board of county commissioners holding the deposit for the election shall refund to the holder of the permit said deposit upon being notified by the state racing commission that the permit has become void and canceled; provided, further that where, upon a permit issued, an election has been held and such permit ratified, as herein provided, and the holder of the ratified permit has failed to construct a track suitable to conduct a race meeting within twelve months after the ratification of said permit, then the permit shall be void and the commission shall cancel such permit without notice to the holder thereof.

For such election all electors duly registered and qualified to vote at the last preceding general election held in such county shall be qualified electors for such election, and in addition thereto the registration books for such county shall be opened on the tenth day (if the tenth day be Sunday or a holiday, then on the next day not a Sunday or a holiday) after said election is ordered and called, and shall remain open for a period of ten days for additional registrations of persons qualified for registration but not already registered, and electors for such special election shall have the same qualifications for and prerequisites to voting in elections as under the general election laws.

If at any such special election the majority of the electors voting on the question of ratification or rejection of any permit shall vote against such ratification, then such permit shall be void. If a majority of the electors voting on the question of ratification or rejection of any permit shall vote for such ratification, then such permit shall become effectual and the holder thereof may conduct racing upon complying with the other provisions of this chapter. The county commissioners shall immediately certify the results of the election to the secretary of the state racing commission; provided, that the expense of holding the said election shall be paid for by the permit holder as provided for in subsection (6) of §550.02.

History.—§6, ch. 14832, 1931; §6, ch. 17276, 1935; CGL 1936 Supp. 4151 (54); §3, ch. 57-180.

Cf.—§550.33 Quarter horse racing.

550.061 Cancellation of permit to conduct race meeting.—Where the holder of a ratified permit issued pursuant to law, for the conduct of horse, in harness using a sulky, race meetings has failed to construct a track suitable to conduct such race meetings by July 1, 1948, or within one year from the date on which such permit was issued, whichever period of time be the longest, then such permit shall be void and the state racing commission may cancel such permit without notice to the holder thereof.

History.—§1, ch. 24359, 1947.

550.062 Cancellation of certain permits.—

(1) Every permit issued prior to January 1, 1943, under the statutes for the conduct of race meetings and racing where the holder of such permit has failed to conduct a racing meet under said permit within a period of five years next preceding June 7, 1949, is hereby cancelled and annulled.

(2) This section shall apply to and shall be deemed to cancel and annul all such permits, notwithstanding the permittee be a corporation which has been dissolved or a person, corporation or association in bankruptcy or whose assets or affairs are in the hands of a trustee

in bankruptcy or of a receiver appointed by any court.

History.—Comp. §§1, 2, ch. 25242, 1949.

550.063 Dog racing; ratified permit; extension of time in certain areas.—The time within which the holder of a ratified permit for dog racing shall construct a racetrack is hereby extended for the period of thirty months from the date of the ratification of such permit by the electorate, where such permit was issued and ratified subsequent to January 1st, 1943, and where the location of such racetrack is west of the Apalachicola river, anything to the contrary in any statute notwithstanding.

History.—Comp. §1, ch. 25256, 1949.

550.064 Horse racing; ratified permit; extension of time in certain areas.—The time within which the holders of a ratified permit for horse racing shall construct a race track is hereby extended for the period to May 1, 1953, where such permit was issued and ratified subsequent to December 1, 1949, and where the location of such race track is east of the Apalachicola river, anything to the contrary in any statute of the state notwithstanding.

History.—Comp. §1, ch. 26873, 1951.

550.065 Harness racing; certain permits validated; license.—

(1) Any permit issued by Florida state racing commission, subsequent to June 1st, 1946, to conduct horse racing, in harness, which permit, having been ratified in the manner prescribed by law, in any county of the state where no running horse tracks or dog tracks are located and established, is hereby validated and restored to the permittee or permittees, or his or their lawful assignee, and the time within which the holder of any such ratified permit shall construct a race track is hereby extended for a period of twelve months from such time as restrictions and limitations against such construction now imposed by federal regulations, are removed.

(2) Any horse racing track, in harness with sulky, which may be established and shall operate by virtue of the provision of subsection (1) of this section, shall be entitled to a license from the racing commission for a meet or meetings for a period of not exceeding ninety days of racing during the established racing season, fixed by law, for horse racing, and during such meet or meeting racing may be conducted by a valid permittee at such track either in the day time or night time, at the option of the permit holder, or at the election of the permit holder, the racing season may be divided so that part of the racing during any one season may be conducted at nights and part in the day time; provided, however, there shall be no racing on Sunday, and when racing is being conducted at nights, there shall be no racing in the day time of the same day.

(3) The commission of a licensee on a pari-mutuel pool on horse races, where such license is issued to conduct horse racing in harness, and in the counties affected by the provisions of this section, shall be the same as allowed and received by a licensee on a pari-mutuel pool on dog races as now fixed and established by law.

(4) In all respects the provisions of Chapter 550 shall be applicable to the subject matter of this section, except those provisions thereof which are inconsistent herewith.

History.—Comp. §§1-4, ch. 26485, 1951.

550.066 Harness racing; conduct of races, approval of commission.—Upon approval by the state racing commission any holder of a ratified permit to conduct horse racing in harness, which permit was validated and restored by §550.065(1), is hereby authorized to conduct not more than three quarter horse races per day upon the race track of the ratified permit holder, said three quarter horse races to be instead and in lieu of three horse races in harness with sulky during the regular race meeting of the permit holder; provided, however, that the quarter horses participating in such races shall be duly registered by the American quarter racing association and certified to the permit holder by a bona fide cooperative association organized under the laws of Florida, which has been in existence for two years or more and which has for its purpose the cooperative agricultural activity of breeding and training quarter running horses. All of the provisions of chapter 550, and rules and regulations of the Florida state racing commission relating to harness horse racing with sulky shall apply to any quarter horse race allowed by this section.

History.—Comp. §1, ch. 57-807.

550.067 Dog racing; validation of certain permits; exemptions.—

(1) All permits for dog racing or to hold and conduct dog race track meetings granted by the Florida state racing commission on or subsequent to June 7, 1949, and submitted to and ratified by a majority of the electors of the county designated in such permits voting on the question of ratification or rejection of such permits are hereby declared valid and lawful for the purpose for which issued and to permit the operation of a dog race track and to conduct dog race track meetings on the premises described in such permits.

(2) The provisions of this section shall not apply to permits which have been suspended, canceled or revoked either by the Florida state racing commission or in a recall election pursuant to the provisions of §550.18, nor shall the same affect or apply to permits canceled and annulled pursuant to the provisions of §550.062.

(3) This section shall not prevent the cancellation or revocation of any permit in any future recall election or the suspension, cancellation or revocation of any permit by the state racing commission in the manner and for such causes as other permits may be suspended, canceled or revoked by the state racing commission.

History.—Comp. §§1-3, ch. 57-237.

550.068 Harness racing; certain permits validated.—

(1) Any permit to conduct horse racing in harness or to hold harness horse race meetings granted and issued by the Florida state racing commission subsequent to July 1, 1956, and prior to the effective date of this act and submitted to and ratified by a majority of the electors of the county designated in such permit and on the basis of which ratified permit the holder thereof was issued license to conduct harness horse racing and in reliance thereon the holder of such permit and license constructed racing plant or track, and which permit and license was thereafter held and declared to be invalid as violative of the provisions of chapter 550, and particularly the one hundred mile distance requirements of §550.05, is hereby declared to be valid and the same is hereby restored, ratified and confirmed the same as if never held or declared to be invalid, notwithstanding the distance provisions of chapter 550 and §550.05 is hereby repealed and declared to be ineffective and inoperative as to any such permit and license issued and ratified as aforesaid.

(2) It is hereby declared to be the legislative purpose and intent to ratify and confirm all actions of the state racing commission in the issuance of any permit described in subsection (1), and to ratify, confirm and validate all proceedings in relation to the issuance and ratification of any such permit and to repeal and declare any law or laws in conflict herewith to be inoperative, ineffective and inapplicable to any such permit.

History.—§§1, 2, ch. 61-9.

Note.—Ch. 61-8 ratifies harness racing permit issued in Seminole county.

Ch. 61-1940 ratifies harness racing permit issued in Broward county.

550.069 Harness racing; daily license fee.—

(1) Any duly licensed harness horse race track having an average daily pari-mutuel pool of less than one hundred thousand dollars per day shall, in lieu of the payment of the taxes imposed upon such tracks as now provided by law, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee, which fee shall be determined from the following schedule:

Up to $50,000.00 per day . . . $1,000.00 per day. Over $50,000.00 per day but not exceeding $75.000.00 per day . . . $3,000.00 per day. Over $75,000.00 per day but not exceeding $100,000.00 per day . . . $5,000.00 per day, three-fourths of which daily license fee shall be distributed equally to the sixty-seven counties of the state and the remaining one-fourth to the state's general revenue fund.

(2) Whenever any harness horse track exceeds the sum of one hundred thousand dollars per day in its pari-mutuel pool totals this section shall not apply, and such harness horse track shall be taxed as provided by other general laws.

(3) It is hereby declared to be the legislative purpose and intent to ratify, confirm and validate actions of the state racing commission in the issuance of any permit described in §550.068 (1), and the placing in operation the fixed daily license fee provided for herein.

History.—§§1-3, ch. 63-261.

550.07 Issuance of license by racing commission; revocation of license; penalty in lieu thereof.—After a permit has been granted by the commission, and after the same has been ratified and approved by the majority of the electors participating in such election of the county designated therein, the racing commission shall grant to the lawful holder of such permit, subject to the conditions hereof, a license to conduct racing under this chapter, and fix annually the time, place and number of days during which racing may be conducted by such permit holder at the location fixed in said permit and ratified in said election. After the first license has been issued to the holder of a ratified permit for racing in any county, all subsequent annual applications for a license by said ratified permit holder shall be accompanied by proof in such form as the commission may require, that the ratified permit holder still possesses all the qualifications prescribed by this chapter, and that the permit has not been recalled at a later election held in such county as provided for in §550.18. The racing commission may revoke any permit or license hereunder upon the willful violation by the licensee of any of the provisions of this chapter, or of any rule or regulation issued by the commission under the provisions of this chapter. In lieu of the suspension or revocation of licenses the racing commission after notice and hearing may impose a civil penalty against any licensee for violations of this chapter or chapter 551, or any rule or regulation promulgated by the commission. No penalty so imposed shall exceed $1,000 for each count or separate offense and all penalties imposed and collected shall be deposited with the state treasurer to the credit of the general revenue fund. It is unlawful for any licensee under this chapter, directly or indirectly, to make any contribution whatsoever to any political party or to any candidate for any state, county, district, or municipal office; and the commission upon proof of any contribution having been made shall immediately revoke the permit of such licensee and no further license or permit shall be issued thereafter to such former licensee.

History.—§7, ch. 14832, 1931; §7, ch. 17276, 1935; CGL 1936 Supp. 4151 (55); §4, ch. 57-180.

Cf.—§99.161 Political contributions; §550.33 Quarter horse racing.

550.08 Maximum length of race meeting.—

(1) No license shall be granted to any person or to any race track for a meet or meeting in any county to extend longer than an aggregate of fifty racing days for horse racing and ninety days for dog racing in any racing season: Provided the state racing commission is authorized to grant one additional day of racing during the race meeting period granted to any track as provided by law, upon application

and agreement by any track in which one specific day of any meet shall be set aside, and all profit, less actual operating costs, from such specific day's operations of such track including all taxes payable to the state or any agency thereof for such day's operation shall be paid into the state treasury for a scholarship trust fund which shall be administered by the board of control of the institutions of higher learning of the state for the granting of scholarships for the purpose of attending the institutions of higher learning of the state upon such terms and conditions as the said board may from time to time prescribe. Actual operating costs of any track conducting such additional day of racing to be deducted from all receipts on such additional day of racing shall not include expenses constant from day to day and which would have been incurred had the race on that day not been held; including, but not limited to, such items such as capital expenditures; interest on debts; real estate taxes and annual license fees; donations; bad debts; and such other items of daily or prorated expense as the racing commission may by rule prescribe.

(2) The provisions of this section are supplemental to §550.081 and shall be construed as authority for granting additional days of racing above the total of one hundred and twenty days limitation therein except that each horse race track may run only one additional day as herein provided during its race meeting period as authorized by said law and the one hundred and twenty days limitation therein shall in no event be extended beyond three additional days.

History.—§8, ch. 14832, 1931; CGL 1936 Supp. 4151(56); §2, ch. 21636, 1943; §§1, 2, ch. 25258, 1949; (1) a. by §2, ch. 61-119; (1) §1, ch. 63-315.

cf.—§550.03 Compensation of racing commission.
§550.13 Division among counties of moneys derived under this law.
§550.30 Race track funds guaranteed from general revenue fund.

550.081 Allocation of horse racing periods of operation.—

(1) It is the finding of the legislature of the state that the operation of horse racing and legalized pari-mutuel and mutuel betting at horse race tracks in this state is a substantial business compatible to the best interests of the state and the taxes derived therefrom constitute an integral part of the tax structures of the state and counties. It is the further finding of the legislature that two or more horse race tracks located within a radius of one hundred air miles of each other cannot operate on the same racing days without endangering the tax revenue derived therefrom and the general welfare of the public. It is the further finding of the legislature that where more than one horse race track is located in a radius of one hundred air miles of one or more horse race tracks and the allocation and distribution of periods of operation to and between said horse race tracks is vested solely in the discretion of the state racing commission, that the power to change, alter and vary such racing periods from year to year, as it may see fit, is unsound and unwise, and creates a condition of uncertainty which retards the natural expansion and development of this business and influences and affects the financial stability of the state and counties. It is therefore declared to be the policy of the state that the present danger to the growth and welfare of horse racing and to the tax structure of the state and counties be eliminated insofar as the discretionary powers of the state racing commission in allocating dates to the horse tracks is concerned and this enactment is made pursuant to and for the purpose of carrying out such policy.

(2) Where three horse race tracks in this state are located in a radius of one hundred air miles of each other, the annual period of operating of such horse race tracks shall begin on December first of each year and continue for a full period of one hundred and twenty consecutive days, exclusive of Sundays, and each of said horse race tracks is hereby permitted to race for a full period of forty consecutive racing days, exclusive of Sundays. Such forty day racing periods are hereby established as follows: The first period to consist of the first consecutive forty racing days of such annual racing period, the second period to consist of the second consecutive forty racing days of such annual racing period, and the third period to consist of the third consecutive forty racing days of such annual racing period.

(3) The three racing periods herein above established shall be annually allocated by the state racing commission in the following manner: The horse race track having produced the largest amount of tax revenue during the preceding year of its operation shall be granted its choice of the three established racing periods. The horse race track having produced the second largest amount of tax revenue during the preceding year of its operation shall be granted its choice of the remaining two established racing periods. The horse race track having produced the third largest amount of tax revenue during the preceding year of its operation shall be allocated the racing period remaining after the two tracks producing the largest amount of tax revenue shall have made their selections; provided, however, that if any one or more tracks entitled to a choice of racing periods as provided for herein shall fail to make a selection the state racing commission shall thereupon assign a forty day racing period to said track or tracks, which period it shall be required to operate unless relieved therefrom by order of the state racing commission; provided further, that if any track heretofore allocated racing dates, shall fail or refuse to operate for its full forty day period, unless prohibited by law or causes beyond its control then the state racing commission may, upon request of any one of the other two tracks affected by this law, allocate the remaining racing dates to either or both of the two established horse racing tracks.

(4) On or before the first day of May of each year, each of the horse race tracks shall file in writing with the state racing commission in accordance with the procedure set forth in sub-

sections (2) and (3) of this section, its selection of the racing period herein above established that it desires to operate and conduct its racing meet. On or before the fifteenth day of May of each year the state racing commission shall issue an annual license authorizing the permit holder to conduct a racing meet during the period set forth therein. Such license shall be issued by the state racing commission to the permit holder on the basis of and in accordance with the procedure set forth in subsections (2) and (3) of this section.

(5) In the event any track shall be prevented from operating a full forty day racing season, as a result of a prohibition of law, fire, strike or circumstances beyond the control of the track involved, then the state racing commission in allocating and setting racing dates for the following racing season shall be governed by the amount of tax revenue produced by each track during the last racing season in which all tracks governed by this bill operated a full forty day racing period and dates shall be allocated to the tracks under such circumstances in the manner set forth in subsections (2) and (3) of this section.

(6) The state racing commission is hereby prohibited from granting any permit and there shall be no election in any county for the ratification or rejection of any permit to conduct horse racing, sulky or harness racing at a location in the area in which there are three horse race tracks located within one hundred air miles of each other; provided, however, that permits issued prior to May 21, 1947 shall not be affected by this subsection of this section.

History.—§§1-6, ch. 23728, 1947.
Am. §11, ch. 25035, 1949.
Note.—See ch. 28499, 1953, Hillsborough county; racing, extra day; athletic scholarships.

550.082 Special allocation of periods of operation of certain dog racing tracks.—

(1) Where there are three or more dog racing tracks operating under valid outstanding permits, issued by the state racing commission, located within a radius of thirty-five miles of each other, one of such permit holders within said area shall be permitted, at its option, but shall not be required, during the period beginning July 1 and ending the first Monday of September following, both dates inclusive, of any year, to conduct upon dates of its choice not more than fifty days of its aggregate number of operating days allowed by §550.08; provided that where two or more of such permittees apply for racing dates, as herein provided, the state racing commission shall designate the permittee entitled to conduct such racing during such fifty-day period, and the remaining number of said aggregate days under §550.08, shall be granted to and utilized by such permittee within the period provided in §550.04.

(2) This section shall be cumulative and shall not be construed as repealing any other provisions of law, and shall not be construed as permitting or allowing any permit holder to operate for a period of time in excess of the number of days now provided by law.

History.—§§1, 3, ch. 59-417.

550.083 Dog racing; periods of operation generally; exceptions.—

(1) Owners of valid outstanding permits for dog racing in this state may hold race meetings at any time they choose during the calendar year for the aggregate number of racing days fixed and permitted by law and subject to the approval of the state racing commission; provided, that no racing shall be conducted on Sunday.

(2) The provisions of this act shall not apply to or affect holders of valid permits to conduct greyhound racing or jai alai at greyhound race tracks or jai alai frontons located in Florida in the area between the parallels of twenty-eight degrees north latitude and thirty degrees north latitude and lying east of the meridian of eighty-two degrees west longitude.

History.—§§1, 2, ch. 61-509.

550.09 Moneys to be paid to commission for operation of race track.—Every person engaged in the business of conducting race meetings under this chapter, shall pay to the state treasurer in his capacity as ex-officio treasurer of the commission for the use of the commission a sum equal to three per cent of the total contributions to all pari-mutuel pools conducted or made on any and every race track licensed under this chapter, and on every race at such track. In addition to the aforesaid taxes, each person authorized to conduct race meetings under this chapter shall collect from each person attending such races fifteen per cent of the established admission price or the sum of ten cents from each person attending such race meeting, whichever sum is the greater, as an admission tax, and said person shall pay to the state treasurer as ex officio treasurer of the commission the tax hereinabove provided for. Payments shall be made every seventh day of any and every race meeting and shall be accompanied by a report under oath, showing the total of all contributions and admissions on the races covered by such report and such other information as the commission may require.

If any free passes or complimentary cards shall be issued to guests by any licensee, the licensee of any such track shall pay to the commission the same tax upon such complimentary admission cards each time they are used for admission to the track as though such complimentary passes or cards had been sold at the regular and usual admission rate; provided that the person conducting any race meeting in this state may issue tickets for admission, showing the amount of admission and the amount of tax to be paid by each person; however, this provision shall not be construed to mean that the association will not be held liable for the payment of the admission tax to the state treasurer as ex-officio treasurer of the state racing commission; provided, however, that a race track permit holder may, by and with the consent of the commission, issue tax-free passes to its officers, officials and employees or other persons actually engaged in

working at such race track, including persons actually employed and accredited press representatives, such as reporters and editors, and may also issue tax-free passes and tax-free box seats to other racing plant permit holders. A list of all persons to whom tax-free passes or tax-free box seats are issued shall be filed with the commission.

History.—§9, ch. 14832, 1931; §8, ch. 17276, 1935; CGL 1936 Supp. 4151(57); 2nd par. by §3, ch. 59-406.
cf.—§550.16(8) Additional tax on pari-mutuel pool.
§550.161 License fee in lieu of pari-mutuel pool tax.

550.10 Occupational license tax to be paid by employees; denial and revocation of license.—All persons connected with race tracks shall pay an annual occupational license tax, this occupational tax to be payable for each specified job performed. The scheduled license fees are as follows:

(1) Contractual concessionaries with permit holders, twenty-five dollars.

(2) Professional persons such as owners, trainers, veterinarians, doctors, nurses, officials and supervisors of all departments, ten dollars.

(3) Jockeys, apprentice jockeys, jockey agents and jai alai players, five dollars.

(4) Permit holder employees, concession employees, grooms, exercise boys, hot walkers, miscellaneous stable help, platers, and all others not specifically provided, four dollars.

It is unlawful for any person to take part in or officiate in any way or to serve in any capacity at any race track without first having secured said license and paid said occupational tax; provided, however, this section shall not apply to disabled men of any war of which the United States was a participant; and provided, further, that every race track operating in the state and having a license from the racing commission shall be required to employ at least eighty-five per cent of their employees from bona fide residents and citizens of the state, exclusive of jockeys or apprentices, exercise boys, owners, trainers, clockers and governing and managing officials and heads of the departments of the track.

The commission may deny or revoke a license to any person who shall have been refused a license by any other state racing commission or racing authority; provided, however, that the state racing commission or racing authority of such other state extends to the state racing commission of Florida reciprocal courtesy to maintain the disciplinary control; the state racing commission may deny or revoke any license where the holder thereof has violated the rules and regulations of the commission governing the conduct of persons connected with the race tracks.

History.—§9B, ch. 14832, 1931; §9, ch. 17276, 1935; CGL 1936 Supp. 4151(58); am. §7, ch. 22858, 1945; 1st par. by §4, ch. 59-406.
cf.—§551.07 Occupational license tax on fronton employees.
§550.20 License to be issued by county judge.

550.11 Tax imposed to be in lieu of other taxes, except city.—The tax imposed by §550.10 shall be in lieu of all license, excise or occupational taxes to the state or any county, city, town or other political subdivision thereof, except that when any race meeting is held or conducted in any incorporated city or town, such city or town may assess and collect an additional tax against any person conducting racing within its corporate limits not to exceed one hundred fifty dollars per day for horse racing and not to exceed fifty dollars per day for dog racing.

History.—§10, ch. 14832, 1931; CGL 1936 Supp. 4151(59).
cf.—Ch. 205 License taxes.

550.12 Method of bookkeeping prescribed.—Every person conducting race meetings under this chapter shall so keep books and records as to clearly show the total number of admissions and the total amount of money contributed to every pari-mutuel pool on each race separately and the amount of money received daily from admission fees, and within sixty days after the conclusion of every race meeting shall submit to the commission a complete audit of its accounts, certified by a public accountant licensed to practice in the state, and in addition, every person conducting race meetings under this chapter shall submit to the commission a detailed annual audit. The state auditor may audit and check the books and records of any such person and upon the request of the commission he shall do so.

History.—§11, ch. 14832, 1931; CGL 1936 Supp. 4151(60). §5, ch. 59-406; §1, ch. 61-476.

550.13 Division among counties of moneys derived under this law.—All moneys received by the state treasurer as ex officio treasurer of the commission shall be distributed among the several counties of the state in the following proportions in the manner and at the times hereinafter specified:

All such moneys, after expenses of the commission are paid, shall be divided into as many equal parts as there are counties in the state and there shall be remitted one part to each county.

Distribution among the several counties shall begin each racing year on or before the fifth day of January and shall continue monthly through April fifth; and on or before the fifth day of May the state comptroller shall determine and make a finding of all receipts and all moneys paid out upon warrants of the comptroller during the year, and the balance remaining on hand as shown by such statement shall be distributed among the several counties of the state, except that prior to making such distribution there shall be retained and reserved in the state treasury a sum not to exceed forty thousand dollars to the credit of the commission for salaries and expenses.

This section shall be construed to permit, after expenses of the commission are paid, the retention in the state treasury from and after January fifth of each year and until May fifth of each year a sum not to exceed an amount equalling ten per cent of the total receipts under this chapter to insure sufficient moneys on hand at all times for current operating expenses of the commission, and the comptroller

shall distribute the balances over and above such ten per cent on or before the fifth day of the months of January, February, March and April. It shall further be construed to mean that, after all salaries and necessary expenses of the commission have been paid for each racing season, up to but not exceeding forty thousand dollars shall be retained to the credit of the commission to meet its expenses accruing before further moneys are received under this chapter, and that all the balance of said money shall be apportioned equally and paid to the several counties of the state by the comptroller on or before the fifth day of May of each year or as soon thereafter as may be practicable.

History.—§12, ch. 14832, 1931; §1, ch. 16113, 1933; CGL 1936 Supp. 4151(61); §1, ch. 19170, 1939.

550.131 Payment of racing funds to county boards of public instruction.—In all cases where it is provided by local or special laws that one-half of all monies accruing to any county of the state under the provisions of chapter 550, (the same being racing commission funds), shall be paid to the treasurer of the state, as ex officio treasurer of the teachers salary fund, to the credit of the board of public instruction of any such county, such monies shall be paid direct to the board of public instruction of such county.

History.—§1, ch. 24144, 1947.

550.14 Use of moneys by counties.—When the moneys mentioned in §550.13 have been transmitted to the county commissioners of the several counties of the state in accordance with the provisions of this chapter, the county commissioners of the several counties may determine whether such moneys, or any part thereof, shall be converted into the county school fund, or to some other lawfully authorized fund, or shall be equally or otherwise apportioned to any two or more of such funds; provided, however, that if the supreme court of this state shall hold the foregoing use of said moneys mentioned in §550.13 to be an illegal use of the same, then said funds so remitted to the several counties of this state shall be held by the respective county commissioners in a fund to be designated special road fund, to be used by and under the direction of the board of county commissioners of each county, who are designated ex officio agencies of the state for the purposes of this chapter, for one or more of the following purposes which are expressly recognized and declared to be proper state objects, and the expenses thereof incurred for a general and state purpose:

(1) For the construction and maintenance of those state roads, or either of them within such county as have not been taken over for maintenance by the state road department of this state; or

(2) The whole or any part of the moneys so remitted may, by resolution of the board of county commissioners of each county, be paid over by the county commissioners for use by the board of public instruction of such county, to be used by such board of public instruction in payment of teachers' salaries or in payment of cost of transportation of pupils in the public school system of such county; provided, that in those instances where, by virtue of any local or special law, now in force or hereafter enacted, any portion of such funds is earmarked for use by the board of public instruction of any county of this state, the county commissioners shall, upon receipt of such funds, remit the proportionate allocated part thereof to such board of public instruction, and the money so remitted shall be used for the exclusive purposes aforesaid; provided, further, in those instances where any other method of remittance is prescribed by local or special law then such method shall be followed.

This section shall be liberally construed.

History.—§13, ch. 14832, 1931; CGL 1936 Supp. 4151(62); §§1, 2, ch. 19106, 1939.

550.15 Bond required of licensees to conduct race meeting.—Every person to whom a license may be granted under this chapter, at his own cost and expense, shall before any such license is delivered, give a bond in the penal sum of fifty thousand dollars payable to the governor of the state and his successors in office, with a surety or sureties to be approved by the commission and the state treasurer, conditioned to faithfully make the payments to the state treasurer in his capacity as treasurer of the commission and to keep his books and records and make reports as provided, and to conduct his racing in conformity with this chapter.

History.—§14, ch. 14832, 1931; CGL 1936 Supp. 4151(73).

550.16 Pari-mutuel pool authorized within track enclosure; commissions, breaks, etc.—

(1) The sale of tickets or other evidences showing an interest in or a contribution to a pari-mutuel pool is hereby permitted within the enclosure of any horse race track and dog race track licensed and conducted under this law, but not elsewhere in this state except as is provided in chapter 551. The sale and purchase of tickets or other evidences showing an interest in or a contribution to pari-mutuel pools in this state shall be under the supervision of the state racing commission and shall be done subject to such regulations as the state racing commission shall from time to time prescribe.

(2) The commission on a pari-mutuel pool on every horse race which may be withheld by the licensee and the state from the total contributions made to such pari-mutuel pool shall in no event exceed fifteen per cent of the amount contributed thereto, and the commission on a pari-mutuel pool on every dog race which may be withheld by the licensee and the state from the total contributions made to such pari-mutuel pool shall in no event exceed seventeen per cent of the amounts contributed thereto, which said maximum commissions shall include the three per cent tax heretofore provided by §550.09, together with the additional tax of five per cent of the total contributions

to all pari-mutuel pools conducted on every horse race and the additional tax of four per cent of the total contributions to all pari-mutuel pools conducted on every dog race, hereinafter provided for old age assistance and other purposes.

(3) After deducting a commission or license and the "breaks" (hereinafter defined), a pari-mutuel pool shall be redistributed to the contributors.

(4) Redistribution of funds otherwise distributable to the contributors of a pari-mutuel pool shall be a sum equal to the next lowest multiple of ten on horse and dog races.

(5) No distribution of a pari-mutuel pool shall be made of the odd cents of any sum otherwise distributable, which odd cents shall be known as the "breaks."

(6) The "breaks" shall be known as the difference between the amount contributed to a pari-mutuel pool and the total of the commissions and sums redistributed to the contributors.

(7) No person or corporation shall directly or indirectly purchase pari-mutuel tickets or participate in the purchase of any part of a pari-mutuel pool for another for hire or for any gratuity and no person shall purchase any part of a pari-mutuel pool through another, wherein he gives or pays directly or indirectly such other person anything of value, and any person violating this section shall be deemed guilty of a misdemeanor.

(8) In addition to the three per cent pari-mutuel tax provided for by §550.09, and any and all other taxes otherwise levied and assessed, every person, association or corporation conducting a horse race meet shall pay a tax equal to five per cent, and every person, association or corporation conducting a dog race meet shall pay a tax equal to four per cent of the total contributions to all pari-mutuel pools there conducted and made on any and every horse race and dog race for operation of such horse and dog tracks, which additional tax of five per cent on horse race pari-mutuel pools and one-half of the additional four per cent tax on dog race pari-mutuel pools shall be known as the "old age assistance tax" and shall be paid to the state treasurer for deposit in the general revenue fund. The remaining one-half of the additional four per cent tax on dog race pari-mutuel pools shall be paid to the state treasurer as ex officio treasurer of the state racing commission and shall be distributed among the sixty-seven counties of the state. Such money shall be divided into as many equal parts as there are counties in the state and there shall be remitted one part to each county. Distribution among the several counties shall be as provided by §550.13.

(9) Provided that in the event the tax equal to three per cent of the total contributions to all pari-mutuel pools conducted or made on any and every horse race track, plus the three thousand dollars license fee from horse (running) tracks having an average daily pari-mutuel pool of less than one hundred seventy-five thousand dollars per day for the preceding season, and on any and every dog race track as provided by §550.09, plus the three hundred dollars license fee from dog tracks having an average daily pari-mutuel pool of less than twenty thousand dollars per day for the preceding racing season, distributed equally to the sixty-seven counties of this state, produces during any full and complete racing season authorized by law, less than the total amount from said source distributed to the said counties during the racing season 1940-1941, such deficiency and no more shall be paid into said fund created by the said three per cent tax and license fee as aforesaid for distribution to the sixty-seven counties of this state according to law, from and out of the additional tax equal in the amount of five per cent on all pari-mutuel pools at horse race meets and the one thousand dollars license fee for old age assistance from horse (running) tracks having an average daily pari-mutuel pool of less than one hundred seventy-five thousand dollars per day for the preceding season and two per cent on all pari-mutuel pools at dog race meets, and the two hundred dollars license fee for old age assistance from dog racing tracks having an average daily pari-mutuel pool of less than twenty thousand dollars per day for the preceding racing season, as herein levied and designated for old age assistance, and the balance of said additional tax of five per cent and the one thousand dollars license fee for old age assistance from horse (running) tracks having an average daily pari-mutuel pool of less than one hundred seventy-five thousand dollars per day for the preceding season, on horse race tracks and two per cent on dog race tracks having an average daily pari-mutuel pool of less than twenty thousand dollars per day for the preceding racing season, shall be paid into said general revenue fund as herein provided, and for the purposes set forth.

(10) The taxes levied by subsection (8) of this section to be known as the old age assistance tax shall in no wise affect or be construed to repeal or affect any other tax on horse or dog race tracks or races or the apportionment thereof in equal portions to each county of the state.

(11) The taxes levied by subsection (8) of this section shall be paid at the times and places as provided by law for the payment of other taxes based on a per cent of pari-mutuel pools.

(12) Any willful or wanton failure by any licensee to make payment into the state treasury as required by law shall constitute sufficient ground for the state racing commission to revoke the permit of such licensee and no further license or permit shall be issued to such former licensee.

History.—§16, ch. 14832, 1931; §10, ch. 17276, 1935; CGL 1936 Supp. 4151(74), 8135(6b); §§1-6, ch. 20306, 1941; am. § § 1-6, 9, ch. 21744, 1943; §1, ch. 22589, 1945; §1, chs. 25257, 26334, 1949; sub. § § (2),(8),(10),(12) am. §1, ch. 28058. 1953. (1), (2), (8) a. by §§1, 2, 3, ch. 29694, 1955; (8)-(10) a. by §2, ch. 61-119; (11) r. by §1, ch. 61-516, subsequent subsections renum.; (4) §1, ch. 63-314.

cf.—§550.161 Exception re-horse racing.
§550.26(4) Breaks tax deposited in general revenue fund.
§550.09 Moneys to be paid commission for operation of race track.

550.161 Pari-mutuel pools of less than $400,000 daily; license fee; distribution.—

(1) Any duly licensed horse (running) race track having an average daily pari-mutuel pool of less than four hundred thousand dollars per day for the preceding racing season shall, in lieu of the payment of the five per cent and three per cent tax paid to the state from pari-mutuel pools as now provided by law, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee, which shall be determined from the preceding racing season's daily average mutuel pool of the licensee, and which is hereby fixed according to the following schedule:

Up to $175,000	$ 4,000 per day
Over $175,000 but not exceeding $200,000	$ 5,000 per day
Over $200,000 but not exceeding $225,000	$ 6,000 per day
Over $225,000 but not exceeding $250,000	$ 7,000 per day
Over $250,000 but not exceeding $275,000	$ 9,000 per day
Over $275,000 but not exceeding $300,000	$11,000 per day
Over $300,000 but not exceeding $325,000	$13,000 per day
Over $325,000 but not exceeding $350,000	$15,000 per day
Over $350,000 but not exceeding $375,000	$18,000 per day
Over $375,000 but less than $400,000	$21,000 per day

three-fourths of which daily license fee shall be distributed equally to the sixty-seven counties of this state and the remaining one-fourth to the state's general revenue fund.

History.—Comp. §1, 2, ch. 28193, 1953; (1) by §24, ch. 57-1. (2) r. by §6, ch. 59-406; §2, ch. 61-119.

550.162 Dog racing; daily operational cost allowance.—

(1) It is the finding of the legislature of Florida that the operation of a dog track and legalized pari-mutuel betting at dog tracks in this state is a privilege and is an operation which requires strict supervision and regulation in the best interests of the state; that pari-mutuel wagering at dog tracks in this state is a substantial business and taxes derived therefrom constitute part of the tax structures of the state and counties. It is the further finding of the legislature that the operators of dog tracks should pay their fair share of taxes to the state, and at the same time this substantial business interest should not be taxed to an extent as to cause a track which is operated under sound business principles to be forced out of business.

It is the further finding of the legislature that all dog race tracks have in common a "daily initial expense of operation." This "daily initial expense of operation" is created by certain factors which are common to all dog tracks and which remain relatively uniform and constant among the several dog tracks throughout a race meeting.

(2) Each licensed dog track holding a permit to conduct racing in this state under the authority of chapter 550, and the state by and through the state racing commission, is authorized to withhold from the total maximum commission of seventeen per cent that may be withheld from the total amounts contributed to pari-mutuel pool on dog races the sum of one hundred seventy dollars per race, and not to exceed ninety days during any race meeting, which said amounts shall be credited to the dog track operators as a daily "initial expense of operation." No tax shall be levied or collected on said one hundred seventy dollars so withheld and all taxes imposed by §§550.09 and 550.16, or by any other act of the legislature shall be imposed upon the seventeen per cent of total amounts contributed to any pari-mutuel pool at dog tracks less the above described one hundred seventy dollars "initial expense of operation" amount per race. The daily "initial expense of operation" allowance shall be deducted from the seventeen per cent commission prior to any tax being imposed on said pool and said allowance shall be credited to the track operator.

(3) All allowances granted by this section to the track operator known as the "initial expense of operation" allowance shall appear on the report tendered by the licensee as provided by §550.09, and shall be shown on the tax report submitted by the licensee every seventh day of the race meeting.

(4) Nothing in this section shall be construed so as to allow any dog track in this state an "initial expense of operation" allowance as provided herein for any day on which races may be held for the benefit of educational scholarships or charitable organizations.

History.—Comp. §§1-4, ch. 29693, 1955.

550.163 Dog racing; daily license fee.—

(1) Any duly licensed dog race track, having a daily pari-mutuel pool of less than twenty-five thousand dollars per day in a racing season, shall, in lieu of the payment of the tax imposed in §§550.09 and 550.16, or any other law imposing a tax upon the seventeen per cent of the total pari-mutuel pool at dog race tracks, be permitted to operate the sale of pari-mutuel pools on the basis of a fixed daily license fee which fee shall be determined from the following schedule:

Up to and including $20,000	$150 per day
Over $20,000 per day and not exceeding $21,000 per day	$200 per day
Over $21,000 per day and not exceeding $22,000 per day	$250 per day
Over $22,000 per day and not exceeding $23,000 per day	$300 per day
Over $23,000 per day and not exceeding $24,000 per day	$350 per day
Over $24,000 per day and not exceeding $25,000 per day	$400 per day

(2) Whenever any dog race track exceeds the sum of twenty-five thousand dollars per day in its pari-mutuel pool totals, this section shall not apply and such dog race track shall

be taxed as provided by other general laws, and at such time such dog track shall receive any "daily initial cost of operation" credit allowed by general law.

(3) Three-fifths of such daily license fee shall be distributed equally to the sixty-seven counties of the state and the remaining two-fifths to the state's general revenue fund.

History.—§§1-3, ch. 29751, 1955; (3) a. by §2, ch. 61-119.

550.164 Escheat to state of abandoned interest in or contribution to pari-mutuel pools.—

(1) It is hereby declared to be the public policy of the state, while protecting the interest of the owners thereof, to possess all unclaimed and abandoned interest in or contribution to any pari-mutuel pool conducted in this state under the provisions of chapters 550 and 551, for the benefit of all the people of the state, and this law shall be liberally construed to accomplish such purpose.

(2) All money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has remained in the custody of or under the control of any licensee authorized to conduct pari-mutuel pools in this state for a period of one year from the date said pari-mutuel ticket was issued, when the rightful owner or owners thereof, have made no claim or demand for such money or other property within the aforesaid period of time, is hereby declared to have escheated to or to escheat to, and to have become the property of the state.

(3) All money or other property which shall have escheated to and become the property of the state as provided herein, and which is held by such licensees, authorized to conduct pari-mutuel pools in this state, shall be paid by such licensees to the state treasurer annually within sixty days after the close of the race meeting of the said licensee. Such moneys so paid by said licensees to the state treasurer shall be deposited in the state school trust fund to be used for the support and maintenance of public free schools as required by Art. XII, Sec. 4, state constitution.

History.—§§1-4, ch. 29688, 1955; §7, ch. 59-406; (3) a. by §2, ch. 61-119.

550.17 Proof of referendum required.— The commission shall not issue any license under this chapter except upon proof in such form as the commission may prescribe that a referendum election has been held in the county where the applicant for such license desires to conduct a race meeting and that a majority of the electors voting on that question in such election voted in favor of licensing such racing.

History.—§17, ch. 14832, 1931; CGL 1936 Supp. 4151(75).

550.18 Petition for election to revoke license.—Upon petition of twenty per cent of the qualified electors of any county wherein any racing has been licensed and conducted under this chapter, the county commissioners of such county shall provide for the submission to the electors of such county at the then next succeeding general election the question of whether any permit or permits theretofore granted shall be continued or revoked, and if a majority of the electors voting on such question in such election shall vote to cancel or recall the permit theretofore given, then the racing commission shall not thereafter grant any license on the permit so recalled. Every signature upon every such recall petition shall be signed in the presence of the clerk of the board of county commissioners at the office of the clerk of the circuit court of the county and the petitioner shall present at the time of such signing his registration receipt showing his qualification as an elector of the county at the time of the signing of the petition. Not more than one permit shall be included in any one petition and in all elections wherein the recall of more than one permit shall be voted on, the voters shall be given an opportunity to vote for or against the recall of each permit separately. Nothing in this chapter shall be construed to prevent the holding of later referendum or recall elections.

History.—§18, ch. 14832, 1931; §11, ch. 17276, 1935; CGL 1936 Supp. 4151(76); am. §7, ch. 22858, 1945.

550.181 Certain persons prohibited from holding racing permits; suspension or revocation of permits.—

(1) On and after the first day of July, 1952, no person who shall have been convicted of a felony in the state, or under the laws of any other state, government or country of an offense which would be a felony if committed within this state, or who shall have been convicted of bookmaking in the state or elsewhere, or who is commonly known as a bookmaker and bears the general reputation of being a bookmaker, or who knowingly associates regularly with persons commonly known as bookmakers or criminals, shall hold any horse or dog racing permit or jai alai fronton permit in the state, or be a member of any assocation which holds such permit, or be an officer or director of any corporation which holds such a permit, or be an employee of the holder of any such permit in any capacity connected to any extent with the racing business or jai alai fronton business in the state.

(2) In order to better effectuate this section, and to assist the state racing commission in checking up on the observance of this section, every person holding a horse or dog racing permit or jai alai fronton permit in this state, and every person who is a member of an association holding such a permit, and every person who is an officer or director of a corporation which holds such a permit, and every employee of the holder of any such permit in any capacity connected to any extent with the racing business or jai alai fronton business in this state, shall, at such times as shall be fixed by rule promulgated by the state racing commission, furnish the said commission, for its files, his fingerprints and photograph taken under the supervision and direction of the said commission.

(3) The state racing commission shall

either suspend or revoke a racing permit or jai alai fronton permit upon proof, after due notice and hearing, that such permit is held by a person in violation of subsection (1) of this section, or that it is held by an association or corporation and that any person is a member, officer, or director thereof in violation of said subsection (1), or that any person is an employee of the permit holder in violation of said subsection (1); except, however, that no such permit shall be either suspended or revoked because of the employment of a person in violation of said subsection (1) if such employment is terminated and sufficient evidence of such termination furnished said commission within three days after notice is given to the permit holder of the commission's finding, after a hearing held as hereinabove provided for, that such person is an employee of the permit holder in violation of said subsection (1); and except, further, that no such permit held by a corporation shall be either suspended or revoked because a person is an officer or director of such corporation in violation of said subsection (1), if such person ceases to be such officer or director and the commission is furnished sufficient evidence that such is the case, within fifteen days after notice is given to the permit holder of the commission's finding, after a hearing held as hereinabove provided for, that such person is an officer or director in violation of said subsection (1).

History.—Comp. §§1-3, ch. 26832, 1951.
cf.—§550.33, Quarter horse racing.

550.19 Chapter not applicable to racing conducted by fair associations.—No part of this chapter shall be construed to apply to racing conducted by county or state fair associations or to any racing whatsoever except running or harness horse races and dog races.

History.—§19, ch. 14832, 1931; CGL 1936 Supp. 4151(77).

550.20 License to be issued by county judge.—When any license is granted by the commission under this chapter the same shall be issued by the county judge of the county where such race meeting is to be held, and the county judge shall receive from the licensee twenty-five cents for issuing same.

History.—§20, ch. 14832, 1931; CGL 1936 Supp. 4151(78).
cf.—§551.12, Elections.

550.21 Permits not assignable.—No permit granted under the provisions of this chapter shall be transferable or assignable except upon application to, and written consent and approval of said commission.

History.—§21, ch. 14832, 1931; §12, ch. 17276, 1935; CGL 1936 Supp. 4151(79).

550.22 Moneys to be held by state treasurer if distribution held illegal.—In the event the supreme court of the state should hold invalid the apportionment and distribution as now or hereafter provided of any part or all of the excise or license taxes now collected by the state incident to the operation of any race track or of the game of jai alai or pelota, or pari-mutuel pools conducted in conjunction therewith, then all such funds levied and collected by the state from the operation thereof shall be held in a separate fund by the state treasurer of this state, such fund to be known and designated as the special state racing commission fund, until such time as the legislature of this state shall authorize the distribution thereof. The fund so impounded shall not be subject to transfer, temporarily or permanently, to any other fund.

History.—§22, ch. 14832, 1931; §1, ch. 19114, 1939; CGL 1940 Supp. 4151(72dd).

550.23 Application of laws inconsistent with this chapter.—All laws and parts of laws inconsistent with any of the provisions of this chapter are expressly declared not to apply to any person participating or engaged in racing or making or contributing to pools thereon as authorized by and conducted under this chapter.

History.—§23, ch. 14832, 1931; CGL 1936 Supp. 4151(81).

550.24 Conniving to prearrange result of race; stimulating or depressing horse or dog; penalty.—Any person who shall influence or have any understanding or connivance with any owner, jockey, groom or other person associated with or interested in any stable, kennel, horse or dog or race in which any horse or dog participates, to prearrange or predetermine the results of any such race, or any person who shall stimulate or depress a dog or horse for the purpose of affecting the results of a race, shall be guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for not less than one year nor more than ten years, or shall be fined not less than one thousand dollars nor more than five thousand dollars.

History.—§9, ch. 17276, 1935; CGL 1936 Supp. 8135(6a).
cf.—§775.06, Alternative punishment.

550.25 Penalty for conducting unauthorized race meeting.—Every race meeting at which racing is conducted for any stake, purse prize or premium, except as allowed by this chapter, is prohibited and declared to be a public nuisance, and every person acting or aiding therein or conducting, or attempting to conduct, racing in this state not in conformity with this chapter shall be deemed guilty of a misdemeanor, and upon conviction be punished as provided by law.

History.—§15, ch. 14832, 1931; CGL 1936 Supp. 8135(6).
cf.—§775.07, Punishment for misdemeanor.

550.26 Tax on breaks; distribution.—

(1) A tax is hereby levied upon every pari-mutuel pool conducted by horse tracks and dog tracks within the state authorized by law so to do equal to the "breaks," which said "breaks" shall be the difference between (a) the amount contributed to a pool and (b) the total of the commissions and the sums actually redistributed to the contributors, which tax shall be known as the "breaks tax."

(2) The tax hereby levied shall be paid at the times and places as provided by law for the payment of other taxes based on a per cent of the pari-mutuel pool.

(3) It shall be the duty of every such horse race track licensee and of every such dog race track licensee to pay unto the state treasurer the tax hereby levied and said licensee shall be liable therefor.

(4) Fifty per cent of the breaks tax hereby levied on pari-mutuel pools conducted by horse tracks, and three fourths of the breaks tax hereby levied on pari-mutuel pools conducted by dog tracks, shall be deposited by the state treasurer into, and it shall become and be made a part of, the general revenue fund. The remaining fifty per cent of the breaks tax levied on pari-mutuel pools conducted by horse tracks shall be distributed as provided for in subsection (5). The remaining one fourth of the breaks tax levied on pari-mutuel pools conducted by dog tracks shall be divided into as many equal parts as there are counties in the state and there shall be remitted one part to each county. This distribution to the counties shall be made at the times and in the manner provided by §550.13.

(5) (a) It is the finding of the legislature that the revenues derived from pari-mutuel wagering in this state are a vital and integral part of the tax structure of the state and of the various counties. It is the further finding of the legislature that the breeding of thoroughbred horses has become a sizable industry in this state which contributes a great deal to the revenue of this state and which industry should be encouraged in this state. It is the further finding of the legislature that certain states, among them California, New York and Maryland, have horse racing with pari-mutuel wagering during times which directly conflict with the times horse racing is run in this state and which are in direct competition with this state. It is the further finding of the legislature that horse tracks in the state of Maryland, by virtue of recent favorable legislation in such state and through various other means, are able to offer certain minimum purses or prizes in excess of the minimum offered generally at tracks in this state and that such tracks in Maryland have a purse or prize structure generally that gives such state a competitive advantage over tracks located in this state. It is the further finding of the legislature that as a result of the purse structure in Maryland many owners of thoroughbred horses who would otherwise race in Florida no longer do so and that resultantly the quality of the breed running in this state has suffered.

(b) It is the further finding of the legislature that when well bred horses are racing, horse tracks are likely to attract more of the wagering public with a concomitant increase in the amount wagered, resulting in increased revenue to this state. It is the further finding of the legislature that the revenue to the state realized through pari-mutuel wagering will be seriously impaired unless the purse or prize structure at tracks in this state is altered so as to provide minimum purses or prizes competitive with those of other states and to increase other purses or prizes and thus induce the owners of the best horses in the country to race them on tracks in Florida. It is therefore declared to be the policy in this state that the present danger to the growth and welfare of horse racing and to the tax structure of the state and counties be lessened by utilizing fifty per cent of the breaks tax levied on pari-mutuel pools conducted by horse tracks as a source of funds for augmenting the purse and prize structure at horse tracks in this state.

(c) Said fifty per cent of the breaks tax shall be paid as provided for in §550.26 (2) and shall be paid into the state treasury to be kept in a special fund to be designated as the Florida horse racing promotion trust fund, and all moneys in such fund are hereby appropriated to the Florida state racing commission who shall administer such fund and prescribe suitable and reasonable rules and regulations for the administration thereof. The commission shall make an allocation of the moneys in such fund in such equitable manner as the commission may determine, taking into consideration the economic position of the various horse tracks in the state and their ability or inability to compete with tracks in other states because of the existing racing date structure in this state, and any other pertinent and relevant factors.

(d) It is the intention of the legislature that the moneys in said Florida horse racing promotion trust fund be allocated so as to provide for the supplementing and augmenting of the purses or prizes of the current year's overnight races and the current year's stakes races and for no other purposes.

History.—§§1-4, ch. 20807, 1941; am. §1, ch. 22588, 1945; §7, ch. 24337, 1947; §1, ch. 29810, 1955; (4) §2, ch. 61-119; (4), (5) §2, ch. 63-314.

550.27 Employment of residents required.—(1) The licensees of each race track or fronton now or hereafter operating in this state shall during each racing season employ at least eighty-five percent of their employees from bona fide residents and citizens of Florida and shall pay them at least said percentage of each weekly payroll, excepting jockeys, apprentices, exercise boys, owners, trainers, clockers, jai alai players, player managers and trainers, jai alai basket and ball makers, and all governing and managing officials and heads of departments of such track or fronton.

(2) A person shall have resided and have made his home in Florida for two years continuously last prior to the date of employment by any race track or fronton to be deemed a bona fide resident or citizen under the terms hereof, providing, further, that registration and voting in the primary or general election last prior to such date shall be prima facie evidence of such bona fide residence and citizenship.

(3) It shall be the duty of the Florida state racing commission before issuing any occupational license to any person to take part in or officiate in any way or serve in any capacity or be employed at any race track or jai alai fronton to require and obtain from each applicant for such occupational license, by affidavit and by such other evidence as the commission shall

deem necessary, sufficient and satisfactory proof of such applicant's residence and citizenship as herein defined, and to state upon each such occupational license issued by the commission the residence and citizenship so ascertained.

(4) Whenever it shall be made to appear to the commission that any licensee of any race track or fronton is exceeding the amount of fifteen per cent in employees or amount of payroll as herein provided, the commission shall notify said licensee of such excess, and if same be not corrected before the next payroll the commission shall have the power and it shall be its duty to suspend a sufficient number of occupational licenses issued to employees of said race track or fronton who are not residents and citizens of Florida as herein defined to bring the number of employees and amount of payroll within the limitations herein set forth.

(5) Any person or the licensee of any race track or fronton knowingly and wilfully violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment not exceeding six months or by fine not exceeding five hundred dollars or both such fine and imprisonment.

History.—§§1-5, ch. 20740, 1941.

550.28 Obtaining feed, etc., for race horses, dogs, etc., with intent to defraud.—

(1) Any owner, trainer or custodian of any race horse, or greyhound racing dogs, who shall obtain food, drugs, transportation, veterinary services or supplies for the use or benefit of said race horses or greyhound racing dogs, with intent to defraud the person or persons, from whom said services or supplies are obtained, shall be guilty of a misdemeanor, and shall upon conviction be imprisoned in the county jail not to exceed six months, or by a fine not exceeding five hundred dollars.

(2) In prosecutions under the preceding section, proof that the supplies or services had been furnished and not paid for, and that the owner, trainer or custodian of said race horses or greyhound racing dogs, was removing or attempting to remove any of said race horses or greyhound racing dogs, out of the state and beyond the jurisdiction of the courts of this state, shall be prima facie evidence of the fraudulent intent mentioned in the preceding section.

History.—§§1, 2, ch. 20882, 1941.

550.29 Reallocation of racing dates.—The state racing commission shall have the right to reallocate or reassign, to any other licensed horse racing track, any racing dates previously allocated or assigned to a licensed horse racing track, when said racing dates have been vacated, abandoned, or will not be used, for any reason whatsoever, provided the aggregate total number of horse racing days permitted hereunder shall not exceed one hundred days for any one horse racing licensee.

History.—§1, ch. 20859, 1941.

550.30 Race track funds guaranteed from general revenue fund.—

(1) There is hereby appropriated from any funds in the general revenue fund of the state derived from taxes which may be legally disbursed for the purposes herein set forth, or from proceeds of estate taxes and taxes upon intangible personal property, the sum of two million two hundred and eleven thousand dollars per annum during the period in which this section shall be in force and effect, or so much thereof as shall be necessary to carry into effect the purpose of this section.

(2) In the event that the share of each county of the state in the distribution of funds received from the state racing commission shall be less than thirty-three thousand dollars for any year during the period in which this section shall be in force and effect the comptroller shall draw warrants payable respectively to the board of county commissioners, the county board of public instruction of each county of the state, or to such other authority as is authorized by law to receive the same, as now or hereafter provided by law for the apportionment of racing commission funds, for such amounts as added to the amount distributed to each county from funds received from the state racing commission shall cause each county to receive in the aggregate from funds received from the state racing commission and under the provisions of this section, the sum of thirty-three thousand dollars annually, during the period in which this section shall be in force and effect.

(3) When the moneys provided for in subsection (2) hereof have been received by the respective boards or officials authorized by law to receive the same, it shall be the duty of such boards or officials to distribute or use such funds in such manner as will provide that each distributee under the provisions of the general or special law regulating distribution of race track funds in such county will receive the respective amounts contemplated by the provision of the general or special law regulating distribution of race track funds in such county.

(4) This section shall be construed to be cumulative and supplemental to any and all other laws now or hereafter in effect providing for distribution of funds from the state treasury to the several counties of the state; provided, however, that this section shall not be construed as supplemental or cumulative to any other law now in existence or hereafter enacted for the purpose of providing funds to the several counties in replacement of any loss of revenue due to failure of taxes upon racing to yield to each county the sum of thirty-three thousand dollars or more each per year.

History.—§§1-5A, ch. 21947, 1943; §§1-4, ch. 22896, 1945.
Cf.—§198.34 Disposition of proceeds from taxes.
§550.13 Division among counties of money derived under this law.

550.32 Resumption of dog racing at certain tracks authorized.—Where two or more racing meetings in successive racing seasons have been heretofore conducted at the dog race track of the holder of a ratified permit to conduct dog racing under the laws of this state, and racing at such race track shall have been discontinued for any reason, and where such permit has not been re-

voked in a referendum election, and where such race track is not located closer than ten miles from an existing and operating dog race track by the most direct paved road, and when such race track was and is the only race track located in the county of its location, and where the present owner of such dog race track desires to resume racing at such race track, the Florida state racing commission, upon the application of such owner therefor, shall annually issue unto such owner of such race track license to conduct dog racing meetings at such track for the same number of racing days each dog racing season to which dog race tracks in counties having not more than one dog track are by law entitled, any provision of any law or rule in conflict herewith or to the contrary notwithstanding.

History.—§1, ch. 22707, 1945.

550.33 Quarter horse races by nonprofit agricultural cooperative associations.—

(1) Subject to all the applicable provisions of chapter 550, any bona fide nonprofit cooperative association organized under the laws of Florida, which has for its purposes the cooperative agricultural activity of breeding and training quarter horses, bettering existing types and strains of such horses, which has been in existence for two years or more may, subject to the provisions of this section, with the consent of the permit holder and racing commission, and only during the regular meet, time of day, and as a part of the regular racing program of the permit holder, conduct racing of registered quarter running horses at and upon the race track of any holder of a ratified permit to conduct running horse racing, provided no such racing shall be conducted on Sunday.

(2) Sections 550.05, 550.06, 550.07 and 550.18, are hereby declared to be inapplicable to quarter horse racing as permitted herein; and all provisions of chapter 550, except §§550.05, 550.06, 550.07 and 550.18, shall apply to, govern and control such racing and the same shall be conducted in compliance therewith.

(3) Quarter horses participating in such races shall be duly registered by the American quarter racing association and before each race such horses shall be examined and declared in fit condition by some qualified person designated by the commission.

History.—§1, ch. 25354, 1949; (1) by §1, ch. 59-492.

550.34 Dog racing at north Florida tracks.—

(1) Any dog racing track holding a valid outstanding permit for dog racing in the state and located north of latitude thirty degrees may hold race meetings at any time during the calendar year; provided, that no permit shall be issued for racing on Sunday or at any one location in excess of the aggregate of ninety days in any one calendar year.

(2) This section shall be cumulative and not construed as repealing any other racing laws.

History.—Comp. §§1, 2, ch. 25413, 1949.

550.35 Transmission of racing information for illegal gambling purposes.—

(1) It shall be unlawful for any person to transmit or communicate to another or receive or secure by any means whatsoever the results, changing odds, track conditions, jockey changes, or any other information relating to any horse race or dog race from any race track in this state, between the period of time beginning one hour prior to the first race of any day and ending thirty minutes after the posting of the official results of each race as to that particular race, except that the foregoing limitations shall not apply to the results of the last race of each day's meet. Provided, however, that the state racing commission may, by rule, permit the immediate transmission by radio, television, or press wire of any pertinent information concerning not more than two feature races each week; provided, further, that the foregoing limitation of two feature races per week shall not apply to so-called "name stake races" which if broadcast or televised nationally the commission may in its discretion permit.

(2) It shall be unlawful for any person to transmit by any means whatsoever racing information to any other person, or to relay the same to any other person by word of mouth, by signal, or by use of telephone, telegraph, radio, or any other means, when the information is knowingly used or intended to be used for illegal gambling purposes, or in furtherance of such gambling.

(3) This section shall be deemed an exercise of the police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state and all of the provisions herein shall be liberally construed for the accomplishment of this purpose.

(4) Any person violating the provisions of this section shall be guilty of a felony and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine of not less than five hundred dollars nor more than five thousand dollars, or undergo imprisonment for a period of not less than one year and one day nor more than five years, or both, in the discretion of the court.

(5) Nothing contained in this section shall be construed as amending or repealing the provisions of any other law or affecting any rule of the Florida railroad and public utilities commission, relating to the regulation of public utilities in the furnishing to others of any communication, wire service, or other similar service or equipment; it is intended that this section shall be supplemental to other laws and a further aid in the elimination of transmission of information for illegal gambling purposes.

History.—§§1-5, ch. 26722, 1951; (1) by §5, ch. 57-180; (1) by §8, ch. 59-406.

550.351 Effect of certain 1957 amendments. — 1957 amendments to §§550.02(4), 550.04, 550.06, 550.07 and 550.35(1) shall not be

construed to repeal the provisions of section 550.34.

History.—Comp. §6, ch. 57-180.

550.36 Use of electronic transmitting equipment; permit by commission required.—Any person who has in his possession or control on the premises of any licensed horse or dog race track or jai alai fronton any electronic transmitting equipment or device which is capable of transmitting or communicating any information whatsoever to another person, without the written permission of the Florida state racing commission, shall be guilty of a misdemeanor and shall be punished by fine not exceeding $500 or by imprisonment in the county jail not exceeding 3 months, or both. This section shall not apply to the possession or control of any telephone, telegraph, radio or television facilities installed by any such licensee with the approval of said commission.

History.—§1, ch. 59-173.

550.37 Operation of certain harness tracks.—(1) It is the finding of the legislature of the state that the operation of harness tracks and legalized pari-mutuel and mutuel betting at harness tracks in this state will become a substantial business compatible to the best interests of the state, and the taxes derived therefrom will constitute an important and integral part of the tax structure of the state and counties. It is the further finding of the legislature that the operation of harness tracks within the state will establish and encourage an important industry within the state, namely, the acquisition and maintenance of breeding farms for the breeding of standard-bred horses utilized in harness races. It is further the finding of the legislature that harness tracks operating at night within the immediate vicinity of other race tracks will greatly enhance the tax revenue derived by the state and counties from racing and will not endanger the general welfare of the public. It is the further finding of the legislature of the state that this increase in tax revenue is needed by the state and the counties. It is the further finding of the legislature that harness racing is an exhibition sport which will attract a large tourist business to the state and will afford entertainment at night to such tourists during the winter racing season, and many of such tourists who are thus attracted by harness racing do not attend other forms of racing or engage in other forms of pari-mutuel betting. It is the further finding of the legislature that the racing commission should be empowered to consider and grant the application of any dog track, horse track and harness track permittee and licensee to conduct without further elections harness racing with sulky during the winter racing season at a location within any county wherein two or more elections have been held in which a majority of the electors voting in such elections voted in favor of the operation of pari-mutuel pools within the county at horse and dog tracks; provided, the applicant for the two years immediately preceding the presentation thereof to the racing commission, has had an average daily mutuel pool of less than twenty thousand dollars for a seasonal operation of fifty days or more for each of such years.

(2) DEFINITIONS. — Harness racing at harness tracks when used herein shall mean the racing of standard-bred horses in harness with sulky. Horse racing at horse tracks shall mean racing of thoroughbred horses with jockeys.

(3) Any permittee or licensee authorized under the provisions hereof to transfer the location of its permit shall conduct harness racing at night only. A permit so transferred shall apply only to the locations as hereinafter provided. The racing commission shall authorize such permittees and licensees to operate harness racing from 7:00 p.m. until 12:00 midnight. The provisions of chapter 550 which prohibit the location and operation of a licensed harness track permittee and licensee within one hundred air miles of the location of a race track authorized to conduct racing under the provisions of said chapter and which prohibit the racing commission from granting any permit to a harness track at a location in the area in which there are three horse tracks located within one hundred air miles thereof shall not be applicable to a licensed harness track which is required by the terms of this act to race at night.

(4) No permit shall be issued by the state racing commission for the operation of a harness track within seventy-five air miles of a location of a harness track licensed and operating under the provisions of this chapter. All harness tracks licensed under the provisions of chapter 550 shall be granted by the racing commission racing dates during the winter horse racing season of ninety racing days and such permittee and licensee shall be permitted and authorized to race every day except Sunday during said ninety day racing period. Nothing herein contained shall enlarge the number of racing days of any harness track permittee where by statute applicable thereto a lesser number of days has heretofore been fixed.

(5) The owners and operators of a harness track permitted and licensed by the racing commission shall be entitled to the same commission from the pari-mutuel pool as is provided for dog track owners, operators and permittees, and shall pay the same tax as that imposed upon pari-mutuel pools at dog tracks, however, without the benefit of the daily operational cost allowance provided by §550.162 and without the benefit of the fixed daily license fee as provided by §550.163.

(6) All holders of permits and licenses for dog racing and all holders of permits and licenses for horse racing and all holders of permits and licenses for harness racing issued by the Florida state racing commission authorized to operate in the winter horse race season whose average daily pari-mutuel pool (computed by dividing the total pari-mutuel pool for the racing season by the number of actual days raced at said meet, exclusive of charity

days) for each of the two consecutive years next prior to the filing of the application as herein provided, during its racing seasons which shall have been fifty days or more for each year, was less than twenty thousand dollars at the option of each of said permittees and licensees evidenced by its application to the Florida state racing commission for such purpose, shall be issued a license under its permit to operate only harness racing with sulky for a total period of ninety racing days during the winter horse racing season at such location as may be designated by said applicant and hereinafter authorized in subsection (7) within any county in which two or more elections have been held in which a majority of the electors in such elections voted in favor of the operation within said county of pari-mutuel pools at race tracks. Nothing herein contained shall authorize the transfer of a permit to any county in which there is located a horse track licensed by the Florida state racing commission whose average daily pari-mutuel pool (computed by dividing the total pari-mutuel pool for the racing season by the number of actual days raced at said meet, exclusive of charity days) for each of the two consecutive years next prior to the filing of the application as hereinabove provided, during its racing season which shall have been fifty days or more for each year, was less than four hundred thousand dollars.

(7) Such permittee and licensee upon the approval of its application by the racing commission pursuant to the provisions of this act may conduct harness racing at the facilities or plant leased by it from any horse race permittee or licensee in any county within the authorized area designated in this act not more than forty miles from the applicant's designated location, provided the said horse race permittee has a valid permit and license issued to it under the provisions of chapter 550 and said applicant-permittee and licensee may conduct such harness race meetings at said leased premises provided, that said permittee and licensee may thereafter construct its own facilities and its own plant at the location designated in its approved application. Such applicant-permittee and licensee may, pending the construction of its permanent facilities, operate at said leased premises and may thereafter divide its season of racing between its leased location and its permanent location so long as said locations remain within the authorized county or counties as elsewhere herein defined. If said permittee's season of racing is divided as aforesaid, the limitation of seventy-five miles between harness track locations shall not apply. The seventy-five mile limitation between the harness tracks hereinabove provided in regard to other permittees shall be measured from the location designated in said permittee's application to the racing commission.

Nothing herein contained shall authorize the permittee and licensee to operate more than ninety racing days.

Provided no such permit or harness racing may be moved to or permitted in any county having two or more horse track permits.

(8) The distance provisions contained in §§550.02 and 550.05 shall not be applicable to any harness race permittee who is required by the terms of this act to conduct harness racing at night only, nor shall §550.17 be applicable to any permittee whose permit is transferred under the provisions of this section.

(9) The provisions of chapter 550 as the same pertain to horse racing shall be applicable to harness racing except those provisions which are inconsistent herewith, and where the provisions of chapter 550 are by implication inconsistent with or are, in fact, in conflict with the provisions of this act, then this act shall govern harness race track permittees or licensees, and harness racing.

(10) Each licensed harness track in the state shall be required to schedule an average of one race per racing day in which horses bred in Florida and duly registered as standard-bred harness horses shall have preference as entries over non-Florida-bred horses, and to require all licensed harness tracks to write the conditions for such races in which Florida-bred horses are preferred so as to assure that all Florida-bred horses available for racing at such tracks be given full opportunity to perform in the class races for which they are qualified, said opportunity of performing to be afforded to each class of horses in proportion that the number of horses in this class bears to the total number of Florida-bred horses available; provided that no track shall be required to write conditions for a race to accommodate a class of horses for which a race would otherwise not be scheduled at such track during its meeting.

(11) Where a permit has been transferred from a county under the provisions of this act, no other transfer may be permitted from such county.

History.—§§1, 2, ch. 63-130.

550.38 Horse racing; award to breeder of Florida bred horses.—

(1) Every licensee licensed by the Florida state racing commission, under the laws of this state to conduct a running horse race meeting and where said licensee is permitted to use and operate the pari-mutuel system of wagering, shall, by the acceptance of said license, be deemed to have agreed, as a condition of the grant thereof, that such licensee shall, within thirty days after the expiration of such meeting, pay to the breeder of each Florida bred horse winning an overnight race at such meeting a sum equal to ten per cent over and above the announced gross purse, or one hundred dollars, whichever is greater, and said award so paid shall not in any case be deducted from the amount of the purse, nor shall it be required when the purse includes an award to the breeder equal to or greater than the amount specified and provided further, that any amount so paid as an award shall not be included in

estimating the value of the race to the winner, and there shall be no breeders' awards required in any stake race or races exclusively for Florida breds.

(2) In order for the breeder of a Florida bred to be eligible to demand and receive an award, the thoroughbred horse winning the race must have been registered a Florida bred with the agency designated by the Florida state racing commission as the official Florida bred registry of all Florida bred horses and the jockey club certificate for the winning horse must show that said winner has been duly registered as a Florida bred, evidenced by the seal and proper serial number of the official Florida bred registry.

(3) If any other law is passed that provides benefits for Florida thoroughbred breeders equal to or greater than those provided in this law, then said law shall supersede this law as long as said law is in effect.

History.—§§1-3, ch. 63-161.

CHAPTER 551

FRONTONS

551.01 Operation of frontons for exhibition of jai alai or pelota.—Any person desiring to operate a fronton for the exhibition of the Spanish ball game called jai alai, or pelota, may do so upon compliance with the terms and provisions of this chapter.

History.—§1, ch. 17074, 1935; CGL 1936 Supp. 4151(353). cf.—§550.27, Employment of residents.

551.02 Frontons defined.—The word "fronton" as used in this chapter, means a building or enclosure in which is provided a playing court with three walls so designed and constructed for the playing of that game of ball as played in Spanish-speaking countries, called jai alai or pelota.

History.—§11, ch. 17074, 1935; CGL 1936 Supp. 4151(354).

551.03 Racing commission to supervise operation.—The operation of all frontons shall be under the supervision of the state racing commission of the state, and subject to the terms, powers, duties and liabilities as set out in chapter 550, except as herein otherwise provided.

History.—§2, ch. 17074, 1935; CGL 1936 Supp. 4151(355).

551.04 Powers and duties of racing commission.—The state racing commission shall carry out the provisions of this chapter, and to that end, such commission may personally, or by agent, supervise and check the making of pari-mutuel pools and wagers and the distribution therefrom, and

(1) Fix and set the dates within which any fronton may be operated; provided, however, that this section shall not be construed as authorizing the commission to fix and set dates for the operation of any fronton in any county where there is not more than one fronton in operation;

(2) Require any applicant for a permit to operate a fronton to file an application setting forth:

(a) The full name of the person, firm, corporation or association, and if a corporation, the name of the state under which it is incorporated, as well as the names of the officers, directors and stockholders of said corporation, and their places of residence, or if an association, the name, nationality, race and residence of the members of the association;

(b) The exact location where it is desired to operate a fronton exhibiting the Spanish ball game aforesaid;

(c) Whether or not the fronton is owned or leased, and if leased, the name, nationality, residence and address of the owners or lessees, or if the owner or lessee be a corporation, the name and address of the officers, directors and stockholders thereof;

(d) A statement of the assets and liabilities of the person, firm, corporation or association making application for such permit;

(e) Such other information as the commission may require. Such applications shall be duly sworn to.

(3) Make rules and regulations for the holding, conducting and operating of exhibitions of jai alai or pelota, which rules and regulations shall be uniform in their application and effect, and the duty of exercising this control and power is made mandatory upon such commission.

History.—§3, ch. 17074, 1935; CGL 1936 Supp. 4151(356).

551.05 Additional salary of secretary of commission.—As compensation for the additional duties imposed by this chapter the secretary of the state racing commission shall receive the sum of fifty dollars per month in addition to whatever compensation may be allowed him as such secretary by any other laws; and the same is to be paid in like manner as such other compensation is paid. There is appropriated sufficient money out of the funds now or hereafter in the hands of the state treasurer to the credit of the state racing commission to pay such additional compensation.

History.—§3a, ch. 17074, 1935; CGL 1936 Supp. 4151(357). cf.—§550.03, Compensation of members and employees.

551.06 License fees.—Every person engaged in conducting exhibitions of the Spanish ball game known as jai alai or pelota, under this chapter, shall pay to the treasurer of the state in his capacity as ex officio treasurer of the state racing commission, for the use of the commission, a sum equal to three per cent of the total contributions to all pari-mutuel pools or point wagers won, conducted or made on every Spanish ball game of jai alai or pelota in any fronton operated under the provisions of this chapter. In addition to the aforesaid taxes, each person authorized to con-

duct exhibitions of jai alai or pelota herein, shall pay to the state treasurer fifteen per cent of all moneys received each day from admissions paid by persons attending such exhibitions, or the sum of ten cents on each admission whichever sum is greater; said payments shall be made every seventh day during the season or period of operation of any fronton, and shall be accompanied by report, under oath, showing the total of all contributions, wagers and admissions on the Spanish ball game called jai alai or pelota covered by such report and such other information as the commission may require. If any free passes or complimentary admission cards shall be issued to any guests by any licensee, the licensee of such fronton shall pay to the commission the same upon such complimentary admission cards as if the same were sold at the regular and usual admission rates; but nothing herein shall be construed to prohibit the issuance of tax-free passes to officials and actual employees at such fronton, or engaged in such Spanish ball games; provided, however, that the issuance of all such tax-free passes shall be under the regulations or orders of the state racing commission and a list of all officers, employees and participants shall be filed with the commission.

History.—§4, ch. 17074, 1935; CGL 1936 Supp. 4151(358).

551.07 Tax to be in lieu of all other taxes, except city; occupational license tax.—The tax imposed shall be in lieu of all other license, excise or occupational taxes to the state or any county, city, town or political subdivision thereof, except that when any such fronton for exhibition of jai alai or pelota is being operated in any incorporated city or town, such city or town may assess and collect an additional tax against any person operating said fronton within its corporate limits at a sum not to exceed ten dollars per day for each day that such fronton is actually operated. The same occupational license tax required under §550.10 to be paid by all persons connected with race tracks shall likewise be paid by all persons connected with the operation of any fronton, except disabled ex-service men of any war in which the United States was a participant, as is provided in §550.10.

History.—§5, ch. 17074, 1935; CGL 1936 Supp. 4151(359).
cf.—Ch. 205 License taxes.

551.08 Method of bookkeeping prescribed.—Every person operating a fronton under this chapter shall so keep his books and records as to clearly show the total number of admissions and the total amount of money wagered or contributed to every pari-mutuel pool on each game separately, and the amount of money received daily from admission fees, and within sixty days after the end of the season of each fronton, shall submit to the state racing commission a complete audit of its accounts, certified to by a public accountant qualified to practice in the state, and in addition every person operating a fronton under this chapter shall submit a detailed annual audit to the state racing commission. The state auditor may audit and check the books and records of any such person, and upon the request of said commission, shall do so.

History.—§6, ch. 17074, 1935; CGL 1936 Supp. 4151(360); §1, ch. 61-475.
cf.—§550.12, As to horse and dog racing.

551.09 Wagers and pari-mutuel pools permitted within enclosure of fronton.—

(1) Within the enclosure of any fronton licensed and conducted under this chapter but not elsewhere, wagering on the respective scores or points of the game of jai alai or pelota and the sale of pari-mutuel pools under such regulations as the state racing commission shall prescribe, are hereby authorized and permitted.

(2) The commission of a licensee on such pari-mutuel pools and wagers shall in no event exceed seventeen per cent of the amounts contributed thereto, and said maximum of seventeen per cent of said amounts shall include the three per cent tax heretofore provided by law, together with the additional tax of two per cent hereinafter provided for old age assistance.

(3) After deducting a commission and the "breaks" (hereinafter defined), a pari-mutuel pool shall be redistributed to the contributors.

(4) Redistributions of funds otherwise distributable to the contributors to such pari-mutuel pools shall be a sum equal to the next lowest multiple of ten.

(5) No distribution of a pari-mutuel pool shall be made of the odd cents of any sum otherwise distributable, which odd cents shall be known as the "breaks."

(6) The "breaks" shall be known as the difference between the amount contributed to a pari-mutuel pool and the total of the commission of the licensee and the sums actually redistributed to the contributors.

(7) No person or corporation shall directly or indirectly purchase pari-mutuel tickets or participate in the purchase of any part of a pari-mutuel pool for another for hire or for any gratuity and no person shall purchase any part of a pari-mutuel pool through another, wherein he gives or pays directly or indirectly such other person anything of value, and any person violating this section shall be deemed guilty of a misdemeanor.

(8) In addition to any and all other taxes otherwise levied or assessed, every person, association or corporation conducting a fronton for the exhibition of the Spanish ball game known as jai alai or pelota shall pay to the treasurer of the state for operating said fronton, a tax equal to two per cent of the total contributions to all pari-mutuel pools or point wagers conducted or made on any and every such Spanish ball game of jai alai or pelota in any fronton operated under the provisions of this chapter, which additional two per cent tax shall be deposited in the general revenue fund and when collected shall be known as the "old age assistance tax."

History.—§7, ch. 17074, 1935; CGL 1936 Supp. 4151(361); §1, ch. 22817, 1945; (8) a. by §2, ch. 61-119.
cf.—§550.16, As to horse and dog racing.

551.10 Disposition of funds.—All moneys mentioned in this chapter derived from taxes on admission, wagers and pari-mutuel pools shall be disbursed by the state treasurer pursuant to existing laws relating to the disposition of funds derived from the operation of race tracks, and in the same manner.

History.—§8, ch. 17074, 1935; CGL 1936 Supp. 4151(362).
cf.—§550.13, Disposition of funds derived from operation of race tracks.
§550.22, Funds to be held by state treasurer if distribution held illegal.

551.11 Location of frontons.—No permit shall be issued for the operation of any fronton to be constructed or operated within one thousand feet of any existing church or public school, nor shall any such exhibition be held on Sunday.

History.—§9, ch. 17074, 1935; CGL 1936 Supp. 4151(363).

551.12 Elections; applicability of race track law.—No license to construct or operate a fronton for the exhibition of jai alai or pelota shall be issued until and unless the permit issued by the state racing commission has been ratified by the electors of the county involved pursuant to the requirements of §550.06, except this provision shall not apply to frontons which have been issued valid permits and licenses to operate prior to June 30, 1959, and which are now in effect. All other pertinent provisions of chapter 550, dealing with the powers, duties and liabilities of the state racing commission and of the operators of dog racing tracks and dealing with the location thereof and with the issuance and granting of permits and licenses to conduct dog racing and dealing with the petition for the election to revoke licenses not inconsistent with the express provisions of this chapter shall be construed to relate to and govern the state racing commission and the operators of any fronton and the location thereof and the issuance and granting of permits and licenses for the operation of frontons under the provisions of this chapter as fully as if the same were herein expressly set out; provided, however, that in no event shall any jai alai fronton permit or license be issued to conduct jai alai and pari-mutuel pools at a location within fifty miles of another location where pari-mutuel pools are conducted under chapter 550 or 551, said distance to be measured on a straight line, said straight line shall be measured from property line to property line at the points nearest to each other, except this proviso shall not apply to frontons which have been issued valid permits and licenses to operate prior to June 30, 1959, and which are now in effect; provided, further, that if all or any substantial portion of a fronton shall be taken by eminent domain the state racing commission may on application of the holder of the permit and license of such original fronton filed within two years after such taking (and in lieu of the original permit and without requiring the ratification by the electors of the permit and without regard to the foregoing fifty mile limitation) issue a permit and grant licenses to the holder of the permit and license of such original fronton for the operation of a substitute fronton at any location in the same county within ten miles, as so measured, of the location of the original fronton. Provided, also, that the said commission shall not limit the number of operation days in any twelve-month period for such operators of licensed frontons to less than ninety days during the period extending from and including the first day of December in each year to and including the 10th day of April of the following year. An operation day shall be a continuous period of twenty-four hours starting with the beginning of the first game of a public exhibition of jai alai or pelota, even though such operation day may start during one calendar day and extend past midnight into the following calendar day; provided, however, that no game shall be started later than 12 midnight and before noon on any operation day. No minors except jai alai players, apprentices and ball boys shall be permitted to attend such exhibitions or to be employed in any manner, about the operation of frontons. All laws and parts of laws inconsistent with the express provisions of this chapter are expressly declared not to apply to any person engaged in the operation of a fronton, or making wagers or contributing to pools therein, as authorized and conducted under this chapter.

History.—§10, ch. 17074, 1935; CGL 1936 Supp. 4151(364); am. §1, ch. 22614, 1945; §1, ch. 59-453.
Cf.—§550.20 License issued by county judge.

551.13 Tax on breaks; distribution.—

(1) A tax is hereby levied upon every pari-mutuel pool conducted at a fronton for the exhibition of the Spanish ball game known as jai alai or pelota within the state authorized by law so to do, equal to fifty per cent of the "breaks" as defined in subsections (5) and (6), §551.09.

(2) It shall be the duty of every such fronton licensee to pay unto the state treasurer the tax hereby levied and said licensee shall be liable therefor.

(3) When the tax hereby levied is paid into the state treasury it shall become and be made a part of the "old age assistance tax fund" and all such funds on hand in the office of the state treasury in the "old age assistance tax fund" shall stand appropriated and shall be available to meet any contributions on behalf of the United States for the benefit of the citizens or inhabitants of this state when age shall be a basis or cause.

History.—§2, ch. 22817, 1945.

551.14 Payment of taxes; penalties.—

(1) The "old age assistance tax" and the "breaks tax" levied shall be paid at the times and places as provided by law for the payment of other taxes based on a per cent of pari-mutuel pools.

(2) Any willful or wanton failure by any licensee to make such payments into the state treasury as required by law shall constitute sufficient ground for the state racing commission to revoke the permit of such licensee and no

further license or permit shall be issued to such former licensee.

History.—§3, ch. 22817, 1945.

551.15 Special allocation of periods of operation for certain frontons.—Where there are two or more jai alai frontons operating under valid outstanding permits, issued by the state racing commission, located within a radius of thirty-five miles of each other, one of such permit holders within said area shall be permitted, at its option, but shall not be required, during the period beginning July 1 and ending the first Monday of September following, both dates inclusive, of any year, to conduct upon dates of its choice not more than fifty days of its aggregate number of operating days allowed by §551.12; provided that where two or more of such permittees apply for operating dates, as herein provided, the state racing commission shall designate the permittee entitled to conduct such jai alai fronton operation during such fifty day period, and the remaining number of said aggregate days under §551.12, shall be granted to and utilized by such permittee within the period provided in §551.12; provided, that when a fronton permittee elects to receive the benefits of this section and is granted summer operation dates hereunder, such permittee shall not operate jai alai fronton exhibitions more than a total of one hundred days (plus scholarship and charity days) in the twelve months period in which said summer operation hereunder is permitted.

(2) This section shall be cumulative and shall not be construed as repealing any other provisions of law, and shall not be construed as permitting or allowing any permit holder to operate for a period of time in excess of the number of days now provided by law.

History.—§§2, 3, ch. 59-417.

CHAPTER 552

MANUFACTURE, DISTRIBUTION AND USE OF EXPLOSIVES

552.081 Definitions.—The following words used in this chapter shall have the meanings respectively ascribed to them in this section, as follows:

(1) "Explosives." Any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon the application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps and detonators; but not including cartridges for firearms, and not including fireworks as defined in §791.01.

(2) "Person." Any natural person, partnership, association or corporation.

(3) "Manufacturer-distributor." A person engaged in the manufacture, compounding, combining, production or distribution of explosives.

(4) "Dealer." A person engaged in the wholesale or retail business of buying and selling explosives; provided, that should a manufacturer-distributor make sales to users, such manufacturer shall not be required to obtain an additional license as a dealer.

(5) "User." The person who, as an ultimate consumer of an explosive, purchases same from a dealer or manufacturer-distributor or a dealer or manufacturer-distributor who uses an explosive as an ultimate consumer.

(6) "Blaster." A person employed by a user who detonates or otherwise effects the explosion of an explosive or who is in immediate personal charge and supervision of one or more other persons engaged in such activity.

(7) "Sale." This word and its various forms as used shall include delivery of an explosive with or without consideration.

(8) "Purchase." This word and its various forms as used shall include acquisition of any explosive by a person with or without consideration.

(9) "Highway." Shall mean any public highway in this state, including public streets, alleys and other thoroughfares, by whatever name, in incorporated cities and towns.

(10) "State fire marshal." The state treasurer as ex officio insurance commissioner.

History.—§1, ch. 29944, 1955; (1), (3), (4) and (5) by §1, (7)r. and subsequent subsections renum. by §2, ch. 59-83.

552.091 License or permit required of manufacturer-distributor, dealer, user or blaster of explosives.—It shall be unlawful for any person to engage in the business of a manufacturer-distributor of or dealer in explosives, or to transport explosives, or to acquire, sell, possess, store or engage in the use of explosives in this state, except in conformity with the provisions of this chapter. Each manufacturer-distributor, dealer, user or blaster, as such words are above defined, must be possessed of a valid and subsisting license or permit issued by the state fire marshal. A further requirement in the case of multiple storage of explosives is that each user maintaining more than one permanent storage magazine shall possess an additional license or permit, as herein set forth, for each such magazine. Such licenses and permits are as follows:

Licenses and fees therefor are required for the following:

Manufacturer-distributor	$25.00
Dealer	25.00
User	1.00

Permits and fees therefor are required for the following:

Blaster	$ 1.00

Said licenses and permits shall be issued by the state fire marshal for each license year beginning October 1 and expiring the following September 30. The forms of such licenses, permits, and applications therefor shall be prescribed by the state fire marshal; provided that in addition to such other information and data as that officer shall determine is appropriate and required for said forms there shall be included in said forms the following matters:

Applications for all licenses and permits shall set forth the purpose for which the license or permit is sought in relation to explosives, and the license or permit issued shall set forth such purpose. Each of such applications shall be in such form as to provide that the data and other information set forth therein shall be sworn to by the applicant or, if a corporation, by an officer thereof. Application for a blaster's permit shall include the name of the user employing such blaster, and the permit issued in pursuance thereof shall also set forth

the name of such user. A blaster's permit shall be valid solely for use by the holder thereof in his employment by the user named therein. No license or permit is required for persons detonating or otherwise effecting the explosion of explosives working under the immediate personal supervision and control of a person holding a blaster's permit. No license or permit shall be issued by the state fire marshal pursuant to an application therefor unless that officer shall determine from the information set forth in the application that the purpose for which the applicant seeks a permit or license falls within the purview of this chapter and that such purpose is not violative of any other laws of the state. The fees collected for such licenses and permits are hereby appropriated for the use of the state fire marshal in the administration of this chapter.

History.—§2, ch. 29944, 1955; §1, ch. 57-184; §3, ch. 59-83.

552.101 Possession without license prohibited; exceptions.—No person shall be possessed of an explosive unless he is the holder of a license or permit, as above provided, and possesses such explosive for the purpose covered by the license or permit he holds. Provided, that there is excepted from this provision common carriers, contract and private carriers as described in §552.12, possessed of an explosive in connection with transportation of the same in the ordinary course of their business; and that there is further excepted from this provision persons in possession of explosives during the period of time they are under the immediate personal supervision and control of a person holding a blaster's permit and then engaged in preparations for and in the detonating or otherwise effecting the explosion of an explosive. It shall be unlawful for any person holding a blaster's permit to allow persons working under him to be possessed of an explosive except during the period of time when such persons are loading or unloading or detonating or otherwise effecting the explosion of an explosive under the immediate personal supervision and control of said blaster.

History.—§3, ch. 29944, 1955; §4, ch. 59-83.

552.111 Maintenance of records by manufacturer-distributors and dealers; inspection.—Manufacturer-distributors and dealers shall keep accurate accounts of all inventories and sales of explosives. A manufacturer-distributor is authorized to sell explosives to dealers and users. All such sales shall be evidenced by invoices or sales tickets executed in triplicate, the manufacturer-distributor or dealer retaining the original and one copy and delivering the third copy thereof to the purchaser. No manufacturer-distributor or dealer shall sell any explosive without being satisfied that the purchaser thereof is duly licensed under the provisions of this chapter and authorized to purchase same and that said explosive is to be used by the purchaser for a purpose covered by the latter's license, with the exception that a manufacturer-distributor or dealer may make an original sale under this section to an unlicensed farmer providing the farmer applies for user's license prior to said sale. Such invoices or sales tickets so delivered to purchaser shall bear the name of the manufacturer or dealer and purchaser, date of sale, quantity sold, use for which explosive is purchased and address of purchaser. Said inventories and original invoices or sales tickets and copies thereof shall be retained by manufacturer-distributors or dealers and shall be made accessible and subject to examination by any peace officer of this state, and by the state fire marshal, either in person or through his duly authorized deputy or agent, at such intervals as the state fire marshal shall deem proper.

History.—§4, ch. 29944, 1955; §5, ch. 59-83.

552.112 Maintenance of records by users; inspection.—Each user, as defined herein, of explosives shall keep an accurate written inventory of all explosives possessed by him and a record of the use of such explosives. Said inventory and record of use of explosives shall be retained by users and shall be made accessible and subject to examination by any peace officer of this state, and by the state fire marshal, either in person or through his duly authorized deputy or agent, at such intervals as the state fire marshal shall deem proper.

History.—§6, ch. 59-83.

552.113 Reports of thefts, illegal use or illegal possession.—Any sheriff, police department or peace officer of this state shall give immediate notice to the state fire marshal of any theft, illegal use or illegal possession of explosives within the purview of this chapter, coming to his attention, and shall forward a copy of his final written report to the state fire marshal in Tallahassee.

History.—§6, ch. 59-83.

552.12 Transportation of explosives without license prohibited; exceptions.—No person shall transport any explosive into this state or within the boundaries of this state over the highways, on navigable waters or by air, unless such person is possessed of a license or permit; provided, there is excepted from the effects of this sentence common, contract and private carriers, as mentioned in the next succeeding sentence. Common carriers by air, highway, railroad or water transporting explosives into this state, or within the boundaries of this state (including ocean-plying vessels loading or unloading explosives in Florida ports), and contract or private carriers by motor vehicle transporting explosives on highways into this state, or within the boundaries of this state, and which contract or private carriers are engaged in such business pursuant to certificate or permit by whatever name issued to them by any federal or state officer, agency, bureau, commission or department, shall be fully subject to the provisions of this chapter; provided, that in any instance where the federal government, acting through the interstate commerce commission or other federal officer, agency, bureau, commission or department, by virtue

of federal laws or rules or regulations promulgated pursuant thereto, has preempted the field of regulation in relation to any activity of any such common, contract or private carrier sought to be regulated by this chapter, such activity of such a carrier is excepted from the provisions of this chapter.

History.—§5, ch. 29944, 1955; §7, ch. 59-83.

552.13 Promulgation of regulations by fire marshal.—The state fire marshal shall make, promulgate and enforce regulations setting forth minimum general standards covering manufacture, transportation (including loading and unloading) use, sale, handling and storage of explosives. Said regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons possessing, handling and using such materials, and shall be in substantial conformity with generally accepted standards of safety concerning such subject matters. It is hereby declared that regulations in substantial conformity with the published rules and standards of the institute of makers of explosives in relation to said subject matters other than locks and locking devices used to secure magazine doors and safeguard the storage of explosives shall be deemed to be in substantial conformity with accepted standards of safety concerning such subject matters. Such regulations shall be adopted by the state fire marshal only after a public hearing thereon pursuant to notice previously given to persons he shall deem interested therein.

History.—§6, ch. 29944, 1955; §8, ch. 59-83.

552.14 Penalties.—Any person who manufactures, purchases, keeps, stores, possesses, distributes, or uses any explosive with the intent to harm life, limb or property, shall, upon conviction, be guilty of a felony and liable to a fine of not more than $10,000.00 or imprisonment in the state prison not exceeding 10 years, or both. Any person who shall in an application for a license or permit as herein provided, knowingly make a false statement, or who shall obtain explosives under a false statement, pretense or identification, or who shall knowingly otherwise violate any provision of this chapter or regulation promulgated pursuant to this chapter, shall, upon conviction, be guilty of a felony and liable to a fine of not more than $1,000.00 or imprisonment in the state prison not exceeding 3 years, or both. Possession of explosives under circumstances contrary to the provisions of this chapter or such regulations shall be prima facie evidence of an intent to use the same for destruction of life, limb or property. Conviction under this section of any person holding a license or permit shall effect cancellation thereof.

History.—§7, ch. 29944, 1955; §9, ch. 59-83.

552.15 Revocation of license or permit; hearing.—The violation by any person possessed of a license or permit, of any provision of this chapter or regulation promulgated pursuant thereto, shall be cause for revocation or suspension of such license or permit, by the state fire marshal, after such officer shall determine said person guilty of such violation; but no such determination shall be made until hearing held on a specific written charge of violation, which charge together with notice of hearing thereon, have been delivered to such person not less than ten days prior to date of such hearing. The hearing shall be held in the office of the state fire marshal at Tallahassee, before him or his deputy duly designated for that purpose. At said hearing the state fire marshal and such person so charged shall have the right to adduce testimony and witnesses in relation to said charge; and the state fire marshal or his deputy presiding at such hearing shall be authorized to effectively administer oaths to witnesses as to the truth of their testimony. At the conclusion of such hearing and after consideration by the state fire marshal of the evidence produced thereat, should he find in his judgment that said charge of violation has been proved, he shall enter his order suspending or revoking the license or permit of the person charged. An order of suspension shall state the period of time of such suspension, which period shall not be in excess of one year from the date of such order. An order of revocation may be entered for a period of not exceeding two years; and during such period of time no license or permit shall be issued said person. If during the period between the filing of charges and entry of an order of suspension or revocation by the state fire marshal, a new license or permit has been issued the person so charged, any order of suspension or revocation shall operate effectively with respect to said new license or permit held by such person. After such hearing, should the state fire marshal determine that the charge has not been sustained, he shall enter his order to that effect.

Any person whose license or permit has been so suspended or revoked may have such order of revocation or suspension review by certiorari by the circuit court of Leon county in the manner and within the time provided by the Florida appellate rules. Any record required to be filed in such appeal shall be certified by the state fire marshal or his deputy. No such review shall operate as a supersedeas with respect to any such order of suspension or revocation unless so ordered by one of the judges of said circuit court.

History.—§8, ch. 29944, 1955; §25, ch. 63-512.

552.16 Exceptions.—Nothing contained in this chapter shall apply to the regular military or naval forces of the United States; or to the duly organized military force of any state or territory thereof; or to police or fire departments in this state, provided they are acting within their respective official capacities and in the performance of their duties.

History.—Comp. §9, ch. 29944, 1955.

552.17 Municipal ordinances, rules and regulations.—Nothing contained in this chapter

shall affect any existing ordinance, rule or regulation pertaining to explosives of any incorporated city or town in this state not less restrictive than the provisions of this chapter and regulations promulgated pursuant thereto, or affect, modify or limit the power of such incorporated cities or towns to make ordinances, rules or regulations hereunder pertaining to explosives within their respective corporate limits.

History.—Comp. §10, ch. 29944, 1955.

552.18 **Administration of chapter; personnel.**—The state fire marshal is authorized to employ such persons as he may deem qualified and necessary, and incur such other expenses as may be required, in connection with the administration of this chapter.

History.—Comp. §11, ch. 29944, 1955.

552.19 **Construction of chapter.**—The provisions of this chapter are cumulative and shall not be construed as repealing or affecting any powers, duties or authority of the state fire marshal under any other law of this state; provided that with respect to the regulation of explosives as herein provided, in instances where the provisions of this chapter may conflict with any other such law, the provisions of this chapter shall control.

History.—Comp. §12, ch. 29944, 1955.

CHAPTER 553

PLUMBING CONTROL LAW

553.01 Short title.—This chapter shall be known by the title of "Florida plumbing control act of 1951."

History.—Comp. §1, ch. 26904, 1951.

553.02 Purpose.—The purpose of this chapter is for the promotion of the public health and safety in this state by the regulation of plumbing contractors and plumbing.

History.—Comp. §1, ch. 26904, 1951.

553.03 Definitions.—For the purpose of this chapter, the following terms, when used in the chapter or the rules and regulations, or orders made pursuant thereto, shall be construed, respectively to mean:

(1) PLUMBING CONTRACTOR.—A plumbing contractor is any person, except an employee of a licensed, bonded plumbing contractor, who is engaged in or working at the business of plumbing in the state who has furnished the necessary bond that he will do all plumbing in this state in compliance with the minimum requirements of the state plumbing code and who obtains a state and county occupational license and any other license, when required, to engage in or work at the business of plumbing.

(2) PLUMBING.—Plumbing is the practice, materials, and fixtures used in the installation, maintenance extension and alteration of all piping fixtures, appliances and appurtenances in connection with any of the following: Sanitary drainage or storm drainage facilities, the venting system and the public or private water-supply systems, within or adjacent to any building, structure or conveyance; also the practice and materials used in the installation, maintenance, extension or alteration of the storm water or sewerage and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.

(3) PLUMBING FIXTURES.—Plumbing fixtures are installed receptacles, devices or appliances which are supplied with water or which receive or discharge liquids or other liquid-borne water, with or without discharge into the drainage system with which they may be directly or indirectly connected.

(4) MINOR MAINTENANCE.—Minor maintenance are those repairs involving only the working parts of a faucet or valve, the clearance of stoppage, repairing of leaks, or replacement of defective faucets or valves.

History.—Comp. §2, ch. 26904, 1951.

553.04 Bond of plumbing contractor; requisites; form.—

(1) Any person, except an employee of a licensed, bonded plumbing contractor, who desires to engage in or work at the business of plumbing in counties in the state that have, through their boards of county commissioners, elected to place said counties under the operation of this chapter, shall, before engaging or working at the business of plumbing in said counties, give bond in the sum of five thousand dollars, payable to the governor of the state and his successors in office with two or more good and sufficient sureties to be approved by the board of county commissioners of the county in which the said person intends to engage or work as a plumbing contractor and to be filed with the clerk of the circuit court of the county in which the said person intends to so engage or work, which said bond shall be conditioned upon the said person complying with the minimum requirements of the state plumbing code in regards to all plumbing done by said person in this state. Upon said plumbing contractor obtaining said bond and filing said bond with the clerk of circuit court as aforesaid, the said plumbing contractor is thereby entitled to have issued to him by the said clerk of circuit court, a certificate to the effect that said bond has been filed by said plumbing contractor in said county. Said certificate shall be accepted, in lieu of bond, by other counties in which said plumbing contractor may desire to work.

(2) The requisite of two sureties and justification of same shall not apply where surety is by a solvent surety company authorized to do business in this state.

(3) The form of said bond shall be substantially as follows:

Know all men by these presents that we, ..., (hereinafter called the Principal) and .....,
a corporation duly qualified and authorized under the laws of the State of Florida to act

as surety on bonds (hereinafter called the Surety) are held and firmly bound unto ——————————, Governor of the State of Florida, and his successors in office in the penal sum of Five Thousand and no/100 Dollars, lawful money of the United States of America, the true payment whereof well and truly to be made we do bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by this bond.

The condition of this bond is that if the above bounded Principal, the said ——————————, shall protect the State of Florida against all loss or damage occasioned by the negligence of the said Principal herein in failing to properly execute and protect all plumbing done by said Principal or the employees of said Principal or under the direction and supervision of said Principal and from all loss or damage occasioned by or arising in any manner from any such work done by said Principal or the employees of said Principal or under the direction or supervision of said Principal which is not caused by the negligence of the State of Florida or its agents, or employees, or by the negligence of the agents or employees of the county in which such plumbing is performed or by the negligence of the employees of the city in which such plumbing is performed, and further will keep and observe all laws of the State of Florida relating in any way to plumbing and all local ordinances where such plumbing is done, which relate in any way to plumbing and shall do all the plumbing in compliance with the minimum requirements of the State Plumbing Code and shall further without additional cost to the person for whom the plumbing is done, remedy any defects in said work due to faulty material furnished or used by said Principal and shall further reconstruct and repair any such defective plumbing work or material to the satisfaction of the County Plumbing Inspector of the County where such plumbing is done or to the satisfaction of the City Plumbing Inspector, where such plumbing is done in cities of seven thousand five hundred or more population or to the satisfaction of the city or district plumbing inspector, where such plumbing is done in cities and towns of less than seven thousand five hundred population or legislatively created governing, service or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, at any time within one year after the construction, alteration or installation thereof by said Principal, or under his direction or supervision and within forty-eight hours after notice from the County Plumbing Inspector or the City Plumbing Inspector or the district plumbing inspector to reconstruct or repair same, then this obligation shall become null and void; else to remain in full force and effect.

Any failure or default on the part of the Principal in remedying any defects in plumbing due to faulty workmanship and incorrect construction or due to faulty material furnished or used by Principal, shall give the person for whom such work is performed a direct right of action against the Principal and Surety under this obligation; provided, however, that no suit, action or proceeding by reason of any default whatever shall be brought on this bond, after one year from the date of the final completion of such plumbing by the Principal for such third person.

The premium anniversary date of this bond shall be on the 1st day of October of each year, the first anniversary being October 1, 1951.

Signed, sealed and delivered in the presence of:

——————————(SEAL)
Principal

——————————
——————————
As to the Principal

——————————(SEAL)

——————————
——————————
As to the Surety

By——————————
Attorney in fact

Approved:

——————————
Clerk of Board of County Commissioners of —————— County

History.—§3, ch. 26904, 1951; sub. §(1) am. §1, ch. 28252, sub. §(3) am. §1, ch. 28181, 1953.

553.041 Exemptions.—No person desiring to engage in or work as a plumbing contractor in the state in any county in which the board of county commissioners shall not have employed a plumbing inspector as provided in §553.05 shall be required to give bond as required by the provisions of §553.04 before engaging in or working as a plumbing contractor; anything in the provisions of this chapter to the contrary notwithstanding.

History.—Comp. §1, ch. 28038, 1953.

553.05 County plumbing inspectors; employment, qualifications, duties; exemption of certain municipalities and districts.—

(1) Each county in this state, acting through its board of county commissioners may, at the discretion of said board of county commissioners, employ one or more plumbing inspectors to inspect all plumbing installed within such county, except within the corporate limits of cities of seven thousand five hundred or more population. Each said plumbing inspector as aforesaid must be a practical plumber of not less than ten years' experience, shall not be connected with the plumbing business in any manner after such employment. The said plumbing inspector shall be under the direct supervision of the board of county commissioners and his salary shall be determined by said board. In counties having county health units, it would be desirable to have inspector work in cooperation with such units. The said

plumbing inspector shall be qualified to perform duties in matters pertaining to the gathering of evidence in any violation of the provisions of this chapter, swearing out warrants, appearing before courts in prosecution and any other matters pertaining to the enforcement of the provisions of this chapter, but said inspector shall not be entitled to receive any witness or other fees out of the fine and forfeiture fund of any county on account of his testifying as a witness or any other services rendered by him under this chapter. It shall be the duty of the plumbing inspector to inspect plumbing in his county with respect to mode of installation, materials used, workmanship employed, state plumbing code specifications met and testing used, all to comply with and conform with the minimum requirements of the state plumbing code and the laws of the state in regard to plumbing. Each said county, acting through its board of county commissioners, may exempt from county plumbing inspection cities and towns of less than seven thousand five hundred population and legislatively created governing, service or sanitary districts, which said cities and towns and districts have in existence or which enact plumbing code ordinances meeting or surpassing the minimum requirements for plumbing as set out in state plumbing code and which hire only plumbing inspectors who meet the minimum requirements and qualifications as hereinabove set out for county plumbing inspectors and which said cities and towns and districts conduct inspections complying with the minimum state requirements.

(2) Two or more counties may jointly hire one or more plumbing inspectors to act as inspectors or inspector for such counties jointly hiring such inspector or inspectors.

(3) It shall be the duty of the plumbing inspectors in cities of seven thousand five hundred or more population and also in cities and towns of less than seven thousand five hundred population and legislatively created governing, service or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, to inspect plumbing in their respective corporate limits with respect to mode of installation, materials used, workmanship employed, state plumbing code specifications met and testing used, all to comply with the minimum requirements of the state plumbing code and the laws of the state and the ordinances of the particular municipality or district in regard to plumbing. Cities of seven thousand five hundred or more population and also cities of less than seven thousand five hundred population and legislatively created governing, service or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners are hereby authorized to use their own inspection system, provided the said cities and towns and districts comply with the minimum requirements of the state plumbing code. Nothing herein shall prohibit such cities and towns and legislatively created governing, service or sanitary districts from enacting more stringent requirements in regard to plumbing and inspection than are set out in this act.

(4) If the board of county commissioners of any county so desires it may designate a qualified city or governing, service or sanitary district plumbing inspector as its county plumbing inspector.

History.—§ § 5, 7, ch. 26904, 1951; sub. § § (1),(3),(4) am. §1, ch. 28181, 1953.

553.06 State plumbing code adopted.—Chapter VIII of the Florida state sanitary code of the Florida state board of health adopted in accordance with chapter 381, is hereby adopted as the state plumbing code and all installations, repairs and alterations to plumbing shall from October 1, 1951 be performed in accordance with its provisions. At least three copies of said Chapter VIII of the Florida state sanitary code shall be kept on file at the board of county commissioners in each said county of the state and shall be marked with the words "County of ....., official copy."

History.—Comp. §6, ch. 26904, 1951.

553.07 Plumbing permits; inspection fee, amount, disposition; exception.—The board of county commissioners of each county, except within the corporate limits of cities of seven thousand five hundred or more population and also except within the corporate limits of cities and towns of less than seven thousand five hundred population and legislatively created governing, service or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, may charge and collect a reasonable fee for the cost of inspection, which fee shall not be less than one dollar and fifty cents for each plumbing permit issued for each building and one dollar for each fixture up to and including the first eight fixtures and fifty cents for each fixture thereafter installed in connection with such plumbing work in such county. The said permit shall be issued in triplicate, the original going to the plumbing contractor, one copy to be retained by the issuing officer, who should be the plumbing inspector in the county, and one copy to be filed in the records of the county depositor. All such fees shall be paid at the time of the application for a permit to do such work and prior to the installation of any plumbing material, and all such fees collected under this chapter shall be deposited by the plumbing inspector in the county depository and shall be used for the inspection of plumbing and the enforcement of this chapter in such county.

History.—§7, ch. 26904, 1951; am. §1, ch. 28181, 1953.

553.08 Inspectors for municipalities, service or sanitary districts; permits; inspection fee, amount.—Cities of seven thousand five hundred or more population and also cities and towns of less than seven thousand five hundred population and legislatively created governing, service or sanitary districts which have been exempted from county plumbing inspection by the board of county commissioners, shall employ one or

more plumbing inspectors to inspect plumbing within the corporate limits of said city or district, and for such inspection service shall charge and collect a reasonable fee for the cost of such inspections, which fee shall not be less than one dollar and fifty cents for each plumbing installation permit issued for each building and one dollar for each fixture up to and including the first eight fixtures and fifty cents for each fixture thereafter installed in connection with such plumbing to be performed within the corporate limits of such cities or districts; all such fees to be paid at the time of application for a permit to do such work and prior to the installation of any plumbing material. All fees collected under this chapter by the cities and districts shall be used for the inspection of plumbing and the enforcement of this chapter in such cities and districts.

History.—§8, ch. 26904, 1951; am. §1, ch. 28181, 1953.

553.09 Advisory council for uniform interpretation of plumbing code; members, terms, etc.—As an aid to uniform interpretation of the state plumbing code a voluntary advisory council may be organized immediately after October 1, 1951. This advisory council shall be composed of three members, one of whom shall be selected by the plumbing inspectors in this state, one of whom shall be selected by the plumbing contractors in this state and one of whom shall be selected by the Florida state board of health. The members of the said council shall serve terms in the following manner: The first person selected by the said board of health shall serve on said council for a period of three years; the first person selected by the said plumbing inspectors shall serve on said council for a period of two years; and the first person selected by said plumbing contractors shall serve on said council for a period of one year; all persons who shall thereafter serve on said council shall serve for a period of three years. The members of said council shall serve without pay unless their respective organizations which selected them shall see fit to reimburse them for their time and expenses incurred while serving on said council. The said council shall give its opinion and advice to the said plumbing inspectors of this state on the construction and interpretation of the state plumbing code. The construction and interpretation of the said state plumbing code as given by the said council shall be given great weight by the said plumbing inspectors of this state.

History.—Comp. §11, ch. 26904, 1951.

553.10 Penalty for violations.—Any person violating any provisions of this chapter shall upon conviction of each violation thereof be deemed guilty of a misdemeanor and be punished by a fine of not exceeding three hundred dollars and the cost of prosecution, or by imprisonment for a period of not exceeding sixty days, or by both such fine and imprisonment in the discretion of the court.

History.—Comp. §12, ch. 26904, 1951.

553.11 Construction, limitation of chapter.—

(1) Nothing herein contained shall limit or repeal the authority of the state board of health as granted by law; provided, however, this chapter shall not affect laws or parts of laws establishing plumbing codes nor shall it be applicable in counties where plumbing codes have been established by local or special laws or general bills of local application at the option of county commissioners of said counties.

(2) The provisions of this chapter shall not apply to minor maintenance or repairs of plumbing fixtures by persons, firms or corporations upon their own property provided the minimum requirements of the state plumbing code are observed.

(3) The provisions of this chapter shall not be construed as being in conflict with chapter 469, relating to plumbers except as to §469.06 which is hereby expressly repealed.

(4) Nothing herein contained shall prohibit any bona fide owner from personally installing plumbing in his own residence.

History.—Comp. §§4, 9, 10, 14, ch. 26904, 1951.

553.12 Counties excepted from chapter.—The provisions of this chapter shall not apply to:

(1) Any county having a population of less than 26,000 according to the last official census.

(2) Counties having a population of not less than 36,300 nor more than 37,000 according to the last official census.

(3) Any county having a population according to the last official census of not less than 50,000 nor more than 52,000.

(4) Counties having a population of more than 70,000 and less than 74,200, according to the latest official decennial census.

(5) Counties having a population according to the last official census of not less than 80,000 and not more than 90,000.

History.—§§2, 5, 14, ch. 26904, 1951; §1, ch. 29976, 1955; (4) a. by §1, ch. 61-44.

553.13 Counties exempt from provisions of chapter 28181, Laws of 1953.—The provisions of chapter 28181, acts of 1953 shall not apply to any county which is excepted from the provisions of this chapter in §553.12. The provisions of chapter 28181, acts of 1953 shall not apply to the counties of Madison, Taylor, Jefferson, Alachua, Lake, Bradford, Union, Levy, Dixie, Gilchrist, Columbia, Baker, Clay, Gulf, Calhoun, Washington, Wakulla, Franklin, Liberty, Santa Rosa, Walton, Holmes, and St. Johns, Flagler, Hardee, Glades, DeSoto, Highlands, Pasco, Sumter, Citrus, Hernando, Hamilton, Marion, Suwannee, Lafayette.

History.—§2, ch. 28181, 1953; §1, ch. 57-1993.

CHAPTER 554

INTER-AMERICAN CULTURAL AND TRADE CENTER

554.01 Inter-American center authority; creation.—There is hereby created and constituted, as an agency of the state the inter-American center authority for the purposes and with the powers herein set forth. Said authority shall have perpetual succession.

History.—Comp. §1, ch. 26614, 1951.

554.011 Use of names "interama" and "interama."—The Authority shall have the exclusive right to the use of the names "interama" and "inter-ama."

History.—Comp. §2, ch. 29830, 1955.

554.02 Members; number, terms, compensation, etc.—

(1) (a) The inter-American center authority shall consist of eleven members, one of whom shall be the governor of the state, whose tenure as a member of the authority shall run concurrently with his term of office as governor of the state. The other ten members of the authority shall be appointed by the governor to serve for terms of four years or until their respective successors are duly appointed and qualified; provided, however, that the original membership of the authority to be appointed as soon as possible after passage of this law shall be designated by the governor to serve the following terms, two of them for one year, three of them for two years, two of them for three years, and three of them for four years, beginning May 15, 1951, each to hold office for the period designated by the governor.

(b) Whenever the authority shall be indebted to Dade county or the city of Miami on account of any obligation or obligations incurred subsequent to January 1, 1959, the board of county commissioners of Dade county or the commission of the city of Miami, as the case may be, shall, at least thirty days prior to the date of the expiration of the term of any member of the authority or within ten days after the death, resignation or removal of any member of the authority during the period of such indebtedness, nominate at least three residents of the county or the city for appointment by the governor of one of such nominees as the successor of such member. In the event that the authority shall be indebted both to Dade county and to the city of Miami on account of obligations incurred subsequent to January 1, 1959, the board of county commissioners of Dade county shall, during the period of such indebtedness, make such nominations for the first successor, and thereafter during such period the commission of the city of Miami and said board shall alternate in the nomination of successors as members of the authority. In the event that any successor shall not be appointed by the governor from such nominees as herein provided within ten days after the governor shall have received the nominations for such successor, at least three additional nominations of residents of the county or of the city for such successor shall be made by the county commissioners of Dade county or by the commission of the city of Miami, as the case may be, for appointment by the governor of one of such nominees as such successor, and such nominations shall continue to be made as herein provided until such successor shall be appointed by the governor from such nominees. Subject to and in accordance with the foregoing provisions of this paragraph, so long as the authority shall be so indebted to Dade county three members of the authority shall be appointed by the governor from nominations made by the board of county commissioners of Dade county, so that during the period of any such indebtedness, to the extent permitted by and

subject to said provisions, three members of the authority at any one time in office, but not more than three, shall be members appointed by the governor from such nominations. Subject to and in accordance with the foregoing provisions of this paragraph, so long as the authority shall be so indebted to the city of Miami three members of the authority shall be appointed by the governor from nominations made by the commission of the city of Miami, so that during the period of any such indebtedness, to the extent permitted by and subject to said provisions, three members of the authority at any one time in office, but not more than three, shall be members appointed by the governor from such nominations.

(c) Subject to and in accordance with the provisions of paragraph (b) the nominees of the commission of the city of Miami may include members of the commission of the city of Miami and any such commissioners, if nominated and appointed by the governor, are hereby authorized to serve as members of the authority.

(d) Interim appointments to fill vacancies created by retirement of any member for any reason before the normal expiration of his appointed term shall be for the unexpired portion thereof. Retiring members shall be eligible for reappointment.

(2) Members of the authority shall not be entitled to compensation for their services as members but shall be reimbursed for traveling expenses as provided in §112.061, and may be compensated from funds available to the authority for any special or full-time service performed in its behalf, as officer or agent of the authority. Any member of the authority may be suspended by the governor for cause as provided in the constitution of the state and a successor appointed to fill the unexpired portion of the normal term of office of any member thus suspended.

History.—§2, ch. 26614, 1951; (1) §1, ch. 59-378; (2) §19, ch. 63-400.

554.03 Officers; quorum.—The governor of the state shall be a member of said authority and ex officio chairman thereof. The authority shall elect from among its members a standing chairman, who shall preside in the absence of the governor, a secretary and a treasurer who may or may not be members of the authority, and such other officers as the authority may deem necessary or expedient in the performance of its functions, whether or not they be members. The same person may serve both as secretary and treasurer, if thus designated. The authority may delegate to any of its members, officers, agents or employees such powers and duties as it may deem proper and shall establish by-laws and such rules of conduct and procedure as it may deem necessary to govern its own functioning. A majority of the members of the authority shall constitute a quorum. No vacancy in the membership shall impair the right of a quorum to exercise all of the powers, functions and duties of the authority.

History.—Comp. §3, ch. 26614, 1951.

554.04 Authority to sue and be a party to suits.—The authority may sue and be sued, plead and be impleaded, and complain and defend in all courts of law and equity, with respect to its contractual rights and obligations and to carry out its proper purposes and functions.

History.—Comp. §4, ch. 26614, 1951.
cf.—§554.20 Exemption from tort liability.

554.05 Location of offices.—The principal offices of the authority shall be in such place or places in Dade county, as the authority may from time to time designate.

History.—Comp. §5, ch. 26614, 1951.

554.06 Definitions.—The following words and terms employed in this chapter shall have the following meanings unless the context otherwise requires:

(1) The word "authority" shall mean the inter-American center authority hereby established or, if such authority shall be abolished, the board, commission, or officers succeeding to perform the functions thereof, or upon whom the powers given by this chapter to such authority shall be delegated by law.

(2) The term "reconstruction finance corporation" shall mean the reconstruction finance corporation of the United States or any other public corporation or agency of the United States existing, or created hereafter, to fulfill the purposes and functions of said corporation or its successor.

(3) The terms "center," "inter-American cultural and trade center," or "cultural and trade center" shall be considered synonymous and embrace all properties and activities integrated thereto wherever situate, in connection with the establishment, maintenance, and operation of such center and agencies and branches thereof.

(4) The word "improvements" shall embrace such repairs, replacements, additions, extensions and betterments of and to any then existing properties, buildings, plant or facilities as are deemed necessary in connection with the establishment, maintenance and operation of the inter-American cultural and trade center provided for herein.

History.—Comp. §6, ch. 26614, 1951.

554.07 Powers.—The authority shall have power:

(1) To have a seal and to alter the same at pleasure;

(2) To acquire, hold, lease and dispose of real and personal property for its authorized purposes;

(3) To own, operate, maintain, repair and improve its facilities, wherever located;

(4) To acquire in its own name by purchase, grant, gift or lease, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with and subject to provisions of any and all laws applicable to condemnation of property for public use, real property or rights or ease-

ments therein, or franchises necessary or convenient for its purposes, and to use same so long as its existence shall continue, and to lease or make contracts with respect to the use or disposal of same, or any part thereof, in any manner deemed by the authority to be in the best interest of the center, but only for the purposes of the authority, and in any condemnation proceeding such orders may be made by the court having jurisdiction of the suit, action or proceeding, as may be just to the authority and to the owners of the property to be condemned, and no property shall be acquired under the provisions of this chapter upon which any lien or other encumbrance exists, unless at the time such property is so acquired, a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance; provided, however, that no condemnation of property may be made by the authority unless or until at the time of institution of the condemnation proceedings a showing is made that development of the entire property to be taken, is to be made within a period of two years from the institution of the condemnation proceedings.

No property after condemnation shall be leased or let for the same or similar use to which it was being put before condemnation, but must be used exclusively by the authority, or, if leased, or let, it may only be leased or let for use solely for purposes of the authority.

(5) To employ consulting engineers, architects, superintendents or managers, accountants, inspectors and attorneys, and such other employees as may be deemed necessary, and to prescribe their powers and duties and to fix their compensation;

(6) To contract with any department or agency of the United States, or of this state, or with any county or municipality in the state, with Latin American and other countries, with industries, individuals, partnerships, corporations or others, including the granting of franchises to gas, light, power, telephone and other public utilities, under the jurisdiction of the Florida public utilities commission and certified by this commission to serve this area, upon such terms and conditions as the authority finds to be in the authority's best interests, with respect to the establishment, construction, maintenance, operation and financing of an inter-American cultural and trade center in or near the city of Miami, in Dade county, with facilities elsewhere as occasion may demand, as a permanent enterprise created for the purposes and with the powers herein stated; provided, however that such power to grant franchises shall not be exercisable hereunder with respect to any public utility service during the effective period, or extension thereof, of a county-wide franchise relating to such service heretofore granted by the board of county commissioners of Dade county; and provided further that no power herein granted to the authority shall enable it to limit, restrict, modify or otherwise change any of the terms and conditions of any such county-wide franchise or to levy any tax or other imposition upon the property, revenues, operations or activities of the grantee of any such county-wide franchise, or to take any action which would affect the amount of any taxes collected by Dade county under any such franchise;

(7) To acquire by grant or purchase from the city of Miami, or any municipality, county or state agency, any existing property, real or personal, by it now owned, or hereafter acquired, suitable for the uses of such a center, and to improve, operate and maintain the same for the purposes herein stated;

(8) To accept loans or grants of money or materials or property at any time from the United States or any agency or instrumentality thereof, including the reconstruction finance corporation, and upon such terms and conditions as the United States or such agency or instrumentality, including the reconstruction finance corporation, may impose;

(9) To make and enter into all contracts or agreements either with or without competitive bidding, as the authority may determine, which are necessary or incidental to the performance of its duties or the execution of its powers under this chapter;

(10) To borrow money for any of its authorized purposes and for expenses incidental thereto including expenses incurred during the period of organization and construction prior to the operation of the center, and to issue negotiable revenue bonds payable solely from revenues accruing from the operation of such center and from authorized activities incidental thereto; and to provide for the payment of same; and to fix rates and to make collections for the use of the facilities and services of the authority; and to execute mortgages or trust indentures, as may be required, for the financing of the authorized activities of the authority;

(11) To exercise any power not in conflict with the constitution and laws of the state or the United States which is usually possessed by private corporations or public agencies performing similar or comparable functions;

(12) To establish and maintain proper and adequate zoning and building requirements and restrictions upon property owned or controlled by it, including high standards of design and construction, and to institute action to compel the observance of same in any court of competent jurisdiction. All parties erecting any improvements or construction upon property owned or controlled by the authority, under permit from it, lease or contract of any character, shall observe said building and zoning requirements, restrictions and standards, as they may from time to time be promulgated by the authority. No improvements or alterations shall be made to or erected upon any property owned or controlled by the authority, under lease or otherwise, without its permission in writing. All courts of

competent jurisdiction are hereby authorized and instructed to issue such temporary or permanent restraining orders as may be deemed proper to compel observance of the zoning and building requirements, restrictions and standards duly promulgated by the authority or others as the court may deem just and proper;

(13) To engage in any lawful business or activity deemed by it to be necessary, convenient or useful in the full exercise of its powers to establish, finance and operate an inter-American cultural and trade center under the provisions of this chapter, including the leasing for revenue of any land, improved real estate, or personal property directly related to the conduct of the center or reserved for its future use or expansion. Within the meaning of this chapter any use of the property of the authority, real or personal, shall be deemed essential, convenient or useful which stimulates international and domestic patronage, trade, good will and the advancement of living standards which enhances the attractiveness of the center or the efficiency of its operations, or which provides revenue to the authority from said property pending its future use for any of the purposes of the center;

(14) To do all lawful things necessary and convenient to carrying out the powers and purposes expressed in this chapter.

History.—§7, ch. 26614, 1951; (6) §1, ch. 63-197 and §1, ch. 63-279.

554.071 Additional powers and authority.— In addition to the other powers and authority granted by chapter 554, and by any other law to the inter-American center authority (hereinafter sometimes called the authority), an agency of the state duly created and established by chapter 554, the authority shall have the following powers:

(1) To fix and collect charges for admission to the inter-American cultural and trade center mentioned in said chapter 554, and each or any part thereof, and for the privilege of entering or staying in any exhibition, place of amusement or other facility within the boundaries of the center, which power shall not be affected by the construction, reconstruction, improvement, repair or maintenance by the state road department or any other agency or political subdivision of the state of any roads within or approaching the center;

(2) To enter into contracts and leases with any department or agency of any other state or municipality or political subdivision thereof with respect to the establishment, construction, maintenance or operation of any buildings or structures within the center;

(3) To enter into contracts with any agency of the state or with Dade county or any municipality therein for the purpose of providing police and fire protection, water, sanitation and any other public services deemed advisable by the authority, and any such agency, county or municipality is hereby authorized to enter into such contracts; and

(4) To pledge to the payment of its bonds and obligations any revenues or other funds accruing to the authority.

History.—Comp. §1, ch. 29830, 1955.

554.072 The Graves tract; power to acquire.—

(1) The authority shall have power to acquire by grant or purchase from the city of Miami or any other municipality, or from any county, state agency, corporation for profit, nonprofit corporation or any person, any property, real or personal (including those properties in Dade county, known as "the Graves tract"), and to improve, operate and maintain any such property, and any such municipality, county or state agency owning any such property is hereby authorized to grant, convey or sell such property to the authority without any limitation or restriction as to the use or disposition thereof by the authority and without any limitation or restriction as to consideration or terms or conditions of any sale thereof.

(2) Notwithstanding the provisions of or the limitations or restrictions contained in ch. 30990, special acts of 1955, or any other law, general or special, the authority shall have power to grant, convey, sell, lease, trade, exchange, mortgage, encumber in any manner or otherwise dispose of any such property on such terms and conditions and for such prices or consideration as it shall deem proper and for the best interests of the authority.

(3) No mortgage or encumbrance of any such property by the authority shall be deemed to be a debt of this state or of any municipality or county therein or a pledge of the faith and credit of the state or of any such municipality or county, but any bonds secured by such mortgage or encumbrance shall be payable solely from the funds designated therefor and/or from the security therefor, including any property so mortgaged or encumbered.

(4) It is hereby determined and declared that the powers herein conferred and the exercise of any such powers are for a public purpose.

History.—Comp. §§2-5, ch. 31415, 1956.

554.08 Issuance of revenue bonds.—

(1) The authority shall have power and is hereby authorized at one time or from time to time to provide by resolution for the issuance of negotiable revenue bonds of the authority for the purpose of paying all or any part of the cost, as hereinabove set forth, of establishing, maintaining and operating an inter-American cultural and trade center. The principal and interest of such bonds shall be payable solely from the special fund or funds herein authorized to be provided for such payment. The bonds of each issue shall bear such date or dates and interest at such a rate or rates, not exceeding six per cent per annum, payable as provided by contract, and shall ma-

ture at such time or times not exceeding forty years from the date or dates thereof, and be payable in such medium or media of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. The authority shall determine the forms and denominations of the bonds, including any interest coupons attached thereto, and their manner of execution, and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state. In case any officer whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as though he had remained in office until such delivery. All revenue bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments laws of the state. The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provisions may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest, and for the reconversion of bonds registered as to both principal and interest into coupon bonds. The authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interest of the authority, but no such sale shall be made at a price so low as to result in the payment of interest on the money received therefor at more than six per cent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation, the amount of any premium to be paid on redemption of any bonds prior to maturity. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. The authority may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(2) This chapter shall be complete authority for the issuance of the bonds hereby authorized. Any restrictions, limitations or regulations relative to the issuance of such bonds which may be contained in any other act shall not apply to the bonds issued under this chapter. Such bonds may be issued without any other proceedings, the happening of any event or the existence of anything other than those proceedings, conditions and things which are specified or required by this chapter. Any resolution providing for the issuance of revenue bonds under the provisions of this chapter shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular, special or adjourned meeting of the authority by a majority vote of the entire membership of the authority.

(3) Any resolution providing for the issuance of bonds and any trust indenture hereinbefore or hereinafter mentioned may also contain such limitations upon the issuance of additional bonds as the authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or by such trust indenture. All monies received from any bonds issued under the provisions of this chapter shall be applied solely to the purposes for which the bonds shall have been authorized or to the sinking fund or funds created for the payment of such bonds. There shall be and hereby is created and granted a lien upon such monies until so applied in favor of the holders of such bonds or in favor of the designated trustees for the benefit of the holders thereof.

History.—Comp. §8, ch. 26614, 1951.

554.09 Bonds not to be debt of nor pledge credit of state, counties or municipalities.—Bonds issued under the provisions of this chapter shall not be deemed to be a debt of this state or of any municipality or county therein or a pledge of the faith and credit of the state or of any such municipality or county, but such bonds shall be payable solely from the funds designated therefor, and/or from such other security therefor as may lawfully be provided. All such bonds shall contain a statement on their face to the effect that there is no obligation to pay the same or the interest thereon except from revenues or from the proceeds of such other property as may be lawfully pledged to secure the bonds, or both, as the case may be, and that there are not pledged for the payment of the principal or interest of such bonds the faith and credit of the state or of any municipality or county in the state. No holder of any of the bonds of the authority, regardless of the character of the security pledged for their payment, shall ever have the right to compel any exercise of the taxing power on the part of the authority or of any municipality or county or of any other agency possessing the taxing power, to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the authority or of any municipality or county in the state, except to the extent that such bonds or certain issues thereof, may be lawfully and specifically secured by mortgage lien upon property owned by the authority as hereinafter set out. To the full extent any state agency may now or hereafter lawfully encumber its property by mortgage as security for borrowed money,

without thereby being deemed to have pledged the faith or credit of the state or of any county, municipality or other subdivision thereof, this authority is hereby empowered to encumber its property by mortgage for the purposes expressed in this chapter.

History.—Comp. §9, ch. 26614, 1951.

554.10 **Bonds; pledge of security for.**—Within the powers granted in §554.09, the authority may further secure its revenue bonds by a mortgage or mortgages upon any of its property, or by a trust indenture by and between the authority and a corporate trustee, which corporate trustee may be any trust company or bank having the powers of a trust company within or outside of this state. Such mortgage or trust indenture may pledge or assign all or any part of the revenues and earnings to be received in connection with the operation of the inter-American cultural and trade center, and may in addition, or in the alternative, encumber and create a lien upon any or all of the real or personal property of the authority, to secure the payment thereof. The resolution providing for the issuance of such bonds, the mortgage itself, or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bond holders as may be reasonable, proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the construction, acquisition, improvement, maintenance, operation, repair and insurance of the trade center properties acquired, or to be acquired, and the custody, safeguarding and application of all moneys, and may also provide that such center or any part thereof shall be constructed and paid for under the supervision and approval of consulting engineers employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor, and may also require that security given by contractors and by depositaries of the proceeds of the bonds or revenues or other moneys pertaining thereto be satisfactory to such purchasers. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depositary and to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Such trust indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of state agencies or private corporations. In addition to the foregoing, such trust indentures may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture may be treated as a part of the cost of establishing, maintaining, or operating the center or as a part of the cost of properties of the authority.

History.—Comp. §11, ch. 26614, 1951.

554.101 **Bonds of authority approved securities for investment of public funds.**—Bonds issued by the authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the state, counties, other political subdivisions, cities or towns, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries may properly and legally invest any funds, including capital belonging to them or within their control.

History.—Comp. §5, ch. 29830, 1955.

554.102 **Tax exemption.**—The creation of the authority and the carrying out of its purposes is in all respects for the benefit of the people of this state and is a public purpose, and as the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by law, any and all bonds issued by the authority, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state, and said authority shall be exempted from any and all admissions and other excise taxes heretofore or hereafter levied or pursuant to authority granted by the state.

History.—Comp. §4, ch. 29830, 1955.

554.11 **Trust funds.**—To the extent provided in any trust indenture securing bonds or other obligations issued or incurred by the authority all moneys, or any portions thereof specified in the indenture, received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds, as grants or other contributions, or as revenues and earnings, shall be deemed to be trust funds, and shall be held and applied as provided in the indenture and in this chapter. The authority shall, in the resolution or resolutions providing for the issuance of revenue bonds, or in the trust indenture or indentures accompanying such bond issues, provide for the payment of the proceeds of the sale of such bonds, and of the earnings and revenues pledged for their repayment, to an officer or officers who, or to an agency, bank or trust company which, shall act as trustees of such funds, and the designated trustees shall hold and apply the same for the purposes hereof, subject to the provisions of this chapter and of the resolutions and trust indentures governing the terms of said bond issues; provided that to the extent that such funds so held by the trustee or trustees are not derived from any form of taxation or are not the product of legislative appropriation, they may be applied and expended by the trustee or trustees in any manner permitted by the resolution and trust indenture securing said bonds, notwithstanding any statutory provision or administrative regulation limiting allowances, compensation or oth-

er expenditures paid by tax-supported state agencies.

History.—§10, ch. 26614, 1951; §1, ch. 63-193.

554.12 Fixing and revising charges for admissions, concessions, facilities, etc.; disposition.—

(1) The authority shall fix, and revise from time to time as may be necessary any and all rates and other charges for admissions, displays, concessions, services and facilities. All such rates and other charges shall be so fixed and adjusted as to provide funds in such order of preference as the authority may determine, sufficient to pay (a) the cost of maintaining, repairing and operating the trade and cultural center, within the absolute discretion of the authority, for extraordinary depreciation, repairs, insurance, replacement and expansion of building, facilities and equipment, and other reserves required by bond resolutions or trust indentures; and (b) the principal of and the interest on the revenue bonds issued by the authority under the provisions of this chapter, as the same shall become due, and any premium required for the redemption of such bonds before maturity, and all sinking fund and other requirements provided by the resolutions authorizing the issuance of such bonds or by the trust indentures.

(2) Such rates or other charges shall not be subject to supervision or regulation by any other state commission, board, bureau or agency. The revenues derived as aforesaid, except such part thereof as may be required to pay the cost of maintaining, repairing and operating such trade and cultural center and to provide such reserves therefor as may be required in the resolutions authorizing the issuance of the bonds or in the trust indentures, shall be set aside at such regular intervals as may be provided in such resolutions or trust indentures, in a sinking fund or funds which are hereby pledged to, and charged with the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the principal of the bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) any premium upon bonds retired by call or purchase as herein provided. The use and disposition of such sinking fund or funds shall be subject to such regulations as may be provided in the resolutions authorizing the issuance of the revenue bonds or in the trust indentures, but, except as may otherwise be provided in such resolutions or trust indentures, each such sinking fund shall be for the benefit of all bonds of the issue or issues which it secures without distinction or priority of one over another. All bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

History.—Comp. §12, ch. 26614, 1951.

554.13 Remedies of bond and trust indenture holders. — Any holder of bonds issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee under the trust indentures, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this chapter or by such resolution or trust indenture to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of rates, rentals, fees, and other charges for the facilities furnished by the authority.

History.—Comp. §13, ch. 26614, 1951.

554.14 Appointment and duties of receivers.—

(1) In the event the authority shall default in the payment of the principal of or the interest on any of the bonds as the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of ninety days, or in the event the authority or its officers, agents, or employees, or the trustees named in the trust indenture for any bond issue, shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of the bonds, any bondholder or the trustees therefor, subject to the provisions of the resolutions authorizing the same or of the trust indentures, shall have the right to apply in any appropriate judicial proceeding to the circuit court in chancery or any court having jurisdiction, for the appointment of a receiver of the moneys accruing from the operation of the said inter-American cultural and trade center.

(2) Notwithstanding anything in this section to the contrary, no such receiver shall have the power to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority and useful for or employed in connection with the operation of such trade and cultural center, and the authority of such receiver shall be limited to such portion of said trade and cultural center, and the affairs thereof, as may be placed in receivership. No court shall have jurisdiction to enter any order or decree requiring or permitting such receiver to sell, mortgage, or otherwise dispose of any such assets, except upon foreclosure and sale of specific property or properties covered by specific mortgage liens.

(3) Whenever such defaults shall have been fully cured and made good by the authority or the receiver, said receivership shall thereupon be terminated and the authority shall thereupon resume the collection of said monies.

History.—Comp. §14, ch. 26614, 1951.

554.15 Refunding bonds.—The authority is hereby authorized to provide by resolution for the issuance of revenue-refunding bonds of the authority for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority for the additional purpose of constructing additions, improvements, extensions or enlargements of the inter-American cultural and trade center or any part thereof. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

History.—§15, ch. 26614, 1951; §3, ch. 29830, 1955.

554.16 Declaration of public purpose.—It is hereby determined and declared that the creation of the authority and the carrying out of its purposes is in all respects for the benefit of the people of this state and is a public purpose and that the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter, and the state covenants with the holders of the bonds issued under the provisions of this chapter that the authority shall not be required to pay any taxes or assessments upon any of the property acquired by it under its jurisdiction, control, possession or supervision or upon its activities in the establishment, maintenance and operation of an inter-American cultural and trade center, or upon any revenues received by the authority. It is further determined and declared that all exhibits within the center for which no admission charge is required by the exhibitor, and structures housing the same, shall be deemed to be property held and used exclusively for scientific or educational purposes and exempt from ad valorem taxation.

History.—§16, ch. 26614, 1951; §24, ch. 57-1; §1, ch. 63-65.

554.17 Proceedings and contracts; ratification.—Any proceedings which have heretofore been taken by the authority and any contracts which have heretofore been entered into by the authority which are authorized under the provisions of this chapter shall be regarded as being taken or entered into under the authority of this chapter, and such proceedings and such contracts are hereby ratified and confirmed.

History.—Comp. §17, ch. 26614, 1951.

554.18 Bonds; validation.—The power of the authority to issue bonds under the provisions of this chapter may be determined and such bonds may be validated and confirmed by the circuit court of Dade county, under the provisions of chapter 75, and laws amendatory thereof or supplementary thereto.

History.—Comp. §18, ch. 26614, 1951.

554.19 Bonds; constitute contract with holders.—While any of the bonds issued by the authority under the provisions of this chapter shall remain outstanding, the powers, duties or existence of said authority or of its officers, employees or agents shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the holders of said bonds. The provisions of this chapter shall be for the benefit of the state, the authority and the holders of any such bonds, and upon the issuance of bonds under the provisions of this chapter, shall constitute a contract with the holders of such bonds.

History.—Comp. §19, ch. 26614, 1951.

554.20 Exemption from tort liability. —Neither the authority nor any member, agent or employee of the authority shall ever be held liable or accountable for or because of any injuries or damages suffered by spectators, patrons, visitors, invitees, licensees or others, affected by the operation of the said cultural and trade center, either by reason of any failure of the authority to provide facilities or any other act, event or omission arising out of or developing from the operation of said cultural and trade center, independently of contract.

History.—Comp. §21, ch. 26614, 1951.
cf.—§554.04 Authority to sue and be a party to suits.

554.21 Cooperation between state agencies. —All commissions, bureaus, boards, departments and agencies of the state are hereby authorized and requested to extend to the authority every possible assistance in the establishment, financing, construction, maintenance and operation of the center, including such use of their resources, funds, and facilities as they may deem proper and within their authority to utilize for such purposes; and the inter-American center authority is hereby authorized and requested to extend to all other commissions, bureaus, boards, departments and agencies of the state the fullest assistance and cooperation in the performance of their functions and the attainment of their objectives.

History.—Comp. §22, ch. 26614, 1951.

554.22 Designation of roads authorized.—The state road department is hereby authorized to designate all roads within the center and approaching it as a part of the state road system and to expend state road funds to construct, reconstruct, improve, repair and maintain, as a part of the state road system, all roads within the boundaries of said center and leading to it from any other state roads. Such roads shall be located, relocated, constructed, reconstructed, improved, repaired and maintained in such manner as shall be agreed upon between said state road department and the inter-American center authority, both of which are hereby authorized and empowered to enter into such agreements.

History.—Comp. §23, ch. 26614, 1951.

554.23 Contracts with counties and municipalities authorized.—Counties, cities and mu-

nicipalities of the state are specifically empowered with the right to enter into agreements with the authority and to contract with the authority to grant to it, sell or lease to it any of their real and personal property (including franchises, rights, privileges, easements, or other property or interest therein) necessary for the full exercise, or convenient or useful for the carrying on, of any of the authority's powers pursuant to the provisions of this chapter.

History.—Comp. §24, ch. 26614, 1951.

554.24 Corporate powers.—The inter-American center authority which is hereby created and constituted an agency of the state shall be a public corporation having all the usual and ordinary corporate powers.

History.—Comp. §25, ch. 26614, 1951.

554.25 Liberal construction.—This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to affect the purposes hereof.

History.—Comp. §20, ch. 26614, 1951.

554.26 Short title.—This chapter shall be known and may be cited as the "Inter-American Cultural and Trade Center Act."

History.—Comp. §27, ch. 26614, 1951.

554.27 Foreign-trade zone. —

(1) The authority may make application to the secretary of commerce or other proper official or agency of the United States for the purpose of establishing, operating and maintaining foreign-trade zones in the inter-American cultural and trade center, providing for the establishment, operation and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, trade and other purposes.

(2) The authority may select and describe the location of the zone for which the application is made, and make such rules and regulations concerning the operation, maintenance, and policing of the zone as may be necessary to comply with the act of congress creating foreign-trade zones, made in accordance with acts of congress, relating to foreign-trade zones.

History.—Comp. §1, ch. 29828, 1955.

554.28 Bonds of inter-American development bank; approved investments.—Any bonds or other obligations of the inter-American development bank shall be and constitute legal investments for banks, savings banks, and insurers, the provision of any other law to the contrary notwithstanding, provided that the investment in such obligations by a bank shall not exceed twenty-five per cent of the unimpaired capital and surplus of such bank.

History.—§1, ch. 63-134.

CHAPTER 555

OUTDOOR THEATRES

555.01 Purpose. — To promote and insure safe ingress and egress to and from state roads of vehicular traffic by preventing the creation of hazardous conditions and locations in the construction of outdoor theatres.

History.—Comp. §1, ch. 28085, 1953.

555.02 Definition and scope.—For the purpose of this chapter, an outdoor theatre is a place of outdoor assembly used for the showing of plays, operas, motion pictures and similar forms of entertainment in which the audience views the performance from self-propelled vehicles parked within the theatre enclosure. The requirements of this chapter shall not apply to existing outdoor theatres, but shall apply only to outdoor theatres which may be constructed after June 2, 1953.

History.—Comp. §2, ch. 28085, 1953.

555.03 Entrances and exits.—All entrances and exits for outdoor theatres shall comply with the regulations of the state road department for driveways from property abutting state highways and the following additional requirements:

(1) Not more than one entrance shall be provided for each access road but each such entrance may be divided into two roadways and channelized to properly provide for vehicles turning right or left from the highway.

(2) That portion of an entrance or exit lying within the highway right-of-way shall comply with the regulations of the authority in charge of the maintenance of the highway or in the event this authority has no regulation, it shall comply with regulations prescribed by the state road department of the State of Florida.

(3) Not more than two exits shall be provided for each access highway but such exit may be suitably channelized to provide for right and left turns to the highway, and not more than one traffic lane shall be permitted for each traffic lane on the highway available to vehicles leaving the theatre.

(4) That no entrance or exit on a state road of the primary state maintained system, located outside an incorporated city or town of this state, shall be located within five hundred feet of its intersection with another state road on the primary state maintained system.

(5) Enclosures surrounding the theatre portion of the property shall begin not less than two hundred feet from the center line of the nearest state road.

History.—Comp. §3, ch. 28085, 1953.

555.04 Vehicle storage.—Sufficient area shall be provided between the highway and the ramp area to provide storage space for vehicles equal to not less than fifteen per cent of the theatre capacity, and of that storage space so provided not less than five per cent of the theatre capacity shall be provided between the highway and the ticket booth. In all cases, sufficient storage space shall be provided so that vehicles will not back on the traveled way of the highway. Storage area shall be calculated on the basis of one hundred sixty-two square feet per vehicle.

History.—Comp. §4, ch. 28085, 1953.

555.05 Location of tower.—The screen shall be so oriented that the picture is not visible from any existing major highway. This requirement does not apply to towers already erected. For the purpose of defining a "major highway", it shall be a primary road as designated by the state road department.

History.—Comp. §5, ch. 28085, 1953.

555.06 Ramps and speaker equipment.—

(1) Ramps shall be spaced not less than thirty-eight feet apart. The ramps shall be so designed that any vehicle can move from its parked position to the exit driveway without being required to back up.

(2) An individual speaker shall be provided for each vehicle accommodated in the ramp area. All speakers shall be equipped with sufficient cord to permit the speaker to be placed inside the vehicle.

History.—Comp. §6, ch. 28085, 1953.

555.07 Lighting. — All entrance and exit driveways shall be adequately lighted and properly marked to avoid congestion and confusion and shall remain lighted throughout the performance and until the audience has left the area.

History.—Comp. §7, ch. 28085, 1953.

555.08 Qualifying certificate.—From and after September 1, 1953, it shall be unlawful for the tax collectors of the several counties of the state to issue state and county occupational licenses to any persons applying for the required license to operate an outdoor theatre, where the theatre was completed after September 1, 1953, unless and until proof of compliance with the applicable provisions of this chapter and the regulations of the state road department are met by tendering and exhibiting to such tax collector at the time of making such application a qualifying certificate duly issued by such road department proving such compliance.

History.—Comp. §8, ch. 28085, 1953.
cf.—Ch. 205 License taxes.

CHAPTER 556

BEDDING INSPECTION

556.01 Short title. — This chapter shall be designated the "Bedding inspection law" and the same shall be deemed an exercise of the police powers of the state for the health and welfare of the people of the state.

History.—Comp. §1, ch. 28173, 1953.

556.02 Definitions.—Definitions as used in this chapter:

(1) "Person" shall include all persons, masculine as well as feminine, corporations, partnerships, limited partnerships, societies, individual proprietorships, and voluntary associations; it shall import the plural and the singular, as the case demands.

(2) "Sale", "sell" or "sold" includes offering or exposing for sale or give away or exchange or lease or consigning or delivering in consignment for sale, exchange or lease or holding in possession with like intent. The possession of any article of bedding, or filling materials, as herein defined, by any maker or dealer, or his agent or servant in the course of business, shall be presumptive evidence of intent to sell.

(3) "Bedding" or "article of bedding" includes any mattress, pillow, cushion, quilt, quilted pad, quilted bedspread, comforter, upholstered spring bed, box spring, davenport, daybed or couch, sleeping bag, auto bed, beach pad, chaise lounge pad, bolster, quilted or padded headboard, or any other item containing filling material used or intended for use for sleeping purposes.

(4) (a) "Filling material" includes any hair, down, feathers, wool, cotton, kapok, excelsior, natural or synthetic rubber, synthetic fiber, or any other soft material used in the manufacture of and for filling articles of bedding.

(b) "Processed filling material" shall mean any filling material manufactured, prepared or fabricated by any process for use in the manufacture or renovating of articles of bedding and shall include cotton felt or batting; shredded or garnetted clippings; willowed fibers; wool felt; prepared hair, curled or uncurled, felted or rubberized; prepared feathers and down; natural or synthetic rubber in any form; jute felt; sisal pads, kapok or any similar materials.

(5) The term "new" shall refer to and mean any article of bedding or filling material which has not been previously used for any purpose; provided, however, that manufacturing processing shall not be considered a previous use.

(6) The term "used" shall refer to and mean any article of bedding or filling material or portion thereof of which a previous use, other than subjecting the same to manufacturing processing has been made.

(7) "Manufacture", "making", "make", or "made" includes altering, repairing, finishing or preparing articles of bedding or filling materials for sale, including remaking or renovating when done by any person except the owner.

(8) Whenever in this chapter the singular is used the plural shall be included and where the masculine gender is used the feminine and neuter shall be included.

(9) The word "shoddy" shall mean garnetted or shredded clippings when made in whole or in part from old or worn rags, clothing or second-hand fabric.

(10) The term "garnetted clippings" shall refer to and mean any material which has been made into fabric and subsequently cut up, torn up, broken up or ground up and has been run through a garnet machine and thoroughly processed.

(11) The term "shredded clippings" shall refer to and mean any material which has been made into fabric and subsequently cut up, torn up, broken up or ground up, but which has not been run through a garnet machine and thoroughly processed.

(12) The word "felt" shall mean material which has been carded in layers or sheets by a garnet or felting machine.

(13) The word "board" shall mean the state board of health.

(14) The word "composite" refers to and means any article of bedding or filling material containing both new and used materials.

(15) "Renovator" shall mean any person who repairs, renovates, makes over, recovers, restores or renews any article of bedding for the owner only and not for sale.

(16) "Supply dealer" shall mean any person who manufactures, makes, or prepares for sale any processed filling materials in bags, bales, or containers, concealed or not concealed, to be used or intended for use in articles of bedding.

History.—§2, ch. 28173, 1953; (3) and (4) by §1, (15) and (16) N. by §2, ch. 59-135.

556.03 Administration; fees.—

(1) The state board of health through its officers and employees is hereby charged with the administration and enforcement of this law. The board shall appoint one or more inspectors and other necessary personnel who shall be qualified by either experience or training and who shall not be interested in either the manufacture or renovation or sale of bedding. It shall be the duty of the board to enforce and supervise the inspection of all bedding and filling material subject to the

provisions of this chapter and to enforce the provisions thereof within this state.

(2) The state board of health is hereby authorized and empowered to make such reasonable regulations as may be necessary for the administration of this chapter and to amend or repeal such regulations; provided, however, such regulations shall not enlarge the scope of this chapter, and pertain only to the formal procedure.

(3) All fees and proceeds from the sale of inspection stamps collected under the provisions of this chapter shall be paid to the state treasurer and deposited into the general revenue fund. The expenses of the state board of health incurred in the discharge of its duties under this chapter including salaries and expenses of inspectors, employees and any other necessary expenses incurred under this chapter shall be paid from moneys appropriated for that purpose. The state board of health shall include a sufficient amount in its legislative budget request to properly carry out the provisions of this chapter.

History.—§3, ch. 28173, 1953; §1, ch. 61-36; §2, ch. 61-119.

556.04 Prohibitions.—

(1) No person shall sell as new any article of bedding unless it is made from all new material and is tagged as provided herein.

(2) No person shall sell, representing it to be new material, any old or second-hand hair, down, feathers, wool, cotton, kapok, or other material used for filling articles of bedding.

(3) No person shall sell any articles of bedding made from old, used, or second-hand material unless it shall be tagged as provided herein.

(4) No person shall knowingly sell any article of bedding, or any material used in the making thereof, which has been used by or about any person having an infectious or contagious disease.

(5) No person shall use in the manufacture of any article of bedding for sale any material (a) that comes from an animal or fowl, (b) that contains any bugs, vermin, or filth, (c) that is unsanitary, (d) that contains burlap or other material that has been used for baling, unless such material has been sterilized by a process approved by the state board of health.

(6) No person shall sell, offer for sale, exchange or lease or deliver or consign for like purpose any article of bedding herein required to be tagged unless there is affixed on the tag an inspection stamp as required by this article.

(7) It shall be unlawful to use any false or misleading statement, term or designation on said tag or to remove, deface or alter, or to attempt to remove, deface or alter such tag or the statement of filling materials made thereon, or the inspection stamp, hereinafter described.

(8) The state board of health shall have the power to take possession of any article of bedding made or offered for sale for inspection and may open any article of bedding at the seams to examine the contents thereof. The state board of health may also inspect the purchase records of the owner of such articles of bedding in order to determine the kind of materials used therein. Such records shall be kept available for inspection for a period of one year. If any article of bedding does not meet the requirements of this chapter the said board of health shall prohibit the sale and shall affix thereto a label to be designed and prescribed by the board, and within fifteen days of such seizure or labeling the owner shall be furnished with the written reason or reasons for such actions by registered mail; such label shall not be removed except by an agent of the board and said article of bedding shall not be sold without the written consent of the board unless on hearing it be determined that the reasons are unfounded. All places where any article of bedding covered by this chapter, is made, re-made, or renovated or where materials for such articles of bedding are manufactured, prepared or stored, or where such articles of bedding are offered for sale or are possessed with intent to sell; or where sterilization or disinfection is performed shall be subject to inspection by the board during usual business hours. For the purpose of administering or enforcing this chapter it shall be unlawful for any person to interfere with any such inspection. Any person adversely affected may demand a hearing within fifteen days after assignment of reasons, which hearing shall be held by the board within fifteen days thereafter.

History.—Comp. §4, ch. 28173, 1953.

556.05 Labels, tagging.—

(1) No person shall sell an article of bedding unless there shall be securely sewed to the outside covering thereof a substantial cloth or cloth-backed label which shall not flake when abraded, at least two inches by three inches in size, upon which shall be indelibly stamped, typed, or printed with ink, in English, the following:

(a) The name of the material or materials used to fill such article of bedding and where two or more different materials are included they shall be described in the order of their predominance stating percentages by weight of each.

(b) The name and address of the manufacturer, jobber, distributor or vendor of the article of bedding.

(c) In letters at least one-fourth inch high in bold, black type the words "all new material" if such article of bedding contains no used material; or in bold, black type of the same size the word "composite" if new and used materials are contained therein; or in bold, black type of the same size the words "made of used material" if such article of bedding contains second-hand material; and in bold, black type of the same size the word "sterilized" if such articles of bedding have been sterilized.

(d) The body of the labels bearing the descriptive words "of new materials" shall be white; the body of the labels bearing the descriptive word "composite" shall be one-half

yellow and one-half blue; the body of the labels bearing the descriptive words "made of used material" shall be yellow. The "composite" label shall clearly and legibly show the correct percentage of new and used material.

(2) The label of any article of bedding containing natural or synthetic rubber shall state the form of such rubber; that is, whether such rubber is in mold, sheet, flake, shredded, ground, crushed or other form.

(3) The word "bonded" shall not be used upon the label of any article of bedding in describing the materials therein used.

(4) If any article of bedding shall contain artificially colored filling materials, the label on such article of bedding shall contain the word "colored" immediately preceding the description of such materials.

(5) Any person who renovates or reprocesses any bedding for an owner shall comply with the following:

(a) Any filling material added to the owners' material shall be new unless otherwise specifically agreed to by the owner.

(b) All bedding renovated, re-processed or re-built for the owner shall be labeled as follows:

Color of label shall be green

Statements on label shall be printed or typed in indelible ink as follows:

"Do not remove this label under penalty of law"

"This article not for sale"

"Owners' material"

"Certification is made that this article contains the same material it did when received from its owner and the added material is according to law and consists of the following:"

The label shall then clearly state the following: Name of the repairers or renovaters thereon which did repair or renovate the bedding and it shall be not less than three by five inches and both the printed and imprinted portions shall be of such size to be easily and clearly read.

History.—§5, ch. 28173, 1953; (1) (c) by §24, ch. 57-1; (1) (a) by §3, ch. 59-135.

556.06 Registration; inspection stamps.—

(1) No person shall sell or lease or have in his possession with intent to sell or lease in the state, any article of bedding covered by the provisions of this chapter, unless there be affixed to the tag required by this chapter by the person manufacturing, selling or leasing the same, an adhesive inspection stamp prepared and issued by the board; two types of such stamps shall be furnished by the board.

(2) The board shall register all applicants for stamps and assign to every person a registration number which thereafter shall constitute his identification record and said identification shall not be used by any other person.

(3) No person shall manufacture, renovate, sell or offer for sale any article of bedding or any processed filling materials as defined herein unless said manufacturer, renovator, retailer or seller and supply dealer of the item of bedding or processed filling material shall pay to the board for registration and annually thereafter the following fee:

Manufacturers or supply dealers	$25.00
Distributors, jobbers or wholesalers	25.00
Renovators	10.00
Retailers	5.00

(a) Every bedding retailer, unless he holds a manufacturer's registration, or a wholesale dealer's registration, shall annually obtain a retail dealer's registration.

(b) Every bedding renovator, unless he holds a manufacturer's registration, shall annually obtain a renovator's registration.

(c) Every distributor, jobber or wholesaler of bedding, unless he holds a manufacturer's registration, shall annually obtain a distributor, jobber or wholesaler registration.

(d) Every supply dealer of processed filling materials, unless he holds a manufacturer's registration, shall annually obtain a supply dealer's registration.

(e) Every bedding manufacturer shall annually obtain a manufacturer's registration.

(f) Every person in each classification shall obtain a separate registration for each branch, factory, store or retail outlet.

(4) Adhesive inspection stamps shall be furnished by the state board of health in quantities of not less than five hundred. One type shall be for use on all articles of bedding as defined herein, except pillows, cushions and comforters, for which the applicant shall pay ten dollars for each five hundred stamps. The other type shall be for use only on pillows, cushions, and comforters, for which the applicant shall pay five dollars for each five hundred stamps.

(5) This act shall also apply to and include the manufacture, preparing and sale of any processed filling materials sold or offered for sale for use or intended for use in the manufacture or renovating of articles of bedding as defined within this act.

(a) All of the requirements of this act including registration, labeling, tagging, affixing inspection stamps, prohibitions and penalties as applied to items of bedding shall likewise apply to processed filling materials as defined herein.

(b) Each bundle, bale, box, package or container of said filling materials shall have securely attached thereto a label or tag as specified within the act with the two cent bedding inspection stamp affixed thereto.

(6) The board may suspend, revoke and void the registration number of any person convicted of violating the provisions of this chapter. Such person shall not thereafter engage in the manufacture, making, remaking, renovating or delivering for sale or selling in this state articles of bedding covered by this chapter until the board has determined that such person is complying with the pro-

visions of this chapter, whereupon the board shall reinstate or reissue the registration number to such person.

History.—§6, ch. 28173, 1953; (3) A. by §4, (5) N. and former (5) renum. (6) by §5, ch. 59-135.

556.07 **Scope.**—This chapter shall apply to all bedding or articles of bedding, including any mattresses, pillows, cushions, quilts, bedpads, comforters, upholstered spring beds, box springs, davenports, day beds or couches used or intended for use for sleeping purposes, whether manufactured, renovated or remade within the state or brought within the state for sale, provided, however, that this law shall not apply to a mattress sold by the owner from his home direct to a purchaser, unless such mattress has been exposed to an infectious or contagious disease.

History.—Comp. §6½, ch. 28173, 1953.

556.08 **Bedding for export only excluded.**—This chapter shall not apply to bedding manufactured, processed or held within the state solely for export to points outside the state, provided such bedding is at all times clearly labelled "For Export Only."

History.—Comp. §7, ch. 28173, 1953.

556.09 **Violations; penalties.** — Any person who fails to comply or who violates any provisions of this chapter or the rules and regulations of the board of health made pursuant hereto, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars, or shall be imprisoned in the county jail for not more than ninety days for each offense, or by both such fine and imprisonment.

History.—Comp. §8, ch. 28173, 1953.

CHAPTER 559

REGULATION OF TRADE, COMMERCE AND INVESTMENTS, GENERALLY

PART I TRADING STAMPS

PART II BUDGET PLANNING

PART III FIRE AND GOING-OUT-OF-BUSINESS SALES

PART IV FLORIDA CEMETERY ACT

PART I TRADING STAMPS

559.01 Definitions; trading stamps. — As used in this act:

(1) The term "trading stamp" means any stamp or similar device issued in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, which entitles the rightful holder, on its due presentation for redemption, to receive merchandise, service or cash. This term, however, shall not mean any redeemable device used by the manufacturer or packer of an article, in advertising or selling it, or any redeemable device issued and redeemed by a newspaper, magazine or other publication.

(2) The term "trading stamp company" means any person engaged in distributing trading stamps for retail issuance by others, or in redeeming trading stamps for retailers, in any way or under any guise.

(3) The term "person" means any individual, partnership, corporation, association or other organization.

History.—§1, ch. 59-311.

559.02 Fraud; false representation and lotteries prohibited.—No trading stamp company shall commit any fraud or shall make any false representation or shall resort to any lottery, in distributing or redeeming trading stamps in this state.

History.—§2, ch. 59-311.

559.03 Declared face value; redemption.—No trading stamp company shall distribute trading stamps in this state or shall redeem trading stamps hereafter issued therein unless each stamp has legibly printed upon its face in cents or any fraction thereof a cash value determined by the company, and the rightful holders may, at their option, redeem the stamps in cash when duly presented to the company for redemption in a number having an aggregate cash value of not less than twenty-five cents.

History.—§3, ch. 59-311.

559.04 Trading stamp companies, requisites for distribution of stamps.—No trading stamp company shall distribute trading stamps in this state or shall redeem trading stamps hereafter issued therein until it has filed with the comptroller of Florida:

(1) STATEMENT OF REGISTRATION.—

A statement of registration accompanied by representative samples of its stamps, stamp collection books, stamp redemption catalogues, and stamp distribution and redemption agreement forms currently used in this state. Each such statement shall provide the following information:

(a) The name and principal address of the company;

(b) The state of its incorporation or origin;

(c) The names and addresses of its principal officers, partners or proprietors;

(d) The address of its principal office in this state;

(e) The name and address of its principal officer, employee or agent therein;

(f) The addresses of the places where its stamps are redeemable therein;

(g) A short form of its balance sheet, as at the end of its last fiscal year prior to such filing, certified by an independent public accountant; and

(h) Unless the principal sum of the bond hereinafter required to be filed by the company is the maximum amount hereinafter required, a statement of its gross income from its business in this state as a trading stamp company during such last fiscal year, certified by an independent public accountant; and, simultaneously therewith.

(2) BOND.—

(a) A bond payable to the comptroller and duly executed by the company and a corporate surety qualified to do business in this state, which is conditioned upon the performance by the company of its obligation to redeem trading stamps issued by retailers in this state, when they are duly presented for redemption by the rightful holders.

(b) The principal sum of the bond shall be as follows: If the company has not previously done business as a trading stamp company in this state, or if the company's gross income from such business in this state during its last fiscal year was not in excess of one hundred thousand dollars, ten thousand dollars; for each additional one hundred thousand dollars of gross income from such business in this state or fraction thereof, an additional ten thousand dollars; but such bond shall not exceed one hundred thousand dollars.

(c) On the effective date of each such new bond any and all liability on all bonds previously filed hereunder shall terminate, and all rightful holders of trading stamps who shall prosecute their claims hereunder shall prosecute such claims solely against the new bond and only by filing proofs of claim with the comptroller in the manner hereinbefore provided.

The statement of registration and the bond shall be filed with the comptroller on or before July 1, 1959, and annually thereafter on or before July 1 of each year. The trading stamp company shall pay a registration fee equal to one-half of one per cent of the face amount of the bond but not in excess of two hundred fifty dollars to the comptroller at the time of filing each such registration statement.

(d) In the event the company defaults in performing such obligations, all rightful holders of trading stamps of such company shall be entitled to make claim against said bond. Retailers in possession of trading stamps for issuance to their customers shall also be deemed rightful holders entitled to make such claim.

In the event the company defaults in the performance of its obligation to redeem trading stamps, any rightful holder may file within three months after such default a complaint with the comptroller. Upon the filing of any such complaint the comptroller shall forthwith make a determination whether there has been a default. If the comptroller shall determine that there has been such a default he shall give notice of such determination to the company and if such default is not corrected within ten days he shall publish notice of such default in three consecutive publications of one or more newspapers having general circulation throughout this state and therein require that proof of all claims for redemption of the trading stamps of the company shall be filed with him, together with the trading stamps upon which the claim is based, within three months after date of the first such publication. The comptroller promptly after the expiration of such period shall determine the validity of all claims so filed. Thereupon the comptroller shall be paid by the surety such amount as shall be necessary to satisfy all valid claims so filed, together with reasonable administrative costs incident to the determination and payment of said claims, not exceeding, in the aggregate, the principal sum of the bond. The comptroller shall promptly thereafter make an equitable distribution of the proceeds of the bond to such claimants and shall destroy the trading stamps so surrendered.

History.—§4, ch. 59-311.

559.05 Notice of intention to suspend or cease redemption of stamps.—No trading stamp company shall cease or suspend the redemption of trading stamps in this state without filing with the comptroller at least ninety days' prior written notice of its intention to do so and concurrently mailing a copy of such notice to each retailer within this state which has at any time theretofore within one year issued trading stamps which the company is obligated to redeem.

History.—§5, ch. 59-311.

559.06 Penalties for violations.—Any person violating any provision of this act shall be punished by a fine of not more than $1000 and the circuit court shall have jurisdiction in equity on the complaint of any interested person to restrain and enjoin the violation of any of said provisions.

History.—§6, ch. 59-311.

PART II BUDGET PLANNING

559.10 Definition; budget planning. — The term "budget planning" as used in this act shall mean the act of entering into a contract by any person, firm, corporation or association with a particular debtor by the terms of which contract the debtor agrees to deposit periodically with such person, firm, corporation or association a specified sum of money and said person, firm, corporation or association agrees to distribute said sum of money among specified creditors of the debtor in accordance with an agreed plan for which service the debtor agrees to pay a valuable consideration.

History.—§1, ch. 59-345.

559.11 Budget planning prohibited.—No person, firm, corporation or association, shall after June 17, 1959, engage in the business of budget planning as defined in §559.10; provided, the provisions of this act shall not affect any contract theretofore made.

History.—§2, ch. 59-345

559.12 Exceptions.—

(1) "Person" as used in this act shall not include a person actively practicing law in Florida and who is also admitted to the Florida bar, and any person who is currently a member of the Florida bar.

(2) "Firm" as used in this act shall not include a partnership, all the members of which are admitted to practice law in this state, and who are current members of the Florida bar.

History.—§3, ch. 59-345.

559.13 Penalty.—Whoever either individually or as an officer, director or employee of a person, firm, corporation or association, violates the provisions of this act shall be guilty of a misdemeanor and shall be punished as provided by law.

History.—§4, ch. 59-345.

PART III FIRE AND GOING-OUT-OF-BUSINESS SALES

559.20 Definitions; fire and going-out-of-business sales.—In construing this act, and each and every word, phrase or part thereof, where the context will permit, the definitions contained in §1.01, shall be applicable, and:

(1) "Fire and other altered goods sale" is a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.

(2) "Going-out-of-business sale" is a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock of goods on hand the business will cease and be discontinued, including but not limited to the following sales: adjusters, adjustment, alteration, assignees, bankrupt, benefit of administrators, benefit of creditors, benefit of trustees, building coming down, closing, creditor's committee, creditors, end, executors, final days, forced out of business, insolvents, last days, lease expires, liquidation, loss of lease, mortgage sale, receiver's, trustees, quitting business, removal. Any sale using any of the foregoing word or words of similar import, at the conclusion of which sale the business will not cease and be discontinued, and not publishing that fact or the qualified nature of said sale with equal prominence with each advertisement of such sale, shall be deemed to be a going-out-of-business sale.

(3) "Goods" is meant to include any goods, wares, merchandise or other property capable of being the object of a sale regulated hereunder.

(4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(5) The words "publish," "publishing," "advertising" and "advertisement" shall include any and all means of conveying to the public notice of sale or notice of intention to conduct a sale, whether by word of mouth, by newspaper advertisement, by magazine advertisement, by handbill, by written notice, by printed display, by billboard display, by poster, by radio announcement and any and all means including oral, written or printed.

(6) The word "shall" is always mandatory and not merely directory.

History.—§1, ch. 59-292.

559.21 Regulation of sales.—

(1) No person shall hereafter publish nor conduct any sale of the type herein defined without a permit therefor. Such permit shall be issued by the sheriff, upon written application, in a form approved by the state comptroller, and verified by the person who, or by an officer of the corporation which intends to conduct such sale. Such application shall contain a description of the place where such sale is to be held, the nature of the occupancy, whether by lease or sub-lease and the effective date of termination of such occupancy, the means to be employed in publishing such sale. Such application shall further contain, as part thereof, an itemized list of the goods, wares and merchandise to be offered for sale.

(2) Upon receipt of such application and payment of the fee hereinafter prescribed, the sheriff shall examine the same, and may make such investigation as he may deem proper. If after such investigation he is satisfied as to the truth of the statement contained in such application, he may issue a license permitting the publication and conduct of such sale on the following terms:

(a) The permit shall authorize the sale described in the application for a period of not more than thirty consecutive days, counting Sundays and legal holidays following the issuance thereof. The sheriff may renew a permit for one period of time only, such period to be in addition to the thirty days permitted in the original permit and not to exceed thirty consecutive days, counting Sundays and legal holidays, when he finds:

1. That facts exist justifying the permit renewal;

2. That the permittee has filed an application for renewal;

3. That the permittee has submitted a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory.

For the purposes of this subsection, any application for a permit under the provisions of this act covering any goods previously inventoried as required hereunder, shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.

(b) The permit shall authorize only the one type of sale described in the application at the location named therein.

(c) The permit shall authorize only the sale of goods described in the inventory attached to the application.

(d) Upon being issued a permit hereunder for a going-out-of-business sale, the permittee shall surrender to the sheriff all other business licenses he may hold at that time applicable to the location and goods covered by the application for a permit under this statute, which license or licenses shall be transmitted by the sheriff to the licensing authority for cancellation.

(e) Any permit herein provided for shall not be assignable or transferable.

History.—§2, ch. 59-292.

559.22 Duties of permittee.—A permittee hereunder shall:

(1) Make no additions whatsoever, during the period of authorized sale, to the stock of goods set forth in the inventory attached to the application for permit.

(2) Refrain from employing any untrue, deceptive or misleading advertising.

(3) Conduct the authorized sale in strict conformity with any advertising or holding out incident thereto.

History.—§2, ch. 59-292.

559.23 Fees.—Upon filing an original application or renewal application for a permit to advertise and conduct a sale, or special sale, as hereinbefore defined, the applicant shall pay to the sheriff a fee in the sum of twenty-five dollars which shall be deemed income of his office. If any application or renewal application be disapproved, said payment shall be retained as and for the cost of investigating the statements contained in such application or renewal application, and of the applicant.

History.—§3, ch. 59-292.

559.24 Enforcement.—Upon commencement of any sale, as hereinbefore defined, the permit issued shall be prominently displayed near the entrance to the premises. A duplicate original of the application and stock list pursuant to which such license was issued, shall at all times be available to the sheriff, who may examine all merchandise in the premises for comparison with such stock list. All advertisements or advertising and the language contained therein shall be in accordance with the purpose of the sale as stated in the application pursuant to which a permit was issued and the wording of such advertisements shall not vary from the wording as indicated in the application. Such advertising should contain a statement in these words and no others:

Sale held pursuant to _____county, _____ sale No. _____ granted the _____ day of _____, (in such blank spaces shall be indicated the type of sale, the permit number and the requisite dates.)

Suitable books and records as prescribed by the state comptroller shall be kept by the permittee and shall during business hours be available to the sheriff. At the close of business each day the stock list attached to the application shall be revised and those items disposed of during such day shall be so marked thereon.

History.—§4, ch. 59-292.

559.25 Exemptions.—The provisions of this statute shall not apply to or affect the following persons:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction.

(2) Persons acting in accordance with their powers and duties as public officers such as sheriffs and marshals, and similar public officers.

(3) Duly licensed auctioneers, selling at auction.

(4) Persons holding licenses or permits duly issued to conduct such sales by municipalities having municipal ordinances similar to this statute.

History.—§5, ch. 59-292.

559.26 Violations.—Any person who shall violate, neglect or refuse to comply with any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not more than $100 or by imprisonment not exceeding 60 days or by both such fine and imprisonment.

History.—§6, ch. 59-292.

PART IV

FLORIDA CEMETERY ACT

559.30 Short title.—This act may be cited as "Florida cemetery act."

History.—§1, ch. 59-363.

559.31 Scope.—The provisions of this act shall apply to all persons engaged in the business of operating a cemetery as defined herein, except cemeteries owned and operated by governmental agencies or churches.

History.—§2, ch. 59-363.

559.32 Definitions; Florida cemetery act.—As used in this act:

(1) "Persons" means an individual, cor-

poration, partnership, joint venture, or association.

(2) "Human remains" or "remains" means the bodies of deceased persons, and includes the bodies in any stage of decomposition, and cremated remains.

(3) "Cemetery" means any one, or a combination of more than one, of the following, in a place used or to be used, and dedicated or designated, for cemetery purposes:

(a) A burial park, for earth interment.

(b) A mausoleum, for crypt or vault entombment.

(c) A columbarium, for cinerary inurnment.

(4) "Mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated or designated for cemetery purposes.

(5) "Columbarium" means a structure containing niches for inurnment of cremated remains in a place used, or intended to be used, and dedicated or designated, for cemetery purposes.

(6) "Cemetery company" means any individual, partnership, corporation, or association, now, or hereafter organized, owning or controlling cemetery lands or property and any such person conducting the business of a cemetery.

History.—§3, ch. 59-363.

559.33 Application to organize; filing fee.—A written application for authority to organize a cemetery company shall be filed with the comptroller and said application shall be in such form and contain such information as the comptroller shall reasonably require, and shall be accompanied by an initial filing fee of four hundred dollars.

History.—§4, ch. 59-363; §1, ch. 63-324.

559.34 Application for change of control; filing fee.—In any case where a person, a group of persons, or a corporation proposes to purchase or acquire control of an existing cemetery company either by purchasing the outstanding capital stock of any cemetery company, or the interest of the owner or owners, and thereby to change the control of said cemetery company, such person shall first make application to the comptroller for a certificate of approval of such proposed change of control of said cemetery company and said application shall contain the name and address of the proposed new owners and the said comptroller shall issue said certificate of approval only after he has become satisfied that the proposed new owners are qualified by character, experience and financial responsibility to control and operate the said cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. Such application for a purchase or change of control must be accompanied by an initial filing or investigation fee of one hundred dollars.

History.—§5, ch. 59-363; §2, ch. 63-324.

559.35 Existing companies, effect of act.—Existing cemetery companies at the time of the adoption of this chapter shall continue in full force and effect but shall hereafter be operated in accordance with the provisions of part IV of this chapter.

History.—§6, ch. 59-363.

559.36 State department of cemeteries.—There is hereby established a state department of cemeteries under the direction of the state comptroller, who shall receive no additional compensation for the performance of these duties.

History.—§7, ch. 59-363.

559.37 Comptroller; powers.—In addition to other powers conferred by this act, the comptroller shall have power to:

(1) Formulate and promulgate reasonable rules and regulations governing the operation of cemetery companies doing business in this state, which shall have the force and effect of law and he shall have the power to enforce same.

(2) Employ, or assign employees necessary to operate the department and fix their compensation.

(3) Restrict or prohibit the sale or rental of space where the comptroller finds it necessary in the public interest.

(4) Revoke the license of any licensee upon ten days notice and upon reasonable opportunity for the licensee to be heard; for failure to pay fees, make any reports required or abide by any other regulations promulgated.

(5) At such time as the comptroller finds it necessary or desirable to examine the affairs of any cemetery company under this act, the licensee shall pay an examination fee not exceeding fifty dollars per day for each examiner engaged in the examination, with a minimum fee of one hundred dollars.

History.—§8, ch. 59-363.

559.38 Records; availability for inspection.—All accounting books and records of cemetery companies shall be kept within the confines of this state and shall be readily available at all reasonable times for examination by the comptroller or his representative.

History.—§9, ch. 59-363.

559.39 Investigation of applications.—Upon receipt of application for authority under §§559.33 and 559.34, the comptroller shall investigate the following:

(1) Character, reputation, financial standing, business qualifications, and motives of the proponents.

(2) The need for a cemetery in the community to be located, giving consideration to the adequacy of existing facilities and the need for further facilities in the area to be served.

(3) The proposed financial structure.

(4) Zoning approval, where applicable, and if zoning is not in effect, the approval and acceptance of a majority of adjacent property

owners. This requirement extends to include extensions of boundaries.

(5) Suitability of property for cemetery use.

History.—§10, ch. 59-363.

559.40 Issuance of certificate of authorization.—If the comptroller finds that the proposed cemetery company has in good faith complied with all lawful requirements, he shall, within thirty days, issue a certificate of authorization to transact a cemetery business. This authorization shall be valid for a period of six months and if said cemetery company has not begun operations within that time, shall become null and void. Provisions for an additional period of not to exceed six months may be obtained upon written application to the comptroller, showing good cause for extension.

History.—§11, ch. 59-363.

559.41 Required trust fund for care and maintenance; penalty for noncompliance.—No cemetery company shall be permitted to establish, or operate if already established, a cemetery without providing for the future care and maintenance of such cemetery, for which a trust fund shall be established, to be known as the care and maintenance trust fund of _____ _____(here use name of licensee). Such trust fund shall be established with a trust company operating under the provisions of chapter 660, or a state or national bank holding trust powers under the provisions of chapter 660; provided, that the cemetery company may appoint an individual or committee of two or more prominent people and lot owners to act in an advisory capacity with the trustee in the investment of the trust fund, and provided further, that a cemetery company, with the consent of the comptroller, may change trustee of trust fund in event of dissatisfaction of service rendered by the trustee. If any cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this act, the comptroller after reasonable notice, shall proceed to enforce compliance under the powers vested in him under this section. Provided any nonprofit cemetery corporation, incorporated and engaged in the cemetery business continuously since and prior to 1915 and whose current trust assets exceed seven hundred fifty thousand dollars shall not be required to designate a corporate trustee.

History.—§12, ch. 59-363.

559.42 Individual contracts for care and maintenance.—At the time of making a sale or receiving the initial deposit hereunder, the cemetery company shall deliver to the person to whom such sale is made, or who makes such deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, for reasonable costs of administering such care and maintenance and for reasonable costs of administering the trust fund.

History.—§13, ch. 59-363.

559.43 Trust fund, percentage of payments for burial rights to be deposited.—

(1) There shall be set aside and deposited in the care and maintenance trust fund by the cemetery company, the following percentages for all burial rights sold, which percentages shall apply to:

(a) All such payments received until such time as the amount of the corpus of such trust fund equals the sum of fifteen thousand dollars, and thereafter

(b) All such sums received from completed sales only exclusive of such sums on which deposits had previously been made under (1) (a) hereof:

1. For graves, ten per cent of all payments received provided, however, that after December 31, 1959, no such deposit shall be less than ten dollars per grave, for sales made after December 31, 1959.

2. For crypts and niches, ten per cent of the payments received.

3. For endowed special care of any lot, grave, crypt or niche, or of a family mausoleum, memorial, marker or monument, the full amount of sums received.

(2) Deposits to the care and maintenance trust fund must be made by the cemetery company not later than sixty days following the close of the calendar month in which payments were received as provided in subsection (1) hereof. The care and maintenance trust fund shall be invested and reinvested by the trustee under the provisions of chapter 518, and as the same may be from time to time amended. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the said net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company.

History.—§14, ch. 59-363.

559.44 Trust fund; financial reports.—Within one hundred and five days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care fund on forms provided by the comptroller. Provided, however, the comptroller may require the trustee to make such additional financial reports as he may deem advisable.

History.—§15, ch. 59-363.

559.45 Financial report of company affairs.—The comptroller shall require each cemetery company to submit a report of its condition, on forms provided by the comptroller, as of such date as he may fix, at least once each calendar or fiscal year, or as often as he may order, and such report shall be submitted within one hundred and five days after the end of the calendar or fiscal year or other reporting period as the case may be. Should the report not be received within the stipulated time, the comptroller shall collect a penalty of five dol-

lars per day for each day of delinquency; provided, that upon application to the comptroller prior to the expiration of the one hundred and five days, and for good cause shown, the comptroller may grant a reasonable extension of the one hundred and five day period.

History.—§16, ch. 59-363.

559.46 **License fee.**—The comptroller shall collect from every cemetery company operating under the provisions of this chapter, an annual license fee based on receipts from the sale of cemetery spaces during the preceding twelve month fiscal period. On receipts under twenty-five thousand dollars the fee shall be twenty-five dollars per annum; at least twenty-five thousand dollars but under one hundred thousand dollars the fee shall be fifty dollars per annum; one hundred thousand dollars and over the fee shall be seventy-five dollars per annum. Applications for such license must be submitted on or before December 31 each and every year in the case of an existing cemetery company and before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control as indicated in §559.34.

History.—§17, ch. 59-363; §3, ch. 63-324.

559.47 **License not assignable or transferable.**—No license issued under §559.46 shall be transferable or assignable and no licensee shall develop or operate any cemetery authorized by this act under any name or at any location other than that contained in the application for such license.

History.—§18, ch. 59-363.

TITLE XXXII

LIQUORS AND BEVERAGES

CHAPTER 561

BEVERAGE LAW; ADMINISTRATION

561.01 Definitions.—

(1) The terms "director" and "supervisors" as hereinafter used shall refer to the director and supervisors of the state beverage department.

(2) The term "state bonded warehouse" as hereinafter used shall refer to any storage warehouse the operator of which holds a permit obtained from the state beverage department to store beverages subject to tax under the beverage law.

(3) The term "beer" or the words "malt beverage" as used in the beverage law shall extend to and include all brewed beverages containing malt.

(4) The term "wine" as used herein shall extend to and include all beverages made from fresh fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States. The term "wine" shall further include all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Sugar, flavors and coloring materials may be added to wine to make it conform to the consumer's taste; provided the ultimate flavor or the color of the product is not altered to imitate a beverage other than wine or to change the character of the wine.

(5) The term "fortified wine" when used herein shall extend to and include all wines containing more than fourteen per cent of alcohol by weight.

(6) The term "liquor" when used herein shall be taken to include the words "distilled spirits" and shall extend to and include all spirituous beverages created by distillation and by mixture of distilled beverages by what is commonly termed "blending."

(7) The term "alcoholic beverages" shall include all beverages containing more than one per cent of alcohol by weight.

(8) The term "intoxicating beverage" and the term "intoxicating liquor" shall include only those liquors, wines and beers containing more than three and two-tenths per cent of alcohol by weight.

(9) The term "the beverage law" shall refer to chapters 561, 562, 567-569.

(10) The term "manufacturer" shall mean all persons, firms or corporations who make alcoholic beverages by distillation, the fermentation of fruits, the brewing of brews or other known processes, and shall extend to and include persons licensed under this law; and where a tax or penalty is imposed by the beverage law upon or affecting manufacturers, or manufacturing of alcoholic beverages, the terms shall extend to and include all other persons who manufacture alcoholic beverages.

(11) The word "tax" shall extend to and include all taxes or payments required under the beverage law, and the words "there shall be paid" as used in the beverage law, and particularly in §561.46, shall be taken to read, include and mean "there is hereby levied and imposed and shall be paid."

(12) The term "sale" or "sell" as used in the beverage laws, shall include any transfer of an alcoholic beverage for a consideration or any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under the beverage law.

(13) The term "discount in the usual course of business" shall mean a cash discount given simultaneously at the time of sale; provided, however, the same discounts shall be offered to all vendors buying similar quantities. Any discount which is in violation of this section shall be considered an arrangement for financial assistance by gift.

(14) The term "licensed premises" as used in the beverage law includes not only rooms where alcoholic beverages are stored or sold by licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved, and designated as such on said sketch, in addition to that included or designated by general law.

History.—§13, ch. 16774, 1935; CGL 1936 Supp. 4151(239), (271a), (271n); §1, ch. 18015, 1937; §§1, 3a, ch. 19301, 1939; CGL 1940 Supp. 451(271a), (271n); am. §1, ch. 21839, 1943; §1, ch. 25359, 1949; (13) §4, ch. 28149, 1953; (4) §1, ch. 29786, 1955; (4), (9), (12), (14) n. §1, ch. 57-420; (13) §1, ch. 63-32.
cf.—§1.01, For general definitions.

561.02 Creation and duties of state beverage department.—There is created a state beverage department, which shall supervise the conduct, management and operation of the manufacturing, packaging, distribution and sale within the state of all alcoholic beverages and shall enforce the provisions of the beverage law and rules and regulations of the state beverage department in connection therewith; provided however, that none of the provisions of the beverage law shall apply to ethyl alcohol intended for use or used for the following purposes; (1) scientific, chemical, mechanical, industrial or medicinal purposes; (2) patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical or industrial preparations or products unfit for beverage purposes; (3) flavoring extracts and syrups, unfit for beverage purposes.

History.—§1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); §1A, ch. 19301, 1939; §2, ch. 57-420.
cf.—§568.14, Duty of enforcing provisions of ch. 568.

561.04 Employment of legislators in beverage department prohibited.—No member of the legislature, during the time for which he was elected, shall be employed as director, assistant director, counsel or otherwise, under the beverage law where such office has been created or the emoluments whereof have been increased during such time.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228). Am. §3, ch. 57-420.
cf.—A3 S5 Ineligibility of legislators to office.

561.05 Beverage department director; bond, duties.—

(1) The principal officer of the state beverage department shall be the director who shall be appointed by the governor. The term of office of said director shall begin and run concurrently with the regular terms of office of the successive governors of this state, but he may be removed at any time by the governor at the discretion of the governor.

(2) The director shall furnish a surety bond by a surety company authorized to do business in this state in the sum of one hundred thousand dollars, payable to the governor and to be approved by the comptroller, conditioned upon the faithful performance of his duties. He shall promptly report and remit to the treasurer all taxes and fees collected by him hereunder, and shall send a copy of such reports to the comptroller.

(3) The premiums on the bond of the director and the blanket bond covering all employees and assistants of the beverage department, as herein provided, shall be paid by the state.

History.—§1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); §1A, ch. 19301, 1939; §1, ch. 20299, 1941; am. §1, ch. 23746, 1947; §6, ch. 57-401 and §4, ch. 57-420.
cf.—§113.07 Bonds of officials.

561.06 Employees; salaries; bonds, discharge.—The director is hereby granted the power to employ such employees and assistants, in accordance with the applicable regulations of the Florida merit system, as may be necessary for the proper operation of the beverage department. Sufficient funds for payment of the salaries and expenses of the director and all employees and assistants of the beverage department, as are incurred in the discharge of their duties in connection therewith, shall be included in the biennial appropriations act. All employees and assistants of the beverage department shall be covered by a blanket bond in such amount as determined by the director, conditioned upon the faithful performance of their duties, payable to the state, for the use and benefit of the state beverage department.

History.—§1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); §1A, ch. 19301, 1939; am. §2, ch. 21839, 1943; am. §2, ch. 22663, 1945; §5, ch. 57-420.
cf.—§113.07 Bonds of officials.
§561.05 Premiums on bond.

561.07 Employees; powers and duties.—All employees authorized by the director shall have access to and shall have the right to inspect the premises of all licensees under the beverage law and under the cigarette law, now in effect or which may hereafter be reenacted, to collect taxes and remit them to the officers entitled to them and to examine the books and records of all licensees. Such authorized employees shall require of each licensee strict compliance with the laws of this state relating to the transaction of such business and shall have all the power of deputy sheriffs in the enforcement of the beverage law and the cigarette tax law of this state, and in the prosecution of offenders against such laws.

History.—§1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); §1A, ch. 19301, 1939; am. §3, ch. 22663, 1945; §6, ch. 57-420.
cf.—§561.52, Authority of certain employees.

561.08 Enforcement of beverage law; director to prescribe forms.—The director and all employees of the beverage department shall enforce the provisions of the beverage law and cigarette tax law and perform such other acts as may be necessary to carry out the provisions thereof, and the director shall prescribe forms of bonds, reports, and other papers, to be used under and in the execution and enforcement of the provisions of the beverage law and the cigarette tax law.

History.—§1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); §1A, ch. 19301, 1939; §7, ch. 57-420.
cf.—Ch. 562, Beverage law; enforcement.
§561.52, Authority of certain employees.

561.09 Labeling regulations, refills; misrepresentation and penalty for violation.—

(1) The director of the beverage department is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all alcoholic beverages containing more than one per cent of alcohol by weight, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

(2) Any person who shall re-use or refill with distilled spirituous liquors for the purpose of sale a bottle or other container which has once been used to contain spirituous liquors and to which has theretofore been attached a stamp as required by the beverage laws of Florida, or any person who shall willfully misrepresent or permit to be misrepresented the brand of distilled spirits being sold or offered for sale in or from any bottles or containers shall be guilty of a misdemeanor and, where such person is licensed under this law, is subject to have his license revoked by the director. The possession of such a refilled or a mislabeled bottle or other container of spirituous liquors shall be prima facie evidence of the violation of this section.

History.—§8, ch. 18015, 1937; CGL 1940 Supp. 4151(271h), 7648(8); am. §3, ch. 21839, 1943; (1) by §8, ch. 57-420.
cf.—§775.07, Punishment for misdemeanor.
§502.03, Labels on milk containers.

561.091 Brands or labels to be registered; fee; revocation.—

(1) No manufacturer, distiller, rectifier, processor, blender, bottler or distributor of spirituous liquors, whether licensed under the beverage laws of this state or not, shall sell or offer for sale in this state, or move or cause to be moved within this state, or into this state, any spirituous liquors, without first registering its name and the brands or labels under which the spirituous liquors are to be sold or

moved, and furnishing such samples and such information as to content, quality, age, proof and formula of such spirituous liquors as the director may require.

(2) Each registrant shall pay an annual registration fee of twenty dollars for a brand or label. Any registration may be suspended or revoked in the same manner as a beverage license for any violation of the beverage law.

(3) The director shall promulgate suitable rules for carrying out the purpose of this section.

History.—§1, ch. 28149, 1953; sub. §§(1), (2) am. §2, ch. 29786, 1955.

561.11 Power and authority of director.—The director shall have full power and authority to make, adopt, amend or repeal such rules, regulations or administrative orders in pursuance of the purposes of the beverage laws, or reasonably necessary for, or calculated to facilitate, the enforcement or administration of the provisions thereof as may be appropriate, and such rules, regulations or orders shall have the full force and effect of law; provided, however, no such rule or regulation affecting the conduct of business or relationship between wholesalers and retailers or the beverage department of the state shall be made, adopted or amended without first having published in at least ten newspapers of general circulation in the state a notice which shall give the general substance of the proposed rule or regulation and shall include a date not less than twenty days after the publication of the said notice before which date any interested party may file in writing with the director any written objections, comments or suggestions concerning the proposed rule or regulation; and, provided further, however, that the validity of any such rule or regulation shall not be questioned by reason of any deficiency in the substance of the said notice; and, provided further, however, that any change in the proposed rule or regulation made subsequent to the publication of the said notice shall be valid without further notice. The rules of the state beverage department presently in effect are hereby specifically excepted from the requirements hereof.

History.—§1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); §2, ch. 18015, 1937; §1A, sub-§ (b), ch. 19301, 1939; CGL 1940 Supp. 4151(271b); §4, ch. 22663, 1945; §132, ch. 26869, 1951. §9, ch. 57-420; §1, ch. 63-26.

561.12 Deposit of revenue.—All funds collected by the state under the beverage law shall be paid into the state treasury to the credit of the general revenue fund.

History.—§13, ch. 18015, 1937; CGL 1940 Supp. 4151(271k); §1, ch. 22923, 1945; §133, ch. 26869, 1951.

561.14 License classification.—Licenses referred to in this chapter shall be classified as follows:

(1) Manufacturers who shall be licensed to manufacture the beverage herein referred to and distribute the same at wholesale to licensed distributors and licensed vendors and to no one else within the state, provided persons engaged in the business of distilling, rectifying or blending spirituous liquors licensed under paragraphs (d) and (e) of subsection (1) of §561.35, shall sell and distribute such beverages at wholesale only to other manufacturers and to licensed distributors and to no one else within this state.

(2) Distributors who when so licensed shall be permitted to sell and distribute the beverages herein referred to at wholesale to other licensed distributors, to licensed vendors, to licensed operators of railroads and steamships, buses and airplanes, to licensed clubs, to nonresident dealers, and to no one else within this state; but no distributor shall sell or distribute to any vendor any beverage which such vendor is not licensed to sell nor shall any vendor buy from any distributor any beverage which such vendor is not licensed to sell.

(3) Vendors shall include all persons, associations of persons or corporations selling the beverages herein referred to at retail only. No vendor shall purchase or acquire in any manner for the purpose of resale, any of the beverages herein described from any person, firm or corporation not duly licensed as a manufacturer, bottler or distributor under the beverage law. No vendor shall import or engage in the importation of any such beverages from places beyond the limits of the state. No vendor shall knowingly sell alcoholic beverages for the purpose of resale. A sale made by a vendor to a person, firm or corporation known by said vendor to hold a current retail liquor dealer's stamp issued by the internal revenue authorities of the United States shall be prima facie evidence of a sale knowingly made for resale under this section.

(4) Exporters, who shall be licensed to transport tax exempt alcoholic beverages into this state under bond, to be exported under bond for delivery beyond the borders of this state. Each license shall entitle the licensee to store such beverages under bond at one location in this state pending shipment beyond the borders of this state.

History.—§4, sub-§ (b), (c), ch. 16774, 1935; CGL 1936 Supp. 4151 (230); §1, ch. 19499, 1939; §2, ch. 25359. 1949; sub. §(2) §10, ch. 26484, 1951; (3) §11, ch. 57-420; (4) n. §1, ch. 63-562.

561.15 Licenses; qualifications required.—(1) Licenses shall be issued only to persons of good moral character, who are not less than twenty-one years of age. Licenses to corporations shall be issued only to corporations whose officers are of good moral character and not less than twenty-one years of age. There shall be no exemptions from the license taxes herein provided to any person, association of persons or corporation, any law to the contrary notwithstanding.

(2) No license under the beverage law shall be issued to any person who has been convicted within the last past five years of any offense against the beverage laws of this state, the United States or any other state, or who has been convicted within the last past five years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics; or who has been convicted in the last past

fifteen years of any felony in this state; or who has been convicted in any other state or the United States, of any offense designated as a felony by such state or the United States; or to a corporation, any of whose officers shall have been so convicted. The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

(3) The director may refuse to issue a license under the beverage law to any person, firm or corporation whose license under the beverage law has been revoked or to any corporation, an officer of which has had his license under the beverage law revoked, or to any person, who is or has been an officer of a corporation whose license has been revoked under the beverage law. Any license issued to a person, firm or corporation prohibited from obtaining such license, under the beverage law, may be revoked by the director.

History.—§3, ch. 16774, 1935; CGL 1936 Supp. 4151(229). §12, ch. 57-420; (2) a. by §1, ch. 61-219.

561.17 License applications.—

(1) Any person, firm or corporation before engaging in the business of manufacturing, bottling, distributing, selling or in anywise dealing in alcoholic beverages, shall file with the district supervisor of the district of the state beverage department in which the place of business for which a license is sought, is located, sworn application in triplicate on forms provided to the district supervisor by the director. The application shall state the character of the business to be engaged in, the address of existing building wherein is located the premises sought to be licensed and to which applicant must have right of immediate possession, the name of the manager or person to be in charge, and the kind of license as hereinafter defined which the applicant desires. The application shall also give the names and addresses of any persons interested directly or, when required by the director, indirectly, with the applicant in the business for which the license is being sought. Prior to any application being approved, the applicant shall file a set of fingerprints on regular United States department of justice forms for himself and the manager or person to be in charge. The applicant shall also file such a set of fingerprints for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when so required by the director. If the applicant or any person interested with the applicant either directly or indirectly in the business for which the license is sought shall be such a person as is within the definition of persons to whom a license should be denied as prescribed by §561.15 or if the manager or person to be in charge is such a person as is within the definition of persons not to be employed as prescribed in §562.13, then the application shall be denied by the director.

(2) All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the state board of health that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); §5, ch. 22663, 1945; §4, ch. 25359, 1949; §3, ch. 29786, 1955. Am. §14, ch. 57-420; (1) by §1, ch. 59-316.

561.18 License investigation.—After the application has been filed with the district supervisor he shall cause the application to be fully investigated, both as to qualifications of the applicants and a manager or person to be in charge and the premises and location sought to be licensed.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228). Am. §5, ch. 25359, 1949; §15, ch. 57-420; §2, ch. 59-316.

561.19 License issuance upon approval of director.—

(1) Upon the completion of the investigation of an application, the director shall endorse his approval or disapproval on said application and notify the tax collector of his action. When so notified, the tax collector shall, in turn, notify the applicant of such approval or disapproval. If approved, the license shall be issued, upon payment to the tax collector of the license tax hereinafter provided.

(2) If the application is disapproved, the director shall give the applicant notice of the disapproval and the reasons therefor and if requested by the applicant, a fair hearing as to his qualifications and the qualifications of the premises. If, after such hearing, the director shall find that the applicant and premises have such qualifications as required by the beverage law, he shall approve the application and the same shall be handled as provided in subsection (1). If the director's disapproval is sustained, he shall so notify the applicant. Any applicant may at any time within thirty days after such disapproval and notice thereof, file with the director a request in writing for a review of such disapproval by the governor. The director shall thereupon certify his findings on which the disapproval was based to the governor who shall review the same and order the application be granted or denied as justice shall require.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228). Am. §6, ch. 25359, 1949; §16, ch. 57-420.

561.20 Limitation of number of licenses issued.—

(1) No license under §561.34(3)-(8) inclusive, shall be issued so that the number of such licenses within the limits of any incorporated municipality or in the territory of any county lying outside of such municipalities therein shall exceed one such license to each twenty-five hundred residents, or major fraction thereof, within such municipality or within such county outside of the limits of such municipalities as shown by the last regular state-wide census, either federal or state, of such county or municipality; provided, however, that such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

(2) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to any bona fide hotel, motel or motor court of not less than one hundred guest rooms; provided, however, that any license heretofore issued to any such hotel, motel, motor court or restaurant or hereafter issued to any such hotel, motel or motor court under the general law shall not be moved to a new location, such licenses being valid only on the premises of such hotel, motel, motor court or restaurant; provided, further, that licenses issued to hotels, motels, motor courts or restaurants under the general law and held by such hotels, motels, motor courts or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1); and provided further, that any license issued for any hotel, motel or motor court under the provisions of this law shall be issued only to the owner of said hotel, motel or motor court or in the event the hotel, motel or motor court is leased, to the lessee of the hotel, motel or motor court and the license shall remain in the name of said owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under the provisions of this law cannot be renewed except in the name of the owner of the hotel, motel, motor court or restaurant, or in the event the hotel, motel, motor court or restaurant is leased in the name of the lessee of the hotel, motel, motor court or restaurant in which the license is located and must remain in the name of said owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special"; provided further, nothing herein provided shall limit, restrict or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within thirty days thereafter, or if an application is on file for such special license at the time this act takes effect, and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein shall prevent an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court or restaurant by the purchaser of such facility nor the transfer of such license pursuant to law.

This act shall not apply to any county having home rule under the constitution in which county the provisions of §561.20 (2) in effect prior to the effective date of this law shall apply.

(3) The limitation upon the number of such licenses to be issued as herein provided shall not apply to existing licenses nor to the renewal or transfer of such licenses but upon the revocation of any existing license no renewal thereof or new license therefor shall be issued contrary to the limitation herein prescribed; provided, however, that such transfer permitted herein shall not include the change in location of any licensed premises as provided in §561.33 of the beverage law when such change of location will increase the number of licenses contrary to the limitation upon the number of such licenses as herein provided. But provided further, that such restriction on the change in location of any licensed premises contained in this paragraph or in §561.33 shall not apply to those applications for change of location of licensed premises from within incorporated cities or towns to a location within the county and outside such incorporated cities or towns where such applications have been filed heretofore with the proper tax collector and the director and the legal right to such change in location is now a subject of litigation pending in the supreme court of Florida.

(4) The limitations herein prescribed shall not affect or repeal any existing or future local or special act relating to the limitation by population and exceptions or exemptions from such limitation by population of such licenses within any incorporated city or town or county that may be in conflict herewith.

(4A) Provisions of subsections (2) and (4) as amended by ch. 57-773, shall take effect January 1, 1958, and shall apply only to those places of business licensed to operate after January 1, 1958, and shall in no manner repeal or nullify any license issued under provisions of law which are now operating or will operate prior to the effective date January 1, 1958, and all such places of business shall be exempt from the provisions of this law so long as they are in continuous operation.

(5) When additional licenses are available by reason of an increase in population, no person, firm or corporation already holding a liquor license shall be permitted to own or have any interest, directly or indirectly, in any such additional licenses, or when additional licenses are available by reason of a county permitting the sale of intoxicating beverages when the same is prohibited, no person, firm or corporation will be permitted to own or have any interest, directly or indirectly, in more than one license. This limitation is enacted pursuant to the police power of the state, for the express purpose of promoting the public health, morals and welfare. This limitation shall only apply when a license is originally issued after first becoming available and shall not apply to subsequent transfers of such licenses from the original purchaser thereof, or to renewals of such licenses.

(6) No license shall be issued under §561.34 (11), to exceed five more than the number of such licenses issued prior to May 24, 1947, and in effect in any county on said date; provided however, in all counties with a population of more than 900,000 inhabitants according to the latest official decennial census, no license shall be issued under §561.34(11), to exceed twenty-five more than the number of licenses issued prior to May 24, 1947, and in effect on said date and provided further, that any additional licenses issued under this section in such

counties shall be limited to subordinate lodges or clubs of national fraternal or benevolent association; golf clubs municipally or privately owned; nonprofit corporations or clubs devoted to promoting community, municipal or county development or any phase of community, municipal or county development; clubs fostering and promoting the general welfare and prosperity of members of showmen and amusement enterprises; clubs assisting, promoting and developing subordinate lodges or clubs of national fraternal or benevolent associations; clubs promoting, developing and maintaining cultural relations of people of the same nationality; provided finally, however, that any chartered or incorporated club owning and maintaining any bona fide regular, standard golf course consisting of at least nine holes, with clubhouse, locker rooms and attendant golf facilities and comprising in all at least one hundred acres of land owned by such club may be issued a license under §561.34(11), but failure of such club to maintain golf course and golf facilities shall be ground for revocation of license.

(7) In addition to any licenses that may be issued to restaurants and hotels under §561.20 (2), the state beverage director is hereby authorized upon the approval of the inter-American center authority to issue not to exceed three special licenses to qualified applicants within the confines of the inter-American cultural and trade center.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); §2, ch. 23746, 1947; §7, ch. 25359, 1949; sub. §(2) am. §1, ch. 28117, sub. §(6) am. §1, ch. 28113, 1953; sub. §§(1), (2) am. §4, ch. 29786, sub. §(6) am. §1, ch. 29978, sub. §(7) comp. §1, ch. 29829, 1955; (1) by §17, ch. 57-420; (2) by §17, ch. 57-420 and §1, ch 57-733; (4) by §1, ch. 57-299, §17, ch. 57-420 and §2, ch. 57-773; (5) by §17, ch. 57-420; (6) by §24, ch. 57-1, and §1, ch 57-837; (4A) n. by §1, ch. 57-1991; (6) by §1, ch. 59-370; (2) a. by §2, ch. 61-219 and §§1, 2, 4, ch. 61-300; (6) a. by §1, ch. 61-439.

Note.—Ch. 61-597, a population act applicable only to Monroe county, exempts it from the provisions of §561.20(2) as amended by ch. 61-300.

561.22 Licensing manufacturers, distributors and exporters as vendors prohibited.—

(1) Except as hereinafter provided, any applicant may receive a license as a manufacturer, distributor or exporter, but no license shall be issued to a manufacturer, distributor or exporter as a vendor, nor shall any license be issued to a vendor as a manufacturer, distributor or exporter.

(2) If any applicant for a vendor's license or renewal thereof shall be an individual or copartnership, such individual or copartnership shall be deemed within the provisions of subsection (1) in the event the individual or any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (3) in manufacturing, distributing or exporting alcoholic beverages under a license of this state or any state of the United States.

(3) If any applicant for a vendor's license or the renewal thereof be a corporation, such corporation shall be deemed within the provisions of subsection (1) when such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in manufacturing, distributing or exporting alcoholic beverages under a license of this state or any other state of the United States, or when such applicant corporation is controlled by or the majority stock therein owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly, in manufacturing, distributing or exporting alcoholic beverages under a license in this state or any other state in the United States.

(4) If any applicant for a manufacturer's, distributor's or exporter's license, or renewal thereof, shall be an individual or copartnership, such individual or copartnership shall be deemed within the provisions of subsection (1) in the event the individual or any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (5) in selling alcoholic beverages as a vendor under a license of this state.

(5) If any applicant for a manufacturer's, distributor's or exporter's license or the renewal thereof, be a corporation, such corporation shall be deemed within the provisions of subsection (1) when such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in selling alcoholic beverages as vendor under a license of this state or when such applicant corporation is controlled by, or the majority stock therein owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged directly or indirectly, in selling alcoholic beverages as vendor under a license of this state.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228). §8, ch. 25359, 1949; §2, ch. 63-562.

561.221 Licensing manufacturers and distributors as vendors prohibited; exceptions.— Nothing contained in §§561.22 or 561.42, or any other provision of the beverage law shall prohibit the ownership, management, operation or control of not more than one vendor's license for the sale of alcoholic beverages by a manufacturer of malt beverages licensed and engaged in the manufacture of malt beverages in this state, even if such manufacturer is also licensed as a distributor, provided that no such vendor's license shall be owned, managed, operated or controlled by any licensed manufacturer of malt beverages unless the licensed premises of the vendor are situated on property contiguous to the manufacturing premises of the said licensed manufacturer of malt beverages.

History.—§1, ch. 63-11.

561.23 License issued in quadruplicate and display.—

(1) Licenses shall be issued in quadrupli-

cate. The original license shall be delivered to the licensee. One copy of the license shall be delivered to the director of the beverage department on or before the tenth day of the month succeeding the month in which the original license was issued to the licensee, by the tax collector. One copy of the license shall be retained by the tax collector, and the fourth copy forwarded to the district office of the county wherein the license is located.

(2) All vendors licensed under the beverage law shall display their licenses in conspicuous places on their licensed premises.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228). Am. §9, ch. 25359, 1949; am. (1) and (2) by §18, (3) R. by §19, ch. 57-420.

561.24 Licensing out-of-state manufacturers as distributors or exporters prohibited; procedure for issuance and renewal of distributors, or exporters' licenses.—

(1) No manufacturer, rectifier or distiller, manufacturing, rectifying or distilling spirituous liquors, in any state other than Florida, shall hereafter be granted a license as a distributor or exporter.

(2) No manufacturer, rectifier or distiller, manufacturing, rectifying or distilling spirituous liquors, in any state other than Florida, shall be granted a renewal of a license theretofore held as a distributor or exporter.

(3) If the applicant for a distributor's or exporter's license or renewal thereof shall be an individual or copartnership, such individual or copartnership shall be deemed within the provisions of subsections (1) or (2), as the case may be, in the event the individual or any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged directly or indirectly or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (4), in manufacturing, rectifying or distilling spirituous liquors in any state other than this state. It is the intent of this subsection that if any individual or any member of such copartnership within six months next preceding the making of an application hereunder has been interested or connected as provided by this subsection, then such individual or such member of the copartnership shall be prima facie presumed to be so interested or connected with such corporation at the time of the making of the application and such prima facie presumption shall continue until overcome by the applicant.

(4) If the applicant for a distributor's or exporter's license, or for the renewal thereof, shall be a corporation, such corporation shall be deemed within the provisions of subsections (1) and (2), as the case may be, when such corporation is affiliated with, directly or indirectly any other corporation which is engaged in manufacturing, rectifying or distilling spirituous liquors in any state other than Florida, or when such applicant corporation is controlled by, or the majority of stock therein is owned by, another corporation, which latter corporation is engaged, directly or indirectly, in manufacturing, rectifying or distilling spirituous liquors in any state other than this state.

(5) Notwithstanding any of the provisions of the foregoing subsections, any corporation which holds a license as a distributor on June 3, 1947, shall be entitled to a renewal thereof, provided such corporation shall comply with all of the provisions of the beverage laws of Florida, as amended, and of this section and shall establish by satisfactory evidence to the board of county commissioners of the county wherein the original license was issued that during the six months period next preceding its application for such renewal, that, of the total volume of its sales of spirituous liquors, in either dollars or quantity, not more than forty per cent of such spirituous liquors sold by it, in either dollars or quantity, were manufactured, rectified or distilled by any corporation, in any state other than Florida, with which the applicant is affiliated, directly or indirectly, including any corporation which owns or controls in any way any stock in the applicant corporation or any corporation which is a subsidiary or affiliate of the corporation so owning stock in the applicant corporation.

(6) Any person, copartnership or corporation applying for a distributor's or exporter's license or a renewal thereof under the provisions of this section, shall file a written or printed application therefor with the tax collector of the county in which a new license is sought, or, where a renewal license is sought, with the tax collector of the county in which the original license was issued. Such application shall be sworn to by the applicant or a member of the copartnership or an officer of the corporation, depending upon whether the applicant is an individual, copartnership or corporation. Forms for such applications shall be provided by the director to the tax collector. Every such application shall set forth clear and detailed information necessary and sufficient to establish the right of the applicant under the provisions of this section to receive or renew its license, as the case may be. The information herein required to be set forth shall be in addition to any information required to be set forth by any other provision of applicable law. Any application failing to comply fully with the provisions of this section shall be denied.

(7) The procedure otherwise provided in this chapter with regard to every application for license as a distributor or exporter with the addition thereto of the procedure provided by this section, shall be followed with regard to every application for license as distributor or exporter and every application for any renewal of such license; provided, §561.27, shall have no application to the renewal of a license of any distributor or exporter, except that no license of any distributor or exporter shall be renewed if the license of such distributor or exporter and continuations thereof shall have been revoked or the qualifications of such distributor shall have been impaired.

(8) Any maneuver, shift or device by any applicant whereby any provision of this sec-

tion, in any manner, is sought to be avoided or evaded shall be deemed a violation of the beverage law and shall subject the applicant, or in case of a corporation, the officer who is responsible for the application, to the penalties provided in §562.45.

History.—§2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); §1, ch. 23899, 1947; §3, ch. 63-562.

561.241 Distributor's licenses; issuance and transfer; procedure.—

No new spirituous liquor distributor's license shall be issued by the beverage department, and no transfer of an existing spirituous liquor distributor's license shall be made unless and until the director shall determine that such issuance or transfer is necessary in the interest of the public and the licensee concerned, after a hearing duly called and held by the director in which fifteen days notice shall be given to the licensee or applicant and to all other licensed spirituous liquor distributors.

History.—Comp. §19, ch. 57-420.

561.25 Officers and employees prohibited from being employed by or engaging in beverage business; penalties.—No officer or employee of the state beverage department, and no sheriff or other state, county or municipal officer with state police power granted by the legislature, shall be permitted to engage in the sale of alcoholic beverages under the beverage law; or be employed, directly or indirectly, in connection with the operation of any business licensed under the beverage law; or be permitted to own any stock or interest in any firm, partnership or corporation dealing wholly or partly in the sale or distribution of alcoholic beverages. Any person violating this provision of the beverage law shall be guilty of a misdemeanor and shall, upon conviction, be automatically removed or suspended from office and punished by a fine of not more than $500.00 or by imprisonment in the county jail for not more than 6 months, or both.

History.—§3, ch. 16774, 1935; CGL 1936 Supp. 4151(229), 7648(4); am. §6, ch. 22663, 1945; §20, ch. 57-420.
cf.—§775.06, Alternative punishment.

561.26 Term of licenses.—

(1) Except as herein otherwise provided, no license shall be issued except annual licenses which shall be paid for on or before the first of October and shall expire the first of the succeeding October; provided that any person beginning business after the first of October may obtain a new license upon the application therefor and the payment of the annual license tax and such license shall expire on the first of the succeeding October; provided, further, that any person beginning such business on or after the first of April of the license year may obtain a new license expiring on the first of October of the same year upon application therefor and the payment of one-half the license tax herein required for the annual license. Nothing herein shall be construed to permit the issuance of licenses contrary to the limitation on the number of such licenses as provided in subsection (4), §561.20, nor to amend the provisions of this law pertaining to the renewal or transfer of licenses.

(2) In addition to the state license tax herein required, there shall be paid by each licensee a county license tax equal to the state license tax.

History.—§5, sub-§ VII½, ch. 16774, 1935; CGL 1936 Supp. 4151(231); §10, ch. 25359, 1949; (2)R. by §21, ch. 57-420, remaining subsections renumbered.

561.27 Renewing license.—

(1) A duly licensed annual licensee under the beverage law, except as provided in §§561.22 and 561.24 of the beverage law, shall be entitled to a renewal of his annual license from year to year, as a matter of course, on or before the first of October, by presenting the license for the previous year or satisfactory evidence of its loss or destruction to the tax collector, and by paying the annual license tax and giving any bond required of such licensee under the beverage law, without the necessity of applying to the director for approval thereof; provided, the annual license of such licensee shall not have been revoked.

(2) A license may be renewed subsequent to October 1 of each year only upon making to the director a delinquent application for approval, accompanied by an affidavit, that no sales of alcoholic beverages have been made subsequent to October 1, and upon payment of a penalty of five dollars for each month or fraction of a month of delinquency or upon payment of a penalty of five per cent of the license fee, whichever amount is the greater; provided, however, that all licenses not renewed within sixty days of October 1 will be cancelled by the state beverage department, unless such license is involved in litigation. If any license is not renewed due to litigation, satisfactory proof that license is involved in litigation must be supplied to the director within sixty days of October 1. If this provision is not carried out then the license must be returned by the county tax collector to the state beverage department for cancellation; provided, however, that the director may allow a licensee to renew the license subsequent to the sixty day period after good and sufficient cause for the delinquency has been shown to the director by the licensee.

History.—§9, ch. 18015, 1937; CGL 1940 Supp 4151(2711). §11, ch. 25359, 1949; §22, ch. 57-420; (2) by §3, ch. 59-316; (2) a. by §4, ch. 61-219.

561.29 Revocation and suspension of license; power to subpoena; hearing; appeal to courts.—

(1) The director is given full power and authority to revoke or suspend the license of any person, firm or corporation holding a license under the beverage law, where it is determined or found by the director upon sufficient cause appearing of:

(a) Violation by the licensee, his or its agents, officers, servants or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state, or of the United States, or violation of

any municipal or county regulation in regard to the hours of sale, service or consumption of alcoholic beverages, or engaging in or permitting disorderly conduct on the licensed premises, or permitting another on the licensed premises to violate any of the laws of this state or of the United States.

(b) Violation by the licensee, and, if a corporation, by any officers thereof, of any laws of this state, or any state, or territory of the United States.

(c) Maintaining a nuisance on the licensed premises.

(d) Maintaining licensed premises that are unsanitary, or are not approved as sanitary by the county or state board of health having jurisdiction thereof.

Whether or not the licensee, his or its officers, agents or employees, have been convicted in any criminal court of any such violation shall not be considered in proceedings before the director for suspension or revocation of license.

(e) Violation by the licensee, and, if a corporation, by any officers thereof of any rule or rules promulgated by the director in accordance with the provisions of this chapter, or a violation of any such rule by any agent, officer, servant or employee of the licensee on the licensed premises or in the scope of such employment.

(2) **The beverage director, or any assistant designated by him, shall have the power and authority to examine into the business, books, records and accounts of any licensee, and to issue subpoenas to said licensee or any other person from whom information is desired and to take depositions of witnesses within or without** the state. The director, or any assistant designated by him, may administer oaths and issue subpoenas. The provisions of the civil law of the state in relation to enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized to issue subpoenas under the laws of Florida, to issue subpoenas in civil cases, shall apply to a subpoena issued by the beverage director, **or any assistant designated by him, as authorized in this section, and may be enforced by writ** of attachment to be issued by the beverage director, or any assistant designated by him, for such witness to compel him to attend before the director, or any assistant designated by him, and give his testimony and to bring and produce such books, papers and documents as may be required for examination, and the director, or any assistant designated by him, may punish any wilful refusal to so appear or give testimony by citation of any witness before the circuit court who shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The director may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(3) Before the director shall revoke or suspend the license of any licensee, he shall give **such licensee a written statement of such cause for revocation or suspension of license and a fair hearing, if the licensee shall demand a** hearing; provided that said licensee shall in **writing demand a hearing within ten days after** the receipt of written statement from the director and shall, within ten days deliver **to the director, either in person or by due course** of mail, a copy of written demand for hearing. If no demand is made within the time herein fixed, the director shall proceed to the revocation or suspension of license. At the hearing the licensee shall be entitled to produce witnesses and be represented by counsel. Hearings may be conducted by an assistant designated by the director; and this assistant shall be either a full-time employee of the beverage department or a duly licensed attorney at law in the state employed on a contractual basis by the beverage department for the purpose of conducting hearings. If the hearing is conducted by any person, as herein provided, other than the director, the hearing officer shall make findings of fact and may make recommendations for disposition of the case based on such findings of fact. Upon receipt of the finding of fact made by the person designated as hearing officer, the director may enter his decision thereon.

(4) The director may, after the proceeding prescribed by subsection (3) hereof, impose a civil penalty against a licensee for any violation mentioned in the beverage law, or any rule issued pursuant thereto, not to exceed $1,000.00 for violations arising out of a single transaction. If the licensee fails to pay the civil penalty, his license shall be suspended for such period of time as the director may specify. The funds so collected as civil penalties shall be deposited in the state general revenue fund.

(5) The director may compromise at a summary hearing upon application therefor any alleged violations of the beverage law, by accepting from the licensee involved an amount not to exceed $1,000.00 for violations arising out of a single transaction. All funds so collected are to be deposited in the state general revenue fund.

(6) The director may suspend the imposition of any penalty conditioned upon terms the director should in his discretion deem appropriate.

7. (a) In order to permit a licensee an opportunity to apply to the court for relief, no order suspending or revoking a license or imposing a civil penalty by the director shall become effective until fifteen days after the date of said order.

(b) Application to the court for relief from the order shall be only by certiorari to the district court of appeal of the district wherein licensee is licensed to do business under the beverage law, in accordance with Florida appellate rules. The transcript of the record of the proceedings involved must be duly certified by the director.

(c) The petition for writ of certiorari shall not supersede the order of the director sought

to be reviewed unless the petitioner shall give good and sufficient bond conditioned to pay all costs, damages and expenses occasioned by reason of the stay of proceedings. When it shall be made to appear to the director that a petition for certiorari has been or is about to be applied for in the appellate court, the director shall grant a supersedeas or stay upon petitioner giving a good and sufficient bond, conditioned that such petition shall be duly presented to the appellate court within twenty days and to pay all costs, damages and expenses occasioned by reason of the stay of proceedings, in event the order or judgment of which a review is sought is not quashed, modified or reversed.

History.—§1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); §1A, ch. 19301, 1939; am. §4, ch. 21839, 1943; am. §7, ch. 22663, 1945; §3, ch. 23746, 1947; sub. §(1) am. §5, ch. 29786, 1955; (1),(4) by §23, ch. 57-420; §5, ch. 61-219; §1, ch. 61-397. cf.—§90.14 Compensation of witnesses in various courts.

561.291 Termination of communication service; revocation of license issued by beverage department or hotel commission.—

(1) Whenever the telephone, telegraph or any other communication facility or service furnished by a public utility to any place or installed on the premises of any place in the state operating under a license of the state beverage department or the state hotel commission has been duly and legally removed or terminated by operation of a state law having for its purpose the prohibiting of bookmaking or other gambling, or because of the operation of any rule, regulation or order of the Florida railroad and public utilities commission, the license or licenses shall be automatically and immediately suspended during the time the communication facilities are denied such places or premises. The Florida railroad and public utilities commission shall notify the state beverage department and the state hotel commission of the removal of communication services from such places.

(2) This section shall be deemed an exercise of the police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state, and the provisions of this section shall be liberally construed for the accomplishment of this purpose.

(3) Nothing in this section shall be construed as repealing the provisions of any other law or preventing the prosecution or the imposing of criminal or civil penalties provided by other law, the penalties herein imposed shall be in addition to any other penalties.

History.—Comp. §§1-3, ch. 26773, 1951.

561.32 Transfer of licenses.—Licenses issued under the provisions of the beverage law shall not be transferable except as follows: When a licensee shall have made a bona fide sale of the business which he is so licensed to conduct he may obtain a transfer of such license to the purchaser of said business, provided the application of the purchaser shall be approved by the director of the beverage department in accord with the same procedure provided for in §§561.17, 561.18 and 561.19, in the case of issuance of new licenses; provided further, however, that no one shall be entitled as a matter of right to a transfer of a license when revocation or suspension proceedings have been instituted against a licensee, and transfer of license in any such case shall be within the discretion of the director; provided further before the issuance of any transfer of license herein provided the transferee shall pay the following transfer fee applicable to the tax collector of the county, and said transfer fee shall be remitted to the beverage director on or before the tenth day of the following calendar month:

LICENSES ISSUED UNDER §561.34, FLORIDA STATUTES	TRANSFER LICENSE FEE
(1) (a)	$ 6.00
(1) (b)	3.00
(2) (a)	20.00
(2) (b)	10.00
(3) (4) (5) (6) (7) (8) (9) (10) (11) & (12)	10% of the total state, county and city, if any, annual license fees.

All licenses issued under §561.35, shall pay a transfer license fee equal to ten per cent of the total state, county and city, if any, annual license fee.

There is herein imposed a service fee of twenty-five cents on each such transfer license issued under this section and shall be collected by the county tax collector from each transferee upon the issuance of any such transfer license. The service fee shall be retained by the tax collector and accounted for as a part of his funds in accordance with law.

History.—§6, ch. 18015, 1937; CGL 1940 Supp. 4151(271f); §4, ch. 23746, 1947; §12, ch. 25359, 1949; am. §1, ch. 28123, 1953.

561.33 Licensee moving to new location; changing name of business.—

(1) Any licensee may move his place of business and sell at his new place of business upon making application, in triplicate, for such change of location to the district supervisor of the district of the state beverage department wherein the new location is situated, and upon such application being approved by the director of the beverage department, as provided in §§561.18 and 561.19. Upon such application and such approval thereof, there shall be issued to such licensee a license for the new location without the payment of any further fee or tax; provided, however, that if the new place of business be in a different county from the county where the original license was issued, an additional county license tax shall be paid by the licensee before the issuance of the license applied for; and, provided further, that if the new place of business be in a different incorporated municipality than that in which the original license was issued, the licensee shall be required to pay an additional tax to the incorporated municipality in which the new place of business is located. Nothing in this

section shall be construed to permit the change in location of any license that will increase the number of licenses in any county or incorporated municipality contrary to the limitations of the number of licenses provided in §561.20(1).

(2) No licensee may change the name of his place of business, except by making application in triplicate for such change to the district supervisor of the district of the state beverage department wherein is located the licensed premises and upon application being approved by the director of the beverage department, as provided in §§561.18 and 561.19.

History.—§11(b), ch. 16774, 1935; CGL 1936 Supp. 4151-(237); §1, ch. 20830, 1941; §13, ch. 25359, 1949; §24, ch. 57-420; §6, ch. 61-219.

561.34 License fees; vendors.—

(1) Each vendor shall pay an annual state license tax as follows:

(a) Vendors of malt beverages containing alcohol of more than one per cent by weight, fifteen dollars.

(b) In counties that have voted against the sale of intoxicating beverages, vendors of beverages containing alcohol of more than one per cent by weight and not more than three and two tenths per cent by weight, fifteen dollars.

(c) Vendors of malt beverages containing alcohol of more than one per cent by weight for consumption off the premises only, seven and one-half dollars.

(d) In counties that have voted against the sale of intoxicating beverages, vendors of beverages containing alcohol of more than one per cent by weight and not more than three and two tenths per cent by weight for consumption off the premises only, seven and one-half dollars.

(2) (a) Vendors of beverages containing alcohol of more than one percent by weight and not more than fourteen per cent by weight, and wines regardless of alcoholic content, fifty dollars.

(b) Vendors of beverages containing alcohol of more than one per cent by weight and not more than fourteen per cent by weight and wines regardless of alcoholic content, for consumption off the premises only, twenty-five dollars.

The following license taxes shall apply to vendors who are permitted to sell any such beverages regardless of alcoholic content.

(3) Vendors operating places of business where beverages are sold only in sealed containers for consumption off the premises where sold, an amount equal to seventy-five per cent of the amount of the license tax herein provided for vendors in the same county operating places of business where consumption on the premises is permitted.

(4) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over one hundred thousand, according to the latest state or federal census, seven hundred fifty dollars.

(5) Vendors operating places of business where consumption on the premises is permitted in counties having a population over sixty thousand and not over one hundred thousand, according to the latest state or federal census, six hundred dollars.

(6) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over forty thousand and not over sixty thousand, according to the latest state or federal census, five hundred dollars.

(7) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over ten thousand and not over forty thousand, according to the latest state or federal census, three hundred dollars.

(8) Vendors operating places of business where consumption on the premises is permitted in counties having a population of ten thousand or less, according to the latest state or federal census, two hundred dollars.

(9) Any operator of railroads or sleeping cars in this state may obtain a license to sell the beverages mentioned in the beverage law on passenger trains on the payment of an annual license tax of two hundred fifty dollars, said tax to be paid to the director. Such license shall authorize the holder thereof to keep for sale and sell all beverages mentioned in the beverage law upon any dining, club, parlor, buffet or observation car operated by it in this state, but said beverages may be sold only to passengers upon said cars and must be served for consumption thereon. It is unlawful for such licensees to purchase or sell any liquor except in miniature bottles of not more than two ounces. Every such license shall be good throughout the state. No license shall be required or tax levied by any municipality or county for the privilege of selling such beverages for consumption in such cars. Such beverages shall be sold only on cars in which are posted certified copies of the licenses issued to such operator. Such certified copies of such licenses shall be issued by the director upon the payment of a tax of one dollar.

(10) Operators of steamships and steamship lines, buses and bus lines, airplanes and airlines engaged in interstate commerce or plying between fixed termini and upon fixed schedules in this state may obtain licenses to sell the beverages mentioned in the beverage law on steamships, buses and airplanes operated by such operators on payment of an annual license tax of one hundred dollars, said tax to be paid to the director. Such licenses shall authorize the holders thereof to keep for sale and sell all beverages mentioned in the beverage law upon any steamship, bus or airplane operated by such operators in this state but said beverages may be sold only to passengers upon such steamships, buses and airplanes and may be served only for consumption thereon. It is unlawful for such licensees to purchase or sell any liquor except in miniature bottles of not more

than two ounces. Such sales shall be permitted only while said steamships, buses and airplanes are in transit and shall not be permitted while such steamships are moored at docks or wharves in ports of this state, or while said buses are at stations, or while airplanes are in airports. Every such license shall be good throughout the state. No license shall be required or tax levied by any municipality or county for the privilege of selling such beverages for consumption on such steamships, buses or airplanes. Such beverages shall be sold only on steamships, buses and airplanes in which are posted certified copies of the license issued to their operators. Certified copies of such license shall be issued by the director upon payment of a fee of one dollar for each certified copy; provided, that this paragraph shall not apply to operators of pleasure or excursion boats not having regular round trip runs of more than one hundred miles in each direction, but operators of such pleasure or excursion boats may obtain a license, with such boats being designated as their place of business, upon compliance with all the laws relating to vendors operating places of business where consumption on the premises is permitted; provided further, that no license to sell the beverages herein defined shall be issued to the operator of any boat which plies upon or is anchored upon the waters of any lake within this state.

Operators of railroads, sleeping cars, steamships, buses and airplanes licensed under this section shall not be required to obtain their beverages from licensees under the beverage law, but such operators shall keep strict account of all such beverages sold within this state and shall make monthly reports to the director on the forms prepared and furnished by the director. Said operators are hereby required to pay an excise tax for said beverages sold within this state as to which such excise tax has not theretofore been paid, equal to the tax assessed against manufacturers and distributors. Said operators shall pay said tax monthly to the director, at the same time they furnish the reports hereinabove provided for. Said reports shall be filed on or before the fifteenth day of each month for sales for the previous calendar month.

(11) Persons associated together as a chartered or incorporated club, including social clubs incorporated by orders of circuit judges after their charters have been found to be for objects authorized by law and approved by said judges as organized for lawful purposes and not for the purpose of evading license taxes on dealers in beverages defined herein, which such organizations are bona fide clubs, and at the time of application for license hereunder shall have been in continuous active existence and operation for a period of not less than two years in the county where they exist, shall before serving or distributing to their members or nonresident guests the beverages defined herein, whether such service or distribution be made upon contribution to the club of money or by check or other device, pay annual license taxes as follows:

To the state	$125.00
To the county	$125.00

provided, that any golf club operated by or on behalf of any incorporated municipality in this state, and any veteran's or fraternal organization of national scope, need not have been, or need not be, in continuous active existence or operation for any required period of time prior to an application for license hereunder. The payment of such club license tax shall authorize the service and distribution to members and nonresident guests of the club only and such service and distribution to said members and nonresident guests shall not be deemed sales within the meaning of the law in this state but any service or distribution to anyone other than a member or nonresident guest of such licensed club shall be deemed a sale and any officer, member or employee of any such licensed club who shall sell or distribute or serve any such beverages to any person other than a member or nonresident guest of such club for money or other value shall be deemed guilty of selling such beverages without a license and shall be punished as provided by law. Any officer of any such club which has not paid such license, who shall knowingly permit such service or distribution by such club of the beverages herein defined to members or nonresident guests of such club shall, upon conviction thereof, be punished as herein provided; provided, that this paragraph shall not apply to clubs organized or used for the purpose of evading the payment of the license tax on vendors of such beverages, but such club shall be subject to the payment of the license tax imposed by the beverage law upon vendors. The president, vice-president, secretary or treasurer or officers of corresponding duties, by any name they may be called, of any club required by this section to pay a license tax, shall be required to see that such license tax shall be paid and in default thereof shall each be personally liable to the punishment provided by the beverage law for nonpayment of the license hereby required; provided, further, that clubs not authorized to obtain licenses under this subsection or which do not obtain licenses under this subsection may, if they comply with this provision of the beverage law, obtain licenses as vendors. Clubs obtaining such club licenses shall not purchase any beverage herein defined from anyone other than a distributor licensed under the beverage law, nor shall such clubs dispense or serve any beverages defined herein unless such beverages shall have been purchased by such club from such licensed distributor; nor shall they dispense or serve any such beverage on which a tax stamp is required by the beverage law unless the containers of such beverages have affixed to them the stamps required by said law. Such club license cannot be transferred in any manner whatsoever.

(12) Caterers at horse and dog race tracks and jai alai frontons may obtain licenses upon the payment of an annual state license tax of

two hundred fifty dollars and an annual county license tax of two hundred fifty dollars. Incorporated municipalities may provide for a municipal license tax on such caterers of fifty per cent of the state and county license tax, to be deducted from the state and county license tax as provided herein with reference to other municipal license taxes. Such caterers' licenses shall permit sales only within the enclosure wherein such races or jai alai games are conducted and such licensees shall be permitted to sell only during the period beginning ten days before and ending ten days after racing or jai alai under the authority of the state racing commission is conducted at such race track or jai alai fronton. Except as in this subsection otherwise provided caterers licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

(13) (a) Any person, firm or corporation operating a commercial establishment catering to the public by offering live band music, singers or other form of live entertainment, and which shall, in addition to said live entertainment, permit consumption of alcoholic beverages on the premises and does not hold a valid beverage license of any classification permitting consumption of said alcoholic beverages on said premises, shall pay a license fee of twenty-five dollars per day for each day of operation in addition to any other license fees now required by law. Such licenses herein required shall be issued by the beverage department for a period of less than thirty days.

(b) Said premises shall be subject to all general laws and special laws and municipal ordinances regulating the hours of opening and closing as provided for vendors of alcoholic beverages.

(c) The enforcement of this chapter shall be under the director and the director is hereby authorized to make such necessary rules and regulations to enforce the provisions hereof.

History.—§5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); §5, ch. 23746, 1947; §11, ch. 25035, 1949; sub. §(1)(a) am. §10, ch. 26484, 1951; sub. §(13) comp. §1, ch. 29960, 1955.
Am. (9)-(12) by §25, ch. 57-420; (1) by §4, ch. 59-316; (12) by §1, ch. 59-269; (13)(a) by §5, ch. 59-316.
cf.—§561.63, Sale of mixed drinks, when prohibited.
§567.10, Refund on discontinuance by local option.
§561.20 Limitation on number of licenses issued.
§561.32 Transfer of license.

561.341 Licenses; in Monroe county.—Licenses under subsections (3) and (7) of §561.34, shall be granted to vendors whose places of business are on the Florida Keys or islands in Monroe county, even though such places of business are or shall be within two thousand five hundred feet of an established school or church, provided, however, that such places of business are not or shall not be within five hundred feet of an established school or church. This section shall not apply to vendors whose places of business are or shall be within an incorporated city or town.

History.—§1, ch. 23880, 1947; §11, ch. 25035, 1949.

561.35 License fees; manufacturers, distributors, exporters.—

(1) Each manufacturer authorized to do business under the beverage law shall pay an annual license tax as follows:

(a) If engaged in the manufacture of wines and of nothing else, a state license tax of fifty dollars.

(b) If engaged in the manufacture of wines and cordials and of nothing else, a state license tax of one hundred dollars.

(c) If engaged in the business of brewing malt liquors and nothing else, a state license tax of seven hundred and fifty dollars.

(d) If engaged in the business of distilling spirituous liquors and nothing else, a state license tax of seven hundred and fifty dollars.

(e) If engaged in the business of rectifying and blending spirituous liquors and nothing else, a state license tax of twelve hundred and fifty dollars.

(f) Persons licensed hereunder in the business of distilling spirituous liquors may also engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(g) All persons licensed under paragraphs (a), (b), (c), (d), and (e) of this subsection shall be deemed manufacturers within the meaning of the beverage law.

(h) There shall be a separate license tax for each manufacturing plant or establishment operated in the state even though the same manufacturer operates more than one manufacturing plant or establishment.

(i) Each distributor who shall distribute beverages containing alcohol of more than one per cent by weight and not more than three and two-tenths per cent by weight, in counties where the sale of intoxicating liquors, wines and beers is prohibited, for each and every establishment or branch he may conduct, shall pay an annual state license tax of two hundred dollars.

(j) Each distributor who shall sell beverages containing alcohol of more than one per cent by weight and not more than fourteen per cent by weight, and wines regardless of alcoholic content, in counties where the sale of intoxicating liquors, wines and beers is permitted, shall pay for each and every such establishment or branch he may operate or conduct a state license tax of two hundred dollars.

(k) All other distributors authorized to do business under the beverage law shall pay a state license tax of twelve hundred fifty dollars for each and every establishment or branch they may operate or conduct in the state; provided, that in counties having a population of fifteen thousand or less according to the latest state or federal census the state license tax for a restricted license shall be three hundred fifty dollars, but the holder of such a license shall be permitted to sell only to vendors and distributors licensed in the same county, and such license shall contain such restrictions. In such counties licenses without such restrictions may be obtained as in other counties but the tax for

a license without such restrictions shall be the same as in other counties. Warehouses of a licensed distributor used solely for storage, located in the county in which license is issued to such distributors, shall not be construed to be separate establishments or branches.

(1) Each exporter as defined in §561.14(4), shall pay an annual state license tax of one hundred twenty-five dollars for each and every establishment or branch that such exporter may operate or conduct in this state.

(2) Each manufacturer, distributor and exporter shall pay an annual county license tax equal to the state license tax.

(3) All licenses of manufacturers, distributors and exporters shall be issued annually and shall run from October 1 to the succeeding October 1, except that where a manufacturer, distributor or exporter shall begin business after April 1 in any year he may obtain a license expiring on the succeeding October 1 upon the payment of one half the tax for such annual license.

History.—§5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); §2, (h), ch. 19301, 1939; §5, ch. 21839, 1943; (4) r. §12, ch. 29786, 1955; §4, ch. 63-562.
cf.—§561.32 Transfer of license.

561.36 Municipal license tax.—

(1) Each incorporated municipality in the state may levy and collect a license tax on each manufacturer, distributor, exporter, vendor, caterer and club having a place of business or club rooms within the corporate limits of such city or town not to exceed fifty per cent of the state and county license tax herein provided, but if such municipality provides and collects such license tax the manufacturer, distributor, exporter, vendor or club paying such license tax shall be entitled to a reduction in his state and county license tax of the amount so paid for such municipal license tax, upon exhibiting to the county tax collector a receipt for the payment of such municipal license tax. Such municipal license shall not apply to state and county licensees who shall have paid their state and county license tax before the ordinance providing for such municipal license tax shall have become effective.

No tax on the manufacture, distribution, exportation, transportation, importation or sale of such beverages shall be imposed by way of license, excise or otherwise, by any municipality, anything in any municipal charter, special or general law to the contrary notwithstanding, except as herein expressly authorized.

(2) Any beverage license issued by an incorporated municipality must be separate from any other municipal license and the amount of license tax paid for such license must show on its face.

History.—§7, ch. 16774, 1935; CGL 1936 Supp. 4151(233); §12, ch. 18015, 1937; §26, ch. 57-420; (1) §5, ch. 63-562.

561.37 Bond for payment of taxes.—Each manufacturer, distributor or exporter shall file with the director a surety bond acceptable to the director in the sum of twenty-five thousand dollars as surety for the payment of all taxes, provided, however, that where in the discretion of the director the amount of business done by the manufacturer or distributor is of such volume that a bond of less than twenty-five thousand dollars will be adequate to secure the payment of all taxes assessed or authorized by the beverage law, the director may accept a bond in a lesser sum than twenty-five thousand dollars, but in no event shall he accept bond of less than ten thousand dollars, and he may at any time in his discretion require any bond in an amount less than twenty-five thousand dollars to be increased so as not to exceed twenty-five thousand dollars; provided, however, that the amount of bond required for a brewer shall be twenty thousand dollars, except that where in the discretion of the director, the amount of business done by the brewer is of such volume that a bond of less than twenty thousand dollars will be adequate to secure the payment of all taxes assessed or authorized by the beverage law, the director may accept a bond in a lesser sum than twenty thousand dollars, but in no event shall he accept bond of less than ten thousand dollars, and he may at any time in his discretion require any bond in an amount less than twenty thousand dollars to be increased so as not to exceed twenty thousand dollars; provided further that the amount of the bond required for a wine or wine and cordial manufacturer shall be five thousand dollars, except that, in the case of a manufacturer engaged solely in the experimental manufacture of wines and cordials from Florida products where in the discretion of the director the amount of business done by such manufacturer is of such volume that a bond of less than five thousand dollars will be adequate to secure the payment of all taxes assessed or authorized by the beverage law, the director may accept a bond in a lesser sum than five thousand dollars, but in no event shall he accept a bond of less than one thousand dollars and he may at any time in his discretion require a bond in an amount less than five thousand dollars to be increased so as not to exceed five thousand dollars; provided, further, that the amount of bond required for a distributor who sells only beverages containing not more than three and two tenths per cent of alcohol by weight, in counties where the sale of intoxicating liquors, wines and beers is prohibited, and to distributors who sell only beverages containing not more than fourteen per cent of alcohol by weight and wines regardless of alcoholic content, in counties where the sale of intoxicating liquors, wines and beers is permitted, shall file with the director a surety bond acceptable to the director in the sum of twenty-five thousand dollars, as surety for the payment of all taxes; provided, however, that where in the discretion of the director the amount of business done by such distributor is of such volume that bond of less than twenty-five thousand dollars will be adequate to secure the payment of all taxes assessed or authorized by the beverage law the director may accept a bond in a less sum than twenty-five thousand dollars but in

no event shall he accept a bond less than one thousand dollars and he may at any time in his discretion require any bond in an amount less than twenty-five thousand dollars to be increased so as not to exceed twenty-five thousand dollars; provided, further, that the amount of bond required for a distributor in a county having a population of fifteen thousand or less who procures a license by which his sales are restricted to distributors and vendors who have obtained licenses in the same county, shall be five thousand dollars. Each exporter shall file with the director a surety bond acceptable to the director in the sum of five thousand dollars as surety for the payment of all taxes; provided, however, that where in the discretion of the director the amount of business done by the exporter is of such volume that a bond of less than five thousand dollars will be adequate to secure the payment of all taxes assessed or authorized by the beverage law, the director may accept a bond in a lesser sum than five thousand dollars, but in no event shall he accept bond of less than one thousand dollars.

History.—§5, sub-§ XI (h), ch. 16774, 1935; CGL 1936 Supp. 4151 (231); §2, ch. 19301, 1939; §6, ch. 63-562.

561.38 Issuance of license prohibited until bond approved; cancellation or expiration of bond.—No license shall be issued to a manufacturer, distributor or exporter until the bond herein provided for has been approved by the director. If at any time the bond is cancelled or expires, the licensee is enjoined from making any further purchases, sales, distribution or exportation of alcoholic beverages until a new bond is secured and approved by the director.

History.—§5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); §2, ch. 19301, 1939; §7, ch. 61-219; §7, ch. 63-562.

561.39 State license tax collected by county tax collector.—The state license tax provided for in the beverage law shall be collected by the county tax collector of each county and shall be remitted by him monthly with the report to the director on or before the tenth day of the succeeding month.

History.—§5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); §2, ch. 19301, 1939; §7, ch. 61-219.

561.41 Maintenance and designation of principal office by manufacturers, distributors and exporters.—Each manufacturer, distributor and exporter licensed hereunder shall have within this state an office which shall be designated as his principal office within this state and may maintain branch offices within or without this state. Said principal and branch offices within this state shall during regular defined business hours be kept open for the inspection of authorized employees of the beverage department.

History.—§4, ch. 16774, 1935; CGL 1936 Supp. 4151(230). §27, ch. 57-420; §8, ch. 63-562.

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer or distributor prohibited; procedure for enforcement; exception.—

(1) No licensed manufacturer, or distributor, of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the beverage law, nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this shall not apply to any bottles, barrels or other containers necessary for the legitimate transportation of such beverages, or advertising materials, and shall not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section.

(2) Credit for the sale of liquors may be extended to any vendor up to but not including the tenth day after the calendar week within which such sale was made.

(3) In cases where payment for sales to a vendor is not made by the tenth day succeeding the calendar week in which such sale was made, the distributor who made such sale shall, within three days, notify the beverage department in writing of such fact and the beverage department, upon receipt of such notice, shall, after compliance with the proceedings hereinafter mentioned, declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the beverage department shall certify in writing that such vendor has fully paid for all liquors previously purchased.

(4) Before the beverage department shall so declare, and prohibit such sales to such vendor, it shall, within two days after receipt of such notice, give written notice to such vendor by mail of the receipt by the beverage department of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof, or upon failure to do so, to show cause before the beverage director or one of his designated assistants why further sales to such vendor shall not be prohibited. Good and sufficient cause to prevent such action by the beverage department may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common law action. The vendor shall have five days after receipt of such notice within which to show such cause, and he may demand a hearing thereon, provided he does so in writing within said five days, such written demand to be delivered to the beverage director either in person or by due course of mail within such five days. If no such demand for hearing be made, the beverage department shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the beverage department shall certify in writing that such vendor has

fully paid for all liquors previously purchased. If such demand for hearing is made, the vendor shall be entitled to produce witnesses and be represented by counsel. Decision thereon may be made by the director or such designated assistant who has heard the same. In the event no good cause be shown, such prohibition of sales and declaration thereof to the vendor, manufacturers and distributors shall follow five days after such hearing unless the vendor within such time seeks review of such decision by certiorari or any other appropriate remedy to the circuit court of the county wherein the vendor is licensed to do business under the beverage law. In the event application for such review is filed within such time, such prohibition of sales shall not be made, published or declared until final disposition of such review by the courts.

(5) Upon receipt by the beverage department from the distributor of the notice of nonpayment provided for by subsection (3), above, the beverage department shall forthwith notify such delinquent vendor and all distributors in the state that no further purchases or sales of liquor by or to such vendor, except for cash, shall be made until good cause be shown by such vendor as heretofore provided for. No liquor shall be purchased by such vendor or sold to him by any distributor, except for cash, from and after such notification by the beverage department and until such cause be shown as is provided for in subsection (4), next above. In the event no good cause be shown, then all further sales, for cash or credit are hereby prohibited after such declaration in writing by the beverage department is sent to such vendor and distributors and until all delinquent accounts have been paid.

(6) Nothing herein shall be taken to forbid the giving of trade discounts in the usual course of business upon wine and liquor sales.

(7) The extension or receiving of credits in violation of this section shall be considered as an arrangement for financial assistance and shall constitute a violation of the beverage act and any maneuver, shift or device of any kind by which credit is extended contrary to the provisions of this section shall be considered a violation of the beverage act.

(8) The director may establish rules and require reports to enforce the herein established limitation upon credits and other forms of assistance. Nothing herein shall be taken to affect the provisions for cash sales of wines or beer as are provided in §562.21 or provisions of §562.22 but shall govern all other sales of intoxicating liquors.

(9) The term advertising materials as used in this section shall not include outside signs so located as to be connected with or appertaining to the vendor's licensed premises.

(10) No manufacturer or distributor of the beverages herein referred to shall directly or indirectly give, lend, rent, sell or in any other manner furnish to a vendor any outside sign, printed, painted, electric, or otherwise; nor shall any vendor display any sign advertising any brand of alcoholic beverages on the outside of his licensed premises or on any lot of ground of which the licensed premises are situate, or on any building of which the licensed premises are a part.

(11) A vendor may display in the interior of his licensed premises, including the window or windows thereof, neon, electric, or other signs, including window painting and decalcomanias applied to the surface of the interior or exterior of such windows, and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him, whether visible or not from the outside of the licensed premises, but no vendor shall display in the window or windows of his licensed premises more than one neon, electric, or similar sign, advertising the produce of any one manufacturer.

(12) Any manufacturer or distributor may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer or distributor neon or electric signs, window painting and decalcomanias, posters, placards and other advertising material herein authorized to be used or displayed by the vendor in the interior of his licensed premises.

History.—§4, ch. 16774, 1935; CGL 1936 Supp. 4151(230); §1, ch. 22078, 1943; §6, ch. 23746, 1947; §1, ch. 25260, 1949; §1. ch. 25340, 1949; sub. §(3) am. §10, ch. 26484, 1951.
Am. (6),(11) by §28, ch. 57-420.

561.43 Dry counties; manufacturers' or distributors' licenses; exemptions.—

(1) No license shall be issued under §561.35, to a manufacturer, distributor or exporter for the operation of a manufacturing or distributing plant or exporting establishment, as defined in §561.01, in any county where the sale of intoxicating liquors, wines and beers is prohibited, except:

(a) To manufacturers of wines or wines and cordials;

(b) To distillers of alcoholic or spirituous liquors made exclusively from citrus fruits, citrus fruit products or citrus fruit by-products, agricultural products and by-products;

(c) To manufacturers of beer whose plants are licensed at the time the county in which such plants are located votes to prohibit the sale of intoxicating beverages therein under the local option provisions of the constitution of Florida.

(d) To rectifiers and blenders of alcoholic or spirituous liquors mixed exclusively with citrus fruit products or citrus fruit by-products, agricultural products or agricultural by-products

(2) It shall be lawful for any manufacturer or distiller authorized to be licensed under the provisions of this section to sell its products from its plants only for transportation out of the county.

History.—§5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); §2, ch. 19301, 1939; am. §8, ch. 22663, 1945; am. §7, ch. 23746, 1947; §1, ch. 57-1969; (1)(d) n. §1, ch. 61-438; (1) §9, ch. 63-562.

561.44 Licensing vendors near school or church; zoning regulations in cities and counties.—

(1) Incorporated cities and towns are hereby given the power hereafter to establish zoning ordinances restricting the location wherein a vendor licensed under §561.34 may be permitted to conduct his place of business and no license shall be granted to any such licensee to conduct a place of business in a location where such place of business is prohibited from being operated by such municipal ordinance; provided, however, such powers shall not apply to vendors licensed under paragraph (c) and (d) of subsection (1) of §561.34.

(2) The board of county commissioners of any county of the state may hereafter, by resolution, establish zones or areas, in the territory lying without the limits of incorporated cities or towns, wherein the location of a vendor's place of business licensed under this act may be permitted to be operated; provided, however, such power shall not apply to vendors licensed under paragraphs (c) and (d) of subsection (1) of §561.34, and no license shall be granted to any such licensee to conduct a place of business in a location where such place of business is prohibited from being operated by such resolution, provided, however, that no license under subsections (3) to (8) inclusive, of §561.34, shall be granted to a vendor, in the territory lying without the limits of incorporated cities or towns, whose place of business is within twenty-five hundred feet of an established church or school (which distance shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of said place of business to the main entrance of the church) and, in the case of a school, to the nearest point of the school grounds in use as part of the school facilities; provided further, that where such established church or school be within the incorporated city or town and the applicant for such license, under subsections (3) to (8) inclusive, of §561.34, within the county be outside such incorporated city or town, or in another county and outside any other incorporated city or town, then and in either event such applicant may be granted such license if his place of business be the same or a greater distance from such church or school as required by the ordinance of the incorporated city or town wherein such church or school is located; provided further, that where an established church or school be located in a county outside an incorporated city or town so near the corporate limits of any such city or town that under the ordinances of such city or town a vendor therein shall receive a license under subsections (3) to (8) inclusive, of §561.34, within a distance less than twenty-five hundred feet of such church or school, then and in that event any applicant for such license in the county outside such city or town may be issued such license when his place of business is the same or a greater distance from such church or school as any such vendor duly licensed within such incorporated city or town; provided, further, that any such licensed premises located on any populated island the distance from any established church or school shall be two thousand feet. Provided always, that any measurements required by the provisions of this subsection shall be made as heretofore set forth in this subsection.

(3) No license shall be granted under §561.34 (3)-(8) inclusive, where said business is located in any building, or upon a lot or parcel of land located less than three hundred feet to the nearest property line of any public housing project constructed or maintained by or with the aid of federal funds. The provisions of this subsection shall be applicable only in cities having a population of more than one hundred thousand people and less than two hundred thousand people according to the last federal census.

History.—§5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); §2, ch. 19301, 1939; (1), (2) §8, ch. 23746, 1947; (3) §1, ch. 23789, 1947; (4) §1, ch. 23835, 1947.
Am. §1, ch. 25104, 1949 (Law effective May 18, 1949).
Am. §15, ch. 25359, 1949 (Law effective June 13, 1949).
(1),(2) by §2, ch. 59-269.

561.441 Additional zoning powers granted certain counties.—

(1) From and after May 30, 1949, the county commissioners of those counties in the state where the sale of intoxicating liquors is permitted and where said commissioners are authorized to establish or have established zoning and planning boards, be and they are, hereby authorized to determine the distance from churches and schools within which intoxicating liquors may be sold in those areas within said counties outside the limits of incorporated cities and towns that are now, or which may hereafter be, designated or zoned for business purposes.

(2) Such distance so determined by said county commissioners shall not be less than the distance established by ordinance in the county seats of the respective counties in which county commissioners may exercise such authority, or not more than the distance established by general law in the absence of any such authority being exercised by the county commissioners.

History.—Comp. §§1, 2, ch. 25184, 1949.

561.45 Establishment of school or church near licensee after license issued.—Whenever a licensee has procured a license permitting the sale of beverages containing more than one per cent of alcohol by weight, and thereafter a church or school be established within a distance otherwise prohibited by law of the place of business of the licensee, the establishment of such church or school shall not be cause for the revocation of the license of such licensee and shall not prevent the subsequent renewal of such license of such licensee.

Provided, that whenever the beverage director has heretofore approved the transfer of any such license from a location which is within the distance from churches or schools

prohibited by law to a new location which is likewise in such prohibited distance and such new location is substantially the same distance from churches or schools as the former location or is in the same business block as the former location then such license and transfer thereof by the beverage director is hereby validated, approved and confirmed and provided further, that whenever any license heretofore issued has been issued and renewed yearly for the past five years, including renewals and transfers thereof, it shall not be grounds for revocation of any such license that the location of the licensee thereunder is now or was, when originally issued, within such prohibited distance from churches or schools and provided further that nothing herein shall authorize the beverage director to hereafter transfer any license without such prohibited distance to a location within such prohibited distance.

History.—§11, ch. 18015, 1937; CGL 1940 Supp. 4151(271j); §9, ch. 23746, 1947; §1, ch. 26585, 1951.

***561.46 Excise taxes on beverages; exemptions.—**

(1) As to malt beverages containing more than one per cent of alcohol by weight, there shall be paid by all manufacturers and distributors, as herein defined, a tax of twenty-eight cents per gallon upon all such beverages in bulk or in kegs or barrels and when sold in containers of less than one gallon, the tax shall be three and one half cents on each pint or fraction thereof in said container. Provided, however, the excise taxes required to be paid by this subsection upon malt beverages containing alcohol of not more than three and two tenths per cent by weight, shall not be required to be paid upon such beverages, where the same are sold to post exchanges, ship service stores and base exchanges located in military, naval or air force reservations within this state.

(2) As to beverages including wines, except natural sparkling wines and malt beverages, containing more than one per cent alcohol by weight and less than fourteen per cent alcohol by weight, there shall be paid by all manufacturers and distributors a tax at the rate of one dollar fifteen cents per gallon; provided, however, that there shall be paid by all manufacturers and distributors a tax of twenty-three cents per gallon and no more, upon all wines, except natural sparkling wines, containing more than one per cent alcohol by weight and less than fourteen per cent alcohol by weight, manufactured in Florida from fresh fruits, berries or grapes and not from concentrates thereof, except concentrates of fruits, berries or grapes grown and concentrated in Florida and bottled in Florida and upon all other such beverages except malt beverages, containing more than one per cent alcohol by weight and less than fourteen per cent alcohol by weight, manufactured and bottled in Florida from Florida citrus products or Florida citrus by-products and not from concentrates thereof except concentrates grown and concentrated in the state. It is further provided, however, that the exception set forth in this subsection relating to all such beverages except wines and malt beverages manufactured and bottled in Florida from Florida citrus products or Florida citrus by-products shall remain in full force and effect only until May 15, 1965.

(3) As to all wines, except natural sparkling wines containing fourteen per cent or more alcohol by weight, there shall be paid by manufacturers and distributors a tax at the rate of one dollar sixty cents per gallon; provided, however, that there shall be paid by all manufacturers and distributors a tax of thirty-five cents per gallon and no more, upon all wines manufactured in Florida from fresh fruits, berries or grapes and not from concentrates thereof, except concentrates of fruits, berries or grapes grown and concentrated in the state, bottled within this state and containing fourteen per cent or more of alcohol by weight.

(4) As to natural sparkling wines there shall be paid by all manufacturers and distributors a tax at the rate of two dollars thirty cents per gallon; provided, however, that there shall be paid by all manufacturers and distributors a tax of forty-six cents per gallon and no more, upon all natural sparkling wines manufactured in Florida from fruits, berries or grapes and not from concentrates thereof, except concentrates of fruits, berries or grapes grown and concentrated in this state and bottled within this state.

(5) As to beverages containing fourteen per cent or more of alcohol by weight and not more than forty-eight per cent of alcohol by weight, except wines, there shall be paid by all manufacturers and distributors a tax at the rate of one dollar and fifty-three cents per gallon, except that upon all such beverages manufactured and bottled in Florida from Florida citrus products or Florida citrus by-products and not from concentrates thereof, except concentrates grown and concentrated in the state the tax shall be at the rate of twenty-eight cents per gallon, said taxes to be evidenced by stamps as hereinafter provided. Provided, however, the exception set forth in this subsection relating to Florida citrus products or Florida citrus by-products shall remain in full force and effect only until May 15, 1965. The director by promulgation of a rule shall establish the denominations of which excise tax stamps for such intoxicating beverages shall be sold. In the event any such intoxicating beverages are sold in a quantity which under the excise tax levied herein or elsewhere in this chapter, would require excise tax stamps not available under the rule promulgated by the director, the containers of such intoxicating beverages must have affixed thereto excise tax stamps of a denomination above that required.

(6) As to beverages containing more than forty-eight per cent of alcohol by weight, there shall be paid by all manufacturers and distributors a tax at the rate of three dollars six cents per gallon, except that upon such bever-

ages manufactured and bottled in Florida from Florida citrus products or Florida citrus by-products and not from concentrates thereof except concentrates grown and concentrated in the state the tax shall be at the rate of fifty-five cents per gallon, said taxes to be evidenced by stamps as herein provided. Provided, however, the exception set forth in this subsection relating to Florida citrus products or Florida citrus by-products shall remain in full force and effect only until May 15, 1965.

(7) Nothing in this section shall in any manner affect any tax imposed by chapter 24342, laws of 1947 §561.64, or of chapter 25340, laws of 1949 §§561.42, 561.461, 561.462.

(8) Provided further that wine used by any established church as sacramental wine or in connection with religious services is hereby expressly exempted from the provisions of this section.

(9) As to all beverages taxed under this section which are manufactured or bottled in Florida, there shall be a two per cent discount allowed to the manufacturer or bottler on the amount of taxes assessed against wine for his losses from shrinkage, in filtering, breakage and waste in bottling, said two per cent to be computed on the taxable amount assessed by the state when sold taxpaid, and said two per cent shall be deducted by the manufacturer or bottler on his monthly report.

History.—§9, ch. 16774, 1935; CGL 1936 Supp. 4151(235) §10, ch. 18015, 1937; §2, ch. 20830, 1941; am. §1, ch. 22562, 1945; §§1-7, 9, ch. 26324, 1949; (2) §1, ch. 28177, 1953; (2)-(4), (9) n. (1), (4) §29, ch. 57-420; (5) §9, ch. 61-219; (10) n. §1, ch. 61-271; (2), (5), (6), §1, ch. 63-466; (1)-(6), §1, ch. 63-531; (10) r. §§1, chs. 63-485 and 63-510.

*Note.—Subsections (2), (5), (6) expire May 15, 1965.

***561.461 Additional tax on certain beverages; exceptions.**—In addition to all taxes now levied and imposed by the laws of Florida upon the manufacture, distribution and sale of beverages containing fourteen per cent or more of alcohol by weight, except all wines, natural sparkling wines and malt beverages, there is hereby levied and imposed an additional tax of twenty-five cents per gallon upon such beverages containing fourteen per cent or more of alcohol by weight and not more than forty-eight per cent of alcohol by weight, and an additional tax of fifty cents per gallon upon such beverages containing more than forty-eight per cent of alcohol by weight, provided that upon such beverages manufactured and bottled in Florida from Florida citrus products or Florida citrus by-products and not from concentrates thereof except concentrates grown and concentrated in the state the additional tax shall be five cents and ten cents, respectively, per gallon. The payment of said additional taxes shall be evidenced by stamps as provided for in the beverage law.

History.—§2, ch. 25340, 1949; §1, ch. 63-464.

cf.—§396.121 Appropriation; rehabilitation of alcoholics.

*Note.—Expires July 1, 1965.

561.462 Legislative intent; interdependence of §§561.42 and 561.461.—It is the intent that §§561.42 and 561.461 shall be dependent upon each other and considered together as making one whole, and should one portion be declared unconstitutional and invalid, then the other shall fail.

History.—Comp. §3, ch. 25340 1949.

561.47 Stamps sold distributors only; price; affixing.—

(1) The stamps provided for shall be sold by the director to distributors who are licensed in this state and who have furnished the bond required herein, and to none else. The director shall sell all such stamps to distributors for cash only at a price of ninety-eight cents for each dollar's worth of stamps purchased.

(2) Each such purchaser of stamps shall by such purchase become obligated and required to affix such stamps to the bottles or immediate containers in which beverages requiring stamps are sold, and stamps of the required amount shall be affixed thereto before such beverages are sold by any distributor. Such stamps shall be affixed in accordance with regulations of the director, which said regulations the director may make, promulgate and change from time to time.

(3) The director may at any time require reports additional to the monthly reports hereinbefore required, as to the disposition of the beverages herein defined, for the purpose of assessment and collection of the excise taxes herein provided, and the burden of proof shall be on the distributors to satisfy the director as to the disposition of said beverages.

History.—§9, ch. 16774, 1935; CGL 1936 Supp. 4151(235); §10, ch. 18015, 1937; §2, ch. 20830, 1941; am. §3, ch. 22026, 1943; am. §9, ch. 22663, 1945; am. §10, ch. 23746, 1947.

561.471 Malt beverages; stamp on crown or can lid.—

(1) On and after the first day of October, 1959, all taxable malt beverages packaged in bottles or cans, possessed by any person, firm or corporation in the state, for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses and airplanes engaged in interstate commerce and licensed under this section, shall have printed or lithographed on the crown or can lid thereof, the word "Florida" in not less than 8-point type; crown closures and can lids shall bear the manufacturer's insignia, name or trademark in addition to the word "Florida." Manufacturers of the malt beverages shall be required to submit samples of crowns or lids to the state beverage director for approval as to the "Florida" designation. Provided, however, that manufacturers of malt beverages who have heretofore submitted samples of crowns or lids to the state beverage director and had said samples approved shall not be required to resubmit such samples for approval.

(2) Nothing herein contained shall require crowns or can lids bearing such designation to be attached to containers of malt beverages which are transported through this state and which are not sold, delivered or stored for sale therein, if transported in accordance with such rules and regulations as adopted by the state beverage director; nor shall this requirement apply to malt beverages packaged in bottles

or cans and held on the premises of a brewer or bottler, which malt beverages are for sale and delivery to persons, firms or corporations outside the state.

(3) It is further provided that the state beverage director shall issue his approval of a crown or can lid only if the word "Florida" is applied in a clear fashion and by a method that will assure the permanent attachment of the design to the crown or can lid.

(4) The possession by any person, firm or corporation in the state, except as otherwise provided herein, of more than four and one-half gallons of malt beverages in bottles or cans, the crowns or lids of which do not have the word "Florida" as herein provided, shall be prima facie evidence that said malt beverage is possessed for the purpose of sale or resale.

(5) Except as otherwise provided herein, any malt beverages in bottles or cans held or possessed in the state for the purpose of sale or resale within the state, the crown or can lid of which does not bear the word "Florida" thereon and for which design there is not an approval and an approved sample thereof on file in the office of the state beverage director, shall, at the direction of, or by, the state beverage director, be confiscated in accordance with the provisions of §§562.39, 562.40 and 562.44; provided, that the provisions of this section shall not be effective until the 1st day of October, 1949, with respect to malt beverages held or possessed by a manufacturer or distributor, and shall not be effective until the 1st day of January, 1950, with respect to malt beverages held or possessed by retail vendors.

(6) Any person, firm or corporation, its agents, officers or employees, violating any of the provisions of this section, shall upon conviction thereof be fined up to five hundred dollars or imprisoned for one year or both; and the license, if any, shall be subject to revocation or suspension by the state beverage director.

History.—§§1-5, ch. 25261, 1949; sub. §(1) am. §9, ch. 29786, 1955; (1) by §1, ch. 59-143; (3) a. by §8, ch. 61-219.
cf.—§95.37 Limitation on claims against state.
§215.26 Limitation on right to refund from state treasury.

561.48 Stamp redemption.—The comptroller may upon receipt of satisfactory evidence of the facts, and of approval by the director, make allowance for or redeem such stamps as may have been spoiled, destroyed or rendered useless or unfit for the purposes intended or for which the purchaser may have no use, or which through mistake may have been improperly or unnecessarily used. Such allowance or redemption may be made either by giving to the purchaser other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, but no allowance or redemption shall be made in any case until the stamps so spoiled shall have been returned to the comptroller or until satisfactory proof has been made showing the reason why the same cannot be returned or if so required by the comptroller or by the director when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid. No allowance or repayment shall be made except to the original purchaser. Such claim shall not be paid unless approved by both the director and the comptroller. Sufficient funds are hereby appropriated out of the revenues collected under the beverage law to make such repayment.

History.—§10, ch. 16774, 1935; CGL 1936 Supp. 4151(236). Am. §10, ch. 29786, 1955; §10, ch. 63-562.
cf.—§95.37 Claims against state; limitation.
§215.26 Repayment of funds paid into state treasury through error, etc.

561.49 No tax on out-of-state sales.—The excise taxes provided for in this chapter shall be paid as to all such beverages sold within this state. No excise tax shall be required to be paid by manufacturers, distributors or exporters as to the sale of beverages which are actually delivered by such manufacturer, distributor or exporter to persons outside the state when such deliveries are actually made outside the state in places where the sale of such beverages is authorized by law to persons authorized by the laws of the places where such delivery is made to purchase and receive such beverages in such places. The burden shall always be on the manufacturer, distributor or exporter to show to the satisfaction of the director by bill of lading of a common carrier or other satisfactory evidence that delivery was made outside the state in accordance with the laws of the place of delivery.

History.—§9, ch. 16774, 1935; §10, ch. 18015, 1937; CGL 1936 Supp. 4151(235); §2, ch. 20830, 1941; §10, ch. 63-562.

561.50 One state tax payment and reports.—There shall be only one state tax paid as to each gallon or fraction thereof of beverage sold under the beverage law, and no other excise tax shall be levied directly or indirectly. Said tax shall be computed from the reports and books and records of manufacturers and distributors and said tax shall be remitted to the director at intervals of one month, i. e., said tax shall be paid by the tenth of each month for all beverages sold during the previous calendar month and such payment of tax shall accompany the report provided in §561.55. Provided, however, when the monthly tax liability of a manufacturer or distributor exceeds the amount of the bond furnished for payment of taxes, the director may require payment each Monday of the tax on the sales for the previous week.

History.—§9, ch. 16774, 1935; CGL 1936 Supp. 4151(235); §10, ch. 18015, 1937; §2, ch. 20830, 1941; §30, ch. 57-420.

***561.51 Beverage stamps; minimum denominations; exceptions.**—No stamps shall be sold by the beverage department, as provided by the beverage laws of this state, in denominations of less than seven and one half cents, except stamps for Florida produced beverages as hereinafter provided, and no container of beverages containing alcohol of fourteen per cent or more by weight except wines and Florida

produced beverages as hereinafter provided, shall be sold in this state, without there being affixed thereto a stamp of not less than seven and one half cents, or a stamp of such larger denomination as may be required by the beverage law; provided, however, that beverages containing alcohol of fourteen per cent or more by weight, except wine, manufactured and bottled in Florida from Florida citrus products or Florida citrus by-products and not from concentrates thereof except concentrates grown and concentrated in Florida, shall be sold in this state with a stamp of not less than three and three quarters cents, or a stamp of such larger denomination, as may be required by the beverage law.

History.—§9, ch. 16774, 1935; CGL 1936 Supp. 4151(235); §10, ch. 18015, 1937; §2, ch. 20830, 1941; §1, ch. 63-467.
*Note.—Expires July 1, 1965.

561.52 Authority of certain employees.—All white male employees of the state beverage department are hereby vested with all the authority and power that is conferred on supervisors in §§561.07 and 561.08, with respect to the beverage and cigarette tax laws of the state.

History.—CGL 1936 Supp. 4151(235); §10, ch. 18015, 1937; §3, ch. 20830, 1941; am. §10, ch. 22663, 1945.

561.54 Certain deliveries of beverages prohibited.—It is unlawful for common or permit carriers, operators of privately-owned cars, trucks, buses or other conveyances or out-of-state manufacturers or suppliers to make delivery from without the state of any beverage containing more than one per cent alcohol by weight to any person, association of persons or corporation within the state, except to qualified manufacturers, distributors and exporters of such beverages so delivered and to qualified bonded warehouses in Florida, and except sacramental wines ordered under permit issued by the state beverage department.

History.—CGL 1936 Supp. 4151(235); §10, ch. 18015, 1937; §5, ch. 20830, 1941; am. §11, ch. 22663, 1945; am. §11, ch. 23746, 1947; §11, ch. 25035, 1949; §11, ch. 29786, 1955; §11, ch. 63-562.

561.55 Manufacturers', distributors' and exporters' records and reports.—

(1) Manufacturers, distributors and exporters shall each keep a complete and accurate record and make reports showing the amount of beverages manufactured or sold within the state and to whom sold; also of all beverages imported from beyond the limits of the state and to whom sold; also all beverages exported beyond the limits of the state, to whom sold, the place where sold and the address of the person to whom sold. Manufacturers, distributors and exporters shall make full and complete report by the tenth day of each month for the previous calendar month. Said report shall be made out in triplicate, two copies of which shall be sent to the beverage department, the third copy retained for the manufacturer's, distributor's or exporter's record. Reports shall be made on forms prepared and furnished by the director.

(2) All manufacturers, distributors and exporters licensed under the beverage law shall maintain and keep for a period of three years at the licensed place of business such records of alcoholic beverages received, sold or delivered within or without this state as may be required by the director.

History.—§4, ch. 16774, 1935; CGL 1936 Supp. 4151(230). §31, ch. 57-420; §3, ch. 61-219; §12, ch. 63-562.

561.56 Transportation of beverages by manufacturers, distributors and exporters.—Manufacturers, distributors and exporters may transport or cause to be transported such beverages from one place in this state to another place in this state, or from any place beyond the limits of this state into any place within this state, or from any place in this state to any place beyond this state, for sale at wholesale or export as herein provided, except that no beverage prohibited to be sold in certain counties in this state shall be transported for sale or be caused to be transported for sale in the counties where their sale is prohibited.

History.—§4, ch. 16774, 1935; CGL 1936 Supp. 4151(230); §13, ch. 63-562.

561.57 Deliveries by licensees.—Vendors shall be permitted to make deliveries away from their places of business of sales actually made at the licensed place of business; provided, telephone orders received at vendor's licensed place of business shall be construed as a sale actually made at the vendor's licensed place of business. Where deliveries are made by a vendor, manufacturer, distributor or exporter away from his place of business, such deliveries shall be made only in vehicles to which are conspicuously attached vehicle plates as herein defined. The director shall have prepared annually vehicle plates suitable to be attached to such vehicles, with the words, Beverage Vehicle No.———, which such plates may be obtained by any licensee upon payment of a fee of one dollar for each such license plate, said fee to be paid to the director.

History.—§11(c), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; §17, ch. 25359, 1949; §32, ch. 57-420; §14, ch. 63-562.

561.58 Issuance of license for a prior license revoked.—When a license is revoked by the director under the authority granted in §561.29, it shall be within the discretion of the director to prohibit or permit a license provided for in §§561.34 and 561.35 to be issued for the location of the place of business formerly operated under such revoked license; provided the maximum period of time that any such license shall be prohibited by the director from any such place of business shall be two years from the first day of the succeeding October following such revocation.

History.—§7, ch. 20830, 1941; §18, ch. 25359, 1949.

561.60 Regulation concerning draft beer.—Each and every tap or spigot through which draft beer is served shall, on the handle of such tap or spigot in plain view of the consuming public, display the name of the beer being presently served through such tap or spigot.

History.—§9, ch. 20830, 1941; §18, ch. 57-1.

561.63 Sale of mixed drinks by certain vendors prohibited.—Vendors licensed to sell alcoholic beverages under subsections (2) (a) and (2) (b) of §561.34, are hereby prohibited from selling or dealing in or possessing for sale any alcoholic beverage except malt and vinous beverages, commonly termed beers, wines and ales, it being intended hereby to forbid the sale of what is known as prepared mixed drinks by those vendors who are licensed under subsections (2) (a) and (2) (b) of §561.34.

History.—§2, ch. 22026, 1943; am. §2, ch. 22562, 1945. Am. §19, ch. 25359, 1949.

561.631 Cigarette vending machines may be operated in package liquor stores.—It shall be lawful for places of business of vendors operating package liquor stores for consumption off the premises, to maintain and operate cigarette vending machines therein and thus through such medium offer for sale and sell cigarettes to patrons.

History.—Comp. §1, ch. 28293, 1953.

***561.64 Additional tax upon alcoholic beverages containing fourteen per cent or more of alcohol; exceptions.**—In addition to all taxes now levied and imposed by the laws of Florida upon the manufacture, distribution, and sale of beverages containing fourteen per cent or more of alcohol by weight, except all wines, natural sparkling wines and malt beverages, there is hereby levied and imposed an additional tax of seventy-two cents per gallon upon such beverages containing fourteen per cent or more of alcohol by weight and not more than forty-eight per cent of alcohol by weight and an additional tax of one dollar forty-four cents per gallon upon such beverages containing more than forty-eight per cent of alcohol by weight, provided that upon such beverages manufactured and bottled in Florida from Florida citrus products or Florida citrus by-products and not from concentrates thereof, except concentrates grown and concentrated in the state, the additional tax shall be fourteen and four-tenths cents and twenty-eight and eight-tenths cents respectively, per gallon. The payment of said additional taxes shall be evidenced by stamps as provided for in the beverage law.

History.—§§1, 3, ch. 22713, 1945; §1, ch. 24342, 1947; §1, ch. 63-465.

*Note.—Expires July 1, 1965.

CHAPTER 562

BEVERAGE LAW; ENFORCEMENT

562.01 Possession of unstamped beverages by vendor, club or caterer prohibited.—It is unlawful for any vendor, club or caterer to purchase, serve, distribute or store any beverages herein defined requiring stamps, unless said beverages bear or have affixed thereto the Florida excise tax stamps.

History.—§9, ch. 16774, 1935; CGL 1936 Supp. 4151(235); §10, ch. 18015, 1937; §2, ch. 20830, 1941; §1, ch. 57-327.
cf.—§§561.46-47, Tax stamps on beverages.

562.02 Possession of beverage not permitted to be sold under license.—It is unlawful for a licensee under the beverage law to have in his possession or permit anyone else to have in his or her possession at or in the place of business of such licensee beverages containing more than one per cent of alcohol by weight and not permitted to be sold by such licensee under the license issued to him under §561.34.

History.—§7, ch. 18015, 1937; §4, ch. 19301, 1939; CGL 1940 Supp. 4151(271g); am. §12, ch. 23746, 1947.

562.03 Storage on licensed premises.—

It is unlawful for any vendor to store or keep any beverages defined hereunder, except for the personal consumption of the vendor, his family and guest, in any building or room other than the building or room shown in the diagram accompanying his license application; provided, however, that where a vendor requires an additional building or storeroom for the storing of a portion of his stock of such beverages, he shall make application to the director for a permit to store such beverages in some other designated building or room. If such application shall be deemed reasonable by the director, he shall without any fee or other charges issue such permit and the vendor will thereby be permitted to keep or store such beverages in the place designated in the permit. Such permit shall be issued in duplicate, one copy which shall be posted in a conspicuous place in the licensee's place of business; the other duplicate shall be posted on the outside of the entrance door to the building or room described in the permit.

History.—§6, ch. 16774, 1935; CGL 1936 Supp. 4151(232). Am. §1, ch. 57-327.

562.031 Inspection and search of licensed premises.—Licensees, by the acceptance of their license, agree that their places of business shall always be subject to be inspected and searched without search warrants by the authorized employees of the beverage department and also by sheriffs, deputy sheriffs and police officers during business hours or at any other time such premises are occupied by the licensee or other persons.

History.—Comp. §2, ch. 57-327.

562.04 Sale of unstamped beverages prohibited.—It is unlawful for any person to sell within this state any beverages on which stamps are required unless the bottle or other immediate container in which said beverage is contained shall have affixed to it the stamps hereby required.

History.—§11, sub-§ (a), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941.

cf.—§562.37, Absence of stamp prima facie evidence of violation.

562.05 Sale without license prohibited.—

(1) It is unlawful for any person to sell beverages herein defined containing more than one per cent of alcohol by weight unless such person shall hold a proper license permitting such sale issued by the state and county wherein such sale is made. Any person convicted of violation of this section shall be guilty of a misdemeanor and shall be punished by fine of not less than $100.00 nor more than $1,000.00, or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon the arrest of any person charged with the violation of this section, the arresting officer shall take into his custody all intoxicating liquors, wines or beers found in the possession, custody or control of the person arrested, or found on the premises wherein such person was arrested, and safely keep and preserve the same and have it forthcoming at any investigation, prosecution or other proceeding for the violation of this section. Upon the conviction of the person arrested for the violation of this section such intoxicating liquors, wines or beers found by the arresting officer as aforesaid shall be forfeited to the state and shall be disposed of by the director according to the provisions of section 562.44.

History.—§11, sub-§ (b), ch. 16774, 1935; CGL 1936 Supp. 4151 (237); §1, ch. 20830, 1941; §1, ch. 57-327.

562.06 Sale only on licensed premises.—Each license application shall describe the location of the place of business where such beverage may be sold. It is unlawful to sell, or permit the sale of such beverage except on the premises covered by the license as described in the application therefor.

History.—§11, sub-§ (b), ch. 16774, 1935; CGL 1936 Supp. 4151 (237); §1, ch. 20830, 1941; §1, ch. 57-327.

562.061 Misrepresentation of beverages sold on licensed premises.—It is unlawful for any licensee, his agent or employee knowingly, to sell or serve any beverage represented or purporting to be a beverage containing more than one per cent of alcohol by weight which in fact is not such beverage. It is further unlawful for any licensee knowingly to keep or store on the licensed premises any bottles which are filled or contain liquid other than that stated on the label of such bottle.

History.—Comp. §2, ch. 57-327.

562.07 Illegal transportation of beverages.—It is unlawful for the beverages herein defined to be transported in quantities of more than twelve bottles except as follows:

(1) By common carriers;

(2) In vehicles of licensees to which said vehicles are attached the license plates herein mentioned;

(3) By individuals who possess such beverages not for resale within the state.

History.—§11, sub-§ (c), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941.

562.08 Beverage container limit.—It shall be unlawful for any distributor or vendor to sell or distribute spiritous beverages in any size container other than the following sizes: 40 ounces, 32 ounces, 25.6 ounces, 16 ounces, 12.8 ounces, 8 ounces, or 2 ounces or less, provided that this law shall not apply to any spirituous beverages being sold or offered for sale in Florida in some other size container on May 1, 1961, if satisfactory proof of said condition is furnished the state beverage department by the distributor or vendor desiring to sell such product.

History.—§11, sub-§ (d), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; §1, ch. 57-327; §1, ch. 61-447.

562.09 Package store restrictions.—Vendors licensed under §561.34(3) shall not in said places of business sell, offer or expose for sale any merchandise other than such beverages, and such places of business shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters,

grenadine, nonalcoholic carbonated beverages, fruit juices produced in Florida, and miniatures of no alcoholic content. Such places of business shall have no openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

History.—§11, sub-§ (e), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; am. §13, ch. 23746, 1947. Am. §1, ch. 29964, 1955; §1, ch. 57-327.

562.10 Regulations for consumption on premises; penalty.—Vendors licensed under §561.34, subsections (4) to (8), inclusive, shall provide seats for the use of their customers. Such vendors may sell the beverages herein defined by the drink or in containers for consumption on or off the premises where sold. It is unlawful for such premises to contain swinging doors or to contain screens so placed as to prevent passersby from seeing into the premises. There shall not be sold at such places of business anything other than the beverages hereby permitted and what is customarily sold in a restaurant. The premises of all such vendors shall be subject to and meet all the applicable provisions of chapter 381 and the regulations promulgated thereunder.

History.—§11, sub-§ (f), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; am. §14, ch. 23746, 1947.

562.11 Selling, giving or serving alcoholic beverages to minors prohibited.—

(1) It is unlawful for any person, firm or in the case of a corporation, the officers, agents and employees thereof, to sell, give, serve or permit to be served alcoholic beverages, including wines and beer, to persons under twenty-one years of age or to permit a person under twenty-one years of age to consume said beverages on the licensed premises. Anyone convicted of violation of the provisions hereof shall be punished by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars.

(2) It is unlawful for any person to misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any licensee, his agents or employees, to sell, give, serve or deliver any alcoholic beverages to a person under twenty-one years of age. Anyone convicted of violating the provisions hereof shall be punished by imprisonment in the county jail for not more than three months or by fine of not more than two hundred fifty dollars; provided, any person under the age of seventeen years violating said provisions shall be within the jurisdiction of the judge of the juvenile court, if any, or the county judge acting as a juvenile judge and shall be dealt with by said judge as a juvenile delinquent according to law.

(3) Any person under the age of twenty-one years testifying in any criminal prosecution or in any hearing before the director involving the violation by any other person of the provisions of this section shall be given full and complete immunity from prosecution for any violation of law revealed in such testimony that may be or may tend to be self incriminating, and any such person under twenty-one years of age so testifying, whether under subpoena or otherwise, shall be compelled to give any such testimony in such prosecution or hearing for which immunity from prosecution therefor is herein given.

History.—§11, sub-§ (g), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; am. §15, ch. 23746, 1947. Am. §20, ch. 25359, 1949; §1, ch. 57-327.

562.111 Possession of alcoholic beverages by minors prohibited.—It is unlawful for any person under the age of twenty-one years to have in his or her possession alcoholic beverages, except persons employed under the provisions of §562.13, acting in the scope of their employment.

History.—Comp. §2, ch. 57-327.

562.12 Beverages sold with improper license, or without license, or held with intent to sell prohibited.—

(1) It is unlawful for any licensee under this chapter to make sales of any of the beverages mentioned in this chapter except such beverages as such licensee is permitted by his license to sell, or to sell such beverages in any manner except that permitted by his license, and any licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where intoxicating liquors, wines or beer are sold unlawfully, shall, for each offense, upon conviction, be punished as for misdemeanors.

(2) Upon the arrest of any person charged with violation of this section, the arresting officer shall take into his custody all intoxicating liquors, wines or beer not within the purview of his license found in the possession, custody or control of the person arrested, and safely keep and preserve the same and have it forthcoming at any investigation, prosecution or other proceeding for the violation of this section, and for the destruction of the same as provided herein. Upon the conviction of the person arrested for the violation of this section, the judge of the court trying the case after notice to the person convicted and any other person whom the judge may be of the opinion is entitled to notice, as the judge may deem reasonable, shall issue to the sheriff of the county, the state beverage department or the authorized municipality a written order adjudging and declaring the intoxicating liquors, wines or beer forfeited and directing the sheriff, director of the state beverage department or authorized municipality to dispose of the liquors, wines or beer as provided in §562.44 or §568.10.

History.—§11, sub-§ (h), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; §1, ch. 28069, 1953; (2) a. by §1, ch. 61-218.

562.13 Employment of minors, or certain other persons by certain vendors prohibited.—

It is unlawful for any vendor licensed under the beverage law to employ any person under twenty-one years of age; provided, however, this section shall not apply to professional entertainers between the ages of eighteen and twenty-one years who are not in school, or to drug stores, grocery stores or automobile service stations which have obtained licenses to sell beer or beer and wine, where such sales are made for consumption off the premises only; nothing herein provided shall deny the employment of young citizens of the state, eighteen years of age or over, in bona fide food service establishments in which alcoholic beverages are sold; provided however, that the persons do not participate in the sale, preparation or service of the beverages and that their duties are of such nature as to provide them with training and knowledge as might lead to further advancement in food service establishments; and provided further, this section shall not prohibit the employment of bellboys, elevator boys and others under the age of twenty-one years in hotels where such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises. It shall also be unlawful for the vendor to knowingly employ any person in the place of business of such vendor who does not meet the qualifications required of licensees.

History.—§11, sub-§(j), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; am. §1, ch. 22669, 1945. §21, ch. 25359, 1949; §2, ch. 29964, 1955; §1, ch. 57-327; §1, ch. 61-429.

562.131 Solicitation for sale of alcoholic beverage prohibited; penalty.—

(1) It shall be unlawful for any licensee, his employee, agent, servant, or any entertainer employed at the licensed premises or employed on a contractual basis to entertain, perform or work upon the licensed premises to beg or solicit any patron or customer thereof or visitor in any licensed premises to purchase any alcoholic beverage for such licensee's employee, agent, servant or entertainer.

(2) It shall be unlawful for any licensee, his employee, agent or servant to knowingly permit any person to loiter in or about the licensed premises for the purpose of begging or soliciting any patron or customer of or visitor in such premises to purchase any alcoholic beverages.

(3) Any violation of this section shall be a misdemeanor.

History.—§§1-3, ch. 61-234.

562.14 Regulating the time for sale of alcoholic and intoxicating beverages; municipal and county regulations, etc.—

(1) No alcoholic beverages may be sold, consumed or served or permitted to be served or consumed, in any place holding a license under the state beverage department of Florida, between the hours of midnight and seven o'clock a. m. of the following day.

(2) No intoxicating beverages may be sold, consumed or served or permitted to be served, or consumed, in any place holding a license under the state beverage department of Florida, between twelve o'clock midnight Saturday and seven o'clock a. m. Monday.

(3) Incorporated municipalities may by ordinance independently regulate the hours of sale of alcoholic beverages within the corporate limits thereof, notwithstanding the provisions of this section. It shall be the duty of the sheriff, deputy sheriff and police officers of such municipality, and not the duty of the state beverage department, to enforce the hours of sale as regulated by any incorporated municipality.

(4) The board of county commissioners of any county of the state may, by resolution, independently regulate the hours of sale of alcoholic beverages within the territory of such county not included within any municipality notwithstanding the provisions of this section. It shall be the duty of the sheriff, deputy sheriff and police officers of such county, and not the duty of the state beverage department to enforce the hours of sale as regulated by such resolution.

(5) Any person, firm or in case of a corporation, the officers, agents or employees thereof, violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction be punished by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars, either one or both, in the discretion of the court trying the offender.

(6) Provided, however, that nothing contained in this section shall apply to beverages served upon any dining, club, parlor, buffet or observation car operated on any railroad, but such beverages may be sold only to passengers upon said cars and must be served for consumption thereon.

History.—§11, sub-§ (k), ch. 16774, 1935; CGL 1936 Supp. 4151(237); §1, ch. 20830, 1941; am. §§1-4, ch. 21944, 1943; am. §1, ch. 22605, 1945; am. §16, ch. 23746, 1947. Am. (3),(4) by §1, ch. 57-327.

562.15 Possession of unstamped beverages.—It is unlawful for any person to own or possess within this state any alcoholic beverage containing more than one per cent of alcohol by weight, unless the immediate container of such beverage shall have affixed to it the Florida excise liquor stamp required to be affixed for beverages of like alcohol content. Provided, that this section shall not apply to manufacturers or distributors licensed under the beverage law, to state bonded warehouses or to common carriers; provided, further, this section shall not apply to persons possessing not in excess of one gallon of such beverages; provided, the beverage shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and shall have been brought into this state by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such beverages.

History.—§5, ch. 18015, 1937; §5 (a), ch. 19301, 1939; CGL 1940 Supp. 4151(271e); am. §2, ch. 22669, 1945.

562.16 Possession of beverages upon which tax is unpaid.—Any person or corporation who shall own or have in his or its possession any beverage upon which a tax is imposed by the beverage law, or which would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions of the beverage law, and upon which such tax has not been paid shall, in addition to the fines and penalties otherwise provided in the beverage law, be personally liable for the amount of the tax imposed on such beverage, and the director may collect such tax from such person by suit or otherwise; provided, that this section shall not apply to manufacturers or distributors licensed under the beverage law, to state bonded warehouses or to common carriers; provided, further, this section shall not apply to persons possessing not in excess of one gallon of such beverages; provided, the beverage shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and shall have been brought into this state by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased in all cases shall be upon the possessor of such beverages.

History.—§5, ch. 18015, 1937; §5 (b), ch. 19301, 1939; CGL 1940 Supp. 4151(271e); am. §3, ch. 22669, 1945. Am. §1, ch. 57-327.

562.17 Collection of unpaid beverage taxes.—Any excise tax imposed by the beverage law may be collected as any other excise tax imposed by the state, and all rights and remedies available in the collection of any excise tax imposed by the state are made available for the collection of taxes imposed under the beverage law. Any and all taxes due the state on alcoholic beverages may be collected as provided in §210.14.

History.—§5, ch. 18015, 1937; §5 (c), ch. 19301, 1939; CGL 1940 Supp. 4151(271e); §22, ch. 25359, 1949.

562.18 Possession of beverage upon which federal tax unpaid.—It is unlawful for any person to have in his possession within this state any beverage containing more than one per cent of alcohol by weight, on which a federal excise tax is required to be paid, unless such federal excise tax has been paid as to such beverage.

History.—§4, ch. 18015, 1937; CGL 1940 Supp. 4151(271d).

562.19 Illegal use of tax stamps; penalty.—Whoever fraudulently cuts, tears, or removes any adhesive stamp used in pursuance of this chapter, or fraudulently uses, joins, fixes, or places to, with, or upon any container of a beverage, as to which any tax is imposed by this chapter (1) any adhesive stamp which has been cut, torn, or removed from any such container, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeit stamp; prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or willfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in his possession any washed, restored, or altered stamp which has been removed from any such container; or whoever knowingly or willfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a felony and upon conviction shall be punished by fine of not more than five thousand dollars, or imprisonment of not more than five years.

History.—§14, ch. 16774, 1935; CGL 1936 Supp. 7648(5). cf.—§775.06, Alternative punishment.

562.20 Monthly reports by common and other carriers of beverages required.—

(1) All common carriers of freight operating in the state shall file monthly reports with the beverage department on forms to be prepared by the beverage department which shall show in detail all shipments of alcoholic beverages containing more than one per cent by weight of alcohol transported by them to or from any point within the state.

(2) Every other person, except manufacturers and distributors licensed in this state who are required to make reports under §561.55, who brings into the state from any point without the state, any alcoholic beverage or beverages, in amounts exceeding one gallon in the aggregate, shall likewise file monthly reports with the beverage department on the forms to be prepared by the beverage department, which shall show in detail all such amounts of alcoholic beverages transported by them to any point within the state from any point without the state. Every licensee under this law who ships any alcoholic beverage to points beyond the state shall file monthly reports with the beverage department on forms to be prepared by the beverage department, which shall show in detail all shipments of alcoholic beverages transported by them from any point within the state to any point without the state.

(3) Such reports shall show in detail the name of the shipper and the consignee of each shipment and a description of the kind and amount of each such shipment, and shall be filed monthly on or before the fifteenth of each month for the calendar month previous.

History.—§12, ch. 16774, 1935; CGL 1936 Supp. 4151(238); am. §1, ch. 21840, 1943.

562.21 Sale of beer and wine to vendors for cash only.—All sales of malt, brewed or vinous beverages as defined in the beverage law, made by manufacturers, when distributing under a manufacturer's license, wholesalers and distributors to retail licensees must be for cash only, and cash in this instance means that delivery and payment therefor is to be a simultaneous transaction and any maneuver, device or shift of any kind whereby credit is extended shall constitute a violation of the beverage law. Nothing herein shall be construed to permit such manufacturers to distribute to vendors under a manufacturer's license where a warehouse has been established in any county or

counties from which such beverages are distributed other than the county wherein they are licensed to so manufacture.

History.—§1, ch. 19568, 1939; CGL 1940 Supp. 4151(271cc); §2, ch. 21840, 1943; §23, ch. 25359, 1949.

562.22 Cash deposit on beer sales.—That all licensed manufacturers, when distributing under a manufacturer's license, wholesalers and distributors of domestic malt or brewed beverages, as defined in the beverage law, shall require a minimum cash deposit of fifty cents on the sale of each case of twenty-four bottles of any domestic malt or brewed beverage herein referred to from their vendors, except nonreturnable bottles, and all vendors thereof shall make a minimum cash deposit of fifty cents on the purchase of each case of twenty-four bottles of any domestic malt or brewed beverage herein referred to, except nonreturnable bottles, and vendors shall require a minimum cash deposit of fifty cents on the sale of each case of twenty-four bottles of any domestic malt or brewed beverages herein referred to from their purchasers, except nonreturnable bottles. Said manufacturers, wholesalers and distributors shall keep a record of all such deposits and shall make refund to their vendors within ten days after receipt of notice from such vendors in writing that empties are ready for return, if such be true, to such manufacturers, wholesalers and distributors.

History.—§1, ch. 19570, 1939; CGL 1940 Supp. 4151(271dd). Am. §24, ch. 25359, 1949.

562.23 Conspiracy to violate beverage law; penalty.—If two or more persons shall conspire to do any act which is in violation of any of the provisions of the beverage law, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy, upon conviction, if the act so conspired to be done would be a misdemeanor under the provisions of the beverage law, shall be punished by imprisonment in the county jail for not more than one year or by fine of not more than $500.00, or if the act so conspired to be done would be a felony under the provisions of the beverage law, shall be punished by imprisonment of not more than five years in the state penitentiary or fined not more than $5,000.00.

History.—§6, ch. 19301, 1939; CGL 1940 Supp. 7648(26). Am. §3, ch. 29964, 1955.

cf.—§775.06, Alternative punishment.

562.24 Administration of oaths by director or supervisor.—The director and supervisors of the state beverage department may administer oaths or affirmations on statements of defendants charged with the violation of the beverage law and other things directly connected with the enforcement of said law.

History.—§7, ch. 19301, 1939; CGL 1940 Supp. 4151(271-o).

562.25 State bonded warehouses.—No operator of any storage warehouse shall accept for storage in such warehouse any beverage subject to tax under the beverage law until such operator shall have obtained from the state beverage department a permit to store such beverage and shall have filed a bond payable to the state beverage department, conditioned upon the full compliance by such operator with the provisions of this section; provided, however, that this section shall not apply to a federal bonded warehouse owned wholly by and operated solely for a manufacturer or distributor licensed under the beverage law. Such permit shall issue upon the payment of one dollar to the state beverage department, and may be refused, suspended or revoked in the same manner and upon the same grounds that the license of a distributor may be refused, suspended or revoked. Such bond shall be in an amount of not more than five thousand dollars nor less than one thousand dollars, in the discretion of the director, with a surety company licensed to do business in the state as surety.

On or before the tenth day of each month the operator of any state bonded warehouse shall report, on forms furnished by the state beverage department, the amount of such beverages on deposit in such warehouse on the last day of the previous calendar month and the amount of such beverages deposited in and withdrawn from such warehouse during the previous calendar month; provided, however, that no report shall be required as to such beverages on which all taxes have been paid which have been deposited in storage by a vendor licensed under the beverage law.

History.—§8, sub-§§ (a), (b), ch. 19301, 1939; CGL 1940 Supp. 4151(271p); §24, ch. 57-1.

562.26 Delivering beverage on which tax unpaid.—It is unlawful for any storage warehouse operator to deliver any beverages subject to tax under the beverage law and on which the tax has not been paid to anyone within the state except a common carrier or a manufacturer or distributor licensed under the beverage law to manufacture or distribute the type of beverage so delivered.

History.—§8, sub-§ (c), ch. 19301, 1939; CGL 1940 Supp. 4151(271p).

562.27 Seizure and forfeiture.—

(1) It is unlawful for any person to have in his possession, custody or control, or to own, make, construct or repair any still, still piping, still apparatus or still worm, or any piece or part thereof, designed or adapted for the manufacture of an alcoholic beverage containing more than one per cent of alcohol by weight, or to have in his possession, custody or control any receptacle or container containing any mash, wort or wash or other fermented liquids whatever capable of being distilled or manufactured into an alcoholic beverage containing more than one per cent of alcohol by weight, unless such possession, custody, control, ownership, manufacture, construction or repairing be by or for a licensee licensed under the beverage law to manufacture such alcoholic beverage.

(2) It is unlawful for any person to have in his possession, custody or control any raw materials or substance intended to be used in

the distillation or manufacturing of an alcoholic beverage containing more than one per cent of alcohol by weight unless the person holds a license from the state authorizing the manufacture of the alcoholic beverage.

The terms "raw material" or "substance" for the purpose of this chapter shall mean and include, but not be limited to, any of the following: any grade or type of sugar, syrup or molasses derived from sugar cane, sugar beets, corn, sorghum or any other source; starch; potatoes; grain or corn meal, corn chops, cracked corn, rye chops, middlings, shorts, bran or any other grain derivative; malt; malt sugar or malt syrup; oak chips, charred or not charred; yeast; cider; honey; fruit; grapes; berries; fruit, grape or berry juices or concentrates; wine; caramel; burnt sugar; gin flavor; Chinese bean cake or Chinese wine cake; urea; ammonium phosphate, ammonium carbonate, ammonium sulphate or any other yeast food; ethyl acetate or any other ethyl ester; any other material of the character used in the manufacture of distilled spirits or any chemical or other material suitable for promoting or accelerating fermentation; any chemical or material of the character used in the production of distilled spirits by chemical reaction; or any combination of such materials or chemicals.

(3) Any such raw materials, substance or any still, still piping, still apparatus or still worm, or any piece or part thereof, or any mash, wort, or wash or other fermented liquid and the receptacle or container thereof, and any alcoholic beverage together with all personal property used to facilitate the manufacture or production of the alcoholic beverage or to facilitate the violation of the alcoholic beverage control laws of this state or the United States may be seized by the director or any employee of the state beverage department or by any sheriff or deputy sheriff and shall be forfeited to the state.

(4) It shall be unlawful for any person to sell or otherwise dispose of raw materials or other substances knowing same are to be used in the distillation or manufacture of an alcoholic beverage containing more than one per cent of alcohol by weight unless such person receiving same, by purchase or otherwise, holds a license from the state authorizing the manufacture of such alcoholic beverage.

(5) Any vehicle, vessel, aircraft or any animal used in the transportation or removal of or for the deposit or concealment of any illicit liquor still or stilling apparatus or any mash, wort, wash, or other fermented liquids capable of being distilled or manufactured into an alcoholic beverage containing more than one per cent of alcohol by weight or any alcoholic beverage commonly known and referred to as "moonshine whiskey" shall be seized and forfeited; provided that no vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as carrier shall be forfeited under the provisions of this law unless it shall appear that (a) in the case of a railway car or engine, the owner, or (b) in the case of any other vehicle, vessel or aircraft the owner or the master of the vessel or the owner or conductor, driver, pilot or other person in charge of the vehicle, or aircraft was at the time of the alleged illegal act a consenting party or privy thereto; provided, further, that no vehicle, vessel or aircraft or other conveyance, shall be forfeited under the provisions of this law by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the vehicle, vessel or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of any state or of the United States. Any sheriff, deputy sheriff, state beverage director, or any employee of the state beverage department, or constable or police officer may seize any of the vehicles, vessels or conveyances, and the same shall be forfeited as hereinafter provided.

(6) The finding of any still, still piping, still apparatus or still worm, or any piece or part thereof, or any mash, wort or wash or other fermented liquids in the dwelling house or place of business, or so near thereto as to lead to the reasonable belief that they are within the possession, custody or control of the occupants of the dwelling house or place of business, shall be prima facie evidence of a violation of this section by the occupants of the dwelling house or place of business.

(7) Any person violating any provisions of this section of the law shall be guilty of a felony and shall be punished by imprisonment of not more than five years or a fine of not more than $5,000.00 or both.

History.—§9, ch. 19301, 1939; CGL 1940 Supp. 4151(271q); §4, ch. 22669, 1945; sub. §(3) am. §1, ch. 28073, 1953; sub. §(5) n. by §1, ch. 29804, 1955; §2, ch. 61-218.

562.28 Possession of beverages in fraud of beverage law.—All beverages on which taxes are imposed by the beverage law or would be imposed if such beverages were manufactured in or brought into this state in accordance with the regulatory provisions of such law, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the beverage law, or with design to evade payment of said taxes, may be seized by the director or any supervisor or any sheriff or deputy sheriff and shall be forfeited to the state.

History.—§10, sub-§ (a), ch. 19301, 1939; CGL 1940 Supp. 4151(271r).

562.29 Raw materials and personal property; seizure and forfeiture.—All raw materials found in the possession of any person intending to manufacture the same into a beverage subject to tax under the beverage law, or into a beverage which would be subject to tax under such law if manufactured in accordance with the regulatory provisions thereof, for the purpose of fraudulently selling such manufactured beverage, or with the design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever,

in the place or building or within any yard or enclosure or in the vicinity where such beverage or raw materials are found, may also be seized by the director or any supervisor or any sheriff or deputy sheriff, and shall be forfeited as aforesaid.

History.—§10, sub-§ (b), ch. 19301, 1939; CGL 1940 Supp. 4151(271r).

562.30 Possession of beverage prima facie evidence; exception.—The possession by any person, except a licensed manufacturer or distributor, a state bonded warehouse, or a common carrier, of any beverage which is taxable under the beverage law, or which would be taxable thereunder if such beverage were manufactured in or brought into the state in accordance with the regulatory provisions thereof, and upon which the tax has not been paid, shall be prima facie evidence that such beverage has been manufactured, or is being sold, removed or concealed with design to evade payment of such tax.

History.—§10, sub-§ (c), ch. 19301, 1939; CGL 1940 Supp. 4151(271r).

562.31 Possession of raw materials prima facie evidence; exception.—The possession by any person, except a licensed manufacturer or distributor, a state bonded warehouse or a common carrier, of any mash, wort or wash, or any other raw materials for the manufacture of beverage subject to tax under the beverage law, or which would be taxable thereunder if such beverage were manufactured or brought into the state in accordance with the regulatory provisions of such law, shall be prima facie evidence that such person intends to manufacture the same into such beverage for the purpose of selling such beverage with design to evade the payment of such tax.

History.—§10, sub-§ (d), ch. 19301, 1939; CGL 1940 Supp. 4151(271r); am. §5, ch. 22669, 1945.

562.32 Moving or concealing beverage with intent to defraud state of tax; penalty.—Every person who removes, deposits, or conceals, or is concerned in removing, depositing or concealing any beverage for or in respect whereof any tax is imposed by the beverage law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, with intent to defraud the state of such tax or any part thereof, shall be guilty of a felony and upon conviction shall be punished by a fine of not more than five thousand dollars or by imprisonment in the state penitentiary for a term of not less than one year or more than five years.

History.—§11, sub-§ (a), ch. 19301, 1939; CGL 1940 Supp. 7648(27).

cf.—§775.06, Alternative punishment.

562.33 Beverage and personal property; seizure and forfeiture.—Whenever any beverage on which any tax is imposed by the beverage law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, or any materials, utensils, or vessels proper, or other personal property whatsoever, intended to be made use of for or in the manufacture of such beverage are removed, or are deposited or concealed in any place, with intent to defraud the state of such tax, or any part thereof, all such beverages and all such materials, utensils, vessels, or other personal property whatsoever, may be seized by the director or any supervisor or any sheriff or deputy sheriff and shall be forfeited to the state.

History.—§11, sub-§ (b), ch. 19301, 1939; CGL 1940 Supp. 4151(271s).

cf.—§210.12, Seizures; forfeiture proceedings.

562.34 Containers; seizure and forfeiture.—(1) It shall be unlawful for any person to have in his possession, custody or control any cans, jugs, jars, bottles, vessels or any other type containers which are being used, are intended to be used or are known by the possessor to have been used to bottle or package alcoholic beverages containing more than one per cent of alcohol by weight; provided, however, that this provision shall not apply to any person properly licensed to bottle or package such alcoholic beverages or to any person intending to dispose of such containers to a person, firm or corporation properly licensed to bottle or package such alcoholic beverages.

(2) It shall be unlawful for any person to sell or otherwise dispose of any cans, jugs, jars, bottles, vessels or any other type containers knowing that such are to be used in the bottling or packaging of alcoholic beverages containing more than one per cent of alcohol by weight, unless the person receiving same, by purchase or otherwise, shall hold a license to manufacture or distribute such alcoholic beverages.

(3) It shall be unlawful for any person to transport any cans, jugs, jars, bottles, vessels or any other type containers intended to be used to bottle or package alcoholic beverages containing more than one per cent of alcohol by weight; provided, however, this section shall not apply to any firm or corporation holding a license to manufacture or distribute such alcoholic beverages; and provided, further, that this section shall not apply to any person transporting such containers to any person, firm or corporation holding a license to manufacture or distribute such alcoholic beverages.

(4) Any person violating any provision of this section of the law shall be guilty of a felony and shall be punished by imprisonment of not more than five years or fined not more than $5,000.00 or both.

(5) Any such cans, jugs, jars, bottles, vessels or any other type container found in the possession, custody or control of any person which are being used or are intended to be used or to be disposed of in violation of this section, shall be seized by the director or any employee of the state beverage department, sheriffs or deputy sheriffs and shall be forfeited to the state.

History.—§11, sub-§ (c), ch. 19301, 1939; CGL 1940 Supp. 4151(271s); §3, ch. 61-218.

562.35 Conveyance; seizure and forfeiture.—Every vehicle, vessel, aircraft or other conveyance, including animals used in the transportation or removal of or for the deposit or concealment of any mash, wort or wash, or other fermented liquids, or any moonshine whiskey, or any raw materials used to manufacture illicit liquors, utensils or stills and stilling apparatus, may be seized and forfeited subject to the provisions of §562.27(3).

History.—§11, sub-§ (d), ch. 19301, 1939; CGL 1940 Supp. 4151(271s); am. §2, ch. 28073, 1953.

562.36 Beverage on conveyance prima facie evidence; proviso.—The presence, in any conveyance or place, of any beverage upon which a tax is imposed by the beverage law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, and upon which the tax has not been paid, shall be prima facie evidence that such beverage is being removed, deposited or concealed with intent to defraud the state of such tax; provided, that the provisions of this section shall not apply to any conveyance or any place owned by, or in the possession, custody or control of a licensed manufacturer or distributor, a state bonded warehouse, or a common carrier.

History.—§11, sub-§ (e), ch. 19301, 1939; CGL 1940 Supp. 4151(271s).

562.37 Absence of stamp on container prima facie evidence that state or federal tax not paid.—The absence of the Florida excise liquor stamp upon the immediate container of any beverage as to the sale of which an excise stamp tax is required to be paid by the beverage law, or which would be required thereunder if such beverage were manufactured in or brought into the state in accordance with the regulatory provisions of such law, shall be prima facie evidence that such tax on such beverage has not been paid. The absence of the federal strip stamp on the immediate container of any beverage as to the sale of which an excise liquor stamp tax is required to be paid under the laws of the United States, shall be prima facie evidence that such excise liquor stamp tax has not been paid. The absence of any entry on the page or pages of the records of the state beverage department on which such entry would ordinarily appear, showing the payment of the tax on any beverage upon which a tax is imposed by the beverage law, shall be prima facie evidence that such tax has not been paid. A true copy of such page or pages of such records, sworn to be such by the director, or the testimony in open court of any employee of the state beverage department that such employee has examined such records and that they contain no entry showing the payment of such tax, shall be admissible in any court in the state as evidence that such tax has not been paid.

History.—§11A, ch. 19301, 1939; CGL 1940 Supp. 4151(271t); am. §6, ch. 22669, 1945.

562.38 Report of seizures. — Any sheriff, deputy sheriff, constable or police officer, upon the seizure of any property under this act shall promptly report such seizure to the director of the beverage department or his representative, together with a description of all such property seized so that the state may be kept informed as to the size and magnitude of the illicit liquor business.

History.—§12, ch. 19301, 1939; CGL 1940 Supp. 4151(271u). §25, ch. 25359, 1949; am. §3, ch. 28073, 1953.

562.39 Disposition and appraisal of property seized under this chapter.—

(1) Every peace officer seizing property pursuant to the provisions of this law shall forthwith make return of the seizure thereof and deliver the said property to the board of county commissioners of the county wherein the said property was seized. The said return to the board of county commissioners shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in full the reason why the seizing officer knew, or was led to believe, that the said property was being used for and in connection with a violation of the statutes and laws of this state prohibiting the manufacture of and traffic in illicit moonshine whiskey or other materials set forth in section one hereof. The said return shall contain the names of all persons, firms and corporations known to the seizing officer to be interested in the seized property.

(2) When any property is seized by any peace officer or law enforcement officer heretofore named pursuant to this act and delivered to the board of county commissioners as aforesaid, the board shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3) The return of the board of county commissioners shall contain a schedule of the property seized, describing the same in reasonable detail and give in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey; and a statement of the names of all persons, firms and corporations known to the board to be interested in the seized property; and shall attach to their said return as exhibit thereto, the return of the seizing officer to the board.

(4) The board of county commissioners shall hold the said seized property pending its disposal by the court as hereafter provided.

History.—§13, ch. 19301, 1939; CGL 1940 Supp. 4151(271v); §7, ch. 22669, 1945; am. §4, ch. 28073, 1953.

562.40 Forfeiture proceedings.—

(1) The return of the board aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction, without regard

to value, under and by virtue of that provision in §6(3), art. V of the state constitution, under which the circuit courts may be given jurisdiction of "such other matters as the legislature may provide." The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms or corporations who may have filed a claim prior to such amendment.

(2) Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or lien upon the seized property, giving notice of the seizure and directing that all persons, firms or corporations owning, having or claiming an interest therein or lien thereon to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within twenty days from personal service of said citation, when personal service is had.

(3) The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE ——— JUDICIAL CIRCUIT, IN AND FOR ——— COUNTY, FLORIDA.

IN RE FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY:

(here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS OWNING, HAVING OR CLAIMING AN INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY.

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chapter 562, Florida Statutes as amended, and is now in the possession of the Board of County Commissioners of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the Circuit Court of the_____ Judicial Circuit, in and for _____ County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before———, 195—, if not personally served with process herein, and within twenty days from personal service if personally served with process herein, why the said property should not be forfeited pursuant to said chapter. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court.

WITNESS my hand and the seal of the above mentioned court, at_____ Florida, this_____ 195—.

(COURT SEAL)

Clerk of the above mentioned court

By_____

Deputy Clerk

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than twenty-one nor more than thirty days, from the posting or publication thereof, and as to those personally served with process within twenty days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the value of the property seized is shown by the board's return to have an appraised value of four hundred dollars or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the board's return to have an approximate value of more than four hundred dollars, the citation shall be published once a week for three consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county, and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting and by affidavit as provided in chapter 49, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—§14, ch. 19301, 1939; CGL 1940 Supp. 4151(271w). §26, ch. 25359, 1949; am. §5, ch. 28073, 1953.

562.401 Delivery of property to claimant.—Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the board of county commissioners and posting with said board, to be approved by it, a surety bond, payable to the governor of the state, in twice the amount of the value of the said property as fixed in the board's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to the board of county commissioners the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the board and the release of the property to the applicant the cause shall proceed to final judgment in the same manner, as it would have, had no such

bond been filed, except that any exception to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—Comp. §6, ch. 28073, 1953.

562.402 Proceeding when no claim filed.—When no claim is filed in the cause within the time required the clerk shall enter a default against all persons, firms and corporations owning, claiming or having an interest in and to the property seized and the cause may then proceed in the same manner as a common law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—Comp. §7, ch. 28073, 1953.

562.403 Proceeding when claim filed.—When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey, and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner or user of the property has been convicted of a violation of the statutes and laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and the burden of proof shall be upon such claimant to satisfy the court that he was without knowledge of such conviction, providing, however, the prima facie presumption of knowledge of a previous conviction of a violation of this law shall only apply to a subsequent proceeding involving the forfeiture of a motor vehicle when owned by such previous offender and upon which a lien is held by the same lienee involved in the first claim proceedings. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

History.—Comp. §8, ch. 28073, 1953.

562.404 Attorney for board of county commissioners to represent state.—Upon the filing of the board's return with the clerk of the circuit court the said clerk shall furnish the attorney for the board of county commissioners with a copy thereof and the said attorney shall represent the state in the forfeiture proceeding. The attorney general shall represent the state in all appeals from judgments of forfeiture. The state may appeal from any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.—§9, ch. 28073, 1953; §1, ch. 59-293.

562.405 Judgment of forfeiture.—On final hearing the return of the board to the clerk of the circuit court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimants to show that the property was not so used, if so used, that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after two weeks public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

History.—Comp. §10, ch. 28073, 1953.

562.406 Fees for services.—Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and simi-

lar services in other cases and matters.
History.—Comp. §12, ch. 28073, 1953.

562.407 Disposition of proceeds of forfeiture.—All sums received from sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof; provided, however, that in instances where the seizure is by a municipal police officer within the limits of any municipality having an ordinance requiring such vehicles, vessels or conveyances to be forfeited, the city attorney shall act in behalf of the city in lieu of the state attorney and shall proceed to forfeit the property as herein provided, and all sums received therefrom shall go into the general operating fund of the city.
History.—Comp. §11, ch. 28073, 1953.

562.408 Exercise of police power. — It is deemed by the legislature that this law is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety and morals of the people of the state. All the provisions of this law shall be liberally construed for the accomplishment of these purposes.
History.—Comp. §13, ch. 28073, 1953.

562.41 Searches; penalty.—

(1) The director, any beverage department employee, any sheriff, any deputy sheriff or any police officer may make searches of person, places, and conveyances of any kind whatsoever, in accordance with the laws of this state for the purpose of determining whether or not the provisions of the beverage law are being violated.

(2) The director, any beverage department employee, any sheriff, any deputy sheriff or any police officer may enter, in the day time, any building or place where any beverages subject to tax under the beverage law or which would be subject to tax thereunder if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, or any intoxicating beverages containing more than one per cent of alcohol by weight, are manufactured, produced or kept, so far as may be necessary, for the purpose of examining said beverages. When such premises are open at night, such officers may enter them while so open, in the performance of their official duties.

(3) Any owner of such premises or person having the agency, superintendency or possession of same, who refuses to admit such officer, or to suffer him to examine such beverages, shall, for every such refusal, be subject to a fine of five hundred dollars or imprisonment in the county jail for six months.

(4) Any person who shall forcibly obstruct or hinder the director, any beverage department employee, any sheriff, any deputy sheriff or any police officer in the execution of any power or authority vested in him by law, or who shall forcibly rescue or cause to be rescued any property if the same shall have been seized by such officer, or shall attempt or endeavor to do so, shall, for each such offense, be subject to pay a fine of five hundred dollars or imprisonment in the county jail for six months, or both.

History.—§15, ch. 19301, 1939; CGL 1940 Supp. 4151(271x), 7648(28), 7648(29); §1, ch. 57-327.

562.42 Destruction of forfeited property.—In case of the seizure of any intoxicating beverage, still, doubler, worm, worm tub, still piping, still apparatus or any piece or part thereof, any mash, wort, or wash or other fermented liquids and any containers therefor, for any offense involving forfeiture of the same, where such apparatus shall be of less than one thousand dollars in value and it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same only so far as to prevent the use thereof, or any part thereof, for the purpose for which it was intended. Such destruction shall be in the presence of at least one credible witness and such witness shall unite with the said officer in a duly sworn report of said seizure and such destruction, to be made to the director, in which report they shall set forth the grounds of the claim or forfeiture and the reasons for such seizure and destruction and an estimate of the fair value of the apparatus destroyed and also of the materials remaining after the destruction and a statement that, from facts within their own knowledge, they have no doubt whatever that such apparatus was set up for use in the unlawful manufacture of intoxicating beverages and that it was impracticable to remove the same to a place of safe storage; provided, that not more than one pint of any such intoxicating beverage shall be preserved by the seizing officer to be used as evidence against anyone accused of violating the provisions of the beverage law, and such pint of intoxicating beverage is hereby declared to be sufficient of such intoxicating beverage upon which to base a conviction of a violation of the beverage law.
History.—§16, ch. 19301, 1939; CGL 1940 Supp. 4151(271y).

562.44 Donation of forfeited beverages or raw materials to state institutions; sale of forfeited beverages.—Any alcoholic beverage or raw materials used for the manufacture of alcoholic beverages that may be seized and forfeited under any of the provisions of the beverage law may, with the approval and consent of the governor, be donated to any state operated or charitable institution that may have a legitimate use therefor in the operation of such institution, or the director may sell such beverage so seized and forfeited to any licensed wholesaler in the state, upon the condition that all federal and state taxes that may be due thereon shall be paid and that such sale shall

be made only upon submission by said director of a request for bids to at least five wholesale dealers in the state and such sale shall be made to the highest and best bidder therefor. Provided, however, if in the director's opinion, no satisfactory bid from a wholesaler is received, the director may then reject all bids and sell such beverage so seized and forfeited to any retailer, licensed in this state to sell such beverage, upon the condition that all federal and state taxes that may be due thereon shall have been paid, that such sale shall be made only upon submission by said director of a request for bids to at least five retail dealers in the state and that such sale shall be to the highest and best bidder therefor. All moneys received from such sales shall be paid by the director to the state treasurer for the account of the beverage fund and shall be subject to disbursement in accordance with the law relating thereto.

History.—§18, ch. 19301, 1939; CGL 1940 Supp. 4151-(271aa); am. §8, ch. 22669, 1945; §1, ch. 57-327.

562.45 Penalties for violating beverage law.—Any person willfully and knowingly making any false entries in any records required under the beverage law or willfully violating any of the provisions of the beverage law, concerning the excise tax herein provided for shall be guilty of a felony and upon conviction thereof be punished by imprisonment of not more than five years or by fine of not more than $5,000.00. It is unlawful for any person to violate any provision of the beverage law, and any provision of the beverage law for which no penalty has been provided shall be guilty of a misdemeanor and shall upon conviction be punished by imprisonment in the county jail for not more than six months or by fine of not more than $500.00; provided, that any person who shall have been convicted of a violation of any provision of the beverage law and shall thereafter be convicted of a further violation of the beverage law, shall, upon conviction of said further offense, be deemed guilty of a felony and shall be punished by imprisonment for not more than five years or fined not more than $5,000.00.

Nothing in the beverage law contained shall be construed to affect or impair the power or right of any incorporated municipality of the state hereafter to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the beverage law within the corporate limits of such municipality.

History.—§15, ch. 16774, 1935; CGL 1940 Supp. 4151(240), 7648(6); §3, ch. 19301, 1939; §4, ch. 29964, 1955; §1, ch. 57-327.

562.451 Moonshine whiskey; ownership, possession or control prohibited; penalties; rule of evidence.—

(1) Any person who owns or has in his possession or under his control less than one gallon of liquor, as defined in the beverage law, which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail not exceeding 6 months or by fine not exceeding $500, or both.

(2) Any person who owns or has in his possession or under his control one gallon or more of liquor, as defined in the beverage law, which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state prison not exceeding 5 years or by fine not exceeding $5000, or both.

(3) In any prosecution under this section, proof that the liquor involved is what is commonly known as moonshine whiskey shall be prima facie evidence that the same was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured.

History.—§9, ch. 22669, 1945; am. §17, ch. 23746, 1947.
Sub. §(3) am., sub. §(4) comp. §5, ch. 29964, 1955; §1, ch. 59-435.

562.46 Legal remedies not impaired.—It is the declared legislative intention that no provision or provisions of the beverage law shall in any manner limit, modify or preclude any person from instituting legal proceedings in courts of competent jurisdiction for the adjudication of any rights that such person may have under the federal and state constitutions and under laws now existing, or laws which may be hereinafter enacted.

History.—§17, sub-§ (a), 16774, 1935; CGL 1936 Supp. 4151(243).

562.47 Rules of evidence; beverage law.—In all prosecutions for violations of "the beverage law" proof that the liquor in question was and is known as whiskey, moonshine whiskey, shine, rum, gin, brandy, or other similar name or names shall be prima facie evidence that such liquor is intoxicating and contains more than three and two-tenths per cent of alcohol by weight and that same is intoxicating. Any person or persons who by experience in the past in the handling or use of intoxicating liquors, or who by taste, smell, or the drinking of such liquors has knowledge as to the intoxicating nature thereof, may testify as to his opinion whether such beverage or liquor is or is not intoxicating, and a verdict based upon such testimony shall be valid.

History.—§1, ch. 20744, 1941.

562.48 Minors patronizing, visiting or loitering in a dance hall.—Any person, firm or corporation, or any employee of such person, firm or corporation operating any dance hall in connection with the operation of any place of business where any malt, spirituous or vinous liquors, including beer, ale and wine or any ardent, or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever under any name, label or brand, which produces intoxication is sold, who shall knowingly permit, or allow any person under the

age of eighteen years to patronize, visit or loiter in any such dance hall, or place of business, unless such minor is attended by one or both of his or her parents, or by his or her natural guardian, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or six months in the county jail, or by both such fine and imprisonment, at the discretion of the judge.

History.—§1, ch. 20838, 1941; am. §1, ch. 28291, 1953.
cf.—§562.11, Selling alcoholic beverages to minors.

562.49 Wines; sacramental and religious purposes.—

(1) For the purpose of this section the term "wine" is hereby defined to mean wine, vinous spirits or vinous liquors.

(2) Any religious order, monastery, church or religious body, or any minister, pastor, priest, or rabbi thereof, may purchase wine for religious or sacramental purposes from any duly licensed wholesaler or retailer within or without the state, by obtaining a permit from the director of the beverage department of Florida for such purchases herein provided.

(3) The director of the beverage department of Florida shall issue said permit upon sworn application, stating the name of the applicant, the religious purpose for which the wine is to be used, the amount to be purchased, and from whom the purchase is to be made.

(4) The director of the beverage department of Florida for good cause may refuse to issue said permit.

(5) Said wine and the sale thereof, when sold as herein provided for religious or sacramental purposes, shall be exempt from all other restrictions, regulations and taxation now provided by the laws of the State of Florida for the sale and distribution of wine.

History.—§§1-5, ch. 20978, 1941; sub. §§(2)-(4), am. §7, ch. 29964, 1955.

562.50 Habitual drunkards; furnishing intoxicants to, after notice.—Any person who shall sell, give away, dispose of, exchange or barter any malt, spirituous or vinous liquors, including beer, ale and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition or any article whatsoever under any name, label or brand, which produces intoxication, to any person habitually addicted to the use of any or all such intoxicating liquors, after having been given written notice by wife, husband, father, mother, sister, brother, child or nearest relative that said person so addicted is an habitual drunkard and that the use of intoxicating drink or drinks is working an injury to the person using said liquors, or to the person giving said written notice, shall, upon conviction thereof, be sentenced to a term of imprisonment for not more than six months, or by fine of not more than five hundred dollars, or both, for each and every such offense.

History.—§1, ch. 22633, 1945.

CHAPTER 567

LOCAL OPTION ELECTIONS

567.01 Petition, order, notice of election.— (1) The board of county commissioners of each county shall order an election to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited in said county and if not prohibited, to decide the method of sale, upon the presentation to said board at a regular or special meeting, of a written application asking for such a determination in the county in which said application is made signed by one-fourth of the registered voters of the county. The signature of each registered voter shall be personally signed to such application; provided, however, a copy of said petition shall be dated and filed with the clerk of the circuit court of the county in which such election is to be held prior to procuring the signature of any registered voter thereon; and such petition must be completed and presented to the board of county commissioners within one hundred twenty days from the date said copy of said petition is originally filed with the clerk of the circuit court; and if not so done, said petition shall be held to be invalid.

(2) The election so ordered shall be (a) to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited or permitted in said county and (b) to decide also whether such sale, if permitted by said election, shall be restricted to sales by the package as hereinafter defined.

(3) The term "sales by the package" is defined to mean sales made in quantities of not less than one-half of a pint, contained in sealed containers, for consumption off the premises where sold.

(4) Such an election shall not be ordered oftener than once every two years. All orders for such election shall be in writing and shall be entered upon the minutes of the board but this requirement shall be directory only.

(5) Upon the making of the order for an election as aforesaid, the board shall cause its clerk to give at least thirty days' notice of said election by publishing a copy of the order for election in one newspaper in each and every town in said county in which a newspaper or newspapers be published, and if no newspaper be published within the county, then by posting at least ten copies of said order in ten of the most public places in said county, one of which shall be the court house door. Proof of publication or proof of posting shall be filed with the board and shall be made as provided by §§48.10 and 48.11, for making proof of publication and proof of posting incident to constructive service of process, except that the provisions of said sections for recording shall not apply. All proofs of publication and of posting shall be entered upon the minutes of the board, but this requirement shall be directory only.

(6) It is the purpose and intent of the legislature that such election shall obviate the necessity for holding two separate elections by determining in one election (a) whether the sale of intoxicating liquors, wines or beer shall be prohibited or permitted, and (b) if such sales are determined to be permitted, to further determine whether the sales so made shall be limited to sales by the package as hereinbefore defined, or whether sales by the drink on the premises, as well as sales by the package may be permitted. A majority of those legally voting at such election must cast their votes "for selling intoxicating liquors, wines or beers" in order that the results of the election on the second question shall be effective and binding.

History.—§1, ch. 3700, 1887; RS 857; GS 1209; §1, ch. 6180, 1911; CGL 1936 Supp. 4151(196); am. §1, ch. 23747, 1947; (1) by §1, ch. 57-119.

567.02 Registration and qualification of electors.—For the election under §567.01 electors may be registered as provided in the general law for registration for special elections and they shall have the same qualifications for and prerequisites to voting as in elections under the general election laws.

History.—§1, ch. 3700, 1887; RS 858; GS 1210; CGL 1936 Supp. 4151(197).

567.03 Mode of holding election.—The election under §567.01 shall be held and conducted in the manner prescribed by law for holding general elections, except as herein provided.

History.—§1, ch. 3700, 1887; RS 859; GS 1211; CGL 1936 Supp. 4151(198).

567.04 Time of holding elections.—All elections ordered under this chapter shall be held within sixty days from the time of presenting such application, but if any such election should thereby take place within sixty days of any state or national election, it shall be held within sixty days after any such state or national election.

History.—§1, ch. 3700, 1887; RS 860; GS 1212; CGL 1936 Supp. 4151(199).

567.05 Inspectors, returns and canvass.—Inspectors of election shall be appointed and qualified as in cases of general elections, and

they shall canvass the vote cast and make due returns of the same to the county commissioners without delay. The county canvassing board shall canvass the returns and declare the result, and cause the same to be recorded as provided in the general law concerning elections, as far as applicable.

History.—§1, ch. 3700, 1887; RS 861; GS 1213; CGL 1936 Supp. 4151(200).

567.06 Form of ballot; canvassing votes, etc.—

(1) At the election under §567.01, the ballot used shall be printed on one side of a plain white piece of paper in the form following:

OFFICIAL BALLOT NO._____

OFFICIAL BALLOT NO._____

OFFICIAL ELECTION BALLOT

_____, 19____
Month Day Year

PRECINCT NUMBER_____

_____ County, Florida

INSTRUCTIONS: Local Option Election on TWO QUESTIONS:

QUESTION NUMBER 1 is to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited or permitted in _____ County, Florida.

QUESTION NUMBER 2 is to decide whether the sale of intoxicating liquors, wines or beer shall be restricted to sales made in quantities of not less than one-half of a pint, contained in sealed containers, for consumption off the premises where sold, such sales being described as "sales by the package". The results on question number 2 shall be effective and binding only in the event a majority of those voting at the election shall cast their votes "For selling intoxicating liquors, wines or beer" on question number 1.

Vote on both questions!

If you fail to vote on question number 1, your vote on question number 2 will not be counted!

To vote, make a cross mark (X) at the right of your choice on each question.

QUESTION NO. 1:

For Selling Intoxicating Liquors, Wines or Beer	
Against Selling Intoxicating Liquors, Wines or Beer	

QUESTION NO. 2:

For Sales by the Package and Drink	
For Sales by the Package Only	

(2) No vote on question number two shall be counted or considered in determining the results on said question unless the elector casting said vote shall have voted also upon question number 1; provided that:

(a) If a majority of those legally voting at said election cast their votes on question number one, the vote of said majority shall be determinative of said question and the votes cast on question number two shall in no way affect or nullify the result of the vote on question number one; provided that

(b) A majority of votes legally cast on question number two shall be determinative of said question and the number of votes cast on question number one shall in no way affect or nullify the result of the vote on question number two, unless a majority of the votes legally cast at said election shall be "Against selling intoxicating liquors, wines or beer";

(c) Provided, further, that voting machines may be used in counties which have adopted voting machines for use in general elections.

History.—§1, ch. 3700, 1887; RS 862; GS 1214; CGL 1936 Supp. 4151(201); am. §2, ch. 23747, 1947.

567.07 Results of election.—

(1) Should a majority of those legally voting at any election under §567.01 cast their votes "Against selling intoxicating liquors, wines or beers" on question number one, then no intoxicating liquors, wines or beer shall be sold in the county in which said election was held until otherwise determined by an election, which shall not be held oftener than once in every two years.

(2) Should a majority of those legally voting at any such election cast their votes "For selling intoxicating liquors, wines or beer" on question number one and a majority of votes legally cast on question number two be cast "For sales by the package only," then

(a) No intoxicating liquors, wines or beer shall be sold in said county in quantities of less than one-half of a pint,

(b) No intoxicating liquors, wines or beer shall be sold in said county that are not contained in sealed containers and

(c) No intoxicating liquors, wines or beer shall be consumed in said county on the premises where such intoxicating liquors, wines or beer are sold or on any other premise under the control, either directly or indirectly, of the licensee, until otherwise determined in an election, which shall not be held oftener than once in every two years.

(3) In the event a majority of those legally voting in any such election cast their vote "For selling intoxicating liquors, wines or beer" on question number one and a majority of the votes legally cast on question number two be not cast "For sales by the package only", then intoxicating liquors, wines or beer may be sold as otherwise provided by law in said county until otherwise determined in an election, which shall not be held oftener than once in every two years.

History.—§1, ch. 3700, 1887; RS 863; GS 1215; CGL 1936 Supp. 4151(202); am. §3, ch. 23747, 1947. Am. §11, ch. 25035, 1949.

567.08 Refund of unused portion of state license tax.—When any county votes by an election to discontinue permitting the sale of intoxicating liquors, wines or beer, prior to the date of expiration of any license issued by the state for the sale of intoxicating liquors, wines or beer in such county, the fee for the unexpired and unused portion of said license shall be refunded to the licensee by warrant drawn by the state comptroller on the state treasurer who shall pay such warrants from any moneys in the state treasury not otherwise appropriated.

History.—§1, ch. 5479, 1905; CGL 1936 Supp. 4151(203). cf.—§17.12 Comptroller authorized to issue warrants for payment.

567.09 Refund of unused portion of county license tax.—The county commissioners of such county voting by election to discontinue permitting the sale of intoxicating liquors, wines or beer, shall refund to the licensee the fee for the unexpired and unused portion of any such license issued to him by said county.

History.—§2, ch. 5479, 1905; CGL 1936 Supp. 4151(204).

567.10 Refund of unused portion of municipal license tax.—Any municipality in such county voting by election to discontinue permitting the sale of intoxicating liquors, wines or beer, shall refund to the licensee the fee for the unexpired and unused portion of any such license issued to him by said municipality.

History.—§567.10 Florida Statutes, 1941.

567.11 Evidence of legal election.—In all prosecutions by the state for the unlawful sale of intoxicating liquors, wines or beer contrary to prohibition regulations, the introduction of a copy of the record of the result of the canvass of the returns of the election as made by the county canvassing board and recorded in the minutes of the proceedings of the board of county commissioners, or in any book used as a book of record in the office of the clerk of the circuit court, duly certified to by the clerk of the circuit court, for such county in which an election shall have been held, shall be taken as prima facie evidence that said election was legally called, conducted and held.

History.—§7, ch. 4930, 1901; GS 3559; §1, ch. 7289, 1917; CGL 1936 Supp. 7600(1).

567.12 Proceedings to test legality of election.—Any resident of any county in this state in which an election may be held or which may hereafter be held to determine whether the sale of intoxicating liquors, wines or beer should be prohibited or permitted in such county and, if permitted by such election, to determine whether such sale should be restricted to "Sales by the package," as such term is defined in §567.01, shall have the right to test the legality and regularity of such election by suit in equity in the circuit court of such county to be filed against the county commissioners thereof; and in case any such election shall be adjudged to be illegal and void in any such suit such judgment shall have the effect of nullifying such election in toto as to all inhabitants of such county whether they were parties to such suit or not; provided, no such suit shall be brought to test the validity of any such election unless the same shall be instituted within ninety days after the recording of the declaration of the result of any such election in the minutes of the board of county commissioners.

History.—§1, ch. 5247, 1903; GS 1216; CGL 1936 Supp. 4151(205); am. §4, ch. 23747, 1947; §2, ch. 29737, 1955.

567.13 Sale by the package only.—In any county that has voted "For selling intoxicating liquors, wines or beer" and also has voted to restrict such sale to "Sales by the package only" as herein provided, thereupon;

(1) It shall be unlawful for anyone to sell, or cause to be sold, any intoxicating liquors, wines or beer in quantities of less than one-half of a pint;

(2) It shall be unlawful for anyone to sell, or cause to be sold, any intoxicating liquors, wines or beer not contained in sealed containers;

(3) It shall be unlawful for anyone who sells, or causes to be sold, any intoxicating liquors, wines or beer to permit such intoxicating liquors, wines or beer to be consumed on the premises where such intoxicating liquors, wines or beer are sold or on any other premise under the control, either directly or indirectly, of the licensee and it shall be unlawful for anyone to consume any intoxicating liquors, wines or beer on the premises where such intoxicating liquors, wines or beer are sold or on any other premise under the control, either directly or indirectly, of the licensee.

History.—§5, ch. 23747, 1947.

567.14 Penalty for violation.—Any person violating any of the provisions of §567.13 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars; provided, that any person who shall have been convicted of a violation of any of the provisions of said §567.13 and shall thereafter be convicted of a further violation of any of said provisions, shall, upon conviction of said further offense, be deemed guilty of a felony and shall be punished by imprisonment of not less than one year nor more than five years in the state penitentiary or by fine of not more than five thousand dollars.

History.—§6, ch. 23747, 1947.

CHAPTER 568

INTOXICATING LIQUORS IN COUNTIES WHERE PROHIBITED

568.01 Alcoholic content of intoxicating liquors.—All liquors, wines or beer containing more than three and two-tenths per cent of alcohol by weight shall be deemed and held to be intoxicating liquors, wines or beer and subject to the provisions of this chapter.

History.—§5, ch. 18016, 1937; CGL 1940 Supp. 7648(14).

568.02 Selling intoxicating liquors in counties where prohibited.—It is unlawful for anyone to sell, or cause to be sold, any intoxicating liquors, wines or beer in any county that has voted against the sale of intoxicating liquors, wines or beer.

History.—§1, ch. 18016, 1937; CGL 1940 Supp. 7648(10).

568.03 Possessing intoxicating liquors in counties where prohibited with intent to sell.—It is unlawful for anyone to keep, or possess, intoxicating liquors, wines or beer in any county that has voted against the sale of such intoxicating liquors, wines or beer with intent to sell or dispose of them unlawfully.

History.—§2, ch. 18016, 1937; CGL 1940 Supp. 7648(11).

568.04 Maintaining place of business for sale of liquors in counties where prohibited.—It is unlawful for anyone to keep or maintain a place where intoxicating liquors, wines or beer are sold in any county that has voted against the sale of intoxicating liquors, wines or beer.

History.—§3, ch. 18016, 1937; CGL 1940 Supp. 7648(12).

568.05 Penalty.—Any person who sells, or causes to be sold, any intoxicating liquors, wines or beer in any county that has voted against the sale of intoxicating liquors, wines or beer, or who keeps or possesses in any such county any intoxicating liquors, wines or beer with intent to sell or dispose of same unlawfully, or who keeps or maintains in any such county a place where intoxicating liquors, wines or beer are sold, shall, for each such offense, upon conviction, be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the county jail for not more than six months.

History.—§4, ch. 18016, 1937; CGL 1940 Supp. 7648(13).
cf.—§775.06, Alternative punishment.

568.06 Proof necessary to convict.—In any trial of any person for violation of §568.02, it shall not be necessary for the prosecution to prove that the accused had any interest in the intoxicating liquors, wines or beer delivered or sold by him, or any interest in the money received by the accused for such intoxicating liquors, wines or beer delivered by him, but proof of the delivery of intoxicating liquors, wines or beer by the accused and the receipt of money therefor by him, shall be prima facie evidence of the ownership of said intoxicating beverages by the accused and proof of the sale of a single quantity of intoxicating liquors, wines or beer by such person shall be sufficient evidence upon which to base a conviction for violation of §568.02.

History.—§6, ch. 18016, 1937; CGL 1940 Supp. 7648(15).

568.07 Name sufficient proof; competency of witness.—In all prosecutions for violation of this chapter proof that the liquor in question was and is known as whiskey, moonshine whiskey, shine, rum, gin, brandy, or other similar name or names shall be prima facie evidence that such liquor is intoxicating and contains more than three and two-tenths per cent of alcohol by weight and that same is intoxicating. Any person or persons who by experience in the past in the handling or use of intoxicating liquors, or who by taste, smell, or the drinking of such liquors have knowledge as to the intoxicating nature thereof, may testify as to this opinion, whether such beverage or liquor is or is not intoxicating, and a verdict based upon such testimony shall be valid.

The alcoholic content of any liquor, wine or beer, or other beverage may be shown by hydrometer or gravity test made in or away from the presence of the jury by any person who has knowledge of the uses of such instruments, but the production of such evidence shall be optional. The alcoholic content of any liquor or beverage, or compound, the subject of any inquiry in and proceedings or prosecution may also be shown by chemical or any other analysis made by and certified by any competent chemist or the state chemist, or any of his duly designated assistants or deputies. The sample analyzed may be identified by the sworn testimony of any peace officer or prosecuting officer, that he personally delivered to said chemist such sample for analysis and that it was personally taken by him from the receptacle containing beverages, drinks or alcohol-

ic liquors or compounds, the subject of inquiry.

The mode of proof herein provided shall be considered cumulative and not exclusive.

History.—§7, ch. 18016, 1937; CGL 1940 Supp. 7648(16).

568.08 Person required to testify; exemption from prosecution.—No person shall, upon any investigation before a grand jury, state attorney, county solicitor or other prosecuting attorney commissioned by the state, or regularly employed by a county, for an alleged violation of any of the provisions of this chapter, or before any court upon the trial of any person, association of persons, or corporation, charged with the violation of any of the provisions of this chapter herein made a criminal offense, refuse to testify or give evidence, or produce any document, record, book, papers, or any other personal property of any kind or description, upon the ground that by so doing he may thereby convict himself of crime, or give evidence against himself, or expose himself to criminal prosecution, penalty or forfeiture; and any person who shall so testify or give such evidence, or produce any such document, record, book, paper or any other personal property of any kind or description, shall not be prosecuted or held liable for any penalty or forfeiture for or on account of any matter or thing concerning which he may so testify, or give evidence, or produce any such document, record, book, paper or any other personal property of any kind or description, and the same shall not be given in evidence or used against such person in any wise or in any manner in any prosecution or other proceeding in any of the courts of this state, or otherwise; provided, that nothing in this section contained shall protect any person against prosecution for perjury or false swearing.

History.—§8, ch. 18016, 1937; CGL 1940 Supp. 7648(17).

568.09 Holding federal license or tax stamp prima facie evidence.—The holding, owning, having in possession or paying for a license or tax stamp issued by the internal revenue authorities of the United States showing the payment of a tax as a dealer in intoxicating liquors, wines or beer, by the holder thereof to the United States government shall be held in all the courts of this state as prima facie evidence against the holder thereof in prosecution of such holder for violation of this chapter and upon proof being made by the certificate of the collector of internal revenue, as provided for by the federal statute, in cases where the proper prosecuting officers shall produce said certificate or certified copy, the grand jury may indict the holder of such license or tax stamp or the proper prosecuting officer may file information against the holder of such license or tax stamp without further proof, charging such holder with the violation of this chapter, and upon the trial of persons charged with the violation of this chapter, upon information or indictment proof of the owning, holding or possession of such license or tax stamp by the defendant may be made by two witnesses who have seen such license or tax stamp in the place of business or the holder thereof, or by the production of the original tax stamp or license with proof that said license or tax stamp is the property of the defendant by one or more witnesses, or by production by the prosecuting officer of a certified copy of said license, tax stamp or certificate of the collector of internal revenue of the United States; and proof having been made as provided in this section, it shall be sufficient evidence, without explanation, to convict.

History.—§9, ch. 18016, 1937; CGL 1940 Supp. 7648(18).

568.10 Confiscation of liquors.—Upon the arrest of any person charged with a violation of any of the provisions of this chapter, the arresting officer shall take into his custody all of the intoxicating liquors, wines or beers found in the possession, custody or control of the person arrested, and safely keep and preserve the same and have it forthcoming at any investigation, prosecution or other proceeding for the violation of any of the provisions of this chapter, and for the destruction of same as is in this section provided. Upon the conviction of the person arrested for the violation of any provision of this chapter, the judge of the court trying the case, after notice to the person convicted and any other person who the judge may be of the opinion is entitled to notice, as the judge may deem reasonable, shall issue to the sheriff of the county, state beverage department, or the authorized municipality a written order adjudging and declaring such intoxicating liquor, wines or beers forfeited and directing the sheriff, the state beverage department or authorized municipality to sell the liquor, wines or beers to any licensed wholesaler in the state upon the condition that the intoxicating liquor, wines and beers must be first inspected by an employee of the state beverage department to ascertain that all state taxes applicable have been paid. Sale shall be made, however, only upon submission by the sheriff, state beverage department or authorized municipality of a request for bids to at least five wholesalers in the state, and the sale shall be made to the highest and best bidder; provided, however, if in the opinion of the sheriff, state beverage department or authorized municipality no satisfactory bid from a wholesaler is received, bids may then be rejected and the intoxicating liquor, wines or beer so seized and forfeited may be sold to any retailer licensed in this state to sell such beverages provided that the sale shall be made only upon submission by the sheriff, state beverage department or authorized municipality of a request for bids to at least five retail dealers in the state and that the sale shall be made to the highest and best bidder therefor; the order shall further provide, in the event any forfeited liquor, wines or beer cannot be sold, that the sheriff, state beverage department or authorized municipality shall immediately destroy same or that the sheriff or authorized municipality shall deliver same to the beverage direc-

tor for the disposition as provided in §562.44. In the event that the liquor, wines or beer are to be destroyed under the order, the destruction by the sheriff or authorized municipality shall be in the presence of the clerk of the circuit court of the county and at times, places and in the manner as the judge, in his order, directs.

History.—§10, ch. 18016, 1937; CGL 1940 Supp. 7648(19); am. §1, ch. 22024, 1943; §1, ch. 61-259.

cf.—§562.12 Selling beverage not permitted by license

568.11 Right of property forfeited.—The right of property in and to intoxicating liquors, wines or beer sold or possessed by any person, association of persons, or corporation in violation of any of the provisions of this chapter is declared not to exist in any person, association of persons, or corporation and the same shall be forfeited.

History.—§11, ch. 18016, 1937; CGL 1940 Supp. 7648(20).

568.12 Record of confiscation required.—Any sheriff, who seizes intoxicating liquors, wines or beer as provided for in this chapter, shall keep a permanent itemized record of all such liquors including a complete record of the destruction of such liquors, which record shall be verified by the signature of the sheriff in person, and such records shall be open to inspection at all times.

History.—§12, ch. 18016, 1937; CGL 1940 Supp. 7648(21).

568.13 Form of information or indictment.—An indictment or information framed substantially as follows shall be deemed sufficient in counties voting against the sale of intoxicating liquors, wines or beer:

The grand jurors of the State of Florida, inquiring in and for the body of the county of _____, upon their oaths do present that _____, late of the county of _____, did, on, to-wit: the _____ day of _____ 19____, in the said county of _____, State of Florida, unlawfully sell intoxicating liquors (or intoxicating wines or intoxicating beer as the case may be), which said county had voted against the sale of intoxicating liquors, wines or beer, contrary to the statute made and provided and against the peace and dignity of the State of Florida.

Said form of indictment or information may also be used in charging violation of §568.03 and §568.04.

History.—§13, ch. 18016, 1937; CGL 1940 Supp. 7648(22).

568.14 Beverage department vested with enforcing powers.—For the purpose of enforcing the provisions of this chapter the director and supervisors of the state beverage department shall exercise and perform all powers and duties vested in the several sheriffs and their deputies in the state under the provisions of this chapter.

History.—§13A, ch. 18016, 1937; CGL 1940 Supp. 7648(23).
cf.—§561.02, Duties of state beverage department.

CHAPTER 569

DISPENSING AND CONSUMING OF LIQUOR AND BEVERAGES

569.01 Curb service of intoxicating liquor prohibited.—It is unlawful for any person to sell or serve, by the drink, any intoxicating liquor, other than malt beverages of legal alcoholic content, except within the building which is the address of the person holding a license for the sale of such intoxicating liquor. It is intended to forbid the practice of curb or drive-in service in connection with such intoxicating liquors when sold by the drink; provided, however, that nothing in this section contained shall be construed to prevent the regular delivery by licensed dealers of sealed, stamped containers containing such intoxicating liquors.

History.—§1, ch. 19437, 1939; CGL 1940 Supp. 7648(30); am. §7, ch. 22858, 1945.
cf.—§1.01(3), "Person" defined.

569.02 Curb drinking of intoxicating liquor prohibited.—It is unlawful for any person to consume any intoxicating liquor, except malt beverages of legal alcoholic content, at curb or drive-in stands, except within the building which is the address of the person holding a license for the sale of such intoxicating liquors.

History.—§2, ch. 19437, 1939; CGL 1940 Supp. 7648(31).

569.03 Purchase of beverages by licensed clubs; size of individual containers.—It is unlawful for any person holding a license as a club for the sale of intoxicating liquors and beverages to purchase any of said beverages except from a licensed distributor in the state, and in individual containers not larger than one quart, nor smaller than one-fifth of one gallon.

History.—§1, ch. 19500, 1939; CGL 1940 Supp. 7648(34).

569.04 Clubs to sell only individual drinks.—It is unlawful for any person holding a license as a club for the sale of intoxicating liquors and beverages to sell the same except by the individual drink.

History.—§2, ch. 19500, 1939; CGL 1940 Supp. 7648(35).

569.05 Penalty for violation of §§569.01-569.04.—Any person violating the provisions of §§569.01-569.04, shall be guilty of a misdemeanor and shall be punished accordingly; and if a licensee, the license held by such person shall be subject to revocation.

History.—§3, ch. 19437, 1939; §3, ch. 19500, 1939; CGL 1940 Supp. 7648(32), 7648(36).
cf.—§775.07, Punishment for misdemeanor.

569.06 Limitation of size of individual wine containers; penalty.—It is unlawful for any person to sell within this state any wine in individual containers holding more than one gallon of such wine. Provided, that qualified distributors and manufacturers may sell to other qualified distributors or manufacturers such wine in any size containers. Any person convicted of a violation of this section shall be guilty of a misdemeanor and shall be punished accordingly.

History.—§§1, 2, ch. 19498, 1939; CGL 1940 Supp. 7648(33); am. §7, ch. 22858, 1945.
cf.—§775.07, Punishment for misdemeanor.

569.08 Saloons to be closed in time of riot.—Whenever any riot or mob occurs in any town, city or village of this state, all persons therein who sell intoxicating liquors shall, upon being notified by the mayor, chief of police, marshal, or any policeman, sheriff or constable, immediately close their barrooms, saloons, shops or other places where the sale of such intoxicating liquors is carried on, and keep them closed, and refrain from selling, bartering, lending or giving away any intoxicating liquors as above mentioned, until such time as public notice shall be given by the sheriff of the county, or mayor of any city, town or village where any mob or riot may occur, that such places may be opened and the sale of intoxicating liquors carried on. Any person failing to close up such barroom, saloon, shop or other place where the sale of intoxicating liquors is carried on, or who sells, barters or gives away any intoxicating liquors as aforesaid, after receiving such notice that a mob or riot has occurred, or is then going on, shall forfeit his license, and shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year.

History.—§1, ch. 4033, 1891; GS 3244; CGL 1936 Supp. 7179(1).

569.09 Same; penalty violating proclamation of mayor.—Whenever any riot or mob has occurred, or there is a reasonable cause to apprehend an outbreak thereof in any town, city or village, or in the vicinity thereof, the mayor shall immediately issue his proclamation ordering the closing of all the places mentioned in §569.08, forbidding the selling, lending, giving away, bartering or otherwise disposing of any alcoholic, vinous or malt liquors, intoxicating bitters or beverages, or any other liquors or substances by whatsoever name it may be called, which produces or may produce intoxication, until such time as in his judgment the public peace and safety no longer requires such restrictions. Any person or persons know-

ingly violating the provisions of such proclamation, or suffering any person or persons in his employ to do so, or conniving with any other person or persons to evade the terms of such proclamation, shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year.

History.—§2, ch. 4033, 1891; GS 8245; CGL 1936 Supp. 7179(2).
cf.—§775.06, Alternative punishment.

569.10 Adulterating liquor; penalty.—Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years, and the articles so adulterated shall be forfeited.

History.—§4, sub-ch. 9, ch. 1637, 1868; RS 2664; GS 3593; RGS 5522; CGL 7687.

TITLE XXXIII

AGRICULTURE, HORTICULTURE AND ANIMAL INDUSTRY

CHAPTER 570

STATE DEPARTMENT OF AGRICULTURE

570.01 Department created; commissioner.—There is hereby created a department of the government of this state to be known as the state department of agriculture. The affairs of the department shall be transacted under the control of the commissioner of agriculture.

History.—§1, ch. 59-54.

570.02 Definitions of terms.—The following words and phrases as used in this chapter and the agricultural laws of this state, unless the context otherwise requires, shall have the meanings respectively ascribed to them in this section:

(1) "Department" means the state department of agriculture.

(2) "Division" means a primary subdivision of the department whose administrative head is directly responsible to the head of the department.

(3) "Director" means the administrative head of a division.

(4) "Section" means a subdivision of a division whose administrative head is directly responsible to the head of the division.
(5) "Chief" means the administrative head of a section.
(6) "Commissioner" means the commissioner of agriculture.
(7) "Council" means the state agricultural advisory council.
(8) "Agriculture" means the science and art of production of plants and animals useful to man, including to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise and shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee and any and all forms of farm products, and farm production.

History.—§1, ch. 59-54.

570.03 **Boards and offices abolished; transfer of powers, duties, records and property; pending proceedings.**—
(1) The department shall exercise the powers and perform the duties now vested by law in the Florida livestock board, the state plant board, the state agricultural marketing board, the state marketing commissioner, the state chemist and any assistant state chemist, the state veterinarian and the plant commissioner. The boards and all officers whose powers and duties are hereby transferred to the department shall be abolished as of January 15, 1961. All records, files and papers of any nature whatsoever pertaining to the functions thereof shall be turned over to the department.
(2) The Florida livestock board, the state plant board, the state agricultural marketing board and the state chemist shall on January 15, 1961, transfer and convey by deeds properly executed to the state department of agriculture all property both real and personal owned by such boards and officers and all other rights, titles and interest in properties which the said boards and officers manage and control.
(3) Any hearing or other proceeding before any commission, board or officer whose tenure is terminated by this section shall not be abated, but shall be deemed transferred to the department and shall be carried on and determined by the commissioner in accordance with the provisions of the law and rules and regulations governing such hearings or proceedings.

History.—§1, ch. 59-54; (3) r. (4) renum. by §5, ch. 61-59.

570.04 **Continuance of department.**—The department shall have and exercise all the powers, jurisdiction, duties and authority now exercised by or required of it or of the commissioner and shall carry out such powers, jurisdiction, duties and authority to the same extent and purpose as now set forth by law.

History.—§1, ch. 59-54.

570.05 **Divisions, bureaus, sections and officers abolished.**—All divisions, bureaus, sections and officers with the exception of the commissioner of the department as they now exist are hereby abolished and the department is reorganized as provided in this chapter.

History.—§1, ch. 59-54.

570.06 **Offices of the department.**—The principal office of the department shall be located at the seat of state government. Branch offices may be established and maintained by the department in such places as the commissioner may determine. The offices shall be supplied with all necessary books, stationery, office equipment and furniture, to be furnished and paid for in the manner provided by law.

History.—§1, ch. 59-54.

570.07 **Department of agriculture; functions, powers and duties.**—The department shall have and exercise the following functions, powers and duties:
(1) Inquire into the needs of agriculture of the state, and make appropriate recommendations to the governor and the legislature, except as to such functions as are specifically assigned under state law to other state agencies.
(2) Perform all regulatory and inspection services relating to agriculture except agricultural education, demonstration, research and those regulatory functions relating primarily to the protection of the public health or assigned by law to other state agencies.
(3) Make investigations, conduct hearings, and make recommendations concerning all matters relating to the powers, duties and functions of the department of agriculture as provided by law.
(4) Cooperate with the United States department of agriculture in obtaining and disseminating production statistics, market and trade information concerning demand, supply, prevailing prices and commercial movements of agricultural products and extent of products in storage, and cooperate with any other state or federal agencies which in any manner may be helpful to agriculture. It may compile, publish and disseminate information and pertinent data on crops, livestock, poultry and agricultural products and may provide matching funds with other agencies, local, state or national for the conduct of such service.
(5) Annually fix such inspection and license fees and recording and service charges within maximum limits provided by law as may be necessary to pay the cost of the service performed, and maintenance of reasonable reserves for contingencies, including cost of depository, accounting, disbursement, auditing and rental of such quarters and facilities furnished by the state.
(6) Foster and encourage the standardizing, grading, inspection, labeling, handling, storage and marketing of agricultural products. And, after investigation and public hearings thereon, acting in cooperation with the United States department of agriculture, to establish and promulgate standard grades and other standard classifications of and for agricultural products.
(7) Extend in every practicable way the

distribution and sale of Florida agricultural products throughout the markets of the world.

(8) Promote, in the interest of the producer, the distributor and the consumer, the economical and efficient distribution of agricultural products of this state; and to that end cooperate with the department of commerce of the United States and any other department or agency of the federal or state government.

(9) Obtain and furnish information relating to the selection of shipping routes, adoption of shipping methods, avoidance of delays in the transportation of agricultural products, or helpful in the solution of other transportation problems connected with the distribution of agricultural products.

(10) Act as advisor to producers and distributors, when requested and to assist them in the economical and efficient distribution of their agricultural products as well as to assist and encourage cooperative effort among producers to gain economical and efficient production of agricultural products.

(11) Foster and encourage cooperation between producers and distributors in the interest of the general public.

(12) Act as a mediator or arbitrator in any controversy or issue that may arise between producers and distributors of any agricultural products concerning the grade or classification of such products.

(13) Protect the agricultural and horticultural interests of the state, and to that end it shall enforce those functions, powers and duties given to it in chapter 581, and all other laws relating thereto.

(14) Inspect apiaries for diseases inimical to bees and beekeeping and enforce the laws relating thereto.

(15) Protect the livestock interests of the state, and to that end it shall enforce those functions, powers and duties given to it in chapter 585, and all other laws relating thereto.

(16) Enforce the state laws and regulations relating to: fruit and vegetable inspection and grading; spray, residue inspection and removal; registration, labeling, inspection and analysis of commercial stock feeds and commercial fertilizers; classification, inspection and sale of poultry and eggs; registration, inspection and analysis of gasolines and oils; registration, labeling, inspection, and analysis of pesticides; registration, labeling, inspection, germination testing and sale of seeds, both common and certified; weights, measures and standards; foods, as set forth in the foods, drugs and cosmetics law; inspection and certification of honey; sale of liquid fuels; the licensing of dealers in agricultural products; administration and enforcement of all regulatory legislation applying to milk, cream, milk products, ice cream and frozen desserts; recordation and inspection of marks and brands of livestock; and all other regulatory laws relating to agriculture.

(17) Receive and compile reports on all fruits, vegetables and other farm products as are grown in the state, to publish same in the state press that will do so without cost; to obtain and disseminate information as to carriers' rates, to collect information as to additional market centers and their capacity, and to keep and compile a statement of all shipments moving out of the state, that through this information the farmers and producers can be kept posted as to exact conditions existing in the state, and the several markets of the country, to better cooperate with and prevent a loss to our people, and to cooperate with the United States government in establishing and maintaining a market news system; to issue such bulletins or other information along lines of advice as to how best pick, pack, kind of package, and way to distribute; to study all conditions as affecting other states; to keep in touch with the department of agriculture at Washington, D. C., that through this close touch and study of conditions, it can advise our people what crops to plant or not plant, what markets are overstocked, and through a system of cooperation aid in development of agricultural interests and protection of Florida's producers; to devise such methods as will best carry forward this work, such as inspection of packages and other measures as conform to plans of the marketing system of the department of agriculture at Washington; to publish or issue bulletins listing for sale, exchange and wanted items for farmers; to do all that can be done to bring relief to and aid in the marketing and distribution of Florida's products.

(18) Instruct in the standardization, grading, packing, processing, loading, refrigeration, routing, diversion and distribution of farm products; to carry on research work or cooperate with other state or federal agricultural agencies on research work in marketing and to provide any other information and assistance necessary to the efficient selling of farm products; to acquire suitable sites and erect thereon necessary marketing facilities, livestock pens and properly equip, maintain and operate same for the handling of all staple field crops, meats, fruits and vegetables, poultry and dairy products, and all farm and home products, and for selling and loading livestock, and to let or lease space therein and thereon; to store, or refrigerate any meats, vegetables, fruits, poultry or dairy products; to employ such managers and other help as may be necessary to operate the plants and pens and market the products handled, and make such charges for such services as will cover the costs of operation and maintenance.

(19) Protect the dairy interests of the state, and to that end it shall enforce those functions, powers and duties given to it in chapters 502 and 503.

(20) Stimulate, encourage and foster the production and consumption of agricultural products.

History.—§1, ch. 59-54; (2) a. by §1, ch. 61-407.

570.08 Commissioner; powers and duties.—In addition to all other powers and duties conferred upon the commissioner of agriculture by the provisions of law, the commissioner shall have and exercise the following specific powers and duties:

(1) Determine general policies to be followed by the department in determining and enforcing regulatory and service laws, rules and regulations.

(2) Establish within the divisions such sections as he may deem necessary for the efficient administration and enforcement of the agricultural, horticultural and livestock laws, orders, standards, rules and regulations of the department so long as the activities of such sections are consistent and compatible with the activities of the division within which it is placed.

(3) Regulate the conduct of investigations, inquiries and hearings authorized by law and prescribe necessary forms and notices.

(4) Hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of the powers and duties of his office. Upon failure or refusal of any witness to obey any subpoena, the commissioner may petition the circuit court having jurisdiction in the county within which the seat of government is located, and upon proper showing, the court shall enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of the court shall be punishable as a contempt of court.

(5) Where not already provided by law, to require and fix the bonds of such employees of the department as may be deemed necessary.

(6) Enact, amend and repeal necessary administrative rules and regulations. The rules and regulations of the department and the commissioner of agriculture in force at the time this chapter takes effect shall continue as the rules and regulations of the department, until amended or repealed by the commissioner; however, all said rules and regulations shall be reviewed and either readopted, repealed or amended within three years from January 15, 1961. And all rules and regulations not expressly reviewed and readopted, repealed or amended within said time shall be deemed void and of no further force and effect.

(7) In his discretion, adopt and promulgate, after proper notice and opportunity for hearing, rules and regulations pertaining to the inspection of quality, the truthful and honest branding of each package shipped and the prohibiting of any shipper having the benefit of shipping through the facilities of the department who does not strictly observe and obey such rules and regulations in the preparation, packing and shipping of his agricultural products.

(8) With the approval of a majority of the trustees of the internal improvement fund, the commissioner may sell, exchange, convey, or otherwise dispose of any real property owned or held by the department when, in the judgment of the commissioner, such property is not needed for the purpose for which the said property was held and cannot be put to any other beneficial use by the department. A deed to any real property owned or held by the department, duly executed by the commissioner and witnessed by a majority of the trustees of the internal improvement fund shall be sufficient to convey all the right, title and interest of the said department or of the state in and to the property described therein.

(9) Sell, exchange, convey or otherwise dispose of any personal property and lease any real property owned or held by the department when in the judgment of the commissioner, such property is not needed for the purpose for which the said property was held and cannot be put to any other beneficial use by the department.

History.—§1, ch. 59-54.

570.09 Assistant commissioner.—The commissioner shall appoint and may at pleasure remove an assistant commissioner of agriculture and assign to such assistant the work which shall be under the said assistant's supervision. The assistant commissioner shall serve as the director of the administration division of the department and any other division of the department in which there is a vacancy in the directorship except the divisions of animal and plant industries. Before entering upon the duties of his office the assistant commissioner shall take and subscribe to the same oath of office as required of state officers in §2, Art. XVI, of the Florida constitution and give bond as provided in §570.11. The said assistant commissioner shall be a person qualified by training and experience for the performance of the duties of his office.

History.—§1, ch. 59-54.

570.10 Counsel.—

(1) The department may have a legal staff of three full time attorneys who shall be assistant attorneys general of the state, one of whom shall be chief counsel. Each attorney shall be assigned to the department by the attorney general with the concurrence of the commissioner. Removal from the department of agriculture of such attorney shall be effected by the commissioner. Such attorney shall be compensated from funds of the department of agriculture.

(2) The attorneys of the department shall represent and appear for the department at all actions and proceedings involving any question under this chapter or within the jurisdiction of the department under any general or special law or under or in reference to any act, order or proceedings of or before the commissioner, and shall, when directed, intervene, if possible, in behalf of the department in any action or proceeding involving or relating to any matter within the jurisdiction or powers of the department as herein prescribed.

(3) The several prosecuting attorneys of the state shall prosecute all violations of the

agricultural laws of this state upon the request of the commissioner.

(4) Counsel shall: act as counsel for any officer of the department in the conduct of a hearing, investigation or inquiry executed under authority of the department or as provided in this chapter; advise the commissioner or any officer of the department, when so requested, in regard to all matters in connection with his powers and duties; and, perform generally all duties and services as counsel of the department which may be reasonably required of them.

(5) For a period of two years following January 15, 1961, the department may retain or employ additional part-time legal counsel to aid in the reorganization of said department and in review of the then existing rules and regulations as required by this chapter.

(6) The department may retain or employ a part time attorney as counsel for the division of plant industry.

History.—§1, ch. 59-54; (1) a., (6) n. by §2, ch. 61-407.

570.11 Directors; oath of office.—Each director of the department shall before entering upon the duties of his office take and subscribe to the same oath of office as required of state officers by §2, Art. XVI, of the Florida constitution and give bond with good security to be approved by the governor; in the sum of ten thousand dollars, conditioned upon the faithful discharge of the duties of his office. Such oath shall be filed in the office of the secretary of state.

History.—§1, ch. 59-54.

570.12 Other officers and employees.—There shall be employed or appointed such agents, inspectors, chemists, experts, statisticians, accountants, stenographers, clerks and other assistants and employees, as the commissioner shall deem necessary for the exercise and the performance of the duties of the department under law. Such officers and employees shall be appointed by the commissioner subject to personnel practices which shall be adopted by him and administered by the administration division. The officers and employees of the department who are employed when this chapter takes effect shall continue their employment during the pleasure of the commissioner.

History.—§1, ch. 59-54.

570.13 Salary of commissioner, officers and employees; expenses.—

(1) The annual salary of the commissioner shall be in that amount as provided by law. The salaries of the assistant commissioner, counsel, directors and all other officers and employees of the department shall be fixed by the commissioner within the limits of appropriations made therefor.

(2) The reasonable and necessary traveling and other expenses of the commissioner, assistant commissioner, counsel, directors and other officers and employees of the department, while actually engaged in the performance of their duties, outside of the city of Tallahassee, or if any such officer or employee be in charge of or regularly employed at a branch office of the department, the reasonable and necessary traveling and other expenses outside the place such branch office is located, shall be paid from the state treasury upon the audit of the comptroller upon vouchers approved by the commissioner in the amount provided in §112.061.

History.—§1, ch. 59-54.

570.14 Seal of department.—The department shall have an official seal. Such seal shall be used for the authentication of the orders and proceedings of the commissioner and for such other purposes as the commissioner may prescribe.

History.—§1, ch. 59-54.

570.15 Access to place of business.—The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, and other employees and officers of the department shall have full access at all reasonable hours to all places of business, factories, farm buildings, carriages, railroad cars, motor vehicles and vessels used in the production, manufacture, storage, sales or transportation within the state of any food product or agricultural product or of any article or product with respect of which any authority is conferred by law on the department and all records pertaining thereto. If such access be refused by the owner, agent or manager of such premises, the inspector may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases. The refusal to admit an inspector to any of the above premises, during reasonable hours, shall be construed as prima facie evidence of violation of this section. Such departmental officers and employees may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold or exposed for sale in violation of the provisions of this chapter, or of the rules of the department, or of the laws which the department enforces, and may inspect the contents thereof, and take therefrom samples for analysis.

History.—§1, ch. 59-54.

570.16 Interference with department employees in performance of duties.—No person shall attempt, by means of any threat or violence, to deter or prevent an inspector, agent or other employee of the department from performing any duties imposed by law upon him or upon the department. Whoever violates this section, shall, upon conviction thereof, be deemed guilty of a misdemeanor and punished as provided in §775.07.

History.—§1, ch. 59-54.

570.17 Division of work between department of agriculture and experiment station and extension service.—All of the regulatory work of the state relating to the protection of agricultural interests shall be conducted by the

department of agriculture and all of the demonstrational work shall be conducted by the extension service of the university of Florida. The experimental and research work pertaining to agriculture shall be conducted by the experiment station of the university of Florida.

History.—§1, ch. 59-54; §3, ch. 61-407.

570.18 Organization of departmental work.—In the assignment of functions to the nine divisions of the department the commissioner shall retain within the division of administration, in addition to executive functions, those powers and duties enumerated in §570.30. The commissioner shall organize the work of the other eight divisions in such a way as to secure maximum efficiency in the conduct of the department. The divisions created in §570.29, are solely to make possible the definite placing of responsibility. The department shall be conducted as a unit in which the commissioner shall assign to every employee, including each division director a definite work load and there shall exist between division directors a spirit of cooperative effort to accomplish the work of the department.

History.—§1, ch. 59-54.

570.19 Personnel practices.—

(1) ADMINISTRATION; RULES AND REGULATIONS.—The commissioner on consultation with the division directors of the department shall make, adopt and promulgate as administrative rules and regulations, rules and regulations effectuating a system of personnel administration as contemplated by this chapter. Such rules and regulations shall include provisions for:

(a) The classification of positions and minimum personnel standards for the positions so classified;

(b) The establishment of salary schedules;

(c) Periodic payroll audits of such positions;

(d) Promotions, transfers, demotions, separations, tenure, reinstatements, hours of work; holidays, annual, sick and other forms of leave and such other matters as may be found necessary for the maintenance of a sound personnel administration.

(2) CLASSIFICATION PLAN.—

(a) *Provisions of plan.*—A classification plan covering all positions shall be prepared and made effective in accordance with the provisions of this chapter. The plan shall be based upon an investigation and analysis by the respective division directors within such director's division. The classification plan shall include for each class of position an appropriate title, a description of the duties and responsibilities, the length of the probationary period if more or less than six months, and the minimum requirements of training and experience and other qualifications. Class specifications shall be descriptive and explanatory and not restrictive, except as to minimum requirements of training and experience. The language of class specifications shall not be construed as restricting the authority of division heads to assign related or incidental duties, or to assign, direct, supervise and control the work of employees. The commissioner shall have authority to change duties and responsibilities of a position; however, where material changes are made in the duties of a position, the position shall be reassigned to an appropriate class or the class specification revised.

(b) *Adoption of plan.*—Each division director shall submit the classification plan for his respective division for adoption by the commissioner. The plan shall become effective upon adoption by the commissioner.

(c) *Amendment of plan.*—The commissioner upon his own initiative may prepare class specifications for new positions or revise specifications for existing positions. Such specifications or revisions thereof shall be submitted to the division director concerned for his review and recommendations prior to adoption by the commissioner. Objections by any division director to any such specifications shall be submitted in writing to the commissioner, and the commissioner shall duly consider the same.

(d) *Changes; effective upon adoption.*—Changes in class specifications proposed in the manner prescribed in this section shall be effective when adopted by the commissioner.

(e) *Assignment of positions to classes.*—Upon approval of the classification plan by the commissioner every position shall be assigned to an appropriate class by the division director affected with the approval of the commissioner. No person shall be appointed or promoted to any position until the said position has been classified as provided in this chapter. As additional classes are established or existing classes abolished or amended appropriate assignments or re-assignments shall be made in accordance with this chapter.

(3) PAY PLAN.—

(a) *Provisions of plan.*—A comprehensive pay plan shall be prepared and made effective for all classes of positions in the classified service. The plan shall provide salary schedules for various classes with the salary consistent with the functions outlined in the classification plan. Such salary schedules shall include initial, intervening and maximum rates of pay for each class. In establishing such salary schedules, consideration shall be given to rates of pay in effect in the state agencies under the merit system and in other departments of the state, rates of pay for comparable services in other public and private employment, living costs, maintenance or other benefits received by employees, the state's financial condition and policies, and other relevant factors.

(b) *Preparation of plan.*—When a pay plan is proposed as the result of a pay study conducted by each division director for his own division, the plan shall be submitted to the commissioner for his review. Each such plan shall show budgetary effects of the adoption of the plan upon each division.

(c) *Adoption of plan.*—The plan shall become effective upon adoption by the commissioner.

(d) *Amendment of plan.*—After the adoption of the comprehensive pay plan, any division director may propose a salary range for a new class of position or revision of a salary range for an existing class of position. The proposed salary range or new salary range shall be submitted to the commissioner for his consideration. The division directors shall submit the proposal in writing to the commissioner.

(e) *Salary range proposals by commissioner.*—The commissioner upon his own initiative may propose a salary range for a new class of position or revision of the salary range for an existing class of position. Such proposals or revisions shall be submitted to the division director concerned for his review and recommendations prior to adoption by the commissioner. Objections by any division director to any such proposals or revisions shall be submitted in writing to the commissioner.

(f) *Changes, effective upon adoption.*—Changes in the plan as prescribed in this section shall become effective when adopted by the commissioner.

(4) ADMINISTRATION OF PLAN.—

(a) The approved pay plan shall constitute the official schedule of salaries for all classes of positions in the department. No salaries shall be approved on the pay roll of the department unless they conform to the approved compensation plan and are at one of the salary levels specified by the plan for the class, except where budgetary limitations prevail. The entrance salary for any employee shall be at the minimum salary in the class to which he is appointed except as otherwise provided in paragraphs (b) and (c) of this subsection.

(b) The pay plan shall include regulations relative to administration of the plan, including provisions for advancements within the salary rate ranges and changes of salary rates upon promotion, transfers and demotions. Salary advancements of one step within the salary range shall be granted at regular periodic intervals provided the work of the employee is satisfactory, and subject to budgetary limitations. In addition to the periodic increase, a salary advancement one step within the salary range may be granted annually by a division director upon approval of the commissioner when such increase is based upon a superior quality and quantity of work of an employee.

(c) In the case of professional classifications, if it is not possible to appoint a qualified person to a position at the first step in the range, the commissioner may approve appointment at the second step. If an appointment at the second step is not possible, the commissioner may approve appointment at a step in the range necessary to pay in order to obtain the services of a qualified person. All such appointments must be justified by the person's unusual qualifications of training and experience, area conditions or other valid reasons, which must be given in writing to the commissioner.

History.—§1, ch. 59-54.

570.20 General inspection trust fund.—All inspection fees and funds authorized and received from whatever source in the enforcement of the inspection laws administered by the commissioner of agriculture of Florida shall be paid into the general inspection trust fund of Florida, which said fund is created in the office of state treasurer, and all expenses incurred in carrying out the provisions of said inspection laws shall be paid from said fund as other funds are paid from the state treasury. Two per cent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof, shall be deposited in the general revenue fund in lieu of the three per cent service charge provided for in §215.20.

History.—§1, ch. 59-54; §2, ch. 61-119; §4, ch. 61-493.

570.21 Publication of department's bulletins, publications and reports.—There may be published by the department within the division of marketing from time to time bulletins or other publications and reports containing accurate data and statistics and information relating to:

(1) Agriculture, agricultural production, agricultural labor and the agricultural conditions of the state, and the development and improvement thereof, with a view of increasing farm production and values;

(2) The sources, supply and prices of food, their storage and accumulation at different places, and the quantity and location of the available supply thereof;

(3) The market prices of foods;

(4) Facilities afforded for transportation, marketing and distribution of foods within the state;

(5) Matters pertaining generally to the production of foods, the actual food value of articles used in food, and the sale and distribution thereof to the consumer, which in the opinion of the commissioner will prove valuable or of interest to the public;

(6) Investigations, hearings and inquiries conducted as provided in this chapter, conclusions reached as to matters involved therein, and the orders and recommendations made as a result thereof;

(7) Rules, regulations and orders of the department;

(8) Any other matter of an agricultural nature which the commissioner deems proper and that is not within the jurisdiction of the agricultural experiment station, agricultural extension service or the Florida development commission;

Such bulletins, publications, reports, rules, regulations, and orders and the information contained therein shall be published and distributed in the manner deemed best by the commissioner for the dissemination of knowledge as to the agricultural interest of the state

and the production, sale, purchase, storage, marketing and distribution of food, and the economic and food value of articles used as food. The cost of publishing such bulletins, publications and reports shall be paid in the same manner as other expenses of the department out of appropriations made therefor. Copies of the bulletins, publications and reports of the department may also be sold to the public at the estimated cost thereof, in accordance with a schedule of charges which the commissioner is hereby authorized to adopt.

History.—§1, ch. 59-54.

570.22 Service of process.—Process against the department of agriculture shall be served on the commissioner or in his absence, on the assistant commissioner.

History.—§1, ch. 59-54.

570.23 State agricultural advisory council; appointment; vacancies; terms; removal.—The state agricultural advisory council is hereby created and shall be composed of twenty-three members as follows:

(1) The said twenty-three members shall be appointed by the commissioner upon recommendations as provided in subsection (2), from the state at large, one member to represent each of the following areas of agricultural or trade interests affected by the activities of the department:

(a) Beef cattle
(b) Swine
(c) Dairy
(d) Poultry
(e) Apiary
(f) Citrus
(g) Tropical fruits
(h) Vegetable
(i) Ornamental horticulture
(j) Seed
(k) Commercial feed
(l) Commercial fertilizer and pesticide
(m) Field crops
(n) Forestry
(o) Retail food stores
(p) Independent agricultural markets
(q) Meat processing and packing establishments
(r) Food, other than meat or citrus, processing and canning establishments
(s) Petroleum
(t) Citizen at large
(u) Sugar
(v) Commercial flower growers
(w) Agricultural limestone.

(2) Each appointment to the council shall be made by the commissioner from recommendations submitted by the governing bodies of recognized statewide organizations representing the area of agricultural or trade interest for which the appointment is made, except that the citizen at large member shall be appointed by the commissioner from the general public and shall be representative of the views of the general public toward agriculture and its activities. Nominations shall be made by the governing bodies of such agricultural or trade organizations pursuant to proper provisions adopted and made a part of their by-laws, provided, however, that each recommending organization shall recommend no less than two nor more than three candidates for each council seat for which it is eligible to recommend.

(3) Each appointment by the commissioner to the council of representatives of the areas of agricultural interests enumerated (a) through (n), (v) and (w) in subsection (1) shall be limited to those nominees who are producers or growers actively engaged in the area of agricultural interest which he is chosen to represent and who gains from such agricultural interest a major portion of his income. Each appointment by the commissioner to the council of representatives of the areas of trade interest enumerated (o) through (r) in subsection (1) shall be limited to those nominees who are actively engaged in the area of trade interest which he is chosen to represent and who gains from such trade interest a major portion of his income. The petroleum representative appointment by the commissioner enumerated as (s) in subsection (1) shall be limited to those nominees who are distributors of petroleum or petroleum products. The citizen at large member of the council enumerated as (t) in subsection (1) shall not be actively engaged in any agricultural pursuit nor shall any nominations be required for the appointment to the council by the commissioner. The member of the council enumerated as (w) in subsection (1) shall be primarily and actively engaged in the growing and processing of sugar cane into raw sugar and by-products.

(4) In the absence of nominations from an area of agricultural or trade interest as provided in this section, the commissioner shall appoint a person to that seat on the council without such person first being nominated by a qualified organization, provided that such person meets the requirements of subsection (3) of this section.

(5) Ten members of the first council shall hold office until January 15, 1962, or until their successors are duly appointed and qualified and thereafter shall serve for a term of two years. The remaining thirteen members shall serve for a term of two years. The terms of office of members of the first council shall date from January 15, 1961.

(6) In the event of a vacancy among the membership of the council, the unexpired term so occurring shall be filled by the commissioner, who shall appoint a person having the same required qualifications as the person who theretofore held such office.

(7) Any member of the council who fails to attend three consecutive meetings of the council without good cause shall be subject to removal from the council by the commissioner.

History.—§1, ch. 59-54; intro. para. (1), (3), (5) a. by §1, ch. 61-224; (1), (3), (5), §1, ch. 63-395.

570.24 Council; organization; meetings; quorum.—

(1) Immediately after their appointment,

the members of the council shall meet and organize by the election of a chairman, a vice-chairman and a secretary, whose terms shall be for one year.

(2) The council shall meet at the call of the commissioner, its chairman, or at the request of a majority of its membership, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(3) A majority of the members of the council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of the council.

History.—§1, ch. 59-54.

570.25 Council; powers and duties.—The state agricultural advisory council, shall, with respect to its field of work and that of the department of agriculture with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of agriculture; to advise, counsel and consult with the commissioner and division directors and officers of the department upon their request in connection with the promulgation, administration and enforcement of laws, rules and regulations relating to agriculture; to consider all matters submitted to it by the commissioner; to offer suggestions and recommendations to the commissioner on its own initiative in regard to changes in the agricultural laws, rules and regulations, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules and regulations; to investigate violations of the provisions of the agricultural laws of the state, and rules and regulations promulgated by the authority of said laws and to report its findings or recommendations in connection therewith to the commissioner; to submit with the consent of the commissioner for enactment by the legislature such draft or drafts of legislation in regard to agriculture as it may deem necessary; to suggest or recommend, on its own initiative, policies and practices for the conduct of the department's business to the commissioner and executive officers of the department which suggestions or recommendations the commissioner and executive officers shall duly consider but not be bound by.

(2) To adopt rules and regulations, not inconsistent with law, to govern its own proceedings, a copy of which rules shall be filed in the office of the commissioner. The secretary shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the council. The record shall be filed in the office of the department and shall be a public record. All records and other documents of the department relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

History.—§1, ch. 59-54.

570.26 Council; ex officio members.—The director of the agricultural extension service of the university of Florida, the director of the experiment station of the university of Florida, and the provost of agriculture of the university of Florida shall be ex officio members of the council without the right to vote.

History.—§1, ch. 59-54.

570.27 Council; compensation.—The members of the council shall receive no compensation for their services, except that they shall receive per diem as provided in §112.061, and their legal traveling expenses when actually engaged on the business of the council.

History.—§1, ch. 59-54.

570.28 Council; clerical help and space.—The commissioner shall detail from time to time to the assistance of the council such employees of the department as may be required, and shall provide suitable space in the offices of the department for the meetings and records of the council.

History.—§1, ch. 59-54.

570.29 Departmental divisions.—The department of agriculture shall be organized into nine divisions, as follows:

(1) Administration
(2) Plant industry
(3) Animal industry
(4) Dairy industry
(5) Inspection
(6) Standards
(7) Fruit and vegetable inspection
(8) Chemistry
(9) Marketing.

History.—§1, ch. 59-54.

570.30 Division of administration; powers and duties.—The division of administration shall be divided into not less than four sections as follows: however, it shall also render any other services required by the commissioner and the several divisions of the department that can advantageously and effectively be centralized and other functions of the department that are not specifically assigned by law to some other division;

(1) RECORDS.—It shall be the duty of this section to conduct a central record-keeping system to service the entire department and a secretarial pool to provide stenographic and secretarial services for as much of the department as possible;

(2) PERSONNEL.—It shall be the duty of this section to keep the personnel records of all the department's employees and administer the department's rules and regulations pertaining to personnel and personnel practices;

(3) FISCAL AND AUDITING.—It shall be the duty of this section to conduct all the fiscal and auditing work of the department, including but not restricted to payroll, purchasing, supply, auditing and budget preparation; and.

(4) GENERAL SERVICES.—It shall be the duty of this section to conduct such services as mailing for the department, maintenance

of buildings and any other service which the commissioner may assign.

History.—§1, ch. 59-54; (4) a. by §4, ch. 61-407.

570.31 Director; duties.—

(1) The assistant commissioner of agriculture shall serve as the director of this division.

(2) It shall be the duty of the director to supervise, direct and coordinate the activities provided in §570.30.

History.—§1, ch. 59-54.

570.32 Division of plant industry; powers and duties.—The division of plant industry shall be divided into not less than six sections as follows:

(1) ENTOMOLOGY.—It shall be the duty of this section to identify insects and mites submitted, conduct surveys of agricultural and horticultural crops to determine insect or mite populations present, and to carry on investigations of methods of control, eradication and prevention of dissemination of insect or mite pests.

(2) PLANT PATHOLOGY.—It shall be the duty of this section to identify plant diseases from samples submitted, conduct surveys of agricultural and horticultural crops to determine plant diseases present, and to carry on investigations of methods of control, eradication and prevention of dissemination of plant diseases.

(3) NEMATOLOGY.—It shall be the duty of this section to identify nematodes submitted, conduct surveys of agricultural and horticultural crops to determine nematode population present, and to carry on investigations of methods of control, eradication and prevention of dissemination of nematode pests.

(4) APIARY.—It shall be the duty of this section to enforce the laws of the state and the rules and regulations of the department relating to honeybees and the control and eradication of honeybee diseases.

(5) PLANT INSPECTION.—It shall be the duty of this section to inspect all nurseries in the state and enforce the laws of the state and the rules and regulations of the department pertaining to plants and plant products. This section shall also provide all supervisory personnel for control and eradication programs undertaken by the division of plant industry.

(6) SEED LABORATORY.—It shall be the duty of this section to perform those services and duties pertaining to purity and germination testing of commercial seeds offered for sale in this state as required under chapters 575 and 578, and to enforce those provisions of said chapters as directed by the commissioner. The physical location of the seed laboratory shall be in Tallahassee.

History.—§1, ch. 59-54.

570.33 Director; qualifications; duties.—

(1) The commissioner shall appoint a director of the division of plant industry in conformity with §570.35, who may be known as the plant commissioner.

(2) No person shall be appointed plant commissioner that does not possess the following minimum qualifications:

(a) An expert who has at least five years experience in the regulation, control, eradication and prevention of the dissemination of insect, mite and nematode pests and plant diseases.

(b) A person of recognized ability in regulatory plant industry work.

(c) A graduate of a recognized and reputable college of agriculture with training in plant science.

(3) The director shall be responsible for protecting the plant industry of the state and to that end he shall under the direction of the commissioner direct, coordinate and enforce the activities in chapters 581 and 584.

History.—§1, ch. 59-54.

570.34 Plant industry technical committee; membership; terms; meetings; quorum; compensation.—The plant industry technical committee which may be known as the state plant board, is hereby created and shall be composed of eight members as follows:

(1) The citrus, vegetable, ornamental horticulture, seed, forestry, apiary and citizen-at-large representatives who serve on the state agricultural advisory council shall constitute seven of the eight member technical committee. The terms of office of these seven members shall be concurrent with their terms of office as members of the council.

(2) The remaining member shall be appointed by the commissioner of agriculture subject to the following qualification:

(a) Such member shall be an additional citrus fruit representative and shall be appointed by the commissioner subject to the same qualifications and by the same procedure as prescribed in §570.23, for membership to the council by the citrus representative.

(b) The term of office of the second citrus fruit representative provided for in this subsection shall be for two years or until his successor is duly appointed and qualified.

(3) The terms of office of members of the first technical committee shall date from January 15, 1961.

(4) Immediately after their appointment, the members of this technical committee shall meet and organize by the election of a chairman and vice-chairman, whose terms of office shall be for one year.

(5) This technical committee shall meet at the call of its chairman or secretary, at the request of a majority of its membership, at the request of the commissioner, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(6) A majority of the members of this technical committee shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of this technical committee.

(7) The members of this technical committee shall receive no compensation for their serv-

ices, except that they shall receive per diem as provided in §112.061, and their legal traveling expenses when actually engaged on the business of this technical committee.

History.—§1, ch. 59-54; intro. para., (1) a. by §5, ch. 61-407.

570.35 **Powers and duties.**—The plant industry technical committee shall, with respect to its field of work and that of the division of plant industry of the department with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of plant industry; to advise, counsel and consult with the commissioner and the director upon their request in connection with the promulgation, administration and enforcement of all laws, rules and regulations relating to plant industry; to consider all matters submitted to it by the commissioner or the director; to offer suggestions and recommendations to the commissioner and the director on its own initiative in regard to changes in the laws, rules and regulations relating to plant industry, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules and regulations; to investigate violations of the provisions of chapters 581 and 584, and rules and regulations promulgated by the authority of said chapters and to report its findings or recommendations in connection therewith to the commissioner and the director; to submit with the consent of the commissioner for enactment by the legislature such draft or drafts of legislation in regard to plant industry as it may deem necessary; to suggest or recommend, on its own initiative, policies and practices for the conduct of the business of the division of plant industry of the department to the commissioner and the director which suggestions or recommendations the commissioner and director shall duly consider.

(2) To adopt rules and regulations, not inconsistent with law, to govern its own proceedings, a copy of such rules shall be filed in the office of the commissioner. The director shall serve as the secretary to the committee and shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the committee. The record shall be filed in the office of the commissioner and shall be a public record. All records and other documents of the division of plant industry relating to matters within the jurisdiction of the committee shall be subject to inspection by the members of the committee.

(3) To confirm the appointment or release by the commissioner of the director.

(4) To confirm or reject technical rules and regulations proposed by the commissioner and promulgated by him under the authority of chapters 581 and 584.

(5) To declare an emergency when such exists as defined in chapter 581, and make, adopt and promulgate technical rules and regulations which would be effective during the term of said emergency.

History.—§1, ch. 59-54.

570.36 **Division of animal industry; powers and duties.**—The division of animal industry shall be divided into not less than eight sections as follows:

(1) BRUCELLOSIS AND TUBERCULOSIS.—It shall be the duty of this section to enforce those provisions of chapter 585, and rules and regulations adopted pursuant thereto, relating to testing, supervising, controlling and eradicating brucellosis and tuberculosis in livestock.

(2) TICK ERADICATION.—It shall be the duty of this section to enforce those provisions of chapter 585 and rules and regulations adopted pursuant thereto, relating to the dipping, inspection, quarantine, and eradication of the cattle fever tick.

(3) CONTAGIOUS AND INFECTIOUS DISEASES.—It shall be the duty of this section to enforce those provisions of chapter 585 and rules and regulations adopted pursuant thereto, relating to the control and eradication of dangerous transmissible diseases of livestock other than the control and eradication of those diseases specifically delegated to another section of the division of animal industry and to enforce those provisions of chapter 534, and rules and regulations adopted pursuant thereto, relating to recordation of livestock marks and brands and such other provisions of such chapter as directed by the commissioner.

(4) POULTRY SERVICES.—It shall be the duty of this section to enforce those provisions of chapter 585, and rules and regulations adopted pursuant thereto, relating to the enforcement of the provisions of the national poultry improvement plan and the national turkey improvement plan.

(5) MASTITIS.—It shall be the duty of this section to enforce those provisions of chapter 585, and rules and regulations adopted pursuant thereto, relating to inspection for detection of mastitis infection in dairy cattle and supervision of milking operations.

(6) DIAGNOSTIC LABORATORIES. — It shall be the duty of this section to operate and manage the large animal and poultry disease diagnostic laboratories as provided in chapter 585.

(7) SCREWWORM.—It shall be the duty of this section to enforce those provisions of chapter 585, and rules and regulations adopted pursuant thereto relating to the eradication of screwworm.

(8) MEAT INSPECTION.—It shall be the duty of this section to enforce §585.34, relating to inspection of meats in Florida, and the rules and regulations adopted pursuant thereto, and the provisions of law relating to ante and postmortem inspection of poultry when such services are instituted by the department.

History.—§1, ch. 59-54.

570.37 **Director; qualifications; duties.**—(1) The commissioner shall appoint a di-

rector of the division of animal industry in conformity with §570.39, who mav be known as the state veterinarian.

(2) No person shall be appointed state veterinarian who does not possess the following minimum qualifications:

(a) An expert who has at least five years experience in the regulation, control, eradication and prevention of contagious, infectious and communicable diseases of cattle, hogs, poultry and other domestic animals including but not limited to the following pests and diseases: Fever ticks, tuberculosis, hog cholera, brucellosis, hemorrhagic septicemia, anthrax and screwworms.

(b) A person of recognized ability in regulatory veterinary medicine;

(c) A graduate of a recognized and reputable college of veterinary medicine;

(3) The director shall be responsible for protecting the animal and livestock interests of the state and to that end he shall under the direction of the commissioner direct, coordinate and enforce the activities contained in chapters 585 and 534.

History.—§1, ch. 59-54.

570.38 Animal industry technical committee; membership; terms; meetings; quorum; compensation.—The animal industry technical committee which may be known as the Florida livestock board is hereby created and shall be composed of seven members as follows:

(1) The beef cattle, swine, dairy and poultry representatives who serve on the state agritural advisory council shall constitute four of the seven member technical committee. The terms of office of these four members shall be concurrent with their terms of office as members of the council.

(2) The remaining three members shall be representatives of the beef cattle industry and shall be appointed by the commissioner subject to the same qualifications and by the same procedure as prescribed in §570.23, for membership to the council by the beef cattle representative except that under the provision of this subsection each recognized state-wide organization representing the beef cattle industry shall recommend no less than six nor more than nine candidates to fill these three seats on the technical committee. The terms of office of the three members provided for in this subsection shall be for two years or until their successors are duly appointed and qualified.

(3) The terms of office of members of the first technical committee shall date from January 15, 1961.

(4) Immediately after their appointment, the members of this technical committee shall meet and organize by the election of a chairman and vice-chairman, whose terms of office shall be for one year.

(5) This technical committee shall meet at the call of its chairman or secretary, at the request of a majority of its membership, at the request of the commissioner, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(6) A majority of the members of this technical committee shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of this technical committee.

(7) The members of this technical committee shall receive no compensation for their services, except that they shall receive per diem as provided in §112.061, and their legal traveling expenses when actually engaged on the business of this technical committee.

History.—§1, ch. 59-54.

570.39 Powers and duties.—The animal industry technical committee, shall, with respect to its field of work and that of the division of animal industry of the department with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of animal industry; to advise, counsel and consult with the commissioner and the director upon their requests in connection with the promulgation, administration and enforcement of all laws, rules and regulations relating to animal industry; to consider all matters submitted to it by the commissioner or the director, to offer suggestions and recommendations to the commissioner and the director on its own initiative in regard to changes in the laws, rules and regulations relating to animal industry, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules and regulations; to investigate violations of the provisions of chapters 585 and 534, and rules and regulations promulgated by the authority of said chapter and to report its findings or recommendations in connection therewith to the commissioner and the director; to submit with the consent of the commissioner for enactment by the legislature such draft or drafts of legislation in regard to animal industry as it may deem necessary; to suggest or recommend, on its own initiative, policies and practices for the conduct of the business of the division of animal industry of the department to the commissioner and the director which suggestions or recommendations the commissioner and director shall duly consider.

(2) To adopt rules and regulations, not inconsistent with law, to govern its own proceedings, a copy of such rules shall be filed in the office of the commissioner. The director shall serve as the secretary to the committee and shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the committee. The record shall be filed in the office of the commissioner and shall be a public record. All records and other documents of the division of animal industry relating to matters within the jurisdiction of the committee

shall be subject to inspection by the members of the committee.

(3) To confirm the appointment or release by the commissioner of the director.

(4) To confirm or reject technical rules and regulations proposed by the commissioner and promulgated by him under the authority of chapter 585.

(5) To declare an emergency when such exists as defined in chapter 585, and make, adopt and promulgate technical rules and regulations which would be effective during the term of said emergency.

History.—§1, ch. 59-54.

570.40 Division of dairy industry; powers and duties.—The division of dairy industry shall be divided into not less than three sections as follows:

(1) DAIRY FARM INSPECTION.—It shall be the duty of this section to inspect dairy farms of the state and to enforce those provisions of chapter 502, as authorized by the commissioner.

(2) MILK AND MILK PRODUCTS PLANT INSPECTION.—It shall be the duty of this section to inspect milk plants, milk product plants, and plants engaged in the manufacture and distribution of frozen desserts and frozen desserts mix and to enforce those provisions of chapters 502 and 503, as authorized by the commissioner.

(3) MOBILE DAIRY LABORATORY.—It shall be the duty of this section to analyze and test samples of milk, milk products, frozen desserts and frozen desserts mix collected by it and to enforce those provisions of chapters 502 and 503, as authorized by the commissioner.

History.—§1, ch. 59-54.

570.41 Director; qualifications; duties.—

(1) The director of the division of dairy industry shall be appointed by the commissioner and shall serve at his pleasure.

(2) No person shall be appointed director of the division of dairy industry who does not possess the following minimum qualifications:

(a) A graduate of a recognized and reputable college of agriculture;

(b) A person with at least four years' experience in dairy farm and milk plant control supervision.

(3) The director shall supervise, direct and coordinate the activities of his division and to that end he shall under the direction of the commissioner enforce the provisions of chapters 502 and 503.

History.—§1, ch. 59-54.

570.42 Dairy industry technical committee; membership; terms; meetings; quorum; compensation.—

(1) The dairy industry technical committee is hereby created and shall be composed of seven members as follows:

(a) Two citizens of the state, one of whom shall be associated with the agricultural extension service of the university of Florida and the other such citizen shall be associated with the college of agriculture of the university of Florida.

(b) The state health officer or some employee of the state board of health;

(c) Two dairy farmers who are actively engaged in the production of milk in this state and who earn a major portion of their income from the said production of milk.

(d) Two distributors of milk. "Distributor" means any milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale.

(2) The commissioner shall appoint the members of this technical committee except that his choice of appointment of the four members provided for in paragraphs (c) and (d) hereof shall be limited to nominations received from the governing bodies of recognized state-wide organizations representing the producer group and the distributor group of the dairy industry. These respective organizations shall each recommend no less than four nor more than six candidates to fill their respective two seats on the technical committee. Such nominations shall be made pursuant to proper provisions adopted and made a part of the by-laws of the respective organizations. In the absence of nominations from the producer or distributor groups of the dairy industry, the commissioner shall appoint such persons as are qualified under the provisions of this section.

(3) Three members of the first technical committee shall hold office until January 15, 1962, or until their successors are duly appointed and qualified and thereafter shall serve for a term of two years. The remaining four members shall serve for a term of two years. The terms of office of members of the first technical committee shall date from January 15, 1961.

(4) Immediately after their appointment, the members of this technical committee shall meet and organize by the election of a chairman and vice-chairman, whose terms shall be for one year.

(5) This technical committee shall meet at the call of its chairman or secretary, or at the request of a majority of its membership, or at the request of the commissioner, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(6) A majority of the members of this technical committee shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of this technical committee.

(7) The members of this technical committee shall receive no compensation for their services, except that they shall receive per diem as provided in §112.061, and their legal traveling expenses when actually engaged on the business of this technical committee.

History.—§1, ch. 59-54; (3), (5) a. by §6, ch. 61-407.

570.43 Dairy industries technical committee; powers and duties.—The dairy industry technical committee shall, with respect to its field of work and that of the division of dairy industry of the department with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of dairy industry; to advise, counsel and consult with the commissioner and the division director upon their request in connection with the promulgation, administration and enforcement of all laws, rules and regulations relating to dairy industry; to consider all matters submitted to it by the commissioner or the division director; to offer suggestions and recommendations to the commissioner and the division director on its own initiative in regard to changes in the laws, rules and regulations relating to dairy industry, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules and regulations; to investigate violations of the provisions of chapters 502 and 503 and rules and regulations promulgated by the authority of said chapters and to report its findings or recommendations in connection therewith to the commissioner and the division director; to submit with the consent of the commissioner for enactment by the legislature such draft or drafts of legislation in regard to dairy industry as it may deem necessary; to suggest or recommend, on its own initiative, policies and practices for the conduct of the business of the division of dairy industry of the department to the commissioner and the division director which suggestions or recommendations the commissioner and the division director shall duly consider.

(2) To adopt rules and regulations, not inconsistent with law, to govern its own proceedings, a copy of such rules shall be filed in the office of the commissioner. The division director shall serve as the secretary to the committee and shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the committee. The record shall be filed in the office of the commissioner and shall be a public record. All records and other documents of the division of dairy industry relating to matters within the jurisdiction of the committee shall be subject to inspection by the members of the committee.

History.—§1, ch. 59-54.

570.44 Division of inspection; powers and duties.—The division of inspection shall be divided into not less than three sections as follows:

(1) FEED, SEED, FERTILIZER AND PESTICIDE INSPECTION.—It shall be the duty of this section to inspect and draw samples of: commercial feeds offered for sale in this state and to enforce those provisions of chapter 580, as authorized by the commissioner; seeds offered for sale in this state and to enforce those provisions of chapter 578, as authorized by the commissioner; certified seed grown in this state and to enforce those provisions of chapter 575, as authorized by the commissioner; commercial fertilizers offered for sale in this state and to enforce those provisions of chapter 576, as authorized by the commissioner; and, pesticides offered for sale in this state and to enforce those provisions of chapter 487, as authorized by the commissioner.

(2) FOOD, GRADES AND STANDARDS INSPECTION.—It shall be the duty of this section to conduct those general inspection activities in regard to: foods offered for sale in this state and to enforce those provisions of chapters 500 and 583, relating to foods as authorized by the commissioner; weights, measures and standards of articles offered for sale in this state and to enforce those provisions of chapter 531, as authorized by the commissioner, dairy products offered for sale at retail in this state and to enforce those provisions of chapters 502 and 503, as authorized by the commissioner.

(3) ROAD GUARDS.—It shall be the duty of this section to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural and livestock products and commodities as directed by the commissioner and the division director.

History.—§1, ch. 59-54; (2) a. by §7, ch. 61-407.

570.45 Director; duties.—

(1) The director of the division of inspection shall be appointed by the commissioner and shall serve at his pleasure.

(2) It shall be the duty of the director of this division to receive all reports from the inspectors of this division, to direct the inspectors in the performance of their duties under instructions of the commissioner, and such other powers and authority as authorized by the commissioner.

History.—§1, ch. 59-54.

570.46 Division of standards; powers and duties.—The division of standards shall be divided into not less than two sections as follows:

(1) GASOLINE AND OIL STANDARDS.—It shall be the duty of this section to inspect petroleum measuring devices and perform the quality analysis as required under chapters 525 and 526.

(2) WEIGHTS AND MEASURES STANDARDS.—It shall be the duty of this section to inspect all scales and measures in the state and to carry out the provisions of chapter 531, relating to weights, scales and measuring devices.

History.—§1, ch. 59-54; (2) a. by §8, ch. 61-407.

570.47 Director; qualifications; duties.—

(1) The director of the division of standards shall be appointed by the commissioner and shall serve at his pleasure.

(2) The director of this division shall be

an expert oil analyst in both education and experience and shall have experience in the calibration of weights, scales and measuring devices.

(3) The director shall supervise, direct and coordinate the activities of his division and to that end he shall under the direction of the commissioner enforce the provisions of chapters 525, 526 and 531.

History.—§1, ch. 59-54.

570.48 **Division of fruit and vegetable inspection; powers and duties.**—The fruit and vegetable division shall be divided into not less than five sections as follows:

(1) CITRUS INSPECTION, FRESH. — It shall be the duty of this section to perform such duties related to the inspection and certification of fresh citrus fruit shipments for maturity and grade as required by rules and regulations promulgated under the Florida citrus code; to perform such inspection and certification duties as may be assigned in connection with regulations issued under federal or state marketing agreements or orders; and to perform other inspection and certification assignments as requested by and agreed upon with the applicant.

(2) CITRUS INSPECTION, PROCESSED. —It shall be the duty of this section to perform such duties relating to inspection and certification of the maturity and condition of fresh citrus fruits to be processed as required by the rules and regulations promulgated under the Florida citrus code; to inspect and certify the grade, quality or condition of the finished processed pack, as required by rules or regulations promulgated under the Florida citrus code; to perform such inspection and certification duties as may be assigned in connection with regulations issued under federal or state marketing agreements or orders; to conduct inspection of internal quality, and to perform other inspection and certification assignments as requested by and agreed upon with the applicant.

(3) VEGETABLE INSPECTION.—It shall be the duty of this section to perform such duties relating to inspection and certification of vegetables, other fruits, melons and nuts as requested by and agreed upon with the applicant and to perform such inspection and certification duties as may be assigned in connection with regulations issued under federal or state marketing agreements or orders.

(4) CITRUS BOND AND LICENSE.—It shall be the duty of this section to perform such duties relating to enforcement of the citrus bond and license law as required by chapter 601.

(5) CITRUS, TECHNICAL.—It shall be the duty of this section to perform analyses on waxes, dyes, and other substances used on citrus fruit and to issue authorization for the use of said waxes, dyes, and other substances; to issue and maintain equipment issued to inspectors; to conduct necessary technical investigations relative to inspectional procedures; and to carry out the technical duties prescribed under the arsenical spray provisions of chapter 601, and such other technical duties as may be prescribed by the commissioner.

History.—§1, ch. 59-54.

570.49 **Director; duties.**—

(1) The director of the division of fruit and vegetable inspection shall be appointed by the commissioner and shall serve at his pleasure.

(2) It shall be the duty of the director of this division to direct and supervise the overall operation of the division and exercise such other powers and duties as authorized by the commissioner.

History.—§1, ch. 59-54.

570.50 **Division of chemistry; powers and duties.**—The chemistry division shall be divided into not less than four sections as follows:

(1) FERTILIZER LABORATORY.—It shall be the duty of this section to analyze samples of commercial fertilizer and other plant nutrients offered for sale in this state as required under chapter 576.

(2) PESTICIDE LABORATORY.—It shall be the duty of this section to analyze samples of pesticides, insecticides, fungicides, rodenticides, herbicides, fumigants and all other things included in the Florida pesticide law, offered for sale in this state as required under chapter 487.

(3) FEED LABORATORY.—It shall be the duty of this section to analyze samples of commercial feed offered for sale in this state as required under chapter 580.

(4) FOOD LABORATORY.—It shall be the duty of this section to analyze samples of foods in intrastate commerce or offered for sale in this state as required under chapter 500.

History.—§1, ch. 59-54; (1), (2) a. by §9, ch. 61-407.

570.51 **Director; qualifications; duties.**—

(1) The director of the division of chemistry shall be appointed by the commissioner to serve at his pleasure, and shall be known as the state chemist.

(2) No person shall be appointed state chemist who does not possess the following minimum qualifications:

(a) A person who is a professional chemist.

(b) A person who shall hold an advanced degree in chemistry, conferred by a university whose department of chemistry is accredited by the American chemical society, or the equivalent.

(c) A person who has not less than ten years of practical experience in analytical chemistry, including experience in the supervision of an analytical laboratory.

(3) The director shall supervise, direct and coordinate the activities of his division and enforce the provisions of chapters 487, 500, 576 and 580, as they pertain to the duties of the state chemist. The director shall serve on the fertilizer technical committee as provided in

§576.09, and on the pesticide technical committee as provided in §487.05.

History.—§1, ch. 59-54.

570.52 Fertilizer and pesticide technical committees; powers and duties.—

(1) (a) The fertilizer technical committee shall be composed of the state chemist, the director of the Florida agricultural experiment stations, the director of the Florida agricultural extension service, the field crops, citrus and vegetable members of the state agricultural advisory council and the fertilizer and pesticide member of the state agricultural advisory council.

(b) The pesticide technical committee shall be composed of the state chemist, the director of the Florida agricultural experiment stations, the director of the Florida agricultural extension service, the field crops, citrus and vegetable members of the state agricultural advisory council and a pesticide representative. The pesticide representative shall be appointed by the commissioner subject to the same qualifications and by the same procedure as prescribed in §570.23, for membership to the council.

(2) (a) The fertilizer technical committee shall, with respect to its field of work and that of the division of chemistry of the department with which it is associated, have those powers and duties as provided in §576.09.

(b) The pesticide technical committee shall, with respect to its field of work and that of the division of chemistry of the department with which it is associated, have those powers and duties as provided in §487.05.

(3) The members of the technical committees shall receive no compensation for their services, except that they shall receive per diem as provided in §112.061, and their legal traveling expenses when actually engaged on the business of this technical committee.

History.—§1, ch. 59-54; (1) a., (3) n. by §10, ch. 61-407.
cf.—§576.09 Creation of fertilizer technical committee.

570.53 Division of marketing; powers and duties.—The marketing division shall be divided into not less than four sections as follows; which shall continue to operate from the same cities as they operated from during the year 1958.

(1) AGRICULTURAL INFORMATION.—It shall be the duty of this section to publish agricultural bulletins and reports as defined in §570.21.

(2) STATE MARKETS.—It shall be the duty of this section to manage the operation of all the farmers' markets, livestock markets and state livestock and crop pavilions owned by the state and perform those duties and responsibilities which are required of the department by §570.07(18).

(3) LICENSE AND BOND.—It shall be the duty of this section to enforce the provisions of §§604.15-604.30, (the dealers in agricultural products law).

(4) MARKETING BUREAU.—It shall be the duty of this section to perform those responsibilities which are required of the department by §570.07(17).

History.—§1, ch. 59-54.

570.54 Director; duties.—

(1) A director of the division of marketing may be appointed by the commissioner and shall serve at his pleasure.

(2) It shall be the duty of the director of this division to supervise, direct and coordinate the activities as authorized by §§570.21, 570.07 (17), 570.07 (18), and 604.15-604.30, and exercise such other powers and authority as authorized by the commissioner.

History.—§1, ch. 59-54.

CHAPTER 571

FLORIDA SEAL OF QUALITY LAW

571.01 Short title.—This chapter shall be known as the Florida seal of quality law.

History.—§1, ch. 63-378.

571.02 Purpose.—The purpose of this chapter is to authorize the commissioner of agriculture to adopt seals of quality to be used in advertising and promoting the sale of agricultural products produced in Florida and to provide controls in the use of such seals of quality.

History.—§1, ch. 63-378.

571.03 Definitions.—As used in this chapter:

(1) Commissioner means the commissioner of agriculture of Florida.

(2) Person means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.

(3) Seal of quality means any word, device, emblem or symbol adopted by the commissioner for the purpose of identifying and promoting the sale of high quality agricultural products produced in Florida.

(4) Reproduce means to stencil, emboss, print, engrave, impress, imprint, lithograph or duplicate in any manner or to cause any such acts to be done.

(5) Agricultural product includes any fresh or processed horticultural, viticultural, dairy, poultry, apicultural or any other farm or garden product.

(6) Use of seal of quality means to imprint a seal of quality on any produce, packages or container or attach a reproduction of any seal of quality to any Florida agricultural product, package or container of same, or to cause any such acts to be done, for the purpose of identifying any such product in its preparation for market or in any of the various steps in marketing.

History.—§1, ch. 63-378.

571.04 Powers and duties of the commissioner.—The duty of enforcing and administering this chapter is vested in the commissioner, within the department of agriculture, and the commissioner is authorized to employ all agents and persons necessary therefor.

(1) All fees collected under this chapter shall be paid into the state treasury and placed to the credit of the general inspection trust fund, from which fund there shall be paid the expenses incurred in the enforcement and administration of this chapter to include publicizing, advertising and promoting seals of quality and the agricultural products with which such seals of quality are used. The commissioner may accept contributions of money or services to aid in any advertising or promotion work undertaken by him under authority of this chapter.

(2) The commissioner may register any seal of quality in the office of the secretary of state of Florida, United States patent office, appropriate offices of other states of the United States and of foreign countries.

(3) The commissioner individually or through his authorized representatives, is authorized to:

(a) Enter upon the premises, place of business or vehicle of any applicant or licensee during normal business hours and conditions for the purpose of determining by inspection and examination the sufficiency of bookkeeping system, accuracy of records, the agricultural products with which the seal of quality is used, articles purporting to be seals of quality or reproductions of same, and for the purpose of determining whether any other provision of this chapter or any rule or regulation adopted hereunder is being violated.

(b) Issue hold orders to owners and custodians and affix copy of same to seal of quality or reproduction of same in the possession of a nonlicensee; any seal of quality or reproduction of same that is an imitation or counterfeit; any agricultural product with which an imitation or counterfeit seal is used; any agricultural product on which a seal of quality is used after failure to make reports and remittance of advertising and promotion fees provided in this chapter and rules and regulations adopted hereunder; any agricultural product with which a seal of quality is used unless said product is labeled to indicate it is packaged by a licensee or to any agricultural product or article with which a seal of quality is used in violation of this chapter or rules and regulations adopted hereunder. Such hold order shall name and describe the product or article to which attached and the amount and address of same, give notice that the product or article to which attached is or is suspected of being sold, offered for sale or held for the purpose of sale in violation of law or of rules specified in said order and said hold order shall give warning to all persons not to remove or dispose of such product or article by sale or otherwise until permission is granted by the commissioner or his agent or by order of court.

History.—§1, ch. 63-378.

571.05 Rules and regulations.—The commissioner by rules and regulations may design, determine and adopt seals of quality for use in publicizing, advertising and promoting agricultural products; prescribe minimum stand-

ards of quality and grade of agricultural products with which a seal of quality may be used; name and define market packages of agricultural products; fix a reasonable and equitable advertising and promotion fee for such market package of agricultural products; and otherwise interpret, implement and make specific the provisions of this chapter.

History.—§1, ch. 63-378.

571.06 License; application, fee and conditions.—

(1) Application for license to reproduce or use a seal of quality shall be made to the commissioner on application forms supplied by the commissioner. Anyone making application and payment of license fee in the amount of ten dollars and meeting other qualifications required under this chapter and rules and regulations adopted hereunder shall be granted license for which applied. Such license shall be valid for one year from date of issue. The commissioner, however, may refuse to issue a license to any person whose license has been revoked until such person demonstrates to the commissioner that he no longer will violate the provisions of this chapter or rules adopted hereunder.

(2) Issue of license shall be conditioned upon the applicant's satisfying the commissioner that he has an adequate bookkeeping system, that he keeps and will keep at all times all records necessary to indicate accurately the total volume of agricultural products on which the seal of quality has been used, that such records shall be open at all times for periodic inspection and examination by auditors of the department of agriculture. The volume and kind of agricultural products on which the seal of quality has been used shall be reported monthly, quarterly, semiannually or annually as prescribed by rule of the commissioner and such report shall be made with remittance of the advertising and promotion fee applicable not later than the twentieth day of the month following the period covered by the report. The report shall be made under oath and on forms furnished by the commissioner. If the report is not filed and advertising and promotion fee paid on the date due or if the report be false, the amount of fee due is subject to a penalty of ten per cent, which shall be added to the advertising and promotion fee and paid therewith.

History.—§1, ch. 63-378.

571.07 Suspension or revocation of license.— The commissioner, after notice of violation given by registered mail, hearing and finding that licensee has violated any of the provisions of this chapter or rules adopted hereunder, may revoke the license of any licensee or suspend such license for not more than one year.

History.—§1, ch. 63-378.

571.08 Unlawful acts.—It is unlawful for any person:

(1) To remove or dispose of any hold order or any detained agricultural product or article by sale or otherwise without permission of the commissioner or his representative or by order of court.

(2) To reproduce or use any seal of quality without license or in violation of the provisions of this chapter or rules adopted hereunder.

(3) To supply any seal of quality or reproduction of same to any unauthorized person.

(4) To make, reproduce or use any seal of quality that is an imitation or counterfeit.

(5) To market any agricultural product with which an imitation or counterfeit seal of quality is used.

(6) To market any agricultural product with which a seal of quality is used unless the container of such product is labeled to indicate the name of the licensee.

(7) To fail to report the volume and kind of agricultural product on which a seal of quality has been used and make remittance of advertising and promotion fee when due as provided by rule.

(8) To mislead or deceive, use any imitation, counterfeit or likeness of the seal of quality on any label, tag, seal, container, sign or otherwise of any agricultural product of any kind or description for any purpose whatsoever or to mislead or deceive, use any emblem or counterfeit likeness thereof upon or in connection with any offer to sell or advertise for sale or use of any agricultural product of any kind or description which does not in fact lawfully bear a seal of quality.

(9) To fail to do any act required or to do any act prohibited by this chapter or rules adopted hereunder.

History.—§1, ch. 63-378.

571.09 Penalties.—Any person violating any of the provisions of this chapter or rules adopted hereunder shall, upon conviction, be punished by fine of not less than $100.00 nor more than $500.00 or not more than 30 days in the county jail or both such fine and imprisonment for the first offense and not less than $500.00 nor more than $1,000.00 or not less than 30 days nor more than 6 months in the county jail or both such fine and imprisonment for each succeeding offense.

History.—§1, ch. 63-378.

571.10 Injunction.—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the commissioner is authorized to make application for injunction to a circuit judge, and such circuit judge shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter or any rule or regulation adopted hereunder, such injunction to be issued without bond.

History.—§1, ch. 63-378.

CHAPTER 573

FLORIDA MARKETING LAWS

PART I CELERY AND SWEET CORN MARKETING LAW

PART II FOLIAGE PLANT MARKETING LAW

PART III WATERMELON MARKETING LAW

PART I

CELERY AND SWEET CORN MARKETING LAW

573.01 Short title.—This law may be known and cited as "the Florida celery and sweet corn marketing law."

History.—Comp. §§1, chs. 59-133 and 59-283.

573.02 Legislative findings; declaration of policy.—This law is passed:

(1) Because it is hereby declared that the marketing of celery and sweet corn grown in Florida in excess of reasonable and normal market demands therefor; disorderly marketing of such commodity; improper preparation for market and lack of uniform grading and classification; unfair methods of competition in the marketing of such commodity; and the inherent inability of individual producers to maintain present markets, or to develop new and larger markets for Florida grown celery and sweet corn result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of adequate celery and sweet corn food supply for the people of this and other states, and prevent agricultural producers from obtaining a fair return from their labor, their farms, and the celery and sweet corn which they produce. As a consequence, the purchasing power of such producers has been in the past, and in all likelihood will continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations within this state. Celery and sweet corn producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of other citizens of this state.

(2) Because the conditions hereinbefore described and set forth vitally concern the health, peace, safety and general welfare of the people of this state, and it is hereby declared to be the policy of this state to aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities, to develop more efficient and equitable methods in the marketing of agricultural commodities, and to aid agricultural producers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

(3) The marketing of celery and sweet corn within this state is hereby declared to be affected with a public interest. The provisions of this law are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety and general welfare of the people of this state.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.03 Purposes.—The proposes of this law are:

(1) To enable celery and sweet corn producers of this state, with the aid of the state, to correlate more effectively the marketing of their agricultural commodities, with market demands therefor.

(2) To establish and maintain orderly marketing of celery and sweet corn.

(3) To provide for uniform grading and proper preparation of celery and sweet corn for market.

(4) To provide methods and means for the maintenance of present markets, or for the development of new and larger markets for celery

and sweet corn grown in Florida.

(5) To eliminate or reduce economic waste in the marketing of celery and sweet corn grown in Florida.

(6) To prevent, modify or eliminate trade barriers which obstruct the free flow of celery and sweet corn to market.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.04 Definitions.—As used in this law, the following terms have the following meanings:

(1) "Commissioner" means the commissioner of agriculture of Florida.

(2) "Person" means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.

(3) "Celery" means all varieties and types of celery, apium graveolens.

(4) "Sweet corn" means all varieties and types of sweet corn, zea mays, variety rugosa.

(5) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, any celery or sweet corn for market.

(6) "Primary channel of trade" means celery or sweet corn shall be deemed and held to be in the "primary channel of trade" when such commodity is cut, gathered from the ground, or otherwise harvested for commercial purposes, but any such celery or sweet corn shall cease to be in the "primary channel of trade" if and when it leaves intrastate commerce.

(7) "Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of celery or sweet corn owned by another person, engaged within this state as a distributor in the business of distributing celery or sweet corn in the primary channel of trade.

(8) "Distributor" means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, celery or sweet corn which he has produced, or purchased or acquired from a producer, or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as herein defined.

(9) "Retailer" means any person who purchases or acquires any celery or sweet corn for resale at retail to the general public, unless such retailer engages in the business of a distributor.

(10) "Marketing agreement" means an agreement entered into, pursuant to the provisions of this law, by and between the commissioner and distributors, producers, handlers, and others engaged in the handling of celery or sweet corn, regulating the handling of such commodity.

(11) "Marketing order" means an order issued by the commissioner, pursuant to this law, prescribing rules and regulations governing the distributing, or handling, in any manner, of celery or sweet corn in the primary channel of trade during any specified period or periods.

(12) "To handle" means to engage in the business of handler as herein defined.

(13) "To distribute" means to engage in the business of a distributor as herein defined.

(14) "To retail" means to engage in the business of a retailer as herein defined.

(15) "Advertising and sales promotion," in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of celery or sweet corn to market and may include the presentation of facts to and negotiations with the state, federal and foreign governmental agencies on matters which affect the production and marketing of celery or sweet corn.

(16) "Container" means a crate, bag, box, basket, package, bulk load, or other unit used in the packaging, transportation, sale, shipment or other handling of celery or sweet corn.

(17) "Advisory committee" means the advisory administrative committee or committees established pursuant to this law.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.05 Required consent by industry.—It is herein expressly stated that no marketing order or amendment thereto directly or indirectly affecting or regulating the celery or sweet corn industry of this state shall become effective unless and until the said marketing order or amendment thereto has been consented to by the majority of celery or sweet corn producers and handlers, both in volume and numbers, as provided in §§573.10 and 573.11.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.06 Petition of producers.—

(1) Upon the application or petition of five or more celery producers for a celery marketing order or ten or more sweet corn producers for a sweet corn marketing order who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this act with respect to celery or sweet corn, the commissioner shall give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

(2) After a marketing order has been issued and is in effect, said marketing order may be amended after a public hearing upon the proposed amended marketing order, which public hearing may be called by the commissioner after the receipt by him of an application or petition as provided by subsection (1) or upon the receipt by the commissioner of recommendations by the advisory committee for the marketing order of such commodity in effect.

History.—§§1, chs. 59-133 and 59-283; §7, ch. 61-467; §1, ch. 63-123.

573.07 Petitioner's expense.—

(1) Prior to the issuance of any marketing order by the commissioner under this act, the commissioner shall require the applicants therefor to deposit with him such amounts as the commissioner may deem necessary to defray the expenses of preparing and making effective such marketing order. Such funds shall be re-

ceived, deposited and disbursed by the commissioner, provided, however, any balance remaining shall be returned to the petitioners if a marketing order does not become effective. If an order does become effective, the total amount deposited may be refunded from the funds collected under such order upon the recommendation of the committee and approval of the commissioner.

(2) This section shall not apply to any amendment to any marketing order which is sought on the recommendations of an advisory committee for a marketing order in effect.

History.—§§1, chs. 59-133 and 59-283; §§1, chs. 61-466 and 61-467; §2, ch. 63-123.

573.08 Procedure for notice of hearing.—Due notice of any hearing shall be given to all persons who may be directly affected by any action by the commissioner, pursuant to the provisions of this law. Such hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the commissioner in his office.

History.—§§1, chs. 59-133 and 59-283; §§2, chs. 61-466 and 61-467.

573.09 Notice of effective date of marketing order.—At least ten days prior to the effective date of any marketing order or any suspension or termination thereof, a notice of such action or effective date shall be posted on a public bulletin board to be maintained by the commissioner in the division of marketing of the department of agriculture in the Nathan Mayo building, Tallahassee, Leon county. Within three days after the posting of such notice, a copy of such notice shall be mailed to all producers and handlers in the marketing area known to the commissioner and to each person who has filed in the office of the commissioner a written request for a copy of such notice. A copy of such notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the commissioner may prescribe. The notice published in a newspaper or newspapers shall be sent by first class mail by the commissioner to those newspapers designated by him on the same date that the notice is posted on the aforesaid bulletin board with instructions to publish the same as a legal advertisement, on the first date after receipt of such notice as such newspaper's policy for publishing legal advertisements provide.

History.—§§1, chs. 59-133 and 59-283; §§3, chs. 61-466 and 61-467; §3, ch. 63-123.

573.10 Procedure for referendum.—

(1) With respect to any referendum conducted under the provisions of this act, the commissioner shall fix, determine and publicly announce at least fifteen days prior to the mailing of the copies of the proposed marketing order or proposed amended marketing order and the ballots, the date on which the copies of the proposed marketing order or proposed amended marketing order and ballots will be mailed. Such announcement shall be by notice given in the manner provided for notice in §573.09. The announcement notice aforesaid shall include a list of the counties, if less than all of the counties of the state, in which the county agent will have ballots and copies of the said proposed marketing order, which ballots and said copies of proposed marketing order may be obtained by producers and handlers of celery or sweet corn, whichever is affected, not receiving them by mail from the commissioner. The ballots shall set forth the date on which the ballots must be returned to the commissioner.

(2) The notice required by subsection (1) and the copies of the proposed marketing order or proposed amended marketing order shall be mailed to all celery or sweet corn producers whose names and addresses are known to the commissioner in the state or within the marketing area if the said proposed order pertains only to a portion of the state.

(3) It shall be the duty of the celery or sweet corn producers or handlers, whichever are affected, who vote in each referendum to send their market ballots to the commissioner whose duty it shall be to have the ballots counted by qualified and impartial personnel in his office. The commissioner shall, within ten days after the closing date for submitting ballots in any referendum post the notice required by §573.09 in the event the referendum is affirmative as provided by §573.11, or in the event the said referendum is negative, certify the results and thereafter publish the results in a newspaper of general circulation in the state and in such other newspapers as the commissioner may prescribe.

History.—§§1, chs. 59-133 and 59-283; (1) a. by §§4, chs. 61-466 and 61-467; §4, ch. 63-123.

573.11 Referendum.—

(1) No marketing order or amendments thereto directly affecting and regulating handlers issued pursuant to this law shall become effective unless and until the commissioner finds that such order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the commissioner handled:

(a) As to celery, not less than seventy-five per cent of the volume of the celery covered by the marketing order and who total by number not less than seventy-five per cent of the handlers covered by the marketing order.

(b) As to sweet corn, not less than sixty-five per cent of the volume of the sweet corn covered by the marketing order.

(2) No marketing order or amendments thereto directly affecting and regulating producers, issued pursuant to this law, shall become effective unless and until the commissioner finds that such order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the commissioner, produced:

(a) As to celery, not less than seventy-five

per cent of the volume of the celery covered by the marketing order, and who total by number not less than seventy-five per cent of the celery producers so covered by the marketing order.

(b) As to sweet corn, not less than seventy-five per cent of the volume of the sweet corn covered by the marketing order, and who total by number not less than sixty-five per cent of the sweet corn producers so covered by the marketing order.

(3) No marketing order or amendments thereto directly affecting and regulating both producers and handlers, issued pursuant to this law, shall become effective unless and until the commissioner finds that such order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the commissioner, produced:

(a) As to celery, not less than seventy-five per cent of the volume of the celery covered by the marketing order, and who total by number not less than seventy-five per cent of the celery producers so covered by the marketing order; and further finds that such order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the commissioner, handled not less than seventy-five per cent of the volume of celery covered by the marketing order and who total by number not less than seventy-five per cent of the handlers covered by the marketing order, or

(b) As to sweet corn, not less than seventy-five per cent of the volume of the sweet corn covered by the marketing order, and who total by number not less than sixty-five per cent of the sweet corn producers so covered by the marketing order; and further finds that such order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the commissioner, handled not less than sixty-five per cent of the volume of sweet corn covered by the marketing order.

(4) All percentages determined by the commissioner as required in this section shall be computed on the basis of the persons voting in the referendum.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.12 Findings required to issue order.—After such notice and hearing, the commissioner shall issue a marketing order if he finds and sets forth in such marketing order that such order will tend to accomplish the objectives and purposes of this act.

History.—§§1, chs. 59-133 and 59-283; §§5, chs. 61-466 and 61-467.

573.13 Criteria considered in making findings.—In making the findings set forth in §573.12, the commissioner shall take into consideration any and all facts available to him with respect to the following factors:

(1) The quantity of celery or sweet corn available for distribution.

(2) The quantity of celery or sweet corn normally required by consumers.

(3) The cost of producing celery or sweet corn as determined by available records, statistics and surveys.

(4) The purchasing power of consumers as indicated by reports and indices.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for celery or sweet corn.

(6) The level of prices of commodities, services and articles which farmers commonly buy.

(7) That no hardship will result to any celery producer(s) by the issuance of such proposed marketing order which cannot be remedied under the provision of §573.23.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.14 Advisory committee.—

(1) Any marketing order issued pursuant to the provisions of this law shall provide in it a method for the selection of an advisory committee and the term of office of such committeemen. Such advisory committee shall assist the commissioner in the administration of any marketing order. The members of such advisory committee shall be appointed by the commissioner. The number of producers, handlers, or distributors upon any such advisory committee shall be such number of producers, handlers, or distributors as the commissioner finds is necessary to assist properly in the administration of such order; provided always, that the majority of the members of any such advisory committee shall be producers.

(2) No member of any such advisory committee shall receive a salary, but shall be reimbursed for traveling expenses as provided in §112.061. The commissioner may authorize such advisory committee to employ necessary personnel, including professional and technical services, fix their compensation and terms of employment, and to incur such expenses, to be paid by the commissioner from moneys collected as herein provided, as the commissioner may deem necessary and proper to enable such advisory committee to perform properly such of its duties as are authorized in this law.

History.—§§1, chs. 59-133 and 59-283; §19, ch. 63-400.

573.15 Advisory committee; duties.—The duties of any such advisory committee shall be administrative only, and may include the following:

(1) Subject to the approval of the commissioner, to administer such marketing order.

(2) To recommend to the commissioner administrative rules and regulations relating to the marketing order.

(3) To receive and report to the commissioner complaints or violations of the marketing order.

(4) To recommend to the commissioner amendments to the marketing order.

(5) To assist the commissioner in the assessment of members of the said industry and

in the collection of funds to cover expenses incurred by the commissioner in the administration of the marketing order.

(6) To assist the commissioner in the collection of such necessary information and data as the commissioner may deem necessary to the proper administration of this law.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.16 Advisory committee; exemption from liability.—The members of any advisory committee, duly appointed by the commissioner, including employees of the committee, shall not be held responsible, jointly and individually, in any way whatsoever to any producer, distributor or other handler or any other person for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No person or employee shall be held responsible jointly or individually for any act or omission of any other member of any such committee.

History.—§§1, chs. 59-133 and 59-283; §§6, chs. 61-466 and 61-467; §5, ch. 63-123.

573.17 Possible subjects of marketing orders.—Subject to the legislative restrictions and limitations set forth in this law, any marketing order issued by the commissioner pursuant to this law may contain any or all of the following provisions for regulating the handling or any of the operations of distributing of handlers of any celery or sweet corn within this state, but no others;

(1) AS TO CELERY.—

(a) Provisions for determining the existence and extent of the surplus of celery or of any grade, size or quality thereof, and providing for the control and distribution of such surplus and for equalizing the burden of such surplus elimination or control among the producers, distributors or other handlers affected.

(b) Provisions for limiting the total quantity of celery or of any grade, size or quality thereof, which may be distributed or otherwise handled in the primary channel of trade by any and all persons engaged in distributing, or handling during any specified period or periods. The total quantity of any such celery so regulated and permitted to be distributed, or otherwise handled, shall not be less than the quantity which the commissioner finds is reasonably necessary to supply the market demands of consumers of such commodity.

(c) Provisions for allotting the quantity of celery or of any grade, size or quality thereof, which each handler may purchase or acquire from or handle on behalf of, any and all producers thereof in the primary channel of trade during any specified period or periods, under a uniform rule, applicable to all handlers so regulated, based upon the amounts of celery or of any grade, size or quality thereof produced or placed in the primary channels of trade by such producers in a prior period which the commissioner finds to be representative or upon the current season's production or volume placed in the primary channels of trade by such producers, or both, to the end that the total quantity of celery or any grade, size or quality thereof, so purchased or handled in the primary channel of trade, shall be apportioned equitably among the producers thereof.

(d) Provisions for allotting the quantity of celery or any grade, size or quality thereof, which each producer may sell or have handled for his account, or on his behalf, in the primary channel of trade, during any specified period or periods, under a uniform rule applicable to all producers so regulated, based upon the amounts of celery or of any grade, size or quality thereof placed in the primary channels of trade by such producers in a prior period which the commissioner finds to be representative or upon the current season's production or volume placed in the primary channels of trade by such producers or both to the end that the total quantity of such celery or any grade, size, or quality thereof, so purchased from or handled for producers in the primary channel of trade, shall be apportioned equitably among all such producers.

(e) Provisions for allotting the quantity of celery or any grade, size or quality thereof, which each handler may distribute or handle in the primary channel of trade under a uniform rule applicable to all handlers so regulated, based upon the amounts of celery or of any grade, size or quality thereof, of the current season's crop which each such handler has available for such distributing, or handling, or upon the quantities of celery, or of any grade, size or quality thereof so distributed or handled by each such handler in a prior period which the commissioner finds to be representative, or based upon both, to the end that the total quantity of celery, or any grade, size or quality thereof, distributed or handled in the primary channel of trade during any specified period or periods, shall be equitably apportioned among all such handlers thereof.

(f) Provisions regulating the period or periods during which any celery or any grade, size or quality thereof, may be distributed, or otherwise marketed in the primary channel of trade by any and all persons engaged in such distributing or marketing. Provided that, the total quantity of such commodity so regulated and permitted to be distributed, or otherwise marketed during such period or periods, shall not be less than the quantity which the commissioner finds is necessary to reasonably supply the needs of consumers of such commodity.

(g) Provisions for the establishment of surplus or reserve pools of celery, or of any grade, size or quality thereof, and providing for the sale of such surplus celery and the equitable distribution among the persons interested therein of the net returns derived from the sale of such celery or such distribution of such representative value of such celery.

(2) AS TO SWEET CORN.—

(a) Provisions for determining the existence and extent of the surplus of sweet corn or of any variety, type, grade, size, or quality

thereof, and providing for the control and distribution of such surplus and for equalizing the burden of such surplus elimination or control among the producers, distributors or other handlers affected.

(b) Provisions for limiting the total quantity of sweet corn or of any variety, type, grade, size or quality thereof, which may be distributed or otherwise handled in the primary channel of trade by any and all persons engaged in distributing, or handling during any specified period or periods. The total quantity of any such sweet corn so regulated and permitted to be distributed, or otherwise handled, shall not be less than the quantity which the commissioner finds is reasonably necessary to supply the market demands of consumers of such commodity.

(c) Provisions for allotting the quantity of sweet corn or of any variety, type, grade, size or quality thereof, which each handler may purchase or acquire from or handle on behalf of, any and all producers thereof in the primary channel of trade during any specified period or periods, under a uniform rule, applicable to all handlers so regulated, based upon the amounts of sweet corn or of any variety, type, grade, size, or quality thereof produced or placed in the primary channels of trade by such producers in a prior period which the commissioner finds to be representative or upon the current season's production or volume placed in the primary channels of trade by such producers, or both, to the end that the total quantity of sweet corn or any variety, type, grade, size, or quality thereof, so purchased or handled in the primary channel of trade, shall be apportioned equitably among the producers thereof.

(d) Provisions for allotting the quantity of sweet corn or any variety, type, grade, size, or quality thereof, which each producer may sell or have handled for his account, or on his behalf, in the primary channel of trade, during any specified period or periods under a uniform rule applicable to all producers so regulated, based upon the amounts of sweet corn or any variety, type, grade, size, or quality thereof placed in the primary channels of trade by such producers in a prior period which the commissioner finds to be representative or upon the current season's production or volume placed in the primary channel of trade by such producers, or both, to the end that the total quantity of such sweet corn or any variety, type, grade, size, or quality thereof, so purchased from or handled for producers in the primary channel of trade, shall be apportioned equitably among all such producers.

(e) Provisions for allotting the quantity of sweet corn or any variety, type, grade, size or quality thereof, which each handler may distribute or handle in the primary channel of trade under a uniform rule applicable to all handlers so regulated, based upon the amounts of sweet corn or of any variety, type, grade, size or quality thereof, of the current season's crop which each such handler has available for such distributing, or handling, or upon the quantities of sweet corn, or of any variety, type, grade, size or quality thereof so distributed or handled by each such handler in a prior period which the commissioner finds to be representative, or based upon both, to the end that the total quantity of sweet corn, or any variety, type, grade, size or quality thereof, distributed or handled in the primary channel of trade during any specified period or periods, shall be equitably apportioned among all such handlers thereof.

(f) Provisions regulating the period or periods during which any sweeet corn or any variety, type, grade, size or quality thereof, may be distributed, or otherwise marketed in the primary channel of trade by any and all persons engaged in such distributing or marketing. Provided that, the total quantity of such commodity so regulated and permitted to be distributed, or otherwise marketed during such period or periods, shall not be less than the quantity which the commissioner finds is necessary to reasonably supply the needs of consumers of such commodity.

(g) Provisions for the establishment of surplus or reserve pools of sweet corn, or of any variety, type, grade, size or quality thereof, and providing for the sale of such surplus sweet corn and the equitable distribution among the persons interested therein of the net returns derived from the sale of such sweet corn or such distribution of such representative value of such sweet corn.

(3) AS TO CELERY OR SWEET CORN.—

(a) Provisions establishing or providing for establishing, with respect to celery or sweet corn, either as delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers:

1. Grading standards of quality, condition, size, maturity or pack, which standards may include minimum standards, provided the standards so established shall not be established below any minimum standards prescribed by law for such commodity.

2. Uniform inspection, grading of and proper labeling of celery or sweet corn, in accordance with the standards so established.

3. Fix the type, specifications, size, weight, capacity, dimensions or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of celery or sweet corn.

(b) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger markets for celery or sweet corn grown in Florida, or for the prevention, modification or removal of trade barriers which obstruct the free flow of celery or sweet corn to market. The commissioner is hereby authorized to prepare, issue, administer and enforce plans and programs for promoting the sale of celery or sweet corn. Provided that any such plan or program shall be directed toward

increasing the sale of celery or sweet corn without reference to a particular private brand or trade name.

(c) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices, now prohibited by law, applicable to the distribution or handling of celery or sweet corn within this state, the commissioner is hereby authorized to include in any marketing order issued hereunder provisions designed to correct any trade practice affecting the distributing or handling of celery or sweet corn within this state which the commissioner finds, after a hearing thereupon in which all interested persons are given an opportunity to be heard, is unfair and detrimental to the effectuation of the declared purposes of this act.

(d) Provisions for carrying on research studies in the production or distribution of celery or sweet corn and for the expenditure of moneys for such purposes.

(e) Provisions incidental to and not inconsistent with the terms, conditions and provisions hereinbefore specified and necessary to effectuate the other provisions of such marketing order.

History.—§§1, chs. 59-133 and 59-283; (3) a. by §7, ch. 61-466 and §8, ch. 61-467; (1)(c)-(e) and (2)(c)-(e) a. by §6, ch. 63-123; (3) a. by §7, ch. 63-123.

573.18 Cooperation with other governments.—The commissioner is hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses or orders, and said commissioner is authorized to conduct joint hearings, issue joint or concurrent marketing orders, for the purposes and within the standards set forth in this law, and may exercise any administrative authority prescribed by this law to effect such uniformity of administration and regulation.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.19 Limited marketing orders.—A marketing order issued by the commissioner under this law may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective; provided, that no marketing order shall be issued by the commissioner unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

History.—§§1, chs. 59-133 and 59-283; §8, ch. 61-466 and §9, ch. 61-467.

573.20 Marketing agreements.—In order to effectuate the declared policy of this law, the commissioner shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements, which agreements may contain any of those provisions, contained in §573.17, with distributors, producers and others engaged in the handling of celery or sweet corn, regulating the handling of such agricultural commodities, which said marketing agreement shall be binding upon the signatories thereto exclusively. The execution of such marketing agreement shall in no manner affect the issuance, administration or enforcement of any marketing order provided for in this law. The commissioner may issue such marketing order without executing a marketing agreement, or may execute a marketing agreement without issuing a marketing order, or may execute a marketing agreement and issue a marketing order covering the same agricultural commodity. The commissioner, in his discretion, may hold concurrent hearing upon a proposed marketing agreement and proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order, as provided in this law.

History.—§§1, chs. 59-133 and 59-283; §9, ch. 61-466 and §10, ch. 61-467.

573.21 Assessment; funds; audit; loans.—

(1) For the purpose of providing funds to defray the necessary expenses incurred by the commissioner in the formulation, issuance, administration and enforcement of any marketing order issued by the commissioner hereunder, every person engaged in the production, distributing or handling of celery or sweet corn within this state, and directly affected by any marketing order issued pursuant to this law, shall pay to the commissioner at such times and in such installments as the commissioner may prescribe, such person's pro rata share of said necessary expenses. Each such person's share of such expenses shall be that proportion thereof which the total quantity of celery or sweet corn produced, distributed or handled by such person during the current marketing season, or part thereof covered by such marketing order, is of the total quantity of such commodity produced, distributed or handled by all such persons during the same current marketing season or part thereof. The commissioner, after receiving the recommendation of the advisory committee, shall fix the rate of assessment per container of celery or sweet corn or some other equitable basis.

(2) The commissioner may require every producer, distributor or handler directly affected by any marketing order to deposit with him in advance cash or sufficient bond based upon the estimated volume of the celery or sweet corn to be handled by such producer, distributor or handler during the period or periods covered by such marketing order at the close of each marketing season during which the marketing order is effective. The sum so deposited shall be adjusted to the amount which is chargeable against such producer, distributor or handler upon the basis of the actual volume of celery or sweet corn handled by such producer, distributor or handler during such period or periods. The commissioner shall prescribe the rules and regulations with respect to the assessment and collection of such funds.

(3) Any money so collected by the com-

missioner shall be transmitted to the proper advisory committee, notwithstanding the provisions of §215.31. The advisory committee shall deposit such money in a depository of their choice. The actual expenses incurred by the commissioner, his department, or the advisory committee, with respect to such celery or sweet corn marketing order, shall be paid out upon warrant of the advisory committee signed by the said committee's chairman, when vouchers therefor are exhibited co-signed by the chairman of such advisory committee, and some other duly authorized person appointed by the commissioner. Any moneys remaining in such fund, at the discretion of the advisory committee may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom such funds were collected; provided that upon termination by the commissioner of any marketing order, and all moneys remaining and not required by the advisory committee to defray the expenses of such order shall be returned by the advisory committee upon a pro rata basis to all persons from whom such funds were collected.

(4) In the event of the levying and collecting of assessments, as provided herein, then for each fiscal year of the advisory committee in which such assessment funds are received by the advisory committee, the advisory committee chairman shall cause to be made a thorough annual audit of the books and accounts of the advisory committee by a certified public accountant, such audit to be completed within sixty days after the end of the advisory committee's fiscal year. The commissioner, and all producers and handlers covered by the marketing order, shall be properly advised of the details of the annual official audit of the advisory committee's accounts as shown by the certified public accountant within thirty days of such audit. Before receiving any assessment funds as provided herein, the chairman of the advisory committee and some other duly authorized co-signer of vouchers shall give a bond in an amount prescribed by the commissioner, such bond to have as surety thereon a surety company licensed to do business in Florida, and to be in the form and amount approved by the advisory committee, and to be filed with the advisory committee with a copy to the commissioner.

(5) Any assessment levied hereunder, in such specified amount as may be determined by the commissioner, pursuant to the provisions of this law, shall constitute a personal debt of every person so assessed and shall be due and payable to the commissioner when payment is called for by the commissioner. In the event of failure of such person or persons to pay any such assessment upon the date determined by the commissioner, the commissioner may file a complaint against such person or persons in a state court of competent jurisdiction for the collection thereof as provided in this law.

(6) In the event any advisory committee of any order has reason to believe that the administration of an order will be facilitated or the attainment of the purposes and objectives of the order will be promoted thereby, the advisory committee is authorized to borrow money with or without interest to carry out any provision of any order authorized by this chapter based upon anticipated assessment collections.

History.—§§1, chs. 59-133 and 59-283; (1) a. by §10, 61-466 and §11, ch. 61-467; (4) a. by §11, ch. 61-466 and §12, ch. 61-467; (6) n. by §12, ch. 61-466 and §13, ch. 61-467; (6) a. by §8, ch. 63-123.

573.22 Commissioner; duties.—

(1) The commissioner shall administer and enforce the provisions of this law within the division of marketing in the department. In order to effectuate the declared purposes of this law, the commissioner is hereby authorized to issue, administer, and enforce the provisions of marketing agreements or orders hereunder, regulating the handling of celery or sweet corn in the primary channel of trade.

(2) The commissioner shall have power, consistent with this law and in accordance with the provision of marketing orders and agreements made effective hereunder, to establish such general rules and regulations for uniform application to all marketing orders and marketing agreements issued hereunder as may be necessary to facilitate the administration and enforcement of such marketing orders and agreements. The provisions of this law relative to posting, publication, and time of taking effect shall not be applicable to any such general rule or regulation established pursuant to this law and applicable to marketing orders generally. Such notice shall be mailed to the advisory committee for each marketing order or marketing agreement in active operation.

(3) Upon recommendation of the advisory committee concerned, the commissioner shall have power, consistent with this law, to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each such order or agreement.

(4) Upon recommendation of the advisory committee concerned, the commissioner shall have the power, consistent with the provisions of this act, to issue and make effective marketing regulations authorized by the provisions of any marketing order or marketing agreement issued and made effective hereunder and necessary to carry out and make effective the purposes and provisions of any such marketing order or agreement. All regulations issued pursuant to this act shall become effective as prescribed in the regulation notwithstanding the provisions of chapter 120. The regulations under this act shall be published in the Florida administrative register as a matter of record only. Notice of any such regulation issued by the commissioner shall be given to all producers and handlers directly affected.

(5) The commissioner shall have full au-

thority and power to review and consider all facts available to him and to determine in his sole discretion, who is a producer or handler under the terms of this act, what period or periods are appropriate and just in fixing allotments or other regulations pertaining to, affecting or controlling the handling of commodities dealt with, and to make all other decisions and determinations reasonably necessary or appropriate to render effective the terms of any marketing order and to promote the objectives of this act.

History.—§§1, chs. 59-133 and 59-283; (4) a. and (5) n. by §§9 and 10, ch. 63-123.

573.23 Exemptions.—

(1) The advisory committee may adopt, with approval of the commissioner, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

(2) The advisory committee may issue certificates of exemption to any applicant who applies for such exemption and furnishes adequate evidence to the advisory committee, that by reason of a marketing order issued pursuant to this law, such applicant has been adversely affected, unduly burdened or the result of the marketing order is confiscatory by reason of acts beyond such applicant's control or by acts beyond reasonable expectation.

(3) The advisory committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemptions.

(4) If any applicant for exemption certificates is dissatisfied with the determination by the advisory committee with respect to his application, said applicant may file an appeal with the commissioner. Such an appeal must be taken promptly after the determination by the advisory committee. Any applicant filing an appeal shall furnish evidence satisfactory to the commissioner for a determination of the appeal. The commissioner shall thereupon consider the application, examine all available evidence, and make a final determination concerning the application. The commissioner shall notify the appellant of the final determination, and shall furnish the advisory committee with a copy of the appeal and a statement of considerations involved in making the final determination.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.24 Termination of orders.—The commissioner shall suspend or terminate the marketing order or any provision of the marketing order, whenever he finds such provision or order does not tend to effectuate the declared purposes of this act, within the standards and subject to the limitations and restrictions herein imposed and he further finds upon a referendum called by himself that fifty per cent of those producers who vote, who are engaged within the state in the production of celery or sweet corn for market, covered by such marketing order, and who produce for market more than fifty per cent of the volume of such commodity produced within the state for market are opposed to the said marketing order; provided that such suspension or termination shall not be effective until the expiration of the current marketing season. If the commissioner finds that the termination of any marketing order is requested in writing by more than fifty per cent of those producers who are engaged within the state in the production of celery or sweet corn for market, covered by such marketing order, and who produce for market more than fifty per cent of the volume of such commodity produced within the state for market and the commissioner further finds that such marketing order obstructs or does not tend to carry out the declared policy and purposes of this act, he shall terminate or suspend for a specified period such marketing order or provision thereof; provided that such termination shall become effective not less than ten days after the commissioner gives notice of an order of termination as required in §573.09.

History.—§§1, chs. 59-133 and 59-283; §13, ch. 61-466 and §14, ch. 61-467; §11, ch. 63-123.

573.25 Inspections.—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order made effective pursuant to this law may enter and inspect any premises, enclosure, building or conveyance where he has reason to believe any celery or sweet corn subject to a marketing order is produced, stored, being prepared for market or marketed, and inspect or cause to be inspected such representative samples of the commodity as may be necessary to determine whether or not any lot of said celery or sweet corn is in compliance with applicable regulations of any marketing order made effective pursuant to the provisions of this law.

History.—Comp. §§1, chs. 59-133 and 59-283

573.26 Maintenance and production of records, etc.—

(1) The commissioner may require any and all persons directly affected by and subject to the provisions of any marketing order issued pursuant to this law to maintain books and records reflecting their operations under said marketing order, and to furnish to the commissioner or his duly authorized or designated representative or representatives such information as may be from time to time requested by them relating to operations under said marketing order and to permit the inspection by said commissioner, or his duly authorized or designated representative or representatives of such portions of such books and records as relate to operations under said marketing order.

(2) Information obtained by any person hereunder shall be confidential and shall not be disclosed by him to any other person save and except to a person with like right to obtain the same, or any attorney employed to give legal advice or by court order.

(3) For the purposes of carrying out the provisions of this law, the commissioner, or his duly authorized or designated representative or representatives, may hold hearings, take

testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, or documents, relevant and material to the subject matter of such hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the commissioner, or his duly authorized or designated representative or representatives, in obedience to the subpoena of the commissioner on the ground or the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the commissioner in obedience to a subpoena issued pursuant to this law; provided, that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History.—Comp. §§1, chs. 59-133 and 59-283.

573.27 Penalties; violation; hearings.—

(1) Every person who violates any provision of this law, or any provision of any marketing agreement or order duly issued by the commissioner hereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $200 or more than $10,000. Each day during which any of the violations above referred to continue after the commissioner has issued a cease and desist order against the violator shall constitute a separate offense. Such fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the commissioner for depositing in the account of the advisory committee.

(2) Upon the filing of a verified complaint charging a violation of any provision of this law, or of any provision of any marketing order issued by the commissioner hereunder, or of any provision of any marketing agreement enforced by the commissioner hereunder, and prior to institution of any court proceedings authorized hereinafter, the commissioner may, in his descretion, refer the matter to the attorney general of Florida, or prosecuting attorney of this state having jurisdiction, for action pursuant to the provisions of this law, or call a hearing to consider the charges set forth in such verified complaint. In such case the commissioner shall cause copy of such complaint, together with notice of the time and place of hearing of such complaint, to be served personally or by registered mail upon the person or persons named as defendant or defendants therein. Such service shall be made at least three days before said hearing, which shall be held in the city or town in which is situated the principal place of business of the defendant, or one of the defendants, if more than one, or in which the violation complained of is alleged to have occurred, or at some convenient place or location, at the discretion of the commissioner. At the time and place designated for such hearing, the commissioner, or his agents, shall hear the parties to said complaint, and shall enter in the office of the commissioner at Tallahassee, his findings based upon the facts established at such hearing.

(3) If the commissioner finds that no violation has occurred, he shall forthwith dismiss such complaint and notify the parties to such complaint.

(4) If the commissioner finds that a violation has occurred, he shall so enter his findings and notify the parties to such complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from such violation within the time specified by the commissioner, the commissioner may thereupon file a complaint against such defendant or defendants in a court of competent jurisdiction, as set forth hereinafter.

(5) The attorney general of Florida, or any prosecuting attorney of this state having jurisdiction, may upon his own initiative, and shall upon complaint of any person, if after investigation, he believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of this law or of any marketing order duly issued by the commissioner hereunder or any marketing agreement enforced by the commissioner.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provisions of this law, or of any marketing order duly issued by the commissioner hereunder or any marketing agreement enforced by the commissioner, in any proceeding brought by the commissioner in any of said circuit courts; and in any such proceeding it shall not be necessary for the commissioner to allege or prove that an adequate remedy at law does not exist. The said circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the commissioner, the court shall permanently enjoin the defendant or defendants from further violations, any such final decree in favor of the commissioner shall provide that the defendant or defendants pay him reasonable costs of such suit, including reasonable attorney's fees to be fixed by the court. Any such action may be commenced either in the county where the defendant resides, or in the county where any other defendant resides, if more than one defendant, or in the county where any act of omission, or part thereof, complained of occurred.

(7) It shall be a misdemeanor for:

(a) Any person to wilfully render or furnish a false or fraudulent report, statement or record required by the commissioner, pursuant to the provisions of this law, or any marketing

agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of celery or sweet corn or in the wholesale or retail trade thereof to fail or refuse to furnish to the commissioner or his duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received celery or sweet corn regulated by a marketing order issued and in effect hereunder, and the quantity of such commodity so received.

History.—§§1, chs. 59-133 and 59-283.

573.28 **Continuance of existing orders; conformity.**—Any marketing order heretofore duly issued by the commissioner pursuant to this chapter and now in effect shall continue in full force and effect and shall be conclusively presumed to be in conformity with the provisions of this act, as amended, unless the commissioner calls a public hearing within ninety days after May 21, 1963, and as a result of said hearing finds that such marketing order is not in conformity with the provisions of this act, as amended.

History.—§12, ch. 63-123.

573.29 **Presumption of validity.**—The validity or propriety of any act or action taken by the commissioner hereunder or in pursuance of any marketing order heretofore or hereafter issued shall be presumed until the contrary is affirmatively established by the person or persons objecting thereto.

History.—§12, ch. 63-123.

PART II

FOLIAGE PLANT MARKETING LAW

573.50 **Short title.**—Part II of this chapter may be known and cited as the Florida foliage plant marketing law.

History.—§1, ch. 63-126.

573.51 **Legislative findings; declaration of policy.**—This act is passed:

(1) Because the marketing of foliage plants in Florida in excess of reasonable and normal market demands therefor, disorderly marketing of the commodity, improper preparation for market and lack of uniform grading and classification, unfair methods of competition in the marketing of foliage plants and the inherent inability of individual producers to maintain present markets or to develop new and larger markets for Florida-grown foliage plants result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of adequate supplies of foliage plants for the people of this state and other states, and prevent foliage plant producers from obtaining a fair return from their labor, farms and products. As a consequence, the purchasing power of the producers has been, in the past, and in all likelihood will continue to be in the future, low in relation to that of persons engaged in other gainful occupations within this state, unless such conditions are remedied. Foliage plant producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of the other citizens of this state.

(2) Because these conditions vitally concern the health, peace, safety and general welfare of the people of this state, it is hereby declared to be the policy of this state to aid foliage plant producers in preventing economic waste in the marketing of their commodity, to develop more efficient and equitable methods in the marketing of foliage plants, and to aid foliage plant producers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

(3) In the exercise of the police power of this state to promote and protect the public health, peace, safety and general welfare of the people, the marketing of foliage plants within this state is hereby declared to be affected with a public interest.

History.—§2, ch. 63-126.

573.52 **Purposes.**—The purposes of this act are:

(1) To enable foliage plant producers of this state, with the aid of the state, to correlate more effectively the marketing of their foliage plants with market demands therefor.

(2) To establish and maintain orderly marketing of foliage plants.

(3) To provide methods for the maintenance of present markets, or for the development of new and larger markets for foliage plants grown in Florida.

(4) To provide for uniform grading and proper preparation of foliage plants for market.

(5) To eliminate or reduce economic waste in the marketing of foliage plants grown in Florida.

(6) To prevent, modify or eliminate trade barriers which obstruct the free flow of foliage plants to market.

History.—§3, ch. 63-126.

573.53 **Definitions.**—As used in this act:

(1) Commissioner means the commissioner of agriculture of Florida.

(2) Person means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.

(3) Foliage plants are defined as perennial or woody plants, or vines grown mostly under partial shade primarily to be used for foliage as potted plants or interior landscaping decor in the home, office or business, including but not limited to philodendron, either established or unestablished on bark or poles, rooted or unrooted, small and variegated leafed plants used in dish gardens, terrariums, and hanging baskets; dwarfed citrus, palms; bromeliads and ferns.

(4) Producer means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, foliage plants for market.

(5) Primary channel of trade means foliage plants shall be deemed and held to be in the primary channel of trade when such commodity is cut, gathered from the ground, or otherwise harvested or prepared for sale in any manner for commercial purposes, but foliage plants shall cease to be in the primary channel of trade if they leave intrastate commerce.

(6) Handler is synonymous with shipper and means any person, except a common or contract carrier of foliage plants owned by another person, engaged within this state as a distributor in the business of distributing foliage plants in the primary channel of trade.

(7) Distributor means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, foliage plants which he has produced, or purchased or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as herein defined.

(8) Retailer means any person who purchases or acquires any foliage plants for resale at retail to the general public, unless such retailer engages in the business of a distributor.

(9) Marketing agreement means an agreement between the commissioner and distributors, producers, handlers, and others engaged in the handling of foliage plants, regulating the handling of the commodity.

(10) Marketing order means an order issued by the commissioner, prescribing rules and regulations governing the distributing, or handling in any manner, of foliage plants in the primary channel of trade during any specified period or periods.

(11) To handle means to engage in the business of a handler as herein defined.

(12) To retail means to engage in the business of a retailer as herein defined.

(13) To distribute means to engage in the business of a distributor as herein defined.

(14) Advertising and sales promotion in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of foliage plants to market and may include the presentation of facts to and negotiations with the state, federal and foreign governmental agencies on matters which affect the production and marketing of foliage plants.

(15) Container means a crate, bag, box, basket, carton, package, bulk load, or other unit used in the packaging, transportation, sale, shipment or any other unit used in the handling of foliage plants.

(16) Advisory committee means the advisory administrative committee or committees established pursuant to this act.

(17) General rules and regulations means rules and regulations applicable to all marketing orders and marketing agreements issued and made effective by the commissioner without prior notice and public hearing, to provide uniform methods and procedures to facilitate the administration and enforcement of all marketing orders and marketing agreements. Uniform methods and procedures may include but shall not be limited to methods and procedures pertaining to the receiving, depositing and expenditure of moneys received from assessments; the preparation, handling and payment of claim schedules for the payment of bills, salaries and other obligations; establishing the maximum rates to be allowed for travel expenses of committee members and committee employees; the preparation, verification and filing of evidence relating to violations of marketing orders, agreements and marketing regulations and other fiscal and administrative activities which the commissioner finds are necessary to obtain reasonable uniformity, efficiency and economy in the administration and enforcement of any marketing order or agreement.

(18) Administrative rules and regulations means rules and regulations applicable to a particular marketing order or agreement, is-

sued and made effective by the commissioner upon recommendation of the advisory committee concerned, without prior notice and public hearing, to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules and regulations may include but shall not be limited to methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations thereunder and thereby assist in obtaining cooperation and compliance.

(19) Seasonal marketing regulations means marketing regulations, applicable to a particular marketing order or agreement, made effective by the commissioner upon recommendation of the advisory committee concerned, without prior notice and public hearing, for the purpose of carrying into effect by administrative order, the marketing regulator authorizations and provisions of the marketing order or agreement as such authorizations or provisions may be applicable to or required by changing economic or marketing conditions and requirements from time to time during each marketing season in which the marketing order or agreement may operate. Seasonal marketing regulations shall not extend beyond the marketing regulatory authorizations specified in the marketing order or agreement concerned.

History.—§4, ch. 63-126.

573.54 Required consent by industry.—No marketing order or amendment directly or indirectly affecting or regulating foliage plants in the primary channel of trade of this state shall become effective unless the marketing order or amendment has been consented to by a majority of producers or handlers of such commodity in Florida, as provided in §573.61.

History.—§5, ch. 63-126.

573.55 Petition of producers.—Upon the application or petition of ten or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of part II of this chapter, the commissioner may give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

History.—§6, ch. 63-126.

573.56 Petitioner's expense.—Prior to the issuance of any marketing order by the commissioner, the commissioner shall require the applicants to deposit with him such amounts as the commissioner may deem necessary to defray the expenses of preparing and making effective any marketing order. Funds shall be received, deposited and disbursed by the commissioner provided, however, any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If such proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory committee and approval of the commissioner.

History.—§7, ch. 63-126.

573.57 Public hearing.—Due notice of any hearing shall be given to all persons who may be directly affected by any action of the commissioner. These hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any hearing shall be made and filed by the commissioner in his office. All interested persons shall have a period of not less than seven days following the public hearing for filing written briefs with the commissioner concerning such action.

History.—§8, ch. 63-126.

573.58 Findings required to issue order.—After notice and hearing, the commissioner shall issue a marketing order if he finds and sets forth that the order will tend to accomplish the objectives and purposes of part II of this chapter, and:

(1) The provisions are necessary in order to effect a reasonable correlation of the supply of foliage plants affected with market demands therefor and the marketing order or amendments thereto will tend to re-establish or maintain a level of prices for foliage plants which will provide a purchasing power for the commodity adequate to maintain sufficient producers as are required to provide such supply of the quantities and qualities of foliage plants as is necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach equality of purchasing power at as rapid a rate as is feasible in view of the market demand for foliage plants.

(3) The marketing order or amendments thereto are in conformity with the provisions of part II of this chapter and will tend to effectuate the declared purposes and policies of part II of this chapter.

(4) The marketing order or amendments thereto will protect the interests of consumers of foliage plants, by exercising the powers of part II of this chapter only to the extent necessary to establish the equality of purchasing power described in subsection (1).

History.—§9, ch. 63-126.

573.59 Criteria considered in making findings.—In making the findings set forth in §573.58, the commissioner shall take into consideration all facts available with respect to:

(1) The quantity of foliage plants available for distribution.

(2) The quantity of foliage plants normally required by consumers.

(3) The cost of producing foliage plants as determined by available records, statistics and surveys.

(4) The purchasing power of consumers as indicated by reports and indexes.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for foliage plants.

(6) The level of prices of foliage plants, services and articles which farmers commonly buy.

(7) That no hardship will result to any foliage plant producer by the issuance of any proposed marketing order which cannot be remedied under the provision of §573.72.

History.—§10, ch. 63-126.

573.60 Procedure for referendum.—

(1) With respect to any referendum conducted under the provisions of this act, the commissioner shall, before calling and announcing a referendum, fix, determine and publicly announce, at least fifteen days in advance of the date on which ballots and copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are in the state and whose names and addresses are known, the date by which ballots must be returned to the commissioner. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of the producers or handlers affected, who vote in each referendum to send their marked ballots to the commissioner, whose duty it shall be to have the ballots counted by qualified and impartial personnel in his office, and the commissioner shall within ten days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum in a newspaper of general circulation in the state and in such other newspapers as the commissioner may prescribe.

History.—§11, ch. 63-126.

573.61 Referendum.—

(1) No marketing order or amendments thereto directly affecting and regulating handlers shall become effective unless the commissioner finds that the order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the commissioner handled no less than sixty-five per cent of the volume of foliage plants produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers, shall become effective unless and until the commissioner finds that the order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the commissioner produced not less than sixty-five per cent of the volume of foliage plants covered by the marketing order, and who total by number not less than sixty-five per cent of the foliage plant producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the commissioner as required in this section shall be computed on the basis of persons voting in the referendum.

History.—§12, ch. 63-126.

573.62 Notice of effective date of marketing order.—Before the issuance of any marketing order, or any suspension, amendment or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the commissioner in the division of marketing of the department of agriculture in the Nathan Mayo building, Tallahassee, Leon county, and a copy of the notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the commissioner may prescribe. The notices published in the newspaper or newspapers shall be sent by first class mail, by the commissioner to those newspapers designated by him, the same date that the notice is posted on the bulletin board with instructions to publish the same as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provide. No marketing order, or any suspension, amendment or termination thereof shall become effective until the termination of a period of five days from the date of posting and publication. It shall also be the duty of the commissioner to mail a copy of the notice of the issuance to every person who files in the office of the commissioner a written request for such notice.

History.—§13, ch. 63-126.

573.63 Advisory committee.—

(1) Any marketing order shall provide in it a method for the selection of an advisory committee and the term of office of the committeemen. The advisory committee shall assist the commissioner in the administration of any marketing order. Members of the advisory committee and their alternates shall be appointed by the commissioner. The number of producers, handlers, or distributors, upon any advisory committee shall be such number of producers, handlers, or distributors as the commissioner finds is necessary to assist properly in the administration of the order; provided always, the majority of the members and alternate members of any advisory committee shall be producers.

(2) No members or alternate members of any advisory committee shall receive a salary, but shall be reimbursed for traveling expenses as provided in §112.061. The commissioner may authorize the advisory committee to employ necessary personnel, including professional and technical services, fix their compensation and terms of employment, and to incur expenses, to be paid by the commissioner from moneys collected as herein provided, as the commissioner may deem necessary and proper to enable the advisory committee to perform properly its authorized duties.

History.—§14, ch. 63-126; §19, ch. 63-400.

573.64 Advisory committee; duties.—The duties of any advisory committee shall be ad-

ministrative only, and may include the following:

(1) To administer the marketing order, subject to the approval of the commissioner.

(2) To recommend to the commissioner administrative rules and regulations relating to the marketing order.

(3) To receive and report to the commissioner complaints or violations of the marketing order.

(4) To recommend to the commissioner amendments to the marketing order.

(5) To assist the commissioner in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the commissioner in the administration of the marketing order.

(6) To assist the commissioner in the collection of information and data which the commissioner may deem necessary to the proper administration of part II of this chapter.

History.—§15, ch. 63-126.

573.65 Advisory committee; exemption from liability.—The members and alternate members of any advisory committee, duly appointed by the commissioner, including employees of the committee, shall not be held responsible individually in any way whatsoever to any producer, distributor or other handler or any other person for errors in judgment mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No person or employee shall be held responsible individually for any act of any other member of any committee.

History.—§16, ch. 63-126.

573.66 Possible subjects of marketing orders.—Subject to the legislative restrictions and limitations set forth herein any marketing order issued by the commissioner may contain any or all of the following provisions:

(1) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger markets for foliage plants grown in Florida, or for the prevention, modification or removal of trade barriers which obstruct the free flow of foliage plants to market. The commissioner is hereby authorized to prepare, issue, administer and enforce plans and programs for promoting the sale of foliage plants; provided that any plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production or distribution of foliage plants and for the expenditure of moneys for such purposes. In any research in production or distribution carried on hereunder, the commissioner upon recommendation of the advisory committee shall select the research project or projects to be carried on. These projects may be carried out by any research agency the commissioner determines, based upon recommendations of the advisory committee.

(3) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices, now prohibited by law, applicable to the distribution or handling of foliage plants within this state, the commissioner is hereby authorized to include in any marketing order issued hereinunder provisions designed to correct any trade practices affecting the distributing or handling of foliage plants within this state which the commissioner finds, after a hearing in which all interested persons are given an opportunity to be heard, is unfair and detrimental to the effectuation of the declared purposes of part II of this chapter.

(4) Provisions establishing or providing for establishing, with respect to foliage plants, either as delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers:

(a) Grading standards of quality, condition, size, shape, maturity, pack, or any other criteria for indicating desirability of foliage plants, which standards may include minimum standards, provided the standards shall not be established below any minimum prescribed by law for this commodity.

(b) Uniform inspection, grading of and proper labeling of foliage plants in accordance with the standards so established.

(c) Fix the size, weight, capacity, dimensions or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of foliage plants.

(5) Provisions for the establishment of surplus, stabilization, or by-product pools for foliage plants or of any grade, size, quality or condition and providing for the sale of the commodity in any pool and for the equitable distribution among the persons participating of the net returns derived from the sale of the commodity. Whenever the marketing order authorizes the establishment of any pool or pools, the advisory committee shall have power to receive the commodity from each producer or handler and to handle the same according to the grade, size, quality or condition and to account to each producer or handler participating upon a pro rata basis for the net proceeds derived from the sale.

(6) Provisions incidental to and not inconsistent with the terms, conditions and provisions specified and necessary to effectuate the other provisions of the marketing order.

History.—§17, ch. 63-126.

573.67 Cooperation with other governments.—The commissioner is hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purposes of obtaining uniformity in the administration of federal and state marketing regulations, licenses or orders, and the commissioner is authorized to conduct joint hearings, issue joint or concurrent marketing orders, and may exercise any administrative authority to effect such uniformity of administration and regulation.

History.—§18, ch. 63-126.

573.68 Limited marketing orders.—A marketing order issued by the commissioner may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective; provided that no marketing order shall be issued by the commissioner unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

History.—§19, ch. 63-126.

573.69 Marketing agreement.—In order to effectuate the declared policy of part II of this chapter, the commissioner shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements, which agreements may contain any of those provisions contained in §573.66 with distributors, producers and others engaged in the handling of foliage plants regulating the handling of the commodity, which marketing agreement shall be binding upon the signatories exclusively. The execution of a marketing agreement shall in no manner affect the issuance, administration or enforcement of any marketing order. The commissioner may issue a marketing order without executing a marketing agreement, or may execute a marketing agreement and issue a marketing order covering the same commodity. The commissioner, in his discretion, may hold a concurrent hearing upon a proposed marketing agreement and proposed marketing order, giving due notice and opportunity for hearing in the manner provided for marketing orders.

History.—§20, ch. 63-126.

573.70 Assessment; funds; audit; loans.—(1) To provide funds to defray the necessary expenses incurred by the commissioner in the formulation, issuance, administration and enforcement of any marketing order, every person engaged in the production, distributing or handling of foliage plants within this state, and directly affected by any marketing order, shall pay to the commissioner at such times and in such installments as the commissioner may prescribe, such person's pro rata share of necessary expenses. Each person's share of expenses shall be that proportion which the total volume of foliage plants produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodity produced, distributed or handled by all such persons during the same current marketing season or part thereof. The commissioner, after receiving the recommendations of the advisory committee, shall fix the rate of assessment on the volume of foliage plants sold or some other equitable basis. For convenience of collection, upon request of the commissioner, handlers of the commodity shall pay any producer assessments. Handlers paying assessments for and on behalf of any producers shall at their discretion, collect the producer assessments from any moneys owed by the handlers to the producers.

(2) The commissioner may require every producer, distributor or handler directly affected by any marketing order to deposit with him in advance cash or sufficient bond based upon the estimated volume of foliage plants to be handled during the period or periods covered by the marketing order to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective, the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor or handler upon the basis of the volume of foliage plants handled during the period or periods. The commissioner shall prescribe rules and regulations with respect to the assessment and collection of these funds.

(3) Any money so collected by the commissioner may be transmitted to the foliage plant advisory committee, notwithstanding the provisions of §215.31. Upon the receipt of any assessment funds, the advisory committee shall deposit the money in a depository of its choice upon the approval of the commissioner. The actual expenses incurred by the commissioner, his department, or the advisory committee with respect to the foliage plant marketing order, shall be paid out upon warrant of the advisory committee and some other duly authorized person appointed by the commissioner. Any moneys remaining in the fund, at the discretion of the advisory committee upon approval of the commissioner, may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom the funds were collected; provided that upon termination by the commissioner of any marketing order, all moneys remaining and not required by the advisory committee to defray the expenses of the order shall be returned by the advisory committee upon a pro rata basis to all persons from whom the funds were collected.

(4) In the event of levying and collecting of assessments for each fiscal year of the advisory committee in which assessment funds are received by the advisory committee, the advisory committee chairman shall cause to be made a thorough annual audit of the books and accounts of the advisory committee by a certified public accountant, the audit to be completed within sixty days after the end of the advisory committee's fiscal year. The commissioner, and all producers and handlers covered by the marketing order, shall be properly advised of the details of the annual official audit of the advisory committee's accounts as shown by the certified public accountant within thirty days of the audit. Before receiving any assessment funds, the chairman of the advisory committee and some other duly authorized cosigner of vouchers shall give a bond in an amount prescribed by the commissioner, such bond to have as surety a surety company licensed to do business in Florida, to be filed with the

advisory committee, with a copy to the commissioner.

(5) Any assessment levied, in the specified amount as may be determined by the commissioner, shall constitute a personal debt of every person so assessed and shall be due and payable to the commissioner; the commissioner may file a complaint against any person or persons in a state court of competent jurisdiction for the collection of the assessment.

(6) If any advisory committee has reason to believe that the administration of any order will be facilitated or the attainment of the purposes and objectives of the order will be promoted thereby, the advisory committee is authorized to borrow money with or without interest to carry out any provision of any order based upon anticipated assessment collections.

History.—§21, ch. 63-126.

573.71 Commissioner; powers and duties.—

(1) The commissioner shall administer and enforce the provisions of part II of this chapter within the division of marketing in the department. In order to effectuate the declared purposes of this act, the commissioner is authorized to issue, administer, and enforce the provisions of any marketing agreement or order, regulating producer marketing and handling of foliage plants in the primary channel of trade.

(2) The commissioner shall have the power to establish general rules and regulations for uniform application to all marketing orders and marketing agreements as may be necessary to facilitate the administration and enforcement of the marketing orders and agreements. These general rules shall not be applicable to the provisions of this act relative to posting, publications and effective date. General rules shall be mailed to the advisory committee for each marketing order or marketing agreement in active operation.

(3) Upon recommendation of the advisory committee concerned, the commissioner shall have the power to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(4) Upon recommendation of the advisory committee concerned, the commissioner shall have the power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any regulations issued by the commissioner shall be given to all producers and handlers directly affected.

History.—§22, ch. 63-126.

573.72 Exemptions.—

(1) The advisory committee may adopt, with approval of the commissioner, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

(2) The advisory committee may issue certificates of exemption to any applicant who applies for an exemption and furnishes adequate evidence to the advisory committee, that by reason of a marketing order, the applicant has been adversely affected, unduly burdened or the result of the marketing order is confiscatory by reason of acts beyond the applicant's control or by acts beyond reasonable expectation.

(3) The advisory committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemption.

(4) If any applicant for exemption certificates is dissatisfied with the determination by the advisory committee with respect to his application, the applicant may file an appeal with the commissioner. An appeal must be taken promptly after the determination by the advisory committee. Any applicant filing an appeal shall furnish evidence satisfactory to the commissioner for a determination of the appeal. The commissioner shall consider the application, examine all available evidence, and make a final determination concerning the application. The commissioner shall notify the appellant of the final determination, and shall furnish the advisory committee with a copy of the appeal and a statement of considerations involved in making the final determination.

History.—§23, ch. 63-126.

573.73 Termination of orders.—The commissioner shall suspend or terminate the marketing order or any provision of the marketing order, whenever he finds the provision or order does not tend to effectuate the declared purposes of part II of this chapter, within the standards and subject to the limitations and restrictions herein imposed and he further finds upon a referendum called by himself that fifty-one per cent of the producers who are engaged within the state in the production of foliage plants for market, covered by the marketing order, and who produce for market more than fifty-one per cent of the volume of foliage plants produced within the state for market are opposed to the marketing order; provided the suspension or termination shall not be effective until the expiration of the current marketing season. If the commissioner finds that the termination of any marketing order is requested in writing by more than fifty-one per cent of the producers who are engaged within the state in the production of foliage plants for market, covered by the marketing order, and who produce for market more than fifty-one per cent of the volume of the commodity produced within the state for market, covered by the order, and the commissioner further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of part II of this chapter, he shall terminate or suspend for a specified period the marketing order or provision thereof; provided the termination shall be effective only if announced on or before the

date, prior to the end of the current marketing period, as may be specified in the order.

History.—§24, ch. 63-126.

573.74 Inspections.—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may enter and inspect any premises, enclosure, building or conveyance where he has reason to believe any foliage plants subject to a marketing order are produced, stored, being prepared for market or marketed, and inspect or cause to be inspected the representative samples of the commodity as may be necessary to determine whether or not any lot of foliage plants is in compliance with applicable regulations of any marketing order.

History.—§25, ch. 63-126.

573.75 Maintenance and production of records.—

(1) The commissioner may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, and to furnish to the commissioner or his duly authorized or designated representative or representatives any information as may be from time to time requested by them relating to operations under the marketing order and to permit the inspection by the commissioner or his duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information obtained by any person shall be confidential and shall not be disclosed by him to any other person except to a person with like right to obtain it, or any attorney employed to give legal advice or by court order.

(3) The commissioner or his duly authorized or designated representative or representatives may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the commissioner, or his duly authorized or designated representative or representatives, in obedience to the subpoena of the commissioner on the ground or the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the commissioner in obedience to a subpoena issued; provided, no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History.—§26, ch. 63-126.

573.76 Penalties; violation; hearings.—

(1) Every person who violates any provision of part II of this chapter, or any provision of any marketing agreement or order duly issued by the commissioner shall be guilty of a misdeameanor, and upon conviction, shall be punished by a fine of not less than $200.00 nor more than $10,000.00. Each day during which any of the violations above referred to continue after the commissioner has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the commissioner for depositing in the account of the advisory committee.

(2) Upon the filing of a verified complaint with the commissioner charging a violation of any provision of this act, or of any provision of any marketing order issued by the commissioner, or of any provision of any marketing agreement enforced by the commissioner, and prior to institution of any court proceedings authorized, the commissioner may, at his discretion, refer the matter to the attorney general of Florida, or prosecuting attorney of this state having jurisdiction, for action pursuant to the provisions of part II of this chapter, or call a hearing to consider the charges set forth in such verified complaint. In such case the commissioner shall cause copy of the complaint, together with notice of the time and place of hearing of the complaint, to be served personally or by registered mail upon the person or persons named as defendant or defendants. Such service shall be made at least three days before the hearing, which shall be held in the city or town in which is situated the principal place of business of the defendant, or one of the defendants, if more than one, or in which the violation complained of is alleged to have occurred or at some other convenient place or location, at the discretion of the commissioner. At the time and place designated for the hearing, the commissioner, or his agents, shall hear the parties to the complaint and shall enter in the office of the commissioner at Tallahassee, Leon county, his findings based upon the facts established at the hearing.

(3) If the commissioner finds no violation has occurred, he shall forthwith dismiss the complaint and notify the parties to the complaint.

(4) If the commissioner finds a violation has occurred, he shall so enter his findings and notify the parties to the complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the commissioner, the commissioner may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) The attorney general of Florida, or any prosecuting attorney of this state having juris-

diction, may upon his own initiative and shall upon complaint of any person, if after investigation, he believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of part II of this chapter or any marketing order duly issued by the commissioner or any marketing agreement enforced by the commissioner.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provisions of part II of this chapter, or of any marketing order duly issued by the commissioner or any marketing agreement enforced by the commissioner in any of the circuit courts; and in any such proceeding it shall not be necessary for the commissioner to allege or prove that an adequate remedy at law does not exist. The circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the commissioner, he shall provide that the defendant or defendants pay him reasonable costs of each suit, including reasonable attorneys' fees to be fixed by the court. These actions may be commenced either in the county where the defendant resides, if more than one defendant, or in the county where any act or part thereof, complained of occurred.

(7) No marketing order, general rules and regulations, administrative rules and regulations, or seasonal marketing regulations issued in compliance with part II of this chapter shall be required to comply with the provisions of chapter 120.

(8) The provisions of part II of this chapter shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in part II of this chapter.

(9) It shall be a misdemeanor for:

(a) Any person to willfully render or furnish a false or fraudulent report, statement or record required by the commissioner, or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any agricultural commodity or in the wholesale or retail trade thereof to fail or refuse to furnish to the commissioner or his duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received any agricultural commodity regulated by a marketing order issued and in effect hereunder, and the quantity of the commodity so received.

History.—§27, ch. 63-126.

PART III

WATERMELON MARKETING LAW

573.0100 Short title.—Part III of this chapter may be known and cited as the Florida watermelon marketing law.

History.—§1, ch. 63-292.

573.0101 Legislative findings; declaration of policy.—This law is passed:

(1) Because the marketing of watermelons in Florida in excess of reasonable and normal market demands therefor, disorderly marketing of such commodity, improper preparation for market and lack of uniform grading and classification, unfair methods of competition, and the inherent inability of individual producers to maintain present markets or to develop new and larger markets for Florida-grown watermelons result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions jeopardize the continued production of adequate supplies of watermelons for the people of this state and other states, and prevent watermelon producers from obtaining a fair return from their labor, their farms and their products. As a consequence, the purchasing power of such producers has been low in relation to that of persons engaged in other gainful occupations within this state and in all likelihood will continue to be so in the future, unless these conditions are remedied. Watermelon producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share

to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of the other citizens of this state.

(2) Because these conditions vitally concern the health, peace, safety and general welfare of the people of this state, it is hereby declared to be the policy of this state to aid watermelon producers in preventing economic waste in the marketing of their commodity, to develop more efficient and equitable methods in the marketing of watermelons, and to aid watermelon producers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

(3) The marketing of watermelons within this state is declared to be affected with a public interest. The provisions of part III of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the public health, peace, safety and general welfare of the people.

History.—§2, ch. 63-292.

573.0102 Purposes.—The purposes of part III of this chapter are:

(1) To enable watermelon producers of this state, with the aid of the state, to correlate more effectively the marketing of their watermelons with market demands therefor.

(2) To establish and maintain orderly marketing of watermelons.

(3) To provide for uniform grading and proper preparation of watermelons for market.

(4) To provide methods for the maintenance of present markets, or for the development of new and larger markets for watermelons grown in Florida.

(5) To eliminate or reduce economic waste in the marketing of watermelons grown in Florida.

(6) To prevent, modify or eliminate trade barriers which obstruct the free flow of watermelons to market.

History.—§3, ch. 63-292.

573.0103 Definitions.—As used in part III of this chapter:

(1) Commissioner means the commissioner of agriculture of Florida.

(2) Person means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.

(3) Watermelon means all varieties and types of watermelons, citrullus vulgaris.

(4) Producer means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, watermelons for market.

(5) Primary channel of trade means watermelons shall be deemed and held to be in the primary channel of trade when such commodity is cut, gathered from the ground, or otherwise harvested or prepared for sale in any manner for commercial purposes, but watermelons shall cease to be in the primary channel of trade if and when they leave intrastate commerce.

(6) Handler is synonymous with shipper and means any person, except a common or contract carrier of watermelons owned by another person, engaged within this state as a distributor in the business of distributing watermelons in the primary channel of trade.

(7) Distributor means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, watermelons which he has produced, or purchased or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as herein defined.

(8) Retailer means any person who purchases or acquires any watermelons for resale at retail to the general public, unless such retailer engages in the business of a distributor.

(9) Marketing agreement means an agreement between the commissioner and distributors, producers, handlers, and others engaged in the handling of watermelons, regulating the handling of the commodity.

(10) Marketing order means an order issued by the commissioner prescribing rules and regulations governing the distribution, or handling, in any manner, of watermelons in the primary channel of trade during any specified period or periods.

(11) To handle means to engage in the business of a handler as herein defined.

(12) To retail means to engage in the business of a retailer as herein defined.

(13) To distribute means to engage in the business of a distributor as herein defined.

(14) Advertising and sales promotion, in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of watermelons to market and may include the presentation of facts to and negotiations with the state, federal and foreign governmental agencies on matters which affect the production and marketing of watermelons.

(15) Container means a crate, bag, box, basket, carton, package, bulk load, or other unit used in the packaging, transportation, sale, shipment or any other unit used in the handling of watermelons.

(16) Advisory committee means the advisory administrative committee or committees established pursuant to part III of this chapter.

(17) General rules and regulations means rules and regulations applicable to all marketing orders and marketing agreements issued and made effective by the commissioner without prior notice and public hearing to provide uniform methods and procedures to facilitate the administration and enforcement of all marketing orders and marketing agreements. Uniform methods and procedures may include but shall not be limited to methods and procedures pertaining to the receiving, depositing and expenditure of moneys received from assessments; the preparation, handling and payment of claim schedules for the payment of bills, salaries and other obligations; establishment of maximum

rates to be allowed for travel expenses of committee members and committee employees; the preparation, verification and filing of evidence relating to violations of marketing orders, agreements and marketing regulations and other fiscal and administrative activities which the commissioner finds are necessary to obtain reasonable uniformity, efficiency and economy in the administration and enforcement of any marketing order or agreement.

(18) Administrative rules and regulations means rules and regulations applicable to a particular marketing order or agreement, issued and made effective by the commissioner upon recommendation of the advisory committee concerned, without prior notice and public hearing to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules and regulations may include but shall not be limited to methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations thereunder and thereby assist in obtaining cooperation and compliance.

(19) Seasonal marketing regulations means marketing regulations, applicable to a particular marketing order or agreement, made effective by the commissioner upon recommendation of the advisory committee concerned without prior notice and public hearing, for the purpose of carrying into effect by administrative order, the marketing regulatory authorizations and provisions of the marketing order or agreement as such authorizations or provisions may be applicable to or required by changing economic or marketing conditions and requirements from time to time during each marketing season in which the marketing order or agreement may operate. Seasonal marketing regulations shall not extend beyond the marketing regulatory authorizations specified in the marketing order or agreement concerned.

History.—§4, ch. 63-292.

573.0104 Required consent by industry.—No marketing order or amendment directly or indirectly affecting or regulating watermelons in the primary channel of trade of this state shall become effective unless the marketing order or amendment thereto has been consented to by a majority of producers or handlers of such commodity in Florida, as provided in §573.0111.

History.—§5, ch. 63-292.

573.0105 Petition of producers.—Upon the application or petition of ten or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this act, the commissioner may give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

History.—§6, ch. 63-292.

573.0106 Petitioner's expense.—Prior to the issuance of any marketing order, the commissioner shall require applicants to deposit with him such amounts as the commissioner may deem necessary to defray the expenses of preparing and making effective such marketing order. These funds shall be received, deposited and disbursed by the commissioner. Any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If such proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory committee and approval of the commissioner.

History.—§7, ch. 63-292.

573.0107 Public hearing.—Due notice of any hearing shall be given to all persons who may be directly affected by any action of the commissioner. These hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any hearing shall be made and filed by the commissioner in his office. All interested persons shall have a period of not less than seven days following the public hearing for filing written briefs with the commissioner concerning such action.

History.—§8, ch. 63-292.

573.0108 Findings; required to issue order.—After such notice and hearing, the commissioner shall issue a marketing order if he finds and sets forth that the order will tend to accomplish the objectives and purposes of part III of this chapter, and:

(1) The provisions are necessary in order to effect a reasonable correlation of the supply of watermelons affected with market demands therefor and the marketing order or amendments thereto will tend to reestablish or maintain a level of prices for watermelons which will provide a purchasing power for this commodity adequate to maintain enough producers to provide the quantities and qualities of watermelons necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for watermelons.

(3) The marketing order or amendments thereto are in conformity with the provisions of part III of this chapter and will tend to effectuate the declared purposes and policies of part III of this chapter.

(4) The marketing order or amendments thereto will protect the interests of consumers of watermelons, by exercising the powers of part III of this chapter only to such extent as is necessary to establish the equality of purchasing power described in subsection (1).

History.—§9, ch. 63-292.

573.0109 Criteria considered in making findings.—In making the findings set forth in §573.0108, the commissioner shall take into con-

sideration all facts available with respect to:

(1) The quantity of watermelons available for distribution.

(2) The quantity of watermelons normally required by consumers.

(3) The cost of producing watermelons as determined by available records, statistics and surveys.

(4) The purchasing power of consumers as indicated by reports and indexes.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for watermelons.

(6) The level of prices of watermelons, in relation to services and articles which farmers commonly buy.

(7) Hardship resulting to any watermelon producer by the issuance of any proposed marketing order which cannot be remedied under the provision of §573.0122.

History.—§10, ch. 63-292.

573.0110 Procedure for referendum.—

(1) With respect to any referendum conducted under the provisions of part III of this chapter, the commissioner shall, before calling and announcing a referendum, fix, determine and publicly announce, at least fifteen days in advance of the date on which ballots and copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are in the state and whose names and addresses are known, the date by which ballots must be returned to the commissioner. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of producers or handlers affected, who vote in the referendum to send their marked ballots to the commissioner, who shall have the ballots counted by qualified and impartial personnel in his office, and the commissioner shall within ten days after the closing date for submitting ballots in any referendum, certify in writing and publish the results in a newspaper of general circulation in the state and in such other newspapers as the commissioner may prescribe.

History.—§11, ch. 63-292.

573.0111 Referendum.—

(1) No marketing order or amendments directly affecting handlers shall become effective unless and until the commissioner finds that the order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the commissioner handled no less than fifty-one per cent of the volume of watermelons produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers shall become effective unless and until the commissioner finds that the order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the commissioner produced not less than seventy-five per cent of the volume of watermelons covered by the marketing order, and who total by number not less than seventy-five per cent of the watermelon producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the commissioner as required in this section shall be computed on the basis of persons voting in the referendum.

History.—§12, ch. 63-292.

573.0112 Notice of effective date of marketing order.—Before the issuance of any marketing order, or any suspension, amendment or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the commissioner in the division of marketing of the department of agriculture in the Nathan Mayo building, Tallahassee, Leon county, and a copy of the notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the commissioner may prescribe. Notices published in the newspaper or newspapers shall be sent by first class mail, by the commissioner to those newspapers designated by him, the same date that the notice is posted on the aforesaid bulletin board with instructions to publish the same as a legal advertisement the first day after receipt of the notice as such newspaper's policy for publishing legal advertisements provide. No marketing order, or any suspension, amendment or termination thereof shall become effective until the termination of a period of five days from the date of posting and publication. It shall also be the duty of the commissioner to mail a copy of the notice of said issuance to every person who files in the office of the commissioner a written request for such notice.

History.—§13, ch. 63-292.

573.0113 Advisory committee.—

(1) Any marketing order issued shall provide in it a method for the selection of an advisory committee and the term of office of the committeemen. The advisory committee shall assist the commissioner in the administration of any marketing order. Members of the advisory committee and their alternates shall be appointed by the commissioner. The number of producers, handlers, or distributors, upon any advisory committee shall be such number of producers, handlers, or distributors as the commissioner finds is necessary to assist properly in the administration of the order; provided always, the majority of the members and alternate members of any advisory committee shall be producers.

(2) No members or alternate members of any advisory committee shall receive a salary, but shall be reimbursed for traveling expenses as provided in §112.061. The commissioner may authorize the advisory committee to employ necessary personnel, including professional and technical services, fix their compensation and terms of employment, and to incur expenses, to be paid by the commissioner from moneys col-

lected as herein provided, as the commissioner may deem necessary and proper to enable the advisory committee to perform properly its authorized duties.

History.—§14, ch. 63-292.

573.0114 Advisory committee; duties.—The duties of any advisory committee shall be administrative only, and may include the following:

(1) Subject to the approval of the commissioner to administer the marketing order.

(2) To recommend to the commissioner administrative rules and regulations relating to the marketing order.

(3) To receive and report to the commissioner complaints or violations of the marketing order.

(4) To recommend to the commissioner amendments to the marketing order.

(5) To assist the commissioner in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the commissioner in the administration of the marketing order.

(6) To assist the commissioner in the collection of information and data which the commissioner may deem necessary to the proper administration of part III of this chapter.

History.—§15, ch. 63-292.

573.0115 Advisory committee; exemption from liability.—The members and alternate members of any advisory committee, duly appointed by the commissioner, including employees of the committee, shall not be held responsible individually in any way whatsoever to any producer, distributor or other handler or any other person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act of any other member of any committee.

History.—§16, ch. 63-292.

573.0116 Possible subjects of marketing orders.—Subject to the restrictions and limitations set forth herein any marketing order issued by the commissioner may contain any or all of the following provisions for regulating or providing methods for regulating producer marketing or the handling or any other of the operations of processing or distributing by handlers of watermelons within this state, but no others:

(1) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger markets for watermelons grown in Florida, or for the prevention, modification or removal of trade barriers which obstruct the free flow of watermelons to market. The commissioner is hereby authorized to prepare, issue, administer and enforce plans and programs for promoting the sale of watermelons; provided that any plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production or distribution of watermelons and for the expenditure of moneys for such purposes. In any research in production or distribution carried on hereunder, the commissioner upon recommendation of the advisory committee shall select the research project or projects to be carried on. These projects may be carried out by any research agency the commissioner determines, based upon recommendations of the advisory committee.

(3) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices, now prohibited by law, applicable to the distribution or handling of watermelons within this state, the commissioner is authorized to include in any marketing order issued provisions designed to correct any trade practices affecting the distributing or handling of watermelons within this state which the commissioner finds are unfair and detrimental to the effectuation of the declared purposes of part III of this chapter, after a hearing, in which all interested persons are given an opportunity to be heard.

(4) Provisions establishing or providing for establishing, with respect to watermelons, either as delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers:

(a) Grading standards of quality, condition, size, shape, maturity, pack, or any other criteria for indicating desirability of watermelons which standards may include minimum standards, provided the standards shall not be established below any minimum standards prescribed by law for this commodity.

(b) Uniform inspection, grading of and proper labeling of watermelons in accordance with the standards so established.

(c) Fixing the size, weight, capacity, dimensions or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of watermelons.

(5) Provisions for the establishment of surplus, stabilization, or by-product pools for watermelons or of any grade, size, quality or condition, and providing for the sale of the commodity in any pool and for the equitable distribution among the persons participating of the net returns derived from the sale of the commodity. Whenever the marketing order authorizes the establishment of any pool or pools, the advisory committee shall have power to receive the commodity from each producer or handler and to handle the same according to the grade, size, quality or condition and to account to each producer or handler participating upon a pro rata basis for the net proceeds derived from the sale.

(6) Provisions incidental to and not inconsistent with the terms, conditions and provisions specified and necessary to effectuate the other provisions of such marketing order.

History.—§17, ch. 63-292.

573.0117 Cooperation with other governments.—The commissioner is authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purposes of obtaining uniformity in the administration of federal and state marketing regulations, licenses or orders, and the commissioner is authorized to conduct joint hearings, issue joint or concurrent marketing orders, and may exercise any administrative authority prescribed by part III of this chapter to effect uniformity of administration and regulation.

History.—§18, ch. 63-292.

573.0118 Limited marketing orders.—A marketing order issued by the commissioner may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective; provided that no marketing order shall be issued by the commissioner unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective. The provisions of part III of this chapter shall not apply to any part of the state west of the Apalachicola river.

History.—§19, ch. 63-292.

573.0119 Marketing agreement.—In order to effectuate the declared policy of part III of this chapter, the commissioner shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements, which agreements may contain any of those provisions contained in §573.0116, with distributors, producers and others engaged in the handling of watermelons, regulating the handling of the commodity, which said marketing agreement shall be binding upon the signatories thereto exclusively. The execution of a marketing agreement shall in no manner affect the issuance, administration or enforcement of any marketing order. The commissioner may issue a marketing order without executing a marketing agreement, or may execute a marketing agreement and issue a marketing order covering the same commodity. The commissioner, in his discretion, may hold a concurrent hearing upon a proposed marketing agreement and proposed marketing order, giving due notice and opportunity for hearing, in the manner provided for marketing orders.

History.—§20, ch. 63-292.

573.0120 Assessment; funds; audit; loans.—

(1) Every person engaged in the production, distributing or handling of watermelons within this state, and directly affected by any marketing order, shall pay to the commissioner at such times and in such installments as the commissioner may prescribe, such person's pro rata share of necessary expenses, to provide funds to defray the necessary expenses incurred by the commissioner in the formulation, issuance, administration and enforcement of any marketing order. Each person's share of such expenses shall be that proportion which the total volume of watermelons produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodity produced, distributed or handled by all such persons during the same current marketing season or part thereof. The commissioner, after receiving the recommendations of the advisory committee, shall fix the rate of assessment on the volume of watermelons sold or some other equitable basis. For convenience of collection, upon request of the commissioner, handlers of the commodity shall pay producer assessments. Handlers paying assessments for and on behalf of any producers shall at their discretion, collect the producer assessments from any moneys owed by the handlers to the producers.

(2) The commissioner may require every producer, distributor or handler directly affected by any marketing order to deposit with him in advance cash or sufficient bond based upon the estimated volume of watermelons to be handled during the period or periods covered by the marketing order to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective, the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor or handler upon the basis of the volume of watermelons handled during the period or periods. The commissioner shall prescribe the rules and regulations with respect to assessment and collection of these funds.

(3) Any money so collected by the commissioner may be transmitted to the watermelon advisory committee, notwithstanding the provisions of §215.31. Upon the receipt of any assessment funds, the advisory committee shall deposit the money in a depository of its choice upon the approval of the commissioner. The actual expenses incurred by the commissioner, his department, or the advisory committee with respect to the agricultural commodity marketing order, shall be paid out upon warrant of the advisory committee and some other duly authorized person appointed by the commissioner. Any moneys remaining in the fund, at the discretion of the advisory committee upon approval of the commissioner, may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom the funds were collected; provided that upon termination by the commissioner of any marketing order, all moneys remaining and not required by the advisory committee to defray the expenses of the order shall be returned by the advisory committee upon a pro rata basis to all persons from whom the funds were collected.

(4) In the event of the levying and collecting of assessments for each fiscal year of the advisory committee in which assessment funds are received by the advisory committee, the advisory committee chairman shall cause to be made a thorough annual audit of the books

and accounts of the advisory committee by a certified public accountant, such audit to be completed within sixty days after the end of the advisory committee's fiscal year. The commissioner, and all producers and handlers covered by the marketing order shall be properly advised of the details of the annual official audit of the advisory committee's accounts as shown by the certified public accountant within thirty days of such audit. Before receiving any assessment funds, the chairman of the advisory committee and some other duly authorized cosigner of vouchers shall give a bond in an amount prescribed by the commissioner, such bond to have as surety a surety company licensed to do business in Florida, to be filed with the advisory committee, with a copy to the commissioner.

(5) Any assessment levied, in the specified amount as may be determined by the commissioner, shall constitute a personal debt of every person so assessed and shall be due and payable to the commissioner; the commissioner may file a complaint against any person or persons in a state court of competent jurisdiction for the collection of the assessment.

(6) If any advisory committee has reason to believe that the administration of any order will be facilitated or the attainment of the purposes and objectives of the order will be promoted thereby, the advisory committee is authorized to borrow money with or without interest to carry out any provision of any order based upon anticipated assessment collections.

History.—§21, ch. 63-292.

573.0121 Commissioner; powers and duties.—

(1) The commissioner shall administer and enforce the provisions of part III of this chapter within the division of marketing in the department. In order to effectuate the declared purposes of part III of this chapter, the commissioner is authorized to issue, administer, and enforce the provisions of any marketing agreement or order, regulating producer marketing and handling of watermelons in the primary channel of trade.

(2) The commissioner shall have power to establish general rules and regulations for uniform application to all marketing orders and marketing agreements as may be necessary to facilitate the administration and enforcement of the marketing orders and agreements. These general rules shall not be applicable to the provisions of part III of this chapter relative to posting, publications and effective date. General rules shall be mailed to the advisory committee for each marketing order or marketing agreement in active operation.

(3) Upon recommendation of the advisory committee concerned, the commissioner shall have power to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(4) Upon recommendation of the advisory committee concerned, the commissioner shall have power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any regulations issued by the commissioner shall be given to all producers and handlers directly affected.

(5) Upon finding that any regulation issued pursuant to the provisions of a marketing order imposes an unfair burden upon any person or group, the commissioner shall exempt such person or group from the provisions of such regulation and, upon finding that any regulation in effect under a marketing order does not tend to accomplish the purpose of part III of this chapter, the commissioner shall suspend or terminate such regulation.

History.—§22, ch. 63-292.

573.0122 Exemptions.—

(1) The advisory committee may adopt, with approval of the commissioner, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

(2) The advisory committee may issue certificates of exemption to any applicant who applies for an exemption and furnishes adequate evidence to the advisory committee, that by reason of a marketing order, the applicant has been adversely affected, unduly burdened or the result of the marketing order is confiscatory by reason of acts beyond the applicant's control or by acts beyond reasonable expectation.

(3) The advisory committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemption.

(4) If any applicant for exemption certificates is dissatisfied with the determination by the advisory committee with respect to his application, the applicant may file an appeal with the commissioner. An appeal must be taken promptly after the determination by the advisory committee. Any applicant filing an appeal shall furnish evidence satisfactory to the commissioner for a determination of the appeal. The commissioner shall thereupon consider the application, examine all available evidence, and make a final determination concerning the application: The commissioner shall notify the appellant of the final determination, and shall furnish the advisory committee with a copy of the appeal and a statement of considerations involved in making the final determination.

History.—§23, ch. 63-292.

573.0123 Termination of orders.—The commissioner shall suspend or terminate the marketing order or any provision of the marketing order, whenever he finds the provision or order does not tend to effectuate the declared purposes of part III of this chapter, within the standards and subject to the limitations and restrictions herein imposed and he further finds

upon a referendum called by himself that fifty-one per cent of the producers who are engaged within the state in the production of watermelons for market, covered by the marketing order, and who produce for market more than fifty-one per cent of the volume of such commodity produced within the state for market are opposed to the said marketing order; provided that the suspension or termination shall not be effective until the expiration of the current marketing season. If the commissioner finds that the termination of any marketing order is requested in writing by more than fifty-one per cent of the producers who are engaged within the state in the production of watermelons for market, covered by the marketing order, and who produce for market more than fifty-one per cent of the volume of such commodity produced within the state for market, covered by the order, and the commissioner further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of part III of this chapter he shall terminate or suspend for a specified period the marketing order or provision thereof; provided that the termination shall be effective only if announced on or before the date, prior to the end of the current marketing period, as may be specified in the order.

History.—§24, ch. 63-292.

573.0124 Inspections.—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may enter and inspect any premises, enclosure, building or conveyance where he has reason to believe any watermelons subject to a marketing order are produced, stored, being prepared for market or marketed, and inspect or cause to be inspected representative samples of the commodity as may be necessary to determine whether or not any lot of watermelons is in compliance with applicable regulations of any marketing order.

History.—§25, ch. 63-292.

573.0125 Maintenance and production of records.—

(1) The commissioner may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, and to furnish to the commissioner or his duly authorized or designated representative or representatives any information as may be from time to time requested by them relating to operations under said marketing order and to permit the inspection by the commissioner or his duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information obtained by any person shall be confidential and shall not be disclosed by him to any other person except to a person with like right to obtain it, or any attorney employed to give legal advice or by court order.

(3) The commissioner or his duly authorized or designated representative or representatives, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the commissioner, or his duly authorized or designated representative or representatives, in obedience to the subpoena of the commissioner on the ground or the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the commissioner in obedience to a subpoena issued pursuant to this act; provided, that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History.—§26, ch. 63-292.

573.0126 Penalties; violation; hearings.—

(1) Every person who violates any provision of part III of this chapter, or any provision of any marketing agreement or order duly issued by the commissioner, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than $200.00 nor more than $10,000.00. Each day during which any of the violations above referred to continue after the commissioner has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the commissioner for deposit in the account of the advisory committee.

(2) Upon the filing of a verified complaint with the commissioner charging a violation of any provision of part III of this chapter, or of any provision of any marketing order issued by the commissioner hereunder, or of any provision of any marketing agreement enforced by the commissioner, and prior to institution of any court proceedings authorized, the commissioner may, at his discretion, refer the matter to the attorney general of Florida, or prosecuting attorney of this state having jurisdiction, for action pursuant to the provisions of part III of this chapter, or call a hearing to consider the charges set forth in such verified complaint. In such case the commissioner shall cause copy of the complaint, together with notice of the time and place of hearing of the complaint, to be served personally or by registered mail upon the person or persons named as defendant or defendants therein. Such service shall be made at least three days before the hearing, which shall be held in the city or town in which is situated the principal place of business of the defendant, or one of the defendants, if more

than one, or in which the violation complained of is alleged to have occurred or at some other convenient place or location, at the discretion of the commissioner. At the time and place designated for the hearing, the commissioner, or his agents, shall hear the parties to the complaint and shall enter in the office of the commissioner at Tallahassee, his findings based upon the facts established at the hearing.

(3) If the commissioner finds that no violation has occurred, he shall forthwith dismiss the complaint and notify the parties to the complaint.

(4) If the commissioner finds that a violation has occurred, he shall so enter his findings and notify the parties to the complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the commissioner, the commissioner may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) The attorney general of Florida, or any prosecuting attorney of this state having jurisdiction, may upon his own initiative and shall upon complaint of any person, if after investigation, he believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of part III of this chapter or any marketing order duly issued by the commissioner or any marketing agreement enforced by the commissioner.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provisions of part III of this chapter, or of any marketing order duly issued by the commissioner or any marketing agreement enforced by the commissioner in any circuit court; and in any such proceeding it shall not be necessary for the commissioner to allege or prove that an adequate remedy at law does not exist. Circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the commissioner, he shall provide that the defendant or defendants pay him reasonable costs of each suit, including reasonable attorneys' fees to be fixed by the court. Action may be commenced either in the county where the defendant resides, or in the county where any other defendant resides, if more than one defendant, or in the county where any act of omission, or part thereof, complained of occurred.

(7) No marketing order, general rules and regulations, administrative rules and regulations, or seasonal marketing regulations issued in compliance with part III of this chapter shall be required to comply with the provisions of chapter 120.

(8) The provisions of part III of this chapter shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in part III of this chapter.

(9) It shall be a misdemeanor for:

(a) Any person to willfully render or furnish a false or fraudulent report, statement or record required by the commissioner, or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any agricultural commodity or in the wholesale or retail trade thereof to fail or refuse to furnish to the commissioner or his duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received an agricultural commodity regulated by a marketing order issued and in effect hereunder, and the quantity of the commodity so received.

History.—§27, ch. 63-292.

CHAPTER 574

REGULATION OF SALE OF LEAF TOBACCO

574.01 Administration of law.—This act shall be administered within the division of marketing of the department of agriculture.

History.—§14, ch. 59-154.

574.02 Purpose of act.—The purpose of this act is to enable producers to have sufficient time to properly cure, prepare, and have an adequate time to market their leaf tobacco. Nothing herein shall prohibit a producer from selling his tobacco at a private sale at any time. The provisions of this act shall apply only to sales of leaf tobacco produced in the calendar year in which the sale is made.

History.—§1, ch. 59-154.

574.03 Sales; licenses.—No person, real or corporate, shall operate, hold or conduct an auction sale for the sale of leaf tobacco within this state without having first obtained a license for the year in which the sale is made from the commissioner of agriculture. The license shall be for the calendar year for each tobacco warehouse. The license fee shall be ten dollars for one calendar year and shall expire on December 31 of each year and subject to renewal under such rules and regulations as the commissioner of agriculture shall prescribe.

History.—§2, ch. 59-154.

574.04 Board; membership; appointment; terms; chairman.—There is hereby created a tobacco advisory board which shall consist of six members as follows:

(1) The commissioner of agriculture or some employee of the department of agriculture designated by the commissioner;

(2) One member of the senate who is from one of the leaf tobacco producing senatorial districts of the state to be appointed by the president of the senate;

(3) One member of the house of representatives who is from one of the leaf tobacco producing counties of the state to be appointed by the speaker of the house of representatives;

(4) One member of the Florida farm bureau to be appointed by the president of the Florida farm bureau;

(5) One member of the Florida tobacco warehousemen's association to be appointed by the governing body of the said association;

(6) One member who is a Florida tobacco farmer or producer to be appointed by the commissioner of agriculture.

The appointive members shall serve for a term of two years from date of appointment.

The commissioner of agriculture or his chosen representative shall be chairman of the board.

History.—§3, ch. 59-154.

574.05 Council; compensation; expenses.—Members of the council shall serve without compensation but shall be entitled to per diem and travel expenses as provided by §112.061, which, together with any other operating expenses, shall be paid out of the general inspection trust fund of the department of agriculture.

History.—§4, ch. 59-154; §2, ch. 61-119.

574.06 Opening date of marketing season.—The tobacco advisory board shall meet prior to the meeting of the bright leaf tobacco warehousemen's association of each year on the call of the chairman to survey the condition of the tobacco crop and recommend an opening date of the marketing season. The chairman shall determine the time and place of the meeting. The board shall recommend to the commissioner of agriculture a date for the opening of the tobacco marketing season. If the commissioner of agriculture approves the opening date, he shall cause one or more members of the board to attend the meeting of the board of governors of bright leaf tobacco warehousemen's association to make known the recommendation as to the opening of the marketing season in Florida.

History.—§5, ch. 59-154.

574.07 Revocation of licenses.—If the board of governors of bright leaf tobacco warehousemen's association shall set an opening date for the tobacco marketing season in Florida that is not in accordance with, nor agreeable to, the tobacco advisory board or the commissioner of agriculture, the commissioner of agriculture shall determine the opening date of the tobacco marketing season in the state. If any warehouseman shall hold a sale prior to the date determined by the commissioner of agriculture, the license of that warehouseman shall be revoked and shall not be reinstated or reissued in that calendar year. The revocation of license as provided herein shall be in addition to the penalty for the violation of the provisions of this act.

History.—§6, ch. 59-154.

574.08 Accounts of sales; weekly reports.—On or after July 15, 1959, the proprietor of each

leaf tobacco warehouse doing business in the state shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. On and before the Monday of each succeeding week the said warehouse proprietor shall make a statement under oath, of all the tobacco sold upon the floor of his warehouse during the past week and shall transmit the said statement at once to the commissioner of agriculture at Tallahassee. The report so made to the commissioner of agriculture shall be so arranged and classified as to show the number of pounds of firsthand tobacco received, average price per pound, and the total sales firsthand, at the close of business, the number of pounds sold for the producers of tobacco from firsthand; the number of pounds sold for dealers, and the number of pounds resold by the proprietor of the warehouse for his own account, or for the account of some other warehouse, together with other information or reports as required by law and by the rules and regulations promulgated by the commissioner of agriculture.

History.—§7, ch. 59-154.

574.09 Commissioner; records; penalty.—

(1) The commissioner of agriculture shall cause said statement to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each tobacco market in this state, so as to show the number of pounds sold to producers and the number of pounds resold upon each market. And the said commissioner of agriculture shall keep said books open to the inspection of the public, and shall on or before the tenth day of each month, and after the receipt of the reports above required to be made to him, on or before the fifth day of each month, cause the said reports to be published in the market news report of the department or some other department bulletin at the discretion of the commissioner.

(2) Any warehouse failing to make the report required by §574.08 shall be subject to a penalty of $25.00 and the cost of the case, to be recovered by any person suing for same in any court of competent jurisdiction and the judge in whose court the matter is adjudicated shall include in the costs of each case where the penalty is allowed, one dollar, to be paid to the department of agriculture for expenses of advertising.

History.—§8, ch. 59-154.

574.10 Failure to comply; publication of names.—The commissioner shall on the twelfth day of each month publish in some Florida newspaper the names of the tobacco warehouses that have failed to comply with this act.

History.—§9, ch. 59-154.

574.11 Commissioner's certificate admissible as evidence.—The certificate of the commissioner under the seal of the department shall be admissible as evidence the same as if it were his deposition taken in form as provided by law.

History.—§10, ch. 59-154.

574.12 Tobacco warehouses; charges, fees, penalties.—

(1) Beginning with the enactment and approval of this law, maximum charges and expenses of handling and selling leaf tobacco upon the floor of the tobacco warehouses of this state shall not exceed the following schedule, to-wit:

For auction fees, fifteen cents on all piles of one hundred pounds or less and twenty-five cents on all piles over one hundred pounds. For weighing and handling, ten cents per pile of all piles of one hundred pounds and ten cents for each additional one hundred pounds for commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per cent of said gross sales. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouses a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commission on each sale.

(2) It shall be unlawful for any charges in excess of those named in this section to be made or accepted and any proprietor or person in charge of a leaf tobacco warehouse in this state violating this section shall be guilty of a misdemeanor and punished for the same.

History.—§11, ch. 59-154.

574.13 Penalty.—Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon a conviction thereof shall be punished as provided by law.

History.—§12, ch. 59-154.

CHAPTER 575

CERTIFICATION SEED LAW

575.01 Definitions.—As used in this chapter:

(1) The term "department" shall mean the department of agriculture of the state.

(2) The word "commissioner" shall mean the commissioner of agriculture of the state.

(3) The terms "certified seed" and "registered seed" shall mean seed that have been produced and labeled in accordance with the procedure and in compliance with the rules and regulations under this chapter.

(4) The term "foundation seed" shall mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state. Foundation seed in Florida will be under the control of the Florida foundation seed producers association, inc.

(5) The term "breeder seed" shall mean seed that are released directly from the breeder of experiment station who developed such seed. These are one class above foundation seed.

(6) The term "agricultural seed" shall include the seeds of grass, forage, cereal and fiber crops and any other seed commonly recognized within the state as agricultural or field seed.

(7) The term "vegetable seed" shall include the seeds of those crops which are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed in this state.

(8) The term "grower" shall mean any resident of the state engaged in the business of farming or growing seed.

History.—§2, chs. 19364, 19432, 1939; CGL 1940 Supp. 4151(591), 4151(607); §1, ch. 20627, §2, ch. 20251, 1941; §2, 21942, 1943; tr. from §578.01; §2, ch. 26961, 1951; §1, ch. 61-414.

575.02 Certification of seed.—Any grower of agricultural or vegetable seed, located in Florida, may make application to the commissioner for inspection and certification of his crop for seed purposes, under rules and regulations covered by this chapter. The commissioner, or his authorized agents, shall make all necessary inspections, issue official seals and tags for marking containers of "certified seed" and "registered seed" as are necessary to safeguard the privileges and service provided for in this chapter.

History.—§3, ch. 19432, 1939; CGL 1940 Supp. 4151(608); transferred from §578.05; §3, ch. 26961, 1951; §2, ch. 61-414.

575.03 Fees for certification.—The commissioner may fix, assess and collect, or cause to be collected, fees for the certification inspection service, the same to be paid in such manner as he may direct. Such fees shall be large enough to meet the reasonable expenses incurred by the commissioner or his agents in making such inspections as may be necessary for carrying out the provisions of this chapter.

History.—§4, ch. 19432, 1939; CGL 1940 Supp. 4151(609); transferred from §578.06; §4, ch. 26961, 1951; §3, ch. 61-414.

575.04 Unlawful terms.—It shall be unlawful for any person to sell, distribute, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural or vegetable seed within this state, labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled in accordance with the procedure and in compliance with the rules and regulations of an agent authorized by law.

History.—§5, ch. 19432, 1939; CGL 1940 Supp. 4151(610); transferred from §578.07; §5, ch. 26961, 1951; §4, ch. 61-414.

575.05 Rules and regulations.—The commissioner may make all necessary rules, regulations and standards to carry out the provisions of this chapter, after notice of hearing to all growers of certified seed.

History.—§12, ch. 19364, §6, ch. 19432, 1939; CGL 1940 Supp. 4151(601), 4151(611); transferred from §578.04; §6, ch. 26961, 1951; §5, ch. 61-414.

575.06 Employees.—The commissioner may employ such assistants, inspectors, specialists and others as may be necessary to carry out the provisions of this chapter, to fix their salaries and to pay same from such funds as may be available for the purpose.

History.—§11, ch. 19364, §7, ch. 19432, 1939; CGL 1940 Supp. 4151(600), 4151(612); transferred from §578.03; §7, ch. 26961, 1951.

575.07 Penalty.—Any person, copartnership, association or corporation, and any officer, agent, servant or employee thereof, violating any of the provisions of this chapter or any of the rules and regulations promulgated hereunder, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine not exceeding one hundred dollars.

History.—§15, ch. 19364, §8, ch. 19432, 1939; CGL 1940 Supp. 8135(54), (55); §12, ch. 20251, 1941; §15, ch. 21942, 1943; transferred from §578.18; §8, ch. 26961, 1951.

575.08 Enforcement of chapter.—The commissioner is vested with power and authority to enforce the provisions of this chapter and the rules and regulations made pursuant thereto by writ of injunction in the proper court as well as by criminal proceedings. It shall be the duty of the attorney general, the state attorneys, prosecuting attorneys, county solicitors, and all public prosecutors in each county to represent the commissioner when called upon to do so. The commissioner in the discharge of his duties and in the enforcement of the powers herein delegated

may send for books and papers, administer oaths and hear witnesses, and to that end it is made the duty of the various sheriffs throughout the state to serve all summons and other papers upon request of said commissioner.

History.—§13, ch. 19364, §9, ch. 19432, 1939; CGL 1940 Supp. 4151(602), 4151(613); transferred from §578.15; §9, ch. 26961, 1951.

575.09 Short title.—This chapter shall be known by the title of the Florida certification seed law.

History.—Comp. §10, ch. 26961, 1951.

575.10 Purpose.—The purpose of this chapter is to maintain and make available to the public, through certification, high quality seed of superior crop plant varieties so grown and distributed as to insure genetic identity and genetic purity.

History.—§6, ch. 61-414.

CHAPTER 576

AGRICULTURAL FERTILIZERS

576.01 **Definitions.**—In construing this chapter, where the context permits, the word, phrase, or term:

(1) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers, except unmanipulated animal and vegetable manures.

(2) The words "mixed fertilizer" shall be construed to mean the combination or mixture of two or more fertilizer materials.

(3) The term "commercial fertilizer" includes mixed fertilizer or fertilizer materials.

(4) The words "water insoluble nitrogen" shall be construed to include nitrogen not soluble in water and shall be so classified. All organic nitrogen soluble in water shall be classified as water soluble organic nitrogen. Nitrogen in the form of nitrate shall be classified as nitrate nitrogen. Nitrogen in the form of ammoniacal nitrogen shall be so classified.

(5) The words "primary plant food" shall be construed as relating to and consisting of nitrogen or any form of nitrogen, phosphoric acid, or potash, or any combination of these substances.

(6) The words "available primary plant food" shall be construed as relating to and consisting of total nitrogen, available phosphoric acid, and water soluble potash.

(7) The words "total available primary plant food" shall be construed to mean the sum of the total nitrogen, available phosphoric acid, and water soluble potash.

(8) The words "secondary plant food" shall be construed to mean any element or substance useful as plant food other than the primary plant foods hereinabove defined, except sulphur.

(9) The word "tolerance" means the variation from the guaranteed analysis permitted in this chapter, or by regulation.

(10) The word "manufacturer" means a person engaged in the business of importing, preparing, mixing, or manufacturing commercial fertilizer for sale, either direct to consumers or by or through other media of distribution, and the word "manufacture" means preparation, mixing, or manufacturing.

(11) The words "dealer or agent" mean any person, other than the manufacturer, who offers for sale, sells, barters, or otherwise supplies at a profit commercial fertilizer.

(12) The word "deficiency" means the amount found by analysis less than that shown on the analysis tag.

(13) The word "excess" means the amount found by analysis over and above that guaranteed shown on the analysis tag.

(14) The words "to import" and the word "importing" shall be construed as meaning the bringing of commercial fertilizer into this state from any other state, territory, or possession of the United States, or from any foreign country, for sale within this state, and the word "importer" shall be construed as meaning the person who brings in commercial fertilizer from any other state, territory, or possession of the United States, or from any foreign country, for sale within this state.

(15) The word "brand" means the name, number, trademark, or other designation under which mixed fertilizer or fertilizer material is registered, offered for sale, distributed for sale, or sold in this state.

(16) The term "grade" means the minimum percentage of total nitrogen, available phosphoric acid, and water soluble potash stated in the order given in this definition and when applied to mixed fertilizer shall be in whole numbers only.

(17) The words "guaranteed analysis" shall be construed as meaning the percentage of primary or secondary plant foods shown on the analysis tag.

(18) The words "official sample" shall be construed to mean any sample of commercial fertilizer manufactured, offered for sale, or sold in this state which is taken by an official inspector duly appointed or any official authorized under this chapter to take such samples.

(19) The word "person" shall be construed as applying to individuals, partnerships, associations, and corporations.

(20) When the interpretation of this chapter requires it, words in the singular number may extend and be applied to several persons or things, and words in the plural number may be construed to refer to the singular.

(21) The word "per cent" or "percentage" means the percentage by weight.

(22) The term "sell" or "sale" includes exchange.

(23) A "unit" of plant food means one per cent by weight or twenty pounds per ton.

(24) The term "pesticide-fertilizer mixture" means a mixed fertilizer to which has been added a pesticide or pesticides.

History.—§11, ch. 4983, 1901; GS 1273; RGS 2407; CGL 3816; §1, ch. 16999, 1935; §1, ch. 25148, 1949; sub. §(4) am. §10, ch. 26484, 1951; sub. §§(8), (9) am. §§1, 2, sub. §(24) comp. §3, ch. 29793, 1955; (24) by §24, ch. 57-1.

576.02 Reports required of manufacturers, etc., prior to sale of fertilizers.—

(1) Each brand of commercial fertilizer shall be registered before being offered for sale, sold or otherwise distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a tag outline setting forth the guaranteed analysis which shall be the same as that appearing on the product registered. The commissioner of agriculture is hereby authorized to refuse to accept, or to cancel, if accepted, registration of anyone who violates any of the provisions of this chapter by failing or refusing to do anything herein required to be done; provided, however, that no registration shall be cancelled until the registrant shall have been notified and given opportunity to be heard before the commissioner. No manufacturer shall be permitted to register any brand of mixed fertilizer of which the available primary plant food constitutes less than sixteen per cent; provided, however, that the commissioner of agriculture, upon request from any manufacturer, shall issue a permit to said manufacturer permitting him to manufacture mixed fertilizer of less than sixteen per cent available primary plant food when said request is accompanied with a copy of the complete formula showing in detail all ingredients and the amount of each to be used; and provided further that the state chemist has examined and approved such a permit. All provisions of this chapter shall apply to manufacture and sale of mixed fertilizer under said permit.

(2) It shall be unlawful for any manufacturer, importer, or agent for the sale of commercial fertilizer to sell or make delivery of such commercial fertilizer before the registration thereof has been accepted by the commissioner of agriculture and the manufacturer, importer, or agent notified of such acceptance by the commissioner of agriculture; provided, such registration may be handled by telegraph prior to delivery of order.

(3) Any change in or deviation from the information filed upon registration of brands of mixed fertilizer with the commissioner of agriculture shall constitute a separate brand and shall require a separate registration; provided, however, that secondary plant foods may be added to a brand already registered so long as such addition does not in any way change or qualify any other requirements of the registration previously made, and such addition of secondary plant foods shall not require an additional registration. A mere change in the analysis or percentage of plant food for fertilizer material shall not constitute a separate fertilizer material, but shall require an additional registration.

(4) "Total nitrogen," "available phosphoric acid," "water soluble potash," and "total available primary plant food" shall be expressed and guaranteed only in whole numbers representing percentages. Other forms of "primary plant food" and all forms of "secondary plant food" may be expressed and guaranteed in whole numbers or decimal fractions of whole numbers representing percentages.

(5) Manufacturers shipping or delivering commercial fertilizer in lots of one or more tons shall notify the commissioner of agriculture thereof on the date of such shipment, giving the name and address of consignee, point of destination, and county in which located, quantity and brand or brands, and if shipped by rail in carload lots, the number and initial of the car.

History.—§5, ch. 4983, 1901; GS 1267; RGS 2401; §1, ch. 10128, 1925; CGL 3810, §2, ch. 16999, 1935.

Am. §1, ch. 25148, 1949; subsection (1) formerly §576.03, subsections (2) and (3) formerly §576.04, subsection (4) formerly §576.02, subsection (5) formerly §576.05.

Sub. §(1) am. §4, ch. 29793, 1955.

576.03 State chemist to analyze samples of commercial fertilizer.—

(1) It shall be the duty of the state chemist to analyze samples of commercial fertilizer that may be offered for sale in this state, and for this purpose he is authorized and directed to take or have taken by an inspector of the bureau of inspection of the state department of agriculture, or by one on whom the powers of inspector are by this law conferred, an official sample from any lot of commercial fertilizer offered for sale or sold within this state, which samples shall be taken as prescribed by regulation hereunder.

(2) Upon receipt of the official sample, the state chemist shall have the said official sample prepared and analyzed. Before making said official analysis, however, the state chemist shall take or have taken a sufficient portion from the official sample for check analysis, and shall place the same or shall have the same placed in a bottle, sealed and identified by number, date, and initials of the person preparing it. This sealed and identified sample, herein called "official check sample," shall be kept by the state chemist until the analysis is completed on the official sample. Provided, however, that the manufacturer may obtain upon request to the state chemist a portion of said official sample sufficient for analysis. If upon completion of said official analysis it is found to conform, within the meaning of this chapter, with the guarantee of analysis of the manufacturer of the commercial fertilizer from which the official sample was taken, the official check sample may be destroyed. If, however, it is found that the analysis of the commer-

cial fertilizer from which the official sample was taken does not conform, within the meaning of this chapter, with the guarantee of the manufacturer, then the said official check sample shall be retained by the state chemist for a period of ninety days from the date of the certificate of analysis of the official sample. And if within said time the manufacturer of the commercial fertilizer from which the official sample was taken, upon receipt of certificates, shall make demand for analysis of the official check sample by a referee chemist, a portion of the said official check sample sufficient for analysis shall be sent to a referee chemist mutually acceptable to the commissioner of agriculture, the state chemist, and the manufacturer of the commercial fertilizer, for analysis at the expense of the said manufacturer. The referee chemist, upon completion of his analysis, shall forward to the commissioner of agriculture and to the manufacturer a certificate of analysis bearing a proper identification mark or number and said certificate of analysis shall be verified by an affidavit of the person making the analysis. If said certificate of analysis checks within two-tenths of one actual per cent (0.20%) with the state chemist's analysis on each element for which analysis was made, then the mean average of the two analyses shall be accepted as final and binding on all concerned; provided, however, that if the referee's certificate of analysis shows a variation in any one or more elements for which an analysis was made greater than two-tenths of one actual per cent (0.20%) a portion of the official check sample sufficient for analysis shall be submitted to a second referee chemist mutually acceptable to the commissioner of agriculture, to the state chemist, and to the manufacturer of the commercial fertilizer from which the official sample was taken, upon demand of either of them. The second referee chemist, upon completion of his analysis shall make certificate and report as provided above for the first referee chemist. The mean average of the two certificates of analysis nearest in conformity shall be accepted as final and binding on all concerned; if said mean average shows that the manufacturer's guarantee has not been met within the variation hereinafter provided in this chapter, the said certificates shall be admissible in any court.

(3) The state chemist shall show in his certificate of analysis the moisture content of the goods analyzed, the total nitrogen content, the nitrogen as nitrate nitrogen, the nitrogen as ammoniacal nitrogen, the nitrogen as water soluble organic nitrogen, the nitrogen as water insoluble nitrogen, the available phosphoric acid, the insoluble phosphoric acid, the water soluble potash, the total available primary plant food, and the chlorine.

(4) If the guaranteed analysis tag attached to the package from which the official sample was taken shows a claim of percentage of any secondary plant food, then it shall be the duty of the state chemist to determine the percentage of such secondary plant food present by the methods as provided in this chapter, and to show in his certificate of analysis such percentages as are found present.

(5) Upon completion of the analysis of the official sample by the state chemist, he shall mail to the manufacturer of the commercial fertilizer from which the official sample was taken, and also to the dealer or agent, if any, or purchaser, a true copy of his certificate of analysis.

(6) If an error occurs in analyzing commercial fertilizer or reporting same, the state chemist shall immediately make a corrected report and furnish a copy thereof to the manufacturer and a copy to the purchaser of the fertilizer.

(7) In drawing any official sample and in making any analysis the officially adopted methods and terminology of the association of official agricultural chemists shall be used. In cases not covered by officially adopted methods and terminology of the association of official agricultural chemists, the state chemist shall, as soon as practicable, adopt and publish methods and terminology which shall be official in the state until such methods and terminology are officially adopted by the association of official agricultural chemists; excepting that in any instance in which it is the judgment of the technical committee, as provided for in §576.09 that the officially adopted methods and terminology of the association of official agricultural chemists are not applicable to conditions, circumstances, or cases, in the state, then the state chemist shall, with the approval of the technical committee, adopt and publish methods and terminology which shall be official in the state.

History.—§ § 5, 9, ch. 4983, 1901; GS 1267, 1271; §2, ch. 7939 1919; RGS 2401, 2405; §1, ch. 9128, 1923; § § 1, 3, ch. 10128 1925; CGL 3810, 3814; § § 2, 4, ch. 16999, 1935; am. §7, ch 22858, 1945; present section comp. §1, ch. 25148, 1949; former §576.03 now appears as §576.02(1); material in present §576.03 formerly §576.18; sub. §(7) am. §5, ch. 29793, 1955.

576.04 Analysis of fertilizers to be shown on tag, etc.—

(1) Every package of commercial fertilizer manufactured, imported, transported, distributed, stored, kept or offered for sale or sold in or into the state, shall have securely attached a tag on which shall be plainly and legibly printed the name or brand of the commercial fertilizer, the name and address of the manufacturer, the net contents of the package in pounds, stating the minimum percentage of total nitrogen, the minimum percentage of nitrate nitrogen, the minimum percentage of ammoniacal nitrogen, the minimum percentage of water soluble organic nitrogen, the minimum percentage of water insoluble nitrogen, the minimum percentage of available phosphoric acid, the minimum percentage of insoluble phosphoric acid, the minimum percentage of water soluble potash, the minimum percentage of total available primary plant food, and the maximum percentage of chlorine.

The sum of the various forms of nitrogen

guaranteed shall equal the total nitrogen guaranteed. There shall also be stated on the tag all the materials from which the above plant food are derived.

(2) If claim is made for any of the secondary plant foods they shall be guaranteed on the tag in percentage expressed as oxide with the exception of sulphur which shall be guaranteed as an element. When secondary plant foods are guaranteed in a mixture containing primary plant foods, the guarantee shall be expressed as oxide only; except the element magnesium which shall be guaranteed as an oxide and the percentage thereof guaranteed as to both total and water soluble, and except sulphur which shall be guaranteed as an element. Where such elements form more than one oxide the "technical committee" shall designate the particular oxide which shall be used in a guaranteed analysis.

(3) There shall also be attached to or printed on the tag on each package a label or stamps showing the payment of the fee required; the date of delivery or shipment of the commercial fertilizer to the purchaser shall also be shown on each tag bearing the label or stamp and shall serve as a cancellation mark thereon. There shall be no other statement on the tag, unless required by regulations, except the name and the address of the person to whom the commercial fertilizer is shipped or delivered by the manufacturer; however, the order number may be shown on the tag so long as it does not in any way render the guaranteed analysis illegible. When commercial fertilizer is shipped in bulk by rail there shall be fastened on the inside wall of the car near the door a tag of the same kind as is used in the case of package shipments bearing the same information as required or permitted in the case of package shipments. In such case, the labels or stamps cancelled with date of their use shall be attached to or printed on the tag; provided, however, that in case of bulk shipments or materials from without the state to points within the state, guaranteed analysis of said material and tax stamps cancelled on the date of use may be attached to the invoice covering such shipment of materials and delivered to the purchaser or receiver in lieu of attaching to the inside of the car. When commercial fertilizer is shipped in bulk by truck, wagon or other vehicle, the tags required in this section bearing proper labels or stamps and cancelled with the date of their use shall be attached to the copy of the invoice and shall be delivered to the receiver.

History.—§3, ch. 4983, 1901; GS 1264; §1, ch. 5660, 1907; RGS 2398; §1, ch. 9127, 1923; §2, ch. 10128, 1925; CGL 3807; §1, ch. 14510, 1929; §5, ch. 16999, 1935.

Am. §1, ch. 25148, 1949; material formerly in this section is now included in §576.02 as subsections (2) and (3); material in present §576.04 was formerly §576.07.

576.05 Form for fertilizer and fertilizer material tags; generally.—

(1) The form of the tag shall be as prescribed by regulation, recommended by the "technical committee" herein provided for.

(2) The provisions for tagging shall not be construed as referring or applying to materials stored by manufacturers for mixing purposes or stored for them in public warehouses, and manufacturers are not required to attach tags or guaranteed analysis to such materials until they are offered for sale, nor shall it be construed as applying to sales of commercial fertilizer by one manufacturer to another.

(3) Regulations hereunder may require additional wording on the tag, covering any substances legally included in the fertilizer, other than those provided for in §576.04.

History.—Comp. §1, ch. 25148, 1949; material formerly contained in §576.05 is now included in §576.02 as subsection (5); prior to 1949 amendment of ch. 576, §§576.08 and 576.09 covered form for fertilizer tags.

576.06 Sale of unprocessed leather, hair, etc.; misrepresentation of ingredients.—

(1) No person shall sell or offer for sale in the state any unprocessed leather, hair, or wool waste as a commercial fertilizer, or as an ingredient of any mixed fertilizer, nor organic material showing an activity of water insoluble nitrogen less than prescribed by the association of official agricultural chemists.

(2) Any manufacturer who shall misrepresent the proportion of nitrogen and the source thereof, phosphoric acid, or potash, or other ingredients contained in commercial fertilizers shall be guilty of a misdemeanor punishable as in this chapter provided.

History.—§ § 4, 12, ch. 4983, 1901; GS 1274, 3726, 3727; RGS 2408, 5711, 5712; CGL 3817, 7934, 7935; § § 7, 8, ch. 16999, 1935.

Am. §1, ch. 25148, 1949; material in subsection (1) formerly §576.24; material in subsection (2) formerly §576.25.

576.07 Inspection fee to be paid upon commercial fertilizer; reporting system.—

(1) Every manufacturer of or agent or dealer in commercial fertilizer shall pay to the commissioner of agriculture a fee of twenty-five cents per ton for commercial fertilizer offered for sale in the state, except raw ground phosphate rock, soft phosphate, colloidal phosphate, phosphatic clays and all other untreated phosphatic materials, peat or humus, and hydrated lime and limestone when sold or used for agricultural purposes, on which materials the fee shall be ten cents per ton. The said fee or fees shall accompany the order or orders on the commissioner of agriculture for the official stamps or tags which shall evidence the payment of said fees as herein required. Provided that when the manufacturer shall have paid the fee herein named for any person acting as agent or seller for any manufacturer, the agent or seller shall not be required to pay the fee named in this section. This section shall not be construed as applying to sales of commercial fertilizer by one manufacturer to another. All fees paid to the commissioner of agriculture, as herein provided, shall be by him paid into the state treasury to be placed in the general inspection trust fund.

(2) Any manufacturer, importer, dealer, agent or seller of commercial fertilizer in Florida may make application to the commissioner of agriculture of Florida for a permit to report the tonnage of commercial fertilizer sold and pay the inspection fee fixed and required in the first paragraph of this section, as the basis for said report, in lieu of affixing or furnishing inspection fee tags or stamps. The commissioner of agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant satisfying the commissioner of agriculture that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of commercial fertilizer sold in the state and as are satisfactory to the commissioner of agriculture and granting the commissioner of agriculture, or his duly authorized representative, permission to examine such records and verify the tonnage statement. The tonnage report shall be monthly and the inspection fee shall be due and payable monthly, on or before the fifteenth day of each month covering the tonnage and kind of commercial fertilizer sold during the last preceding month. The report shall be under oath and on forms furnished by the commissioner. If the report is not filed and the inspection fee paid on the date due or if the report of tonnage be false, the amount of inspection fee due shall bear a penalty of ten per cent which shall be added to the inspection fee due and shall constitute a debt and become a claim and lien against the cash deposit or securities or bond which may be required. Failure to make an accurate statement of tonnage or to pay the inspection fee as provided herein shall constitute sufficient cause for revocation of the permit. That in order to guarantee faithful performance with the provisions of this subsection each applicant shall, before being granted a permit to use the reporting system, deposit with the commissioner of agriculture cash in the amount of one thousand dollars or securities acceptable to the commissioner of a value of at least one thousand dollars or shall deposit with the commissioner a surety bond in like amount executed by some corporate surety company authorized to do business in Florida. The commissioner shall approve all such securities or bonds before acceptance.

(3) In the event the permittee for any reason discontinues operating under the provisions of this subsection (2) of this section, and there is no liability against the bond posted by the permittee as herein required, the said bond or deposit shall thereupon be returned to the permittee.

(4) The manner and method of labeling to show the information required by §576.04 shall be provided by the permittee and shall be acceptable to the commissioner of agriculture.

History.—§6, ch. 4983, 1901; GS 1268; RGS 2402; CGL 3811; §9, ch. 16999, 1935; am. §1, ch. 28112, 1953.

Am. §1, ch. 25148, 1949; the material in this section was formerly included in §576.11; material formerly in §576.07 is now included in §576.04; sub. §(2) am. §6, ch. 29793, 1955. (1) n. by §2, ch. 61-119.

576.08 Action by party entitled to recover damages under this chapter.—

(1) Any person purchasing commercial fertilizer from any manufacturer or dealer or agent who shall discover upon an analysis made by the state chemist or otherwise provided by this chapter that he is entitled to recover damages for reason of variation from guaranteed analysis greater than the tolerances permitted under this chapter, shall recover in any action he may institute upon proof of the variation the amount to which he may be entitled under the provisions of penalties.

(2) In the event of the recovery of said penalty in a court action, the said penalty shall be in the form of a judgment in the law court of this state having jurisdiction of the amount involved and the parties. Said law action shall be prosecuted and defended in accordance with the usual practices and procedure in such court.

(3) In case of any sale by any manufacturer or agent of any person or persons residing out of the state, manufacturing, compounding, or furnishing for sale any such commercial fertilizer, the purchaser thereof may at his option proceed by attachment as now provided by law, in case of nonresident and absconding debtors, against any such commercial fertilizer, rights or credits of any person selling, manufacturing, compounding, or furnishing said commercial fertilizer, when such commercial fertilizer, rights, or credits can be found within the limits of this state.

(4) In case a shipment of commercial fertilizer in lots of one or more tons includes more than one brand, or is consigned to different purchasers and delivered at destination in the same car, or by the same boat or vessel at the same time, analysis of one sample taken according to law and the rules and regulations concerning the same, representing any one brand and guaranty, shall be considered representative of and applying to all the fertilizer of that brand included in such shipment and shall entitle each purchaser of fertilizer of that brand contained in such shipment to the remedies provided by this chapter for adulteration of or deficiency in one or more plant food elements.

(5) Any certificate of analysis required or provided for by this chapter, when properly verified, shall be competent evidence in any court of law or equity in this state.

History.—§10, ch. 4983, 1901; GS 1272; RGS 2406; §4, ch. 10128, 1925; CGL 3815; §10, ch. 16999, 1935.

Am. §1, ch. 25148, 1949; material contained in this section was formerly §576.19; for forms for fertilizer tags, formerly covered by this section, see §576.05; sub. §(1) am. §7, ch. 29793, 1955.

576.081 Commercial values.—The commercial value used in assessing penalties for any deficiency shall be that established by the state chemist in his latest published report in the year in which such deficiency occurs.

History.—Comp. §1, ch. 25148, 1949.

576.082 Tolerances.—Tolerances shall be those set by the commissioner of agriculture in technical rules and regulations adopted and

promulgated by him, as recommended to him by the technical committee as provided in and under §576.09; provided that the tolerances fixed and established in §576.082, F.S., 1953, shall be and remain in full force and effect until superseded by tolerances fixed and set by rules and regulations adopted and promulgated by the commissioner of agriculture under §576.082 as herein amended.

History.—§1, ch. 25148, 1949; §8, ch. 29793, 1955.

576.083 Penalties for deficiencies and refunds to buyer.—Deficiencies and penalties for same shall be as follows:

Where the commercial value of the goods in which a deficiency in primary plant food has been found equals or exceeds the amount guaranteed by the manufacturer, no penalty shall be assessed, provided that no element of primary plant food is deficient more than one-half of one actual per cent when the guarantee does not exceed ten per cent nor more than one actual per cent when the guarantee exceeds ten per cent. If the commercial value found fails to equal or exceed that which is guaranteed, a penalty shall be assessed based on the actual deficiency found. No overage in any secondary plant food shall compensate for a deficiency in primary plant food nor of another secondary plant food. Where a deficiency is found in any plant food, the buyer shall be entitled to collect an amount from the manufacturer of three times the value of the deficiency found.

History.—Comp. §1, ch. 25148, 1949.

576.084 Penalties.—

(1) In tobacco brands of commercial fertilizer, penalty for an excess of chlorine of more than twenty-five per cent of the guarantee, a penalty of one hundred per cent of the invoice value of the goods shall be assessed. No penalty shall be assessed for an excess of chlorine of less than twenty-five per cent of the guarantee and in no case shall a penalty be assessed unless the chlorine present is one per cent or more.

(2) In brands of commercial fertilizer other than tobacco brands the penalty for excess in chlorine shall be one-eighth the penalties as set forth above for excess in tobacco brands.

(3) When a manufacturer or dealer or agent is liable for the penalties under the provisions of this chapter, such manufacturer or dealer or agent shall make payment to the buyer within sixty days from the date of the receipt of a certificate of analysis of the state chemist showing the amount of said liabilities and shall also notify the commissioner of agriculture in writing that such payment has been made.

(4) If any fertilizer is found to be short weight by an inspector of the department of agriculture, the manufacturer or guarantor shall, within thirty days of receipt of notice of such shortage, pay to the commissioner of agriculture three times the value of the shortage based on the invoice price of the goods to the consumer. Said penalty shall be deposited in the state treasury to the credit of the general inspection trust fund from which said general inspection trust fund there shall be paid to the consumer, upon approval of the commissioner, the amount of said penalty to which the consumer is entitled.

(5) In any case wherein the manufacturer or dealer or agent fails or refuses to make such payment to the buyer or to the commissioner of agriculture within said sixty days, the buyer may institute legal action against such manufacturer or dealer or agent for the recovery of the penalties as in this chapter provided, and any judgment against the manufacturer or dealer or agent shall be for double the amount of the penalty and shall include a reasonable attorney's fee and costs.

(6) Where a deficiency is found in a sample drawn from a lot of fertilizer in the hands of a "dealer" or "agency" said "dealer" or "agency" shall collect the amount due under said deficiency from the manufacturer and shall within sixty days pay to each person purchasing fertilizer from said lot his proportionate share of the amount collected and shall notify the commissioner in writing that such payment has been made; provided, that as to any individual sale by a dealer or agent of commercial fertilizer subject to penalties for deficiencies and such dealer or agent is unable to ascertain or determine the purchaser of such lot of fertilizer, then and in such case the dealer or agent shall pay the proportionate amount of penalties on such sale to the commissioner of agriculture of Florida to be placed in the state treasury to the credit of the general inspection trust fund.

History.—§1, ch. 25148, 1949; sub. §§(4), (5) am. §§10, 11, ch. 29793, 1955; (6) n. by §2, ch. 59-272; (4), (6) a. by §2, ch. 61-119.

576.09 Rules and regulations.—

(1) This chapter shall be administered and its provisions and all rules and regulations adopted and promulgated hereunder shall be enforced by the commissioner of agriculture of the state.

(2) All rules and regulations made, adopted, and promulgated under authority of this chapter shall be divided into two classes to be known as "technical rules and regulations" and "administrative rules and regulations."

(3) There is hereby created a "fertilizer technical committee" to be composed of the state chemist of Florida, the director of the Florida agricultural experiment stations, the director of the Florida agricultural extension service, the beef cattle, field crops and citrus, vegetable, fertilizer and pesticide members of the state agricultural advisory council. All "technical rules and regulations" adopted and promulgated hereunder shall be first recommended to the commissioner of agriculture by a majority of the fertilizer technical committee. The fertilizer technical committee is hereby authorized to recommend rules and regulations pertaining to the composition and uses of commercial fertilizer, including, without limiting the foregoing general terms, the taking

and handling of samples, the establishment of tolerances, deficiencies, and penalties where not specifically provided for in this chapter; to prohibit the sale or use in fertilizer of any material proven to be detrimental to agriculture or of questionable value; to provide for the incorporation into commercial fertilizer of such other substances as pesticides and proper labeling of such mixture; and to prescribe the information which shall appear on the tag, other than specifically set forth in this chapter.

(4) The commissioner of agriculture or any member of the fertilizer technical committee or any person, firm, or corporation, manufacturing, offering for sale, selling, consuming, or otherwise using commercial fertilizer in the state may propose a rule or regulation and such proposal shall be acted upon by the fertilizer technical committee within a reasonable time not exceeding ninety days after it is filed with the state chemist. Any person, firm, or corporation, with offices in or who is a resident of the state, interested in the manufacture, sale, consumption, or other use of commercial fertilizer in the state may file his name and address with the state chemist and request that he be furnished with a copy of any proposed rule or regulation, and thereafter the state chemist shall in not less than five days before a meeting of the fertilizer technical committee for the consideration of the proposed regulation mail a copy of such proposed regulation to every person so requesting same. Any such person shall have the right to be fully heard in person or through an attorney by the fertilizer technical committee upon any proposed rule or regulation.

(5) It shall be the duty of the commissioner of agriculture within a reasonable time, to either approve or reject rules and regulations recommended to him by the fertilizer technical committee and if approved to adopt and promulgate such rules and regulations under the classification of "technical rules and regulations." A majority of the members of the fertilizer technical committee shall constitute a quorum, however, any official action by the said committee shall require at least four affirmative votes.

(6) The commissioner of agriculture is hereby authorized to make, adopt, and promulgate all rules and regulations under the classification "administrative rules and regulations" which he shall deem necessary or helpful in the efficient administration and enforcement of this chapter.

(7) All rules and regulations heretofore made and promulgated under existing commercial fertilizer laws which are consistent with the provisions of chapter 576, as herein amended, shall remain in force and effect until superseded, modified, or repealed as in this chapter provided.

History.—Comp. § § 1, 2(b), ch. 25148, 1949; original section 576.09 included forms for fertilizer tags, see now §576.05 covering forms: (3) a. by §12, ch. 29793, 1955; (3)-(5) a. by §§1-3, ch. 59-243; (3)-(5) a. by §1, ch. 61-410.

cf.—§570.52 Fertilizer and pesticide technical committee; powers and duties.

576.10 Criminal penalties for violation of this chapter.—Whoever knowingly violates any of the provisions of this chapter by doing anything prohibited or by failing or refusing to do anything herein required to be done shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than $500.00 or imprisoned for not more than six months or by both such fine and imprisonment.

History.—§ § 2, 4-6, 12, ch. 4983, 1901; GS 3723, 3725; RGS 5708, 5710, 5712; §2, ch. 9127, 1923; CGL 7931, 7933; § § 2, 5, 7, 9, ch. 16999, 1935; CGL 1936 Supp. 7935-7937, 7943(1); §1, ch. 25148, 1949; §13, ch. 29793, 1955.

576.11 Remedy by injunction.—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the commissioner of agriculture is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or rules and regulations hereunder or for failing or refusing to comply with the requirements of this chapter or any rule or regulation duly adopted and promulgated; such injunction shall be issued without bond.

History.—§6, ch. 4983, 1901; GS 1268; RGS 2402; CGL 3811; §9, ch. 16999, 1935; §1, ch. 25148, 1949; material formerly included in §576.11 is now §576.07; §28, ch. 29737, 1955; §20, ch. 57-1.

576.121 "Stop sale" orders.—

(1) The commissioner of agriculture or his authorized representatives may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold same at a designated place when the commissioner or his representatives find said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this act until the law has been complied with and said commercial fertilizer is released in writing by the commissioner or his authorized representative or said violation has been otherwise legally disposed of by written authority.

(2) The commissioner or his authorized representatives shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

History.—§1, ch. 59-272.

576.131 Seizure, condemnation, and sale.—Any lot of commercial fertilizer not in compliance with the provisions of this act shall be subject to seizure on complaint of the commissioner of agriculture or his authorized representative to the circuit court in the county in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this act and orders the condemnation of said commercial ferti-

lizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state; provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the owner or custodian an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or re-label said commercial fertilizer to bring it into compliance with this act.

History.—§1, ch. 59-272.

CHAPTER 578

FLORIDA SEED LAW

578.011 Definitions; Florida seed law.—When used in this chapter:

(1) The term "person" shall include a partnership, corporation, company, society, association or agency.

(2) The term "commissioner" shall mean the commissioner of agriculture of the state.

(3) The term "agricultural seed" shall include the seed of grass, forage, cereal and fibre crops and chufas and any other seed commonly recognized within the state as agricultural or field seed and mixtures of such seed.

(4) The term "vegetable seed" shall include the seed of those crops which are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed in this state.

(5) The term "lot of seed" means a definite quantity of seed identified by a lot number or other identification, every portion or bag of which is uniform, for the factors which appear in the labeling, within permitted tolerances.

(6) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name; e. g. corn, beans, lespedeza.

(7) The term "variety" means a subdivision of a kind characterized by growth, plant fruit, seed or other characteristics by which it can be differentiated from other sorts of the same kind; e. g. Whatley's Prolific corn, Bountiful beans, Kobe lespedeza.

(8) The term "pure seed" shall include all seed of the kind or kind and variety or strain under consideration, whether shriveled, cracked or otherwise injured, and pieces of broken seed larger than one-half the original size.

(9) The term "inert matter" shall include broken seed when one-half in size or less; seed of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seed such as sterile dodder which, upon visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies and any matter other than seed.

(10) The term "other crop seed" shall include all seed of plants grown in this state as crops, other than the kind or kind and variety included in the pure seed, when not more than five per cent of the whole of a single kind or variety is present, unless designated as weed seed.

(11) The term "weed seed" shall include the seed of all plants generally recognized as weeds within this state, and shall include prohibited and restricted noxious weed seed, bulblets and tubers.

(12) "Prohibited noxious weed seed" are the seed and bulblets of perennial weeds such as not only reproduce by seed or bulblets, but also spread by underground roots or stems and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice.

(13) "Restricted noxious weed seed" are the seed of such weeds as are very objectionable in fields, lawns or gardens of this state, but can be controlled by good cultural practice. Seed of poisonous plants may be included.

(14) The term "germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions. Broken seedlings and weak, malformed and obviously abnormal seedlings shall not be considered to have germinated.

(15) The term "hard seed" means the percentage of seed which because of hardness or impermeability did not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned.

(16) The term "firm seed" are seed, other than hard seed, which neither germinate nor decay during the prescribed test period and under the prescribed test conditions.

(17) The term "labeling" includes all labels and other written, printed or graphic representations, in any form whatsoever, accompanying and pertaining to any seed, whether in bulk or in containers, and includes invoices and other bills of shipment when sold in bulk.

(18) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this law.

(19) "Stop-sale" shall include any written or printed notice or order given or issued by the commissioner or his authorized agents to the owner or custodian of any lot of agricultural or vegetable seed in the state, directing such owner or custodian not to sell, offer or expose such seed for sale within the state until the

requirements of this law shall have been complied with and a written release has been issued. Provided, such seed may be released to be sold for feed.

(20) The term "strain" means the subdivision of a variety of seed; e.g., tomato, homestead #1.

(21) The term "processing" means cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and, therefore, require retesting to determine the quality of the seed.

(22) The terms "farmer" or "grower" mean any person engaged in the business of growing agricultural or vegetable seed.

(23) The term "dealer" means any person who buys, sells or offers for sale any agricultural or vegetable seed for seeding purposes, and shall include farmers who sell five thousand dollars worth or more of cleaned, processed, packaged and labeled seed in any one year.

(24) The term "record" shall include the symbol identifying the seed as to origin, amount, processing, testing, labeling and distribution, file sample of the seed, and any other document or instrument pertaining to the purchase, sale or handling of agricultural or vegetable seed.

(25) The terms "certified seed," "registered seed," and "foundation seed" mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state.

(26) The term "breeder seed" means seed that are released directly from the breeder or experiment station that develops the seed. These seed are one class above foundation seed.

(27) The term "date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(28) The term "origin" means the state, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country where the seed were grown, except for forest tree seed the term "origin" means the county or state forest service seed collection zone and the state where the seed were grown.

(29) The terms "mixed" or "mixture" mean seed consisting of more than one kind or variety, each present in excess of five percentum of the whole.

(30) The term "treated" means that the seed has been given an application of a material or subjected to a process designed to control, or repel disease organisms, insects or other pests attacking seed or seedlings grown therefrom to improve its planting value or to serve any other purpose.

History.—§2, ch. 22694, 1945; (12) a. (18)-(23) N. §1, ch. 57-199; §1, ch. 61-436; (28), §1, ch. 63-116.

578.08 Registrations.—

(1) Every person, except as provided in subsection (4), before selling, distributing, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural or vegetable seed or mixture thereof, in the state, shall first register with the commissioner as a seed dealer, giving the name and location of each place of business at which such seed are sold, distributed, offered for sale, exposed for sale or handled for sale and the name and address of each representative soliciting orders for purchase of any agricultural or vegetable seed, and at the time of registration shall pay to the commissioner an annual registration fee for each such place of business or each such representative based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a) Receipts less than one thousand dollars and one cent, fee ..... $ 5.00

(b) Receipts more than one thousand dollars and less than two thousand five hundred dollars and one cent, fee ..... $ 10.00

(c) Receipts more than two thousand five hundred dollars and less than five thousand dollars and one cent, fee ..... $ 20.00

(d) Receipts more than five thousand dollars and less than ten thousand dollars and one cent, fee ..... $ 35.00

(e) Receipts more than ten thousand dollars and less than twenty thousand dollars and one cent, fee ..... $ 50.00

(f) Receipts more than twenty thousand dollars and less than thirty thousand dollars and one cent, fee ..... $ 75.00

(g) Receipts more than thirty thousand dollars and less than forty thousand dollars and one cent, fee ..... $ 100.00

(h) Receipts more than forty thousand dollars and less than fifty thousand dollars and one cent, fee ..... $ 150.00

(i) Receipts more than fifty thousand dollars and less than seventy thousand dollars and one cent, fee ..... $ 200.00

(j) Receipts more than seventy thousand dollars and less than one hundred thousand dollars and one cent, fee ..... $ 250.00

(k) Receipts more than one hundred thousand dollars and less than one hundred fifty thousand dollars and one cent, fee .. $ 300.00

(l) Receipts more than one hundred fifty thousand dollars and less than two hundred thousand dollars and one cent, fee .. $ 400.00

(m) Receipts more than two hundred thousand dollars and less than three hundred thousand dollars and one cent, fee ..... $ 500.00

(n) Receipts more than three hundred thousand dollars and less than four hundred thousand dollars and one cent, fee .. $ 600.00

(o) Receipts more than four hundred thousand dollars and less than five hundred thousand dollars and one cent, fee ..... $ 800.00

(p) Receipts more than five hundred thousand dollars, fee $1,000.00

(q) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.

(2) A receipt or acknowledgment from the

commissioner of such registration and payment of such fee or fees shall constitute a sufficient permit for such dealer to engage in or continue in the business of selling, distributing, offering or exposing for sale, handling for sale or soliciting orders for the purchase of any agricultural or vegetable seeds within the state until the first day of July next thereafter, subject to compliance with the other requirements of this law. Provided, that the commissioner shall have authority to suspend or revoke any such permit for the violation of any provision of this law, or of any rule or regulation made and promulgated under authority hereof, after notice to and an opportunity to be heard by such seed dealer. Such registration shall expire on June 30 next thereafter and shall be renewed on July 1 of each year. Provided, that if any person who is subject to the requirements of this section shall fail to comply herewith by the first day of August of any year the commissioner shall have the authority to issue a stop-sale notice or order against such person which shall prohibit such person from selling or causing to be sold any agricultural or vegetable seed until the requirements of this section are complied with.

(3) Every person selling, distributing, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural or vegetable seed in the state, other than as provided in §578.14, shall be subject to the requirements of this section. Provided, that Florida state agricultural experiment stations shall not be subject to the requirements of this section.

(4) The provisions of this act shall not apply to farmers who sell uncleaned, unprocessed, unpackaged and unlabeled seed, but shall apply to farmers who sell cleaned, processed, packaged and labeled seed in amounts in excess of five thousand dollars in any one year; provided that the first five thousand dollars worth of cleaned, processed, packaged and labeled seed of any farmer shall be exempted from the provisions of this act.

History.—§4, ch. 19364, 1939; CGL 1940 Supp. 4151(593); §8, ch. 20251, 1941; am. §8, ch. 21942, 1943; §8, ch. 22694, 1945; (4) §1, ch. 26969, 1951; (1)-(3) by §2, ch. 57-199; (1), (4) a. by §2, ch. 61-436.

578.09 Label requirements.—Each container of agricultural or vegetable seed sold, offered for sale, exposed for sale or distributed within this state for sowing or planting purposes shall bear thereon or have attached thereto, in a conspicuous place, a single label containing all information required under this section, plainly written or printed in the English language, in century type, giving the following information:

(1) FOR AGRICULTURAL SEED.—

(a) Commonly accepted name of kind and variety of each agricultural seed component in excess of five per cent of the whole, and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

(b) Lot number or other lot identification.

(c) Net weight.

(d) Origin, if known; if unknown, that fact shall be stated.

(e) Percentage by weight of all weed seed.

(f) The name and number per pound of each kind of restricted noxious weed seed.

(g) Percentage by weight of other crop seed.

(h) Percentage by weight of inert matter.

(i) For each named agricultural seed (1) percentage of germination, exclusive of hard seed; (2) percentage of hard seed when present, if desired; and (3) the calendar month and year the test was completed to determine such percentages.

(j) Name and address of the person who labeled said seed or who sells, distributes, offers or exposes said seed for sale within this state.

(2) FOR VEGETABLE SEED IN CONTAINERS OF EIGHT OUNCES OR MORE.—

(a) Name of kind and variety of seed.

(b) Net weight.

(c) Lot number or other lot identification.

(d) Percentage of germination.

(e) Calendar month and year the test was completed to determine such percentages.

(f) Name and address of the person who labeled said seed or who sells, distributes, offers or exposes said seed for sale within this state.

(g) For seed which germinate less than the standard last established by the commissioner the words "below standard," in not less than eight-point type, must be printed or written in ink on the face of the tag, in addition to the other information required. Provided, that no seed marked "below standard" shall be sold which falls more than twenty per cent below the standard for such seed which has been established by the commissioner, as authorized by this law.

(3) FOR VEGETABLE SEED IN CONTAINERS OF LESS THAN EIGHT OUNCES.—

(a) Name of kind and variety of seed.

(b) Name and address of person who labeled said seed or who sells, distributes, offers or exposes said seed for sale within this state.

(c) For seed which germinate less than standard last established by the commissioner, the additional information must be shown:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seed when present, if desired.

3. Calendar month and year the test was completed to determine such percentages.

4. The words "below standard" in not less than eight-point type.

(d) No seed marked "below standard" shall be sold which fall more than twenty per cent below the established standard for such seed.

*(4) COMMISSIONER TO PRESCRIBE UNIFORM ANALYSIS TAG.—The commissioner shall have the authority to prescribe a uniform analysis tag required by this section.

History.—§5, ch. 19364, 1939; CGL 1940 Supp. 4151(594); §3, ch. 20251, 1941; §§3, 13, ch. 21942, 1943; §§3, 12, ch. 22694, 1945; sub. §§(1)(j), (2)(f), (3)(e), (4)(b), am. §§1-4, ch. 26926, 1951; §3, ch. 57-199; intro. para., (1)(d), (e) and (j), (2)(f), (3)(b) and (d) a. by §3, ch. 61-436.

*Note.—Title of ch. 61-436 purports to repeal (4), but repeal is not reflected in body of act.

578.10 Exemptions.—

(1) The provisions of §578.13 shall not apply to any common carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier. Provided, that such carrier is not engaged in processing or merchandising seed subject to the provisions of this law.

(2) The provisions of §§578.09 and 578.13 do not apply:

(a) To seed or grain not intended for sowing or planting purposes.

(b) To seed in storage in, consigned to or being transported to seed cleaning or processing establishments for cleaning or processing only. Provided, that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this law.

(3) No person shall be subject to the criminal penalties of this law for having sold, offered or exposed for sale in this state any agricultural or vegetable seeds which were incorrectly labeled or represented as to kind and variety or origin, which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving kind and variety and origin.

(4) When seeds are sold from a duly labeled container and taken therefrom in the presence of the purchaser, the container in which such seeds are delivered to the purchaser will not be required to have a label or tag unless so requested by the purchaser. This, however, shall not relieve or exempt any seed dealer from any liability imposed by the Florida seed law.

History.—§6, ch. 19364, 1939; CGL 1940 Supp. 4151(595); §5, ch. 20251, 1941; am. §5, ch. 21942, 1943; §5, ch. 22694, 1945; sub. §(4) am. §2, ch. 26969, 1951; (4) R. by §9, (5) renumbered as (4) by §4, ch. 57-199.

578.11 Duties, authority and rules and regulations of the commissioner.—

(1) The duty of administering this law and enforcing its provisions and requirements shall be vested in the commissioner, who is hereby authorized to employ such agents and persons as in his judgment shall be necessary therefor. It shall be the duty of the commissioner, who may act through his authorized agents to sample, inspect, make analyses of and test agricultural and vegetable seed transported, sold, offered or exposed for sale, or distributed within this state for sowing or planting purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural or vegetable seed are in compliance with the provisions of this law, and to notify promptly the person who transported, distributed, sold, offered or exposed the seed for sale, of any violation.

(2) The commissioner of agriculture is authorized to prescribe and adopt reasonable rules and regulations, after notice of hearing to registered dealers, Florida farm bureau federation, Florida fruit and vegetable association and Florida cattlemen's association by United States mail, which shall have the full force and effect of law, for the enforcement of this act, governing the methods of sampling, inspecting, testing, and examining agricultural and vegetable seed; to establish standards and the tolerances to be followed in the administration of this act, which shall be in general accord with officially prescribed practices in interstate commerce; to prescribe uniform labels; to adopt prohibited and restricted noxious weed seed lists; to prescribe limitations for each restricted noxious weed to be used in enforcement of this act and to add or subtract therefrom from time to time as the need may arise; to make commercial tests of seed and to fix and collect charges for such tests; and to prescribe such other rules and regulations as may be necessary to secure the efficient enforcement of this act.

(3) For the purpose of carrying out the provisions of this law, the commissioner individually or through his authorized agents is authorized:

(a) To enter upon any public or private premises where agricultural or vegetable seed are sold, offered or exposed for sale or distribution during regular business hours, in order to have access to seed subject to this law and the rules and regulations hereunder.

(b) To issue and enforce a stop-sale notice or order to the owner or custodian of any lot of agricultural or vegetable seed, which the commissioner finds or has good reason to believe is in violation of any of the provisions of this law, which shall prohibit further sale, barter, exchange or distribution of such seed until the commissioner is satisfied that the law has been complied with, and has issued a written release or notice to the owner or custodian of such seed; provided, that after a stop-sale notice or order shall be given, or issued against or attached to any lot of seed, and the owner or custodian of such seed shall have received confirmation that the same does not comply with this law, he shall have fifteen days beyond the normal test period within which to comply with the law and obtain a written release of the seed. And provided, further, that the provisions of this paragraph shall not be construed as limiting the right of the commissioner to proceed as authorized by other sections of this law.

(c) To establish and maintain a seed laboratory and employ seed analysts and other personnel whose qualifications shall be approved by the state chemist, and whose work shall be under the supervision and direction of the state chemist, and to incur such other expenses as may be necessary to comply with these provisions.

History.—§7, ch. 19364, 1939; CGL 1940 Supp. 4151(596); §6, ch. 20251, 1941; am. §6, ch. 21942, 1943; §6, ch. 22694, 1945; (2)(d) a. by §5, ch. 57-199; §4, ch. 61-436.

578.12 Seizures and stop-sale orders.—When the commissioner has issued a stop-sale order to the owner or custodian of any lot of agricultural or vegetable seed, as authorized by §578.11, and such owner or custodian has failed to comply with the provisions of this law, the commissioner shall be authorized and it is hereby made his duty to seize and hold said lot of seed which shall then be destroyed within thirty days, or disposed of by the commissioner in such manner as he shall by regulation prescribe.

History.—§8, ch. 19364, 1939; CGL 1940 Supp. 4151(597); §7, ch. 20251, 1941; am. §7, ch. 21942, 1943; §7, ch. 22694, 1945.

578.13 Prohibitions.—

(1) It shall be unlawful for any person to sell, distribute, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural or vegetable seed within this state:

(a) Unless the test to determine the percentage of germination required by §578.09 shall have been completed within a period of seven months, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale, or transportation.

(b) Not labeled in accordance with the provisions of this law, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing noxious-weed seeds subject to tolerances and methods of determination prescribed in the rules and regulations under this law.

(e) Unless a seed license has been obtained in accordance with the provisions of this law.

(f) When seed have been treated unless each bag or container is labeled to show the type of treatment, name of the material used and rate of application, and if such materials are poisonous, the words "poison treated" in red color plainly shown on the label in not less than one-fourth inch type and a warning or caution statement adequate to protect the public.

(g) Unless such seed conform to the definition of a "lot of seed."

(2) It shall be unlawful for any person within this state:

(a) To detach, deface, destroy or use a second time any label or tag provided for in this law, or the rules and regulations made and promulgated hereunder, or to alter or substitute seed in a manner that may defeat the purpose of this law.

(b) To disseminate any false or misleading advertisement concerning agricultural or vegetable seed in any manner or by any means.

(c) To hinder or obstruct in any way any authorized person in the performance of his duties under this law.

(d) To fail to comply with a stop-sale order or seizure order.

(e) To sell, distribute, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural or vegetable seed labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled under seal in accordance with the procedure and in compliance with the rules and regulations of an agency authorized by law.

(f) To fail to keep a complete record of each lot of seed and to make available for inspection such records to the commissioner or his duly authorized agents.

(g) To use the name of the Florida state department of agriculture or Florida state seed laboratory in connection with analysis tag, labeling, advertisement, or sale of any seed in any manner whatsoever unless such seed are "certified seed."

History.—§4, ch. 20251, 1941; am. §4, ch. 21942, 1943; §4, ch. 22694, 1945; §6, ch. 57-199; (1) (f), (2) (e) a., (1) (g) n., by §5, ch. 61-436.

578.14 Packet vegetable seed.—

(1) When vegetable seed are sold, offered or exposed for sale in packets of less than eight ounces, and no license is obtained in accordance with §578.08, there shall be paid in respect thereof an inspection fee at the rate of one dollar per each one hundred and ten dozen, or fractional part thereof, of such packets of vegetable seed, the payment of such inspection fees to be evidenced by the use of inspection stamps furnished by and purchased from the commissioner, and for each lot or shipment of one hundred and ten dozen packets of vegetable seed, or fractional part thereof, there shall be placed one such inspection stamp on the display box, container or place from which seed are sold, offered or exposed for sale.

(2) Such inspection stamps shall be so placed, kept and maintained on such display box, container or place as to be plainly visible at all times while such seed are being sold, offered or exposed for sale. The requirements of this section shall apply to refills or reorders as well as to the original fills of such display boxes, containers or places from which seed are sold, offered or exposed for sale. Provided, that on reorders of less than fifty-five dozen packets of seed for refills, the inspection fee shall be fifty cents, to be evidenced as in this section required. It shall be unlawful to sell, offer or expose for sale vegetable seed in packets of less than eight ounces without such inspection stamp being first attached to and kept on such display box, container or place as herein required.

History.—§9, ch. 20251, 1941; am. §9, ch. 21942, 1943; §9, ch. 22694, 1945; §6, ch. 61-436.

578.181 Penalties.—Every violation of any of the provisions of §§578.011, 578.08-578.14, 578.22-578.25 shall be deemed a misdemeanor and punishable as such.

History.—§15, ch. 22694, 1945.

578.20 Short title.—Sections 578.011, 578.08-578.14, 578.181, 578.22-578.25 shall be known and cited as the "Florida seed law."

History.—§1, ch. 20251, 1941; am. §1, ch. 21942, 1943; §1, ch. 22694, 1945.

578.22 Disposition of fees collected. — All fees required and collected, as provided in this chapter shall be paid into the state treasury and placed to the credit of the general inspection trust fund, from which fund the expenses incident to the enforcement of this law shall be paid.

History.—§11, ch. 21942, 1943; §10, ch. 22694, 1945. §3, ch. 26960, 1951; §2, ch. 61-119.

578.23 Dealers' records to be kept available. —Every seed dealer shall make and keep for a period of three years satisfactory records of all agricultural and vegetable seed bought or handled to be sold, which records shall at all times be made readily available for inspection, examination or audit by the commissioner or his duly authorized agents.

History.—§14, ch. 21942, 1943; §13, ch. 22694, 1945.

578.24 Mixed varieties of seed oats prohibited.—Oats consisting of mixed varieties shall not be sold for planting purposes in this state, unless permitted by regulation promulgated by the commissioner upon recommendation of the Florida agricultural experiment station at Gainesville.

History.—§12, ch. 21942, 1943; §11, ch. 22694, 1945.

578.25 Use of disclaimer clause.—The use of a disclaimer or nonwarranty clause in any invoice, advertising, labeling or written, printed or graphic matter pertaining to any seed shall not relieve or exempt any person from any provisions of the Florida seed law.

History.—§14, ch. 22694, 1945.

578.26 Complaint, investigation, findings and recommendation prerequisite to legal action.—

(1) When any farmer is damaged by the failure of agricultural or vegetable seed to produce or perform as represented by the label attached to such seed as required by §578.09, as a prerequisite to his right to maintain a legal action against the dealer from whom such seed were purchased, such farmer shall make a sworn complaint against such dealer alleging damages sustained and file same with the commissioner of agriculture within ten days after defect or violation becomes apparent and send a copy of said complaint to said dealer by United States registered mail; provided that requirement for filing complaint herein set forth appears legibly typed or printed on the analysis label attached to the package containing such seed at the time of purchase by the farmer. A filing fee of ten dollars shall be paid to the commissioner of agriculture with each complaint filed and shall be recovered from the dealer upon the recommendation of the arbitration committee. Within five days after receipt of a copy of complaint, the dealer shall file with the commissioner of agriculture his answer to said complaint and send a copy of same to the farmer by United States registered mail.

(2) The commissioner of agriculture shall refer the complaint and the answer thereto to the arbitration committee provided in §578.27, for investigation, findings and recommendation on the matters complained of. Upon receipt of same the commissioner shall transmit the findings and recommendation of the arbitration committee to the farmer and to the dealer by United States registered mail.

History.—§1, ch. 26814, 1951; §7, ch. 57-199.
cf.—§1.01(13) defines "registered mail" to include certified mail.

578.27 Arbitration committee; composition; purpose; meetings; duties; expenses.—

(1) The commissioner of agriculture shall appoint an arbitration committee composed of five members, one each to be appointed upon the recommendation of the following: director of the Florida agricultural experiment station, director of the Florida agricultural extension service, president of the Florida seedsmen's association, president of the Florida farm bureau, and the commissioner of agriculture. Each member shall continue to serve until replaced by the commissioner of agriculture. The committee shall elect a chairman and a secretary from its membership. It shall be the duty of the chairman to conduct all meetings and deliberations held by the committee and to direct all other activities of the committee. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairman.

(2) The purpose of the arbitration committee is to assist farmers and agricultural seed dealers in determining the validity of complaints made by farmers against dealers and recommend cost damages resulting from alleged failure of seed to produce as represented by label on the seed package.

(3) The arbitration committee may be called into session by the commissioner of agriculture at his discretion or upon the direction of the chairman to consider matters referred to it by the commissioner of agriculture.

(4) (a) When the commissioner of agriculture refers to the arbitration committee any complaint made by a farmer against a dealer said committee shall make a full and complete investigation of the matters complained of and at the conclusion of said investigation report its findings and make its recommendation of cost damages and file same with the commissioner of agriculture.

(b) In conducting its investigation the arbitration committee or any member or members thereof is authorized to examine the farmer on his farming operation of which he complains and the dealer on his packaging, labeling and selling operation of the seed alleged to be faulty; to grow to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the commissioner of agriculture when such action is deemed to be necessary; to hold informal hearings at a time and place directed by the chairman of the committee upon reasonable notice to the farmer and the dealer.

(c) Any investigation made by less than the whole membership of the committee shall be by authority of a written directive by the chairman and such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendation.

(5) The members of the committee shall receive no compensation for the performance of their duties hereunder, but the members of the committee shall be reimbursed for travel expenses as provided in §112.061, when they attend a meeting or perform a service in conformity with the requirements of this section.

History.—Comp. §8, ch. 57-199.

CHAPTER 579

SEA ISLAND COTTON LAW

579.01 Sea island cotton production districts.—Whenever residents of any territory containing not less than one hundred contiguous square miles of reasonably compact shape, within any county of this state, desire to have such territory constituted into a cotton production control district, they shall present to the board of county commissioners of said county, a petition signed by not less than ten percent of the duly registered voters, who are freeholders, residing within the territory which it is proposed to create into such cotton production control district. Said petition shall describe, by metes and bounds, or other accurate description, the said territory.

History.—§2, ch. 17808, 1937; CGL 1940 Supp. 4151(430).

579.02 Duty of county commissioners.—At their first meeting after the receipt of said petition, such board of county commissioners shall investigate the facts, and find and determine whether such petition has been duly signed by the requisite number of registered voters, who are freeholders, residing within said territory.

History.—§3, ch. 17808, 1937; CGL 1940 Supp. 4151(431).

579.03 Report to commissioner of agriculture.—If such board of county commissioners, after such investigation, shall find and determine that such petition has been duly signed by the requisite number of registered voters, who are freeholders, residing within said territory; and that it is in all respects strictly in accordance with the requirements of law, such finding and determination shall be regarded for all purposes as conclusive; and such board shall thereupon immediately certify to the commissioner of agriculture, a copy of such petition, together with its finding and determination thereon.

History.—§4, ch. 17808, 1937; CGL 1940 Supp. 4151(432).

579.04 Duties of commissioner of agriculture.—Upon the receipt, by such commissioner of agriculture, of such copy and certificate of the findings of the board of county commissioners thereon, said commissioner of agriculture may make such surveys and inspections of the territory described in the petition, as he may deem necessary. If said commissioner of agriculture shall find that such described territory is suited to the production of sea island cotton, he shall certify that fact to the board of county commissioners of the county within which such territory is located.

History.—§5, ch. 17808, 1937; CGL 1940 Supp. 4151(433).

579.05 Election by freeholders.—When said commissioner of agriculture shall have so certified that the territory described in said petition, is suited to the production of sea island cotton, said board of county commissioners, at their first meeting after receipt of such certification, shall order an election to be held in the territory which it is proposed to constitute into the said cotton production control district, to determine whether or not such territory shall be constituted into a cotton production control district of the state. Only duly qualified electors, who are freeholders, shall be entitled to vote at such election.

History.—§6, ch. 17808, 1937; CGL 1940 Supp. 4151(434).

579.06 Notice of election; holding same, etc.—The board of county commissioners shall have a notice of such election published for not less than thirty days next preceding the date of such election. Said notice shall describe the territory proposed to be included in the cotton production control district. The inspectors for such election shall be appointed by, and the ballots to be voted shall be prepared and furnished by, the board of county commissioners; and the election shall be held in substantial conformity to the laws of Florida, applicable to general elections. The inspectors shall make returns to the board of county commissioners immediately after said election; and the board of county commissioners shall hold a special meeting as soon thereafter as is practicable, for the purpose of canvassing said election returns and certifying to the result thereof.

History.—§7, ch. 17808, 1937; CGL 1940 Supp. 4151(435).

579.07 Certificate of election to commissioner of agriculture.—If the board of county commissioners shall find and determine that the result of said election is adverse to the proposition of constituting the cotton production control district, it shall immediately so certify to the commissioner of agriculture, and no other election for the same purpose, shall be held within one year from the receipt, by said commissioner of agriculture, of such certification. But if a majority of the votes cast at such special election shall be in favor of the proposition to create a cotton production control district, then said board of county commissioners shall certify such fact to the commissioner of agriculture of the State of Florida, who shall then enter an order constituting the territory, in which said election was held, into a cotton production control district, effective as of January 1st next succeeding the

date of the entry of said order. Said commissioner of agriculture shall then transmit a copy of such order to said board of county commissioners, who shall, upon the receipt of such copy, duly attest it, designate said district by name or number, and declare and publish the boundaries of the same. Upon the expiration of thirty days after the finding and determination, by the board of county commissioners, as to the result of any such election that shall have been held, it shall be regarded for all purposes as conclusive.

History.—§8, ch. 17808, 1937; CGL 1940 Supp. 4151(436).

579.08 Abolition of districts. — Any such cotton production control district may be abolished by a majority vote at an election called by the board of county commissioners of the county for the purpose, after publication of such notice as is required to create such cotton production control district, at which election the qualification of voters shall be the same as in elections to create cotton production control districts; provided, however, that no such election for the purpose of abolishing any such district shall be called within one year next succeeding the entry of the order constituting such territory into a cotton production control district.

History.—§9, ch. 17808, 1937; CGL 1940 Supp. 4151(437).

579.09 Powers of commissioner of agriculture.—The commissioner of agriculture of the state shall have all necessary and reasonable power to enable him to promote the planting and production of sea island cotton in any county of the state and to enforce and carry out the provisions of this chapter, including among others, the power to:

(1) Make reasonable rules and regulations not inconsistent with the provisions of this chapter;

(2) Institute, in his name, such proceedings, either at law or in equity, in the courts of this state, as he may reasonably deem necessary to enforce and carry out the provisions of this chapter and the regulations made by reason hereof; provided however that none of the funds appropriated by this chapter shall be expended for legal advice or in any legal proceedings.

(3) Appoint and fix the compensation of all necessary agents and inspectors to carry out and enforce the provisions of this chapter;

(4) Make, or cause to be made, all necessary surveys and inspections in connection with the provisions of this chapter;

(5) Refer to proper officers, charged with the enforcement of the criminal or civil laws of this state, such facts as may come to his attention concerning violations of this chapter;

(6) Make, or cause to be made, studies and investigations, in any county in the state, that might aid in the increased planting of sea island cotton in the state and in the promotion of this industry in the state.

Provided, however, that the enumeration of specific powers in this section shall not be construed to limit or circumscribe said commissioner of agriculture in the exercise of all lawful and reasonable power in and about the administration and enforcement of the provisions of this chapter.

History.—§11, ch. 17808, 1937; §1, ch. 19017, 1939; CGL 1940 Supp. 4151(438).

579.10 Only sea island cotton may be planted; penalties.—It is unlawful for any person to plant, cultivate, or produce within any such cotton production control district any seed or plants of any variety, kind, type, or species of cotton, other than seed or plants of the type known as sea island cotton. Within the meaning of this chapter, no cotton shall be deemed sea island cotton unless having a staple of not less than one and one-half inches in length. Any person found guilty of any violation of the provision of this section shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars, or by imprisonment not exceeding thirty days; provided, however, that the punishment in this section provided, shall not be deemed or construed to prevent or to limit other provisions of this chapter relating to violations hereof.

History.—§10, ch. 17808, 1937; CGL 1940 Supp. 8135(31).
cf.—§775.06, Alternative punishment.

579.11 Construction of chapter.—It is the intention of the legislature that the provisions of this chapter be liberally construed to effect the purpose hereof.

History.—§14, ch. 17808, 1937; CGL 1940 Supp. 4151(440).

CHAPTER 580

FLORIDA COMMERCIAL FEED LAW

580.011 Title.—This chapter shall be known as the "Florida commercial feed law."

History.—Comp. §1, ch. 29755, 1955.

Note.—Chapter 580 revised in 1955 superseding former chapter 580, "Commercial feeds."

580.021 Enforcement agency.—This chapter shall be administered by the Florida commissioner of agriculture, hereinafter referred to as the "commissioner."

History.—§2, ch. 29755, 1955; §1, ch. 61-440.

580.031 Definition of words and terms.—When used in this chapter the following terms shall have the meaning ascribed to them:

(1) "Person" means individual, partnership, corporation, firm or association.

(2) "Distribute" means to offer for sale, sell, barter or exchange commercial feed, or to supply, furnish or otherwise provide commercial feed for use in the state.

(3) "Distributor" means any person who distributes commercial feed.

(4) "Commercial feed" means any material or combination of materials which are distributed for use as feed or for mixing in a feed for animals as may be designated by the commissioner, except:

(a) Unmixed and unprocessed whole seeds.

(b) Unground hay, straw, stover, silage, cobs, husks and hulls when unmixed with other material, provided that the commissioner may by regulation prohibit the inclusion of nonnutritive ingredients in commercial mixed feeds other than customer-formula feeds.

(c) Individual chemical compounds when unmixed with other materials.

(d) Mixed feed for consumer's own use made entirely or in part from products raised on said consumer's farm, except as may be provided by regulations of the commissioner.

(5) "Ingredient" means each of the constituent materials used to make a commercial feed.

(6) "Customer-formula feed" means a commercial feed that is mixed according to the formula of the customer, furnished in writing over the signature of the customer.

(7) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed or customer-formula feed to animals pursuant to a contract whereby such commercial feed or customer-formula feed is supplied, furnished or otherwise provided to such person; and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(8) "Brand name" means the term, design, or trade-mark or any other specific designation under which a commercial feed is distributed.

(9) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice accompanying the commercial feed.

(10) The term "labeling" means all labels and other written, printed, or graphic matters upon an article or any of its containers or wrappers, or accompanying such article; provided also, that if an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(11) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of feed.

(12) "Ton" means a net weight of two thousand pounds avoirdupois.

(13) "Per cent" or "percentage" means percentage by weight.

(14) "Official sample" means any sample of commercial feed taken by the commissioner or his authorized agent and designated as official by the commissioner.

(15) "Special sample" means any sample of commercial feed taken by the commissioner or his authorized agent which is not an "official sample."

(16) Words importing the singular number have the meaning of the plural and words importing the plural number have the meaning of the singular.

(17) Except as provided by law or regula-

tion, all terms used in connection with commercial feed shall have the meaning ascribed to them by the association of American feed control officials.

History.—§3, ch. 29755, 1955; §2, ch. 61-440.

580.041 Master registration; application; refusal or cancellation of registration.—

(1) Each distributor of commercial feed shall obtain an annual master registration before his brands are distributed in Florida. The application for master registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a label for each brand being distributed. A label to cover each new brand or to cover each change in labeling shall be mailed to the commissioner at the time such new or changed brand is distributed in Florida. Said form shall provide that applicant will comply with labeling, inspection fee payment and all other provisions of this chapter and regulation hereunder. The application shall cover all branches listed by the distributor. The commissioner shall mail a copy of the master registration to the distributor to signify that administrative requirements have been met, but this shall not necessarily signify approval of labeling. For good cause shown, but only after notice and opportunity for hearing, the commissioner may refuse such master registration.

(2) A customer-formula feed shall be distributed only to the customer who requested it and shall not be redistributed.

(3) Failure of any distributor to comply with registration shall be considered prima facie evidence of an attempt to violate this chapter, and the commissioner shall have full authority to sample, analyze and assess penalties where deficiencies are found for any feed distributed in Florida prior to registration.

(4) The commissioner is empowered to cancel the master registration of any distributor who violates any of the provisions of this chapter or regulations hereunder; provided, however, that for good cause shown, but only after notice and opportunity for hearing, the commissioner may cancel such master registration.

History.—§4, ch. 29755, 1955; §3, ch. 61-440.

580.051 Labeling.—

(1) Any commercial feed distributed in this state shall be accompanied by a legible label bearing the following information:

(a) The net weight.

(b) The name and principal address of the distributor.

(c) The brand name under which the commercial feed is distributed.

(d) The guaranteed analysis, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber, and, when mineral ingredients are present, the maximum percentage of ash, or the maximum percentage of total mineral ingredients, or the percentage of each mineral ingredient; provided that maximum percentages of ash or of mineral ingredients for types of commercial feed may be established by regulation. Vitamin ingredients, when guaranteed, shall be shown in amounts and terms provided by regulation. For mineral feeds the list shall include the following: Maximum and/or minimum percentages of calcium (Ca), phosphorus (P), salt (NaCl), iron (Fe), copper (Cu), cobalt (Co), manganese (Mn), and fluorine (F) if ingredients used as sources of any of these constituents are declared. All mixtures containing mineral or vitamin ingredients, generally regarded as dietary factors essential for the normal nutrition of animals, and which are sold or represented for the primary purpose of supplying these minerals or vitamins as additions to rations in which these same mineral or vitamin factors may be deficient, shall be classified as mineral or vitamin supplements. The commissioner may by regulation limit the use of active drug ingredients in commercial feeds and prescribe the labeling to be used to insure safe usage of such medicated feeds. Other nutritional substances or elements determinable by laboratory methods may be guaranteed by permission of or shall be guaranteed at the request of the commissioner as may be provided by regulation. Products sold solely as mineral and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber.

(e) The common or usual name of each ingredient used in the manufacture of the commercial feed.

(f) For customer-formula feed the labeling shall also show the name and address of the customer ordering the formula.

(2) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery.

(3) There shall be paid to the commissioner the amount of $10.00 as penalty for the distribution of any commercial feed that is not accompanied with labeling required under this chapter, as may be determined by the commissioner, and proceeds from any such penalty payments shall be deposited by the commissioner in the general inspection trust fund.

History.—§5, ch. 29755, 1955; §4, ch. 61-440; (3) a. by §2, ch. 61-119.

580.061 Inspection fees, payment thereof; enforcement; reporting system and bond requirement.—

(1) There shall be paid to the commissioner for all commercial feed distributed in this state an inspection fee at the rate of twenty-five cents per ton; provided, that sales of commercial feeds to manufacturers or exchanges between them are hereby exempted if the commercial feeds so sold or exchanged are used solely in the manufacture of feeds which are registered; provided, that invoices for such sales or exchanges show the following: "For

mixing in registered brands only"; and provided that such sales or exchanges shall be supported by a written purchase order or confirmation of purchase, which in form shall be subject to the approval of the commissioner, signed by the manufacturer to whom such feeds are invoiced, showing that such feeds are or were purchased for use solely in the manufacture of feeds which are registered. All fees collected by the commissioner under this chapter shall be paid to the state treasurer to the credit of the general inspection trust fund. The commissioner may employ all help necessary to carry out and enforce the provisions of this chapter and may designate any such employee to perform any duties necessary to carry out the terms of this chapter. All expenses and salaries shall be paid out of the general inspection trust fund.

(2) (a) Each registrant or distributor of commercial feeds distributed in Florida shall make application to the commissioner for a permit to report the tonnage of commercial feeds sold and pay the inspection fee of twenty-five cents per ton as in this chapter provided. The issuance of all permits will be conditioned on the applicant satisfying the commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of commercial feeds sold in this state and as are satisfactory to the commissioner and granting the commissioner or his duly authorized representative permission to examine such records and verify the tonnage statement. The tonnage report shall be monthly, quarterly, semiannually or annually, as determined by the commissioner, and the inspection fee shall be due and payable on or before the twentieth day of the month covering the tonnage and kind of commercial feeds sold during the preceding reporting period. The report shall be under oath and on forms furnished by the commissioner. The report shall show the number of tons of each type of feed as shown on the form so furnished. If the report is not filed and the inspection fee paid on the date due or if the report of tonnage be false, the amount of inspection fee due is subject to a penalty of ten per cent which may be added to the inspection fee due and constitutes a debt and becomes a claim and lien against the surety bond which is required as hereinafter provided. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for revocation of the permit and also for cancellation of the master registration on file for the permittee. In order to guarantee faithful performance with the provisions of this chapter each applicant for permit shall post with the commissioner a surety bond in such amount as shall be required by the commissioner to cover fees for any given reporting period, which amount shall not be less than one thousand dollars surety bond to be executed by a corporate surety company authorized to do business in Florida. The commissioner shall approve all such bonds before acceptance.

(b) In the event the permittee for any reason discontinues operating under the provisions of §580.061 (2) (a), the said bond posted by the permittee as provided therein, shall continue in full force and effect; provided, however, that in the event of such discontinuance of operation the permittee may by written notice of such discontinuance to the commissioner, and setting forth the date of such discontinuance, in which event said bond shall remain in force and effect for a period of ninety days thereafter for the filing of any claim or claims against the same; and after such period of ninety days the bond shall stand cancelled except as to such claim or claims as have been filed prior thereto.

(c) Any registrant or distributor of commercial feed distributed in Florida who holds any stamps or tags obtained from the commissioner as evidence of payment of inspection fee that may have been required or provided under prior law shall be refunded the purchase price of same upon application to the commissioner before July 1, 1962, and return of such stamps or tags to the commissioner.

History.—§6, ch. 29755, 1955; (1) by §1, ch. 57-16; (1) a. by §2, ch. 61-119; §5, ch. 61-440.

580.071 **Adulteration.**—No person shall distribute an adulterated commercial feed. A commercial feed shall be deemed to be adulterated:

(1) If it contains any poisonous, deleterious or non-nutritive ingredient in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label.

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(4) If it contains added hulls, screenings, straw, cobs or other high fiber material unless the name of each such material is stated on the label.

History.—§7, ch. 29755, 1955; (1) a., (4) n. by §6, ch. 61-440.

580.081 **Misbranding.**—No person shall distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is distributed under the name of another feed.

(3) If it is not labeled as required in §580.051 and in regulations prescribed under this chapter.

(4) If it purports to be, or is represented as, a commercial feed for which a definition of identity and standard of quality has been prescribed by regulation unless it conforms to such definition and standard.

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not

prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History.—§8, ch. 29755, 1955; (3) a. by §7, ch. 61-440.

580.091 Inspection; sampling; analysis.—

(1) It shall be the duty of the commissioner, who may act through his authorized agent, to sample and inspect commercial feeds distributed within this state at such time and place to such an extent as he may deem necessary to determine whether such commercial feeds are in compliance with the provisions of this chapter. The commissioner, individually or through his agent, is authorized to enter upon any public or business premises and in any vehicle of transport during regular business hours in order to have access to commercial feeds and records relating to their transportation and sale, subject to the provisions of this chapter and the rules and regulations pertaining thereto.

(2) It shall be the duty of the commissioner or his authorized agent to draw and to have analyses made of official and special samples.

(3) The methods of sampling and analysis shall be those adopted by the commissioner.

(4) The commissioner or his authorized agent, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in §580.031 (14) and obtained and analyzed as provided for in subsections (1) and (2) of this section.

(5) When the inspection and analysis of an official sample indicate a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the commissioner or his authorized agent to the guarantor and the purchaser. On request, within thirty days from the date of report, the commissioner or his authorized agent, shall furnish to the guarantor a portion of the sample concerned for check analysis. If requested by the guarantor within sixty days from the date of report, the commissioner or his authorized agent, shall forward other portions of said sample to two referee chemists agreed upon by the commissioner or his authorized agent and the guarantor. The analysis fees of the referee chemists shall be paid by the guarantor. The average of analyses reported by the commissioner or his authorized agent and the two referee chemists shall become the official analysis.

History.—§9, ch. 29755, 1955; (2)-(5) a. by §8, ch. 61-440.

580.101 Regulations; standards, definitions.—The commissioner is hereby authorized to adopt and promulgate such reasonable rules and regulations as, in his judgment, shall be necessary or helpful in the efficient enforcement of this chapter. The commissioner is hereby empowered to adopt regulations establishing definitions and reasonable standards for commercial feeds and such other regulations as may be necessary for the enforcement of any provision of this chapter; provided, that an open hearing shall be held by the commissioner before proposed rules, regulations and standards are adopted; provided further, that during an emergency involving health of animals the commissioner may promulgate temporary regulations effective for the period of emergency or until regulations as above mentioned may be promulgated. Notice of all hearings for consideration of proposed rules and regulations shall be sent at least ten days beforehand to the advisory council members representing the following areas: beef cattle, swine, dairy, poultry and commercial feed.

History.—§10, ch. 29755, 1955; §9, ch. 61-440.

580.111 Detained commercial feeds.—

(1) "STOP-SALE" ORDERS.—When the commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, he may issue and enforce a written or printed "stop-sale" order warning the distributor not to dispose of the feed in any manner until written permission is given by the commissioner, his authorized agent, or a court of competent jurisdiction. The commissioner or his authorized agent shall release the commercial feed so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid; provided that with the permission of the commissioner or his authorized agent any lot of feed under said "stop-sale" for reason of being "below guarantee" may be sold as such to a consumer who shall sign a statement professing that he, the consumer, had knowledge of the same at the time of purchase. If compliance is not obtained within a reasonable time, the commissioner shall begin proceedings for condemnation.

(2) CONDEMNATION AND CONFISCATION.—Any lot of commercial feed not in compliance with the provisions of this chapter, or regulations hereunder, shall be subject to seizure on complaint of the commissioner to the circuit judge or circuit court of the circuit in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter, or regulations hereunder, and orders the condemnation of said commercial feed, it shall be disposed of in the manner provided by said circuit judge or circuit court in the said order of condemnation; provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

History.—§11, ch. 29755, 1955; (1) a. by §10, ch. 61-440.

580.112 Certain acts prohibited.—The following acts, or the causing thereof knowingly, within the state are prohibited:

(1) The distribution of any commercial feed

that is adulterated or misbranded.

(2) The adulteration or misbranding of any commercial feed.

(3) The dissemination of any false advertisement or any other false advertising matter or material with reference to the distribution of commercial feed.

(4) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by §580.091.

(5) The removal or disposal of a detained or "stop-saled" lot of commercial feed pursuant to §580.111.

(6) The forging, counterfeiting, simulating, or falsely representing, or without proper authority using any label authorized or required by §580.051, or any rules or regulations promulgated pursuant to the provisions of this chapter.

(7) Placing, or permitting to be placed, any false advertisement or misleading fact or statement on labels as required under §580.051.

(8) The redistribution of a customer-formula commercial feed.

(9) The using or placing of fasteners which may be injurious to animals on any commercial feed, or bags of commercial feed, excepting only those distributed exclusively for poultry.

(10) The failure or refusal to do or perform any affirmative provision, or the doing or performing of any prohibited provision of this chapter or of any rule or regulation promulgated pursuant to this chapter not expressly covered in this section.

History.—§13, ch. 61-440.

580.121 Penalties; duties of law enforcement officers.—

(1) Any person violating any of the provisions of this chapter, or the rules and regulations issued hereunder, or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his authorized agent in the performance of his duty in connection with the provisions of this chapter, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and shall be fined not more than $100.00 for the first violation, and not less than $100.00 nor more than $500.00 for each subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the commissioner or his authorized agent shall be accepted by the court as prima facie evidence of the composition. Each state or county law enforcement officer, shall make arrests for violations of this chapter or of any rule, regulation or order promulgated or issued by the commissioner or his authorized agent under authority of this law, when such officer is notified of such violation by the commissioner or his authorized agent.

(2) Nothing in this chapter shall be construed as requiring the commissioner or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when he believes that the public interests will be best served by a suitable notice of warning in writing.

(3) The commissioner is hereby authorized to apply for, and the court may grant, upon sufficient evidence, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter, or any rule or regulation promulgated under the chapter, notwithstanding the existence of other remedies at law; said injunction to be issued without bond.

History.—§12, ch. 29755, 1955; (1) a. by §11, ch. 61-440.

580.131 Penalty payable to consumer.—Any consumer who shall purchase without notice a feed which is below guarantee as is forthwith described shall recover in any legal or administrative action that may be instituted penalties or damages as follows:

(1) If the official analysis shall show that any feed bearing a guarantee of twenty per cent protein, or less, falls more than one per cent protein below the guarantee, or, if the analysis shall show that any feed bearing a guarantee of more than twenty per cent protein falls more than two per cent protein below the guarantee, two dollars per ton for each per cent protein deficiency shall be assessed against the guarantor.

(2) If the official analysis shall show that any feed is deficient in fat by more than five-tenths per cent fat, two dollars per ton for each per cent fat deficiency shall be assessed against the guarantor.

(3) If the official analysis shall show that any feed bearing a maximum guarantee of not more than twenty per cent fiber shall exceed this guarantee by more than one per cent fiber, or if the analysis shall show that any feed bearing a maximum guarantee of more than twenty per cent fiber shall exceed this guarantee by more than two per cent fiber, two dollars per ton for each per cent fiber excess shall be assessed against the guarantor.

(4) If any feed is found by the commissioner to be short in weight, four times the invoice value of the actual shortage shall be assessed against the guarantor. The commissioner, in his discretion, may allow reasonable tolerances for short weight due to loss through handling and transporting.

(5) The minimum penalty under any of the foregoing provisions shall in no case be less than three dollars, regardless of the monetary value of the deficiency.

(6) Within sixty days from the date of notice by the commissioner to the registrant or the guarantor all penalties assessed under this section shall be paid to the commissioner who shall deposit same in the state treasury to the credit of the general inspection trust fund, from which said general inspection trust fund there shall be paid to the consumer, upon approval of the commissioner, the amount of said penalties to which the said consumer is entitled under the provisions of this section.

History.—§13, ch. 29755, 1955; (6) a. by §2, ch. 61-119.

580.141 Publications.—The commissioner or his authorized agent may, in the discretion of the commissioner, publish, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a summary report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

History.—§14, ch. 29755, 1955; §12, ch. 61-440.

CHAPTER 581

STATE DEPARTMENT OF AGRICULTURE; DIVISION OF PLANT INDUSTRY

581.011 Definitions.—For the purpose of this chapter, the following terms, when used in this chapter or the rules, regulations and orders made pursuant thereto, shall be construed, respectively, to mean:

(1) "Insect pests and diseases."—Diseases and insect pests, injurious to plants and plant products of this state, including any of the stages of development of such diseases and insect pests.

(2) "Plants and plant products."—Trees, shrubs, vines, forage and cereal plants, and all other plants, cuttings, grafts, scions, buds, and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other plant products.

(3) "Plant pest."—Any insect, fungus, bacteria or virus disease, nematode, parasitic plant or any other organism or thing injurious to plants or plant products including any stage of development of such organism or thing.

(4) "Nursery stock."—All plants, trees, shrubs, vines, bulbs, cuttings, grafts, scions, buds, grown or kept for or capable of propagation, distribution or sale, unless specifically excluded by the rules and regulations of the department.

(5) "Nursery."—Any grounds or premises on or in which nursery stock is grown or propagated for sale or distribution.

(6) "Nurseryman."—Any person engaged in the production of nursery stock for sale or distribution.

(7) "Dealer."—Any person not a grower of nursery stock in this state who buys or otherwise acquires nursery stock for the purpose of reselling or reshipping independently of any control of the nurseryman.

(8) "Agent."—Any person selling or distributing nursery stock under the partial or full control of a nurseryman.

(9) "Places."—Vessels, railroad cars, automobiles, aircraft and other vehicles, buildings, docks, nurseries, orchards and other premises where plants or plant products are grown, kept or handled.

(10) "Distribution." — The movement of nursery stock from the property where it is grown or kept to any other property that is not contiguous thereto, regardless of the ownership of the properties concerned.

(11) "Commissioner." — The commissioner of agriculture of the state.

(12) "Department."—The department of agriculture of the state.

(13) "Director."—The director of the division of plant industry.

(14) "Division."—The division of plant industry of the department of agriculture.

(15) "Technical committee."—The plant industry technical committee which may be known as the state plant board.

History.—§2, ch. 12291, 1927; CGL 3831; am. §7, ch. 22858, 1945; §6, ch. 29767, 1955; §13, ch. 59-1; tr. from §581.14, and am. by §1, ch. 59-261.

581.021 Continuance of powers, duties, etc., in department; location; privileges.—

(1) This chapter shall be enforced by and under the control of the department of agriculture as provided in chapter 570.

(2) The department, through the division of plant industry, shall have and exercise all the powers, jurisdiction, duties and authority exercised by, or required of, the state plant board, and the provisions of chapter 581 shall be applicable to the division within the department. Provided, however, that all rules, regulations, orders, quarantines and official acts of the said state plant board shall remain in full force and effect until and unless repealed, amended, changed or superseded by action of the commissioner in accordance with the procedure prescribed in §581.051.

(3) The division and its employees shall be provided the same suitable quarters and faculty privileges, including but not limited to library facilities, by the university of Florida as the state plant board and its employees now enjoy.

History.—§2, ch. 59-261.

581.031 Department; powers and duties.—The department through the commissioner shall have the following powers and duties subject to the procedural requirements of section 581.-051, pertaining to rules and regulations:

(1) To make all rules and regulations governing nurseries and the movement of nursery

stock therein as may be necessary in the eradication, control or prevention of the dissemination of insect pests and diseases;

(2) Make and publish standard grades for nursery stock;

(3) Make rules and regulations governing the grading, marking, sale and distribution of nursery stock by nurserymen, dealers and agents;

(4) Provide rules and regulations under which nursery stock may be brought into this state from other states, territories and foreign countries;

(5) Make such rules and regulations with reference to plants and plant products while in transit through this state as may be deemed necessary to prevent the introduction into and dissemination within this state of injurious plant pests and diseases;

(6) Declare a dangerous insect pest or disease to be a nuisance as well as any plant or other thing infested or infected therewith or that has been exposed to infestation or infection and therefore likely to communicate same;

(7) Declare a quarantine against any area, place, nursery, grove, orchard, county or counties within this state, other states, territories, foreign countries or portion thereof in reference to dangerous insect pests or diseases and prohibit the movement within this state from other states, territories or foreign countries of all plants, plant products or other things from such quarantined places or areas which are likely to carry such dangerous insect pests and diseases if such quarantine be determined after due investigation, to be necessary in order to protect the agricultural and horticultural interests of this state. In such cases the quarantine may be made absolute, or rules and regulations may be adopted prescribing the method and manner under which the prohibited articles may be moved into or within, sold or otherwise disposed of in this state;

(8) Make and publish reasonable rules and regulations governing the application for, issuance and revocation of such certificates of inspection;

(9) Enter into cooperative arrangements with any person, municipality, county and other departments of this state, and boards, officers and authorities of other states and the United States for inspection with reference to insect pests and plant diseases and for the control and eradication thereof and contribute a just proportionate share of the expenses incurred under such arrangements;

(10) Publish at regular intervals, to be determined by it, an official organ of the department for public distribution and may from time to time publish and distribute to the public such further information as may be deemed necessary;

(11) Revoke certificates of inspection to nurserymen, dealers and agents in the state after notice and a hearing;

(12) Purchase all necessary materials, supplies, office and field equipment and other things and make such other expenditures as may be essential and necessary in carrying out the provisions of this chapter within the limits of the amount appropriated by law;

(13) Enforce the provisions of this chapter and the rules and regulations made pursuant thereto by writ of injunction in the proper court as well as by criminal proceedings;

(14) The department is empowered to test nursery stock to determine its freedom from specific diseases and to so register such stock. Nursery stock found free of the diseases for which it was tested may be propagated by the department and distributed in limited quantities to qualified nurserymen for further propagation under procedures prescribed by the department when recommended by the industry concerned. The department may prescribe standards and procedures for the propagation and distribution of new or superior strains of plants when not provided for by other agencies, and upon recommendation of the industry concerned.

(15) To inspect, or cause to be inspected by duly authorized employees, plants, plant products or other things and substances that may, in his opinion, be capable of disseminating or carrying insect pests and diseases, and for this purpose shall have power to enter into or upon any place and to open any bundle, package or other container containing, or thought to contain, plants or plant products or other things capable of disseminating or carrying insect pests or diseases;

(16) To carry on investigations of methods of control, eradication and prevention of dissemination of insect pests and diseases;

(17) To supervise or cause to be supervised, the treatment, cutting and destruction of plants when necessary to prevent or control the dissemination of insect pests and diseases or to eradicate same and to suggest rules and regulations therefor;

(18) To inspect, or cause to be inspected, all nurseries in the state at such intervals as he may deem best;

(19) To demand of any person who has plants or plant products or other things likely to carry insect pests and diseases in his possession to give full information as to the origin and source of same, and it shall be a misdemeanor for such person to refuse to give the information demanded, if able to do so;

(20) To intercept and inspect or cause to be inspected, while in transit, or after arrival at destination, all plants, plant products or other things likely to carry insect pests and diseases being moved in this state from another state, territory or foreign country, and if upon inspection the same be found to be infested or infected with an injurious insect pest or disease or if such material is believed to be likely to communicate or transmit same or is being transported in violation of any of the rules and regulations of the department then said plants, plant products or other things may be treated when necessary and released, re-

turned to the sender or destroyed, such disposition to be determined under the rules and regulations to be prescribed by the department;

(21) To make and issue certificates of inspection to nurserymen, dealers and agents in the state, after proper inspection of their nursery stock, authorizing them to do business as nurserymen, dealers or agents within the state;

(22) To prescribe the duties of assistants, inspectors and other employees as may be required and delegate to such assistants, inspectors and other employees such powers and authority as may be deemed proper within the limits of the powers and authority conferred upon the said director by this chapter.

History.—§3, ch. 59-261; (15)-(22) n. by §1, ch. 61-409.

581.041 Director of division of plant industry; powers and duties.—The director shall have authority to carry out any of the powers and duties of the department as authorized in §581.031, or as directed by the commissioner.

History.—§4, ch. 59-261; §2, ch. 61-409.
cf.—§570.33 Qualifications and duties of director of division of plant industry.

581.051 Rules and regulations; procedure.—

(1) All rules and regulations made, adopted, or promulgated under authority of this chapter shall be divided into two classes to be known as "technical rules and regulations" and "administrative rules and regulations."

(2) The commissioner shall have full and complete power and authority to and may make, adopt, promulgate, amend and repeal, without prior notice and hearing, all rules and regulations under the classification "administrative rules and regulations" which he shall deem necessary or helpful in the efficient administration and enforcement of this chapter.

(3) "Administrative rules and regulations" are defined as those rules and regulations which control and regulate the internal affairs of the division of plant industry and define organizational, procedural or practice requirements of the said division.

(4) "Technical rules and regulations" are defined as those rules and regulations other than administrative rules and regulations.

(5) All rules and regulations under the classification technical rules and regulations shall be made, adopted and promulgated by the commissioner in the following prescribed manner subject to the approval of the technical committee on plant industry:

(a) The commissioner shall submit to each member of the technical committee on plant industry a copy of the proposed technical rule or regulation.

(b) The technical committee on plant industry may meet at any time after ten days and within thirty days from the date that the commissioner transmitted to them a copy of the proposed technical rule or regulation for the purpose of either approving or disapproving such rule or regulation. In the event the said committee takes no action on the proposed rule or regulation within the said thirty day period, the commissioner shall consider this as conclusive evidence of the said committee's approval of the said rule or regulation and the commissioner shall forthwith adopt and promulgate the said rule or regulation and file the same with the secretary of state.

(c) The director may propose technical rules or regulations relative to the activity of his division to the commissioner, copy of which shall at the same time be furnished the chairman of the technical committee on plant industry.

History.—§5, ch. 59-261; (5) §1, ch. 63-117.

581.061 Review for person affected.—Any person affected by any rule or regulation made or notice given pursuant to this chapter may have a review thereof by the commissioner for the purpose of having such rule, regulation or notice modified, suspended or withdrawn. Such review shall be allowed and considered and the cost thereof fixed, assessed, collected and paid in such manner and in accordance with such rules and regulations as may be prescribed by the commissioner.

History.—§6, ch. 12291, 1927; CGL 3835; tr. from §581.04 and am. by §6, ch. 59-261.

581.071 Principal responsible for agent, etc.—In construing and enforcing the provisions of this chapter, the act, omission or failure of any official, agent or other person acting for or employed by any association, partnership, corporation or other principal within the scope of his employment or office shall in every case be deemed the act, omission or failure of such association, partnership, corporation or other principal as well as that of the individual.

History.—§12, ch. 12291, 1927; CGL 3840; tr. from §581.10 and am. by §7, ch. 59-261.

581.083 Introduction of injurious disease.—The introduction into this state of any live insect or specimen of any disease injurious to plants is prohibited, except under a special permit issued by the department through the division of plant industry.

History.—§7, ch. 12291, 1927; CGL 3836; tr. from §581.05 and a. by §8, ch. 59-261; §3, ch. 61-409.

581.091 Information to department.—Any person, including common carriers, who receives plants, plant products or other things sold, given away, carried, shipped or delivered for carriage or shipment within this state, as to which provisions of this chapter and the rules and regulations made pursuant thereto have not been complied with, shall immediately inform the director or an inspector of the division of plant industry and isolate and hold the said plant, plant product or other thing unopened or unused subject to such inspection or other disposition as may be provided by the director.

History.—§8, ch. 12291, 1927; CGL 3837; tr. from §581.06 and am. by §9, ch. 59-261.

581.101 Quarantines. — Whenever the commissioner under the provisions of this chapter shall declare a quarantine against any place, nursery, grove, orchard, or county of this state,

other states, territory or foreign countries as to a dangerous insect pest or disease, it is unlawful thereafter until such quarantine is removed for any person to introduce into this state, or to move, sell or otherwise dispose of within this state any plant, plant product or other thing included in such quarantine, except under such rules and regulations as may be prescribed by the department; provided that in case of emergency where it is necessary to place a quarantine to take effect immediately the promulgation may be made by the plant industry technical committee.

History.—§9, ch. 12291, 1927; CGL 3838; tr. from §581.07 and am. by §10, ch. 59-261.

581.111 Emergency.—An emergency is any situation wherein the plant industry technical committee has declared a plant pest to be a public nuisance or when in the opinion of the said technical committee a plant pest endangers or threatens the horticultural and agricultural interest of the state. Rules and regulations promulgated and adopted by the technical committee in cases where an emergency is declared to exist shall be effective immediately. These rules and regulations shall continue in effect while the emergency for which the rules and regulations were promulgated and adopted continues to exist, provided, however, that no emergency shall exist for a period in excess of six months, without review by the technical committee and redeclaration by it that such emergency continues to exist.

History.—§11, ch. 59-261.

581.121 Nursery stock; sale, etc.—It is unlawful for any nurseryman, dealer or agent to sell, give away, carry, ship or deliver for carriage or shipment any nursery stock except in compliance with the provisions of this chapter and the rules and regulations made pursuant to law.

History.—§10, ch. 12291, 1927; CGL 3839; tr. from §581.08 and am. by §12, ch. 59-261.

581.131 Certificate of inspection.—Before any nurseryman, dealer or agent shall sell or distribute, or offer for sale or for distribution, any nursery stock in this state he shall apply to the director of the division of plant industry and obtain a certificate of inspection indicating that he has complied with the provisions of this chapter and the lawful rules and regulations made and promulgated by the department. Each application for a certificate of inspection shall be accompanied by a certificate fee in such amount as shall be determined by the commissioner; and upon the issuance of such certificate it shall be renewed annually thereafter upon its anniversary date upon satisfactory showing to the director of the division of plant industry that the provisions of this law and the regulations of the department have been complied with and upon the payment of an annual renewal fee in such amount as shall be determined by the commissioner; provided, however, that neither such certificate of inspection fee or such annual renewal fee shall exceed twenty-five dollars; provided further, that the commissioner may exempt from the payment of a certificate fee nurserymen and dealers whose nursery stock is used exclusively for planting on their own property, provided further that all applications for annual renewal of certificates of inspection required by this section shall be made not later than the anniversay date of the certificate being renewed, and any such application received after such date shall be accompanied by a penalty or late filing fee of not to exceed five dollars. All moneys received by the department under the provisions of this section shall be deposited in the state treasury to the credit of the special account known as the plant industry account within the general inspection trust fund and shall be used by the department to defray its expenses in carrying out the duties imposed on it by this chapter.

History.—§4, ch. 29767, 1955; tr. from §581.081 and am. by §13, ch. 59-261; §2, ch. 61-119; §1, ch. 63-115.

581.141 Certificate of inspection; revocation.—If it shall be determined by the commissioner that any nurseryman, dealer or agent is selling or offering for sale, or is distributing or offering to distribute, nursery stock in violation of the provisions of this chapter, the commissioner may revoke his certificate of inspection or annual renewal thereof; provided the holder of the certificate has been given an opportunity by the commissioner for public hearing not less than thirty days after notice to him by registered mail.

History.—§5, ch. 29767, 1955; tr. from §581.082 and am. by §14, ch. 59-261.

cf.—§1.01(13) Registered mail defined to include certified mail with return receipt requested.

581.142 Viable nursery stock; requirements for sale.—

(1) It shall be unlawful to sell or offer for sale any plant or nursery stock unless such plant or nursery stock is viable and meets the basic requirements of a viable plant or viable nursery stock, at the time and place of sale.

(2) Nursery stock or a plant that is capable of living and accomplishing the purpose for which it is grown, whether foliage, flowers, fruit or special use shall be considered viable.

(3) The basic requirements of viable nursery stock or a viable plant are as follows:

(a) Same must be free of physiological and pathological defects to the extent that all essential parts may function normally.

(b) The root system must have adequate roots or the ability to produce them to support normal performance of all essential parts of the plant. The root system must be adequately protected to prevent excessive loss of moisture while in storage and transit.

(c) Trunk and branches must be capable of transporting fluids throughout the plant and be free from any infirmity of a permanent nature which would interfere with this function. Any damaged branches must be capable of being pruned without seriously deterring growth of the plant.

(d) Leaves must be capable of performing essential manufacturing functions, such as pho-

tosynthesis. In the case of deciduous plants, when void of leaves, must have the ability to put out new leaves capable of functioning normally.

(4) This act shall be enforced by and under the control of the department of agriculture of the state and the division of plant industry in the same manner as provided for the enforcement of other matters contained in chapter 581, and the commissioner, the department of agriculture and the division of plant industry are authorized to use the powers given in chapter 581 to the same extent as if the provisions of this act were specifically incorporated in chapter 581 and as if the wording of said chapter specifically included viable plants and viable nursery stock and shall have the right to make regulations, inspect, enforce, search, seize, and destroy, after reasonable notice, plants and nursery stock which do not meet the standards provided herein and which are offered for sale in violation of this act.

(5) The department of agriculture, through the commissioner, shall have the powers and duties subject to procedural requirements of §581.051, pertaining to rules and regulations:

(a) To make all rules and regulations for the purpose of carrying out the purposes of this act and the enforcement thereof;

(b) In connection with and in order to insure inspection thereof;

(c) Providing standards to assist in the determination of what are viable plants or nursery stock;

(d) Such other and further regulations as are within the purview of this act and will assist in its proper administration.

(6) Any person who shall violate any of the provisions or requirements of this act or the rules and regulations made thereunder or any notice given pursuant thereto or who shall interfere with or obstruct any inspector or any other employee of the department shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25.00 nor more than $500.00, or by imprisonment of not more than 6 months.

History.—§§1-6, ch. 63-260.

581.151 Control of spreading decline.—The department is empowered to join with the U. S. department of agriculture or to proceed independently in a program to control and eradicate, wherever possible, spreading decline resulting from a burrowing nematode (Radopholus similis (Cobb) Thorne), in the state.

History.—§15, ch. 59-261.

581.152 Eradication of burrowing nematode in commercial groves.—

(1) The citrus disease known as spreading decline, caused by the burrowing nematode is hereby declared to be a dangerous public nuisance and a serious threat to the citrus industry of Florida.

(2) The department of agriculture is directed to carry out a program of containment or eradication of spreading decline, caused by the burrowing nematode, in all commercial citrus grove areas in Florida. This program shall include the destruction of all trees and plants in commercial citrus groves or adjacent thereto which are infested by the burrowing nematode and the fumigation of the soil in such areas in accord with rules and regulations of the department of agriculture.

Trees and plants which are known to be hosts to the burrowing nematode but which are not infested with the burrowing nematode shall also be destroyed as a part of the program if their destruction is deemed necessary as provided by the rules and regulations of the department to prevent the spread of the burrowing nematode from an infested area into an uninfested area. Provided, however, no trees shall be destroyed without the owner's consent unless so decreed by a court of competent jurisdiction.

Any grove owner, objecting to the destruction of his trees, infested or otherwise, deemed necessary by the department to be destroyed shall prior to any further action on the part of the department have the right to judicial declaration as to the validity of any rule or order requiring such destruction by bringing an action for a declaratory judgment.

Reasonable compensation based on fair market value shall be made by the department for the compulsory destruction of trees in carrying out the program authorized by this section and in providing protection for the commercial citrus industry of Florida.

The amount of compensation to be paid each grove owner for the loss of his trees in accord with this section shall be determined by the department or its agents, and the grove owner shall be paid such compensation upon his written request before the destruction of his trees.

In the event any grove owner deems such compensation to be inadequate or unreasonable he may petition in writing for a hearing before an independent appraisal board which shall be comprised of one member selected by the grove owner, one member selected by the commissioner, and one member selected and mutually agreed upon by the parties. Such board shall make a fair, impartial appraisal of the value of the trees in question and submit same to the department in writing along with the written proceedings of the hearing. Each member of such appraisal board may be compensated by the department in a reasonable amount as determined by the department.

The administrative determination of such appraisal board as to the amount of compensation to which a grove owner is entitled may be reviewed by certiorari by the circuit court of the county in which the trees are located in the manner provided for in chapter 59 and the Florida appellate rules.

Provided, however, in any proceeding instituted by a grove owner objecting to the destruction of his trees, in which the decision of the court is adverse to said grove owner, the compensation for such trees shall be adjudicated in the same proceeding, pursuant to the procedure herein.

(3) The department shall conduct public hearings for consideration of rules and regulations and such public hearings shall be held prior to the making or promulgating of rules and regulations. Notice of such public hearing must be given at least fifteen days prior to such hearing. Any person, firm, or corporation with property in, or who is a resident of, the state, affected by the department's rules or regulations, may file his name and address with the department and request that he be furnished with a copy of any proposed rule or regulation, and the department shall, in not less than fifteen days before any public hearing, mail a copy of such proposed rule or regulation to every person so requesting same. Any such person shall have the right to be fully heard in person, or through an attorney, by the department upon any proposed rule or regulation.

(4) The department is authorized to cooperate with other public agencies both state and federal and with the Florida citrus industry in carrying out the program of containment, eradication and research of spreading decline authorized by this section.

History.—§§1-5, ch. 57-365; (2) by §1, ch. 59-464; §5, ch. 61-409; tr. from §581.17 and renumbered; (3) r. by §1, ch. 61-516; (2) §33, ch. 63-512.

581.161 Fumigation or treatment of fruit or plants infested by Mediterranean fruit fly or other pests.—The division of plant industry is authorized to supervise or cause the fumigation or treatment of fruit or plants infested by the Mediterranean fruit fly or any other agricultural pest when such pest has been declared to be a nuisance by the commissioner or the technical committee under its emergency powers. Such fumigation may be performed by employees of the said division or other persons supervised by the director of the said division and the persons engaged in such fumigation or treatment of fruit or plants shall not be required to be licensed by any other board or agency notwithstanding the provisions of any other law.

History.—§1, ch. 31392, 1956; tr. from §581.16 by §16, ch. 59-261.

581.171 Printed copies as evidence.—Printed copies of all acts, rules, regulations, standard grades of nursery stock, quarantines or notices of the department which shall be published under the authority of the commissioner shall be admitted as sufficient evidence of such acts, rules, regulations, standard grades of nursery stock, quarantines or notices in all courts and on all occasions whatsoever; provided the correctness of such copies be certified by the commissioner.

History.—§5, ch. 12291, 1927; CGL 3834; §3, ch. 29767, 1955; tr. from §581.03 and am. by §17, ch. 59-261.

581.181 Notice of infection of plants; destruction.—

(1) If the director shall find, on examination, any plant or plant product infested or infected with injurious insects or plant diseases, he shall notify the owner or person having charge of such premises to that effect, and the owner or person in charge shall, within ten days after such notice, cause the removal and destruction of infested and infected plant or plant product if it is incapable of successful treatment; otherwise, such owner or person in charge shall cause it to be treated as directed in the notice. No damage shall be awarded to the owner for the destruction of infested or infected plant or plant product under the provisions of this chapter.

(2) In case the owner or person in charge shall refuse or neglect to comply with the terms of the notice, within ten days after receiving it, the director may, under authority of the commissioner, proceed to treat or destroy the infested or infected plant or plant product. The expense thereof shall be assessed, collected and enforced against the owner by the department.

History.—§18, ch. 59-261; (2) a. by §6, ch. 61-409.

581.191 Appropriations. — The department shall include in its legislative budget request the estimated amounts needed to carry out the purposes of this chapter and the legislature shall appropriate from the general revenue fund such amounts as it deems necessary for these purposes.

History.—§14, ch. 12291, 1927; CGL 3841; §134, ch. 26869, 1951; tr. from §581.11 and a. by §19, ch. 59-261; §1, ch. 61-59.

581.201 Injunction.—A single act in violation of the provisions of this chapter shall be sufficient to authorize the issuance of an injunction. The commissioner is not required to furnish bond when making complaint for injunction. The attorney general, the state attorneys, prosecuting attorneys, county solicitors, and all public prosecutors in each county shall represent the department when called upon to do so. The department in the discharge of its duties and in the enforcement of powers herein delegated may send for books, records, and papers, administer oaths and hear witnesses, and to that end the various sheriffs throughout the state shall serve all summonses and other papers upon request of the department.

History.—§20, ch. 59-261; §7, ch. 61-409.

581.211 Penalties for violations.—Any person who shall violate any provisions or requirement of this chapter or of the rules and regulations made thereunder or of any notice given pursuant thereto, or who shall forge, counterfeit, destroy or wrongfully or improperly use any certificate provided for in this chapter or in the rules and regulations made pursuant thereto, or who shall interfere with or obstruct any inspector or other employee of the department in the performance of his duties, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25.00 nor more than $500.00, or by imprisonment for not more than 6 months.

History.—§11, ch. 12291, 1927; CGL 7854; tr. from §581.09 and am. by §21, ch. 59-261.

CHAPTER 582

SOIL CONSERVATION

582.01 Definitions.—Wherever used or referred to in this chapter unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purpose, with the powers, and subject to the restrictions set forth in this chapter.

(2) "Supervisor" means one of the members of the governing body of a district, elected in accordance with the provisions of this chapter.

(3) "Board" or "state soil conservation board" means the agency created in §582.06.

(4) "Land owner" or "owner of land" includes any person who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this chapter.

(5) "Land occupier" or "occupier of land" includes any person, other than the owner, who shall be in possession of any lands lying within a district organized under the provisions of this chapter, whether as lessee, renter, tenant, or otherwise.

(6) "Qualified elector" includes any person qualified to vote in general elections under the constitution and statutes of this state who, in addition to such qualifications, is a land owner or owner of land as herein defined.

(7) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

History.—§3, ch. 18144, 1937; §1, ch. 19473, 1939; CGL 1940 Supp. 4151(474).

582.02 Lands a basic asset of state.—The farm, forest and grazing lands of the state are among the basic assets of the state and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by fire, wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the top soil is being burned, washed and blown out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by fire, wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any landowner or occupier to conserve the soil and control erosion upon his lands causes destruction by burning, washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control erosion of such other lands difficult or impossible.

History.—§2, ch. 18144, 1937; CGL 1940 Supp. 4151(473).

582.03 Consequence of soil erosion. — The consequences of such soil erosion in the form of soil-washing and soil-blowing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash or poor subsoil material, sand; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failure; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

History.—§2, ch. 18144, 1937; CGL 1940 Supp. 4151(473).

582.04 Appropriate corrective methods.—To conserve soil resources and control or prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; among the procedures necessary for widespread adoption, are the carrying on of engineering operations, such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation, seeding and planting of waste, sloping, abandoned, or eroded lands to water conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments, manurial materials and fertilizers for the correction of soil deficiencies or for the promotion of increased growth of soil protecting crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History.—§2, ch. 18144, 1937; CGL 1940 Supp. 4151(473).

582.05 Legislative policy for conservation. —It is the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

History.—§2, ch. 18144, 1937; CGL 1940 Supp. 4151(473).

582.06 State soil conservation board; advisory committee.—

(1) The present state soil conservation board is hereby abolished and a new state soil conservation board is hereby created.

(2) The state soil conservation board, called the "state board" in this chapter, shall be composed of five members, from among active farmers of at least five years continuous practice of farming at time of appointment who have been practicing soil conservation, and who shall be appointed by the governor, no two members shall be appointed from the same congressional district. Two members shall be appointed for a term of one year; one member shall be appointed for a term of two years; one member for a term of three years; and one member for a term of four years. After the completion of the initial terms thereafter the terms of the members of the state board shall be for four years. The chairman of the state board shall be selected by the members of the state board, at a meeting to be called immediately upon appointment of the original members of the state board and annually thereafter. The state board is authorized to receive gifts, appropriations, materials, equipment, lands and facilities and to manage, operate and disburse same for the use and benefit of the soil conservation districts of the state. The state board, except as provided in this chapter, shall act in conjunction with, but at all times under and subject to, the control and supervision of the state board of conservation as defined by §370.01.

(3) The state board may create an advisory committee which shall be composed of the commissioner of agriculture, the state director of agricultural extension, the state forester and such other persons as the state board may deem qualified. The state board may use this advisory committee in the planning, and in the accomplishment of, the objectives of this chapter.

History.—§4, ch. 18144, 1937; §2, ch. 19473, 1939; CGL 1940 Supp. 4151(475); am. §1, ch. 28094, 1953.

582.07 Quorum of board; compensation; powers; etc.—A majority of the board shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The members of the board shall receive no compensation for their services on the board, but shall be reimbursed for traveling expenses as provided in §112.061. The board shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all pro-

ceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

History.—§4, ch. 18144, 1937; §2, ch. 19473, 1939; CGL 1940 Supp. 4151(475); §24, ch. 57-1; §19, ch. 63-400.

582.08 Additional powers of board.—The state soil conservation board shall have the following additional duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided in §582.10, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other such districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil conservation districts so organized so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies and counties of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts so organized and to encourage the formation of such districts in areas where their organization is desirable.

History.—§4, ch. 18144, 1937; §2, ch. 19473, 1939; CGL 1940 Supp. 4151(475).

582.09 Administrative officer of board.—The state soil conservation board may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The board may call upon the attorney general of the state for such legal services as it may require, or may employ its own counsel and legal staff. It may delegate to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper, and the board may furnish information as well as call upon any or all state or local agencies for cooperation in carrying out the provisions of this chapter.

History.—§4, ch. 18144, 1937; §2, ch. 19473, 1939; CGL 1940 Supp. 4151(475).

582.10 Creation of soil conservation districts.—Any twenty-five owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation board, asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the state soil conservation board duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the board determine that such a district be created.

Where more than one petition is filed covering parts of the same territory the state soil conservation board may consolidate all or any petitions.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476).

582.11 Hearing upon question of creation; notice, etc.—Within thirty days after such a petition has been filed with the state soil conservation board, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All owners and occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and such further hearing held. After such hearing, if the board shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the board shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization

under the provisions of this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in this chapter. The territory to be included wi hin such boundaries need not be contiguous. If the board shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476).

582.12 Referendum for creation, etc.—After the board has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the board in the determination of such administrative practicability and feasibility, the board, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, shall hold a referendum within the proposed district upon the proposition of the creation of the district, and cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of _____, _____(and _____" and "Against creation of a soil conservation district of the lands below described and lying in the county (ies) of_____ and _____" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the board. All owners of lands lying within the boundaries of the territory, as determined by the state soil conservation board, shall be eligible to vote in such referendum. Only such land owners shall be eligible to vote.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476).

582.13 Expenses of referendum.—The board shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as provided in §582.12, and said referendum shall have been fairly conducted.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476).

582.14 Results of referendum; publication, etc.—The board shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the board shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the board shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the board shall give due regard and weight to the attitude of the owners and occupiers of lands lying within the defined boundaries, the number of land owners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land owners and occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination having due regard to the legislative determinations set forth in this chapter; provided, however, that the board shall not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476).

582.15 Organization of district, etc.—

(1) If the board shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, any five of the petitioners who signed the petition for the creation of the proposed district may present to the secretary of state an application signed by them which shall set forth (and such application need contain no details other than the mere recitals) (a) that a petition for the creation of the district was filed with the state soil

conservation board pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district under this chapter; (b) the name which is proposed for the district; and (c) the location selected by the board to be the principal office of the supervisors of the district. The application shall be accompanied by a statement by the state soil conservation board, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the board did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof, that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the board did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the board.

(2) The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation board and to the five petitioners and the petitioners shall thereupon submit to the secretary of state a new name for the said district not subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. The secretary of state shall make and issue a certificate under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation board.

(3) After six months shall have expired from the date of entry of a determination by the state soil conservation board that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); §7, ch. 22858, 1945; §1, ch. 25407, 1949.
cf.—§582.30, Discontinuance of districts.
§582.17 Presumption as to establishment.
§582.31 Certification of results of referendum; dissolution.

582.16 Addition of territory to district or removal of territory therefrom.—Petitions for including additional territory or removing territory within an existing district may be filed with the state soil conservation board, and the proceedings provided for in this chapter in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion or removal. The board shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. If the petition is signed by a majority of the land owners of such area, no referendum need be held. In referenda upon petitions for such inclusions or removals, all owners of land lying within the proposed area to be added or removed shall be eligible to vote.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); §2, ch. 25407, 1949.

582.17 Presumption as to establishment.—In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof.

History.—§5, ch. 18144, 1937; §3, ch. 19473, 1939; CGL 1940 Supp. 4151(476).

582.18 Election of supervisors for each district.—

(1) Regular elections shall be held every two years beginning in 1953 for the purpose of electing supervisors for each district. The state board shall determine the date of such elections, shall pay all expenses of such elections, shall supervise the conduct thereof, shall give due notice of such elections, shall determine the eligibility of voters therein and shall publish the results thereof. Candidates for supervisor in each district shall be nominated by nominating petitions subscribed by twenty-five or more qualified electors of such district and filed with the state board at least thirty days prior to the date set by the state board for the regular election. The names of all nominees on behalf of whom such nominating petitions have been filed shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction of insert an X mark in the square before the names to indicate the voter's preference according to the number of supervisors to be elected. All qualified electors residing within the district shall be eligible to vote in such election. The candidates who

shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. In the case of newly organized districts participating in a regular election for the first time the three candidates receiving the highest number of votes, respectively, shall be elected for terms of four years each, the two candidates receiving the next highest number of votes shall be elected for initial terms of two years.

(2) Following the issuance by the secretary of state of a certificate of organization of a soil conservation district, or in the event of a vacancy resulting from death, resignation, removal or otherwise, nominating petitions for a special election may be filed with the state soil conservation board to nominate candidates for supervisors of such districts, providing, if within six months from the date of the filing of such nominating petitions a regular election is to be held then the state board shall not call a special election, otherwise it shall call a special election. The regulations governing the regular election shall apply to the special election insofar as may be applicable.

History.—§6, ch. 18144, 1937; §4, ch. 19473, 1939; CGL 1940 Supp. 4151(477); am. §2, ch. 28094, 1953.

582.19 Qualifications and tenure of supervisors.—The governing body of the district shall consist of five supervisors, elected as provided hereinabove.

The supervisors shall designate a chairman and may, from time to time, change such designation by majority vote. The term of office of each supervisor shall be four years, except that two supervisors shall be elected to serve for initial terms of two years, respectively, from the date of their election as provided in this chapter. A supervisor shall hold office until his successor has been elected and qualified. The selection of successors to fill an unexpired term, or for a full term, shall be by election by the qualified electors of the district. A majority of the supervisors shall constitute a quorum and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall, with approval of the supervisors of the district, be reimbursed for traveling expenses as provided in §112.061.

The supervisors may utilize the services of the county agricultural agents and the facilities of the county agricultural agents' offices insofar as practicable and feasible and may employ such additional employees and agents, permanent and temporary, as they may require, and determine their qualifications, duties and compensation. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation board, upon request, copies of such rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and others issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisors may be removed by the governor of this state upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located within or near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interest of such municipality or county.

History.—§7, ch. 18144, 1937; §5, ch. 19473, 1939; CGL 1940 Supp. 4151(478); §3, ch. 28094, 1953; §19, ch. 63-400.
cf.—§112.061 Per diem and traveling expenses of state officers and employees.
§113.07 Bonds of officials.

582.191 Election of successors to supervisors of existing districts.—The terms of office of all supervisors now existing shall not be affected by this law. Upon the expiration of each term of a supervisor now in office, his successor shall be elected for terms as provided herein based upon the classification of districts set forth as follows:

(1) Classification of soil conservation districts.

Group A.

Yellow River, Blackwater, Nassau.

Group B.

Holmes Creek, Orange Hill, Choctawhatchee River, Perdido River, Chipola River, Jefferson, Lafayette, Flagler, Sumter, Gilchrist, Pasco, Orange, Brevard, Manatee River.

Group C.

Ochlockonee River, Gadsden, Hamilton, Bradford, Gulf, Putnam, Hillsborough, Martin, Clay, Pinellas, Volusia.

Group D.

Madison, Tupelo, Union, Marion, Levy, Lake, Polk, Seminole, Osceola, Peace River, Lee, Sarasota, Indian River, Highland, Hendry, Glades, Okeechobee.

Group E.

Dixie

Group F.

Wakulla, Hardee, St. Lucie, Suwannee River.

Group G.

Santa Fe

Group H.

Baker, Franklin

(2) The terms of office of successors to supervisors of existing districts as grouped in subsection (1) shall be for four years except as follows:

Group A: Successors to supervisors whose terms expire in 1954, one shall be elected for an initial term of three years and one shall be elected for an initial term of one year.

Group B: Successors to supervisors whose terms expire in 1954, one shall be elected for a term of three years.

Group C: Successors to supervisors whose terms expire in 1954, one shall be elected for an initial term of one year.

Group D: Successors to supervisors whose terms expire in 1953, one shall be elected for an initial term of two years. Successors to supervisors whose terms expire in 1954, three shall be elected for initial terms of three years each.

Group E: Successors to supervisors whose terms expire in 1954, one shall be elected for an initial term of one year; and three shall be elected for initial terms of three years each.

Group F: Successors to supervisors whose terms expire in 1953, two shall be elected for initial terms of two years. Successors to supervisors whose terms expire in 1954, three shall be elected for initial terms of three years.

Group G: Successors to supervisors whose terms expire in 1954, one shall be elected for an initial term of three years. Successors to supervisors whose terms expire in 1955, one shall be elected for an initial term of two years.

Group H: Successors to supervisors whose terms expire in 1954 shall be elected for an initial term of one year.

(3) In all existing districts not herein provided for and after expiration of the initial terms as provided herein, all subsequent terms of office of all supervisors shall be for four years.

History.—Comp. §4. ch. 28094, 1953.

582.20 Powers of districts and supervisors. —A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupiers of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled;

(3) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in §582.04 on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion control or prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this chapter;

(6) To make available, on such terms as it shall prescribe, to landowners and occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such landowners and occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention or control of soil erosion;

(7) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring

them to the attention of owners and occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer, any soil-conservation, erosion-control, or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of the state or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to act as agent for the United States, or any of its agencies, or for the state or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as provided in this chapter; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by public bodies of this state shall be applicable to a district organized hereunder unless the legislature shall specifically so state. The property and property rights of every kind and nature acquired by any district organized under the provisions of this chapter shall be exempt from state, county, and other taxation.

History.—§8, ch. 18144, 1937; CGL 1940 Supp. 4151(479); am. §7, ch. 22858, 1945.

582.21 Adoption of land-use regulations.—The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources, and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to adopt such land-use regulations until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district, for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. Copies of such proposed regulations shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed regulations, or shall state where copies of such proposed regulations may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed land-use regulations for the conservation of soil and prevention of erosion" and "Against approval of proposed land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed regulations. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All owners of lands within the district shall be eligible to vote in such referendum. Only such land owners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not adopt such proposed regulations unless at least a majority of the votes cast in such referendum shall have been cast for approval of the said proposed regulations. The approval of the proposed regulations by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to adopt such proposed regulations. Land-use regulations adopted pursuant to the provisions of this section by the supervisors of any district shall be binding and obligatory upon all owners and occupiers of land within such districts.

Any owner of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda of adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

History.—§9, ch. 18144, 1937; CGL 1940 Supp. 4151(480).

582.22 Regulations; contents.—The regulations to be adopted by the supervisors under the provisions of this chapter may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, changes in cropping systems, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation;

(3) Specifications of cropping programs and tillage practices to be observed;

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(5) Provisions for such other means, measures, operations and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in this chapter.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this chapter shall be printed and made available to all owners and occupiers of lands lying within the district.

History.—§9, ch. 18144, 1937; CGL 1940 Supp. 4151(480).

582.23 Performance of work under the regulations by the supervisors.—The supervisors may go upon any lands within the district to determine whether land-use regulations adopted are being observed. Where the supervisors of any district shall find that any of the provisions of land-use regulations adopted are not being observed on particular lands, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the circuit court for the county or counties within which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the land-use regulations, the failure of the defendant land owner or occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the owner of such land. Upon the presentation of such petition the court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court within his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations, or otherwise bring the conditions of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per cent per annum, from the owner of such lands.

The court shall retain the jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per cent per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History.—§10, ch. 18144, 1937; CGL 1940 Supp. 4151(481).

582.24 Board of adjustment.—Where the supervisors of any district organized under the provisions of this chapter shall adopt an ordinance prescribing land-use regulations, said supervisors shall constitute, and be ex-officio members of, a board of adjustment to hear and consider petitions which may be submitted to such board by any land owner in the district praying for relief from any of the provisions of the said land-use regulations.

History.—§11, ch. 18144, 1937; §6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

582.25 Rules of procedure of board.—The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this chapter

and with the provisions of any ordinance adopted pursuant to this chapter. The board shall designate a chairman from among its members, and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any three members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings and of all documents filed in its office, which shall be a public record.

History.—§11, ch. 18144, 1937; §6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

582.26 **Petition to board to vary from regulations.**—Any land owner or occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be filed by the petitioner with the chairman of the state soil conservation board. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The state soil conservation board shall have the right to appear and be heard at such hearing. Any owner or occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties and unnecessary hardships. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

History.—§11, ch. 18144, 1937; §6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

582.27 **Review of order by circuit court.**—Any petitioner aggrieved by an order of the board granting or denying, in the whole or in part, the relief sought, or any intervening party, may obtain a review of such order in the circuit court for the county or counties within which the lands of the petitioner may be, by filing in such court a petition praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the same manner as are other judgments or decrees of the court.

History.—§11, ch. 18144, 1937; §6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

582.28 **Cooperation between districts.**—The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History.—§12, ch. 18144, 1937; CGL 1940 Supp. 4151(483).

582.29 **State agencies to cooperate.**—Agencies of this state which shall have jurisdiction over, or be charged with, the administration of any state-owned lands, and of any county, or

other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized under this chapter, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted shall be in all respects observed by the agencies administering such publicly owned lands.

History.—§13, ch. 18144, 1937; CGL 1940 Supp. 4151(484).

582.30 Discontinuance of districts; referendum.—Any time after five years from the organization of a district under the provisions of this chapter, any twenty-five owners of land lying within the boundaries of such district may file a petition with the state soil conservation board praying that the operations of the district be terminated and the existence of the district discontinued. The board may conduct such public meetings and public hearings upon petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the board it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (Name of the soil conservation district to be here inserted)" and "Against terminating the existence of the _____ (Name of the soil conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land owners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

If two-thirds or more of the qualified voters in such referendum shall have voted for the discontinuance of the district, the board shall certify to the supervisors of the district the result of such referendum and that the continued operation of the district is not administratively practicable and feasible.

History.—§14, ch. 18144, 1937; §7, ch. 19473, 1939; CGL 1940 Supp. 4151(485).

582.31 Certification of results of referendum; dissolution.—Upon receipt from the state soil conservation board of a certification that the board has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this chapter, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be converted into the state treasury, which amount shall be placed to the credit of the state soil conservation board for the purpose of liquidating any legal obligations said district may have at the time of its discontinuance. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation board setting forth the determination of the board that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

History.—§14, ch. 18144, 1937; §7, ch. 19473, 1939; CGL 1940 Supp. 4151(485).

582.32 Continuance of existing contracts, etc.—Upon issuance of a certificate of dissolution all land-use regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation board shall be substituted for the district or supervisors as party to such contracts. The board shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of this chapter, nor the pendency of any action instituted under the provisions of this chapter, and the board shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The state soil conservation board shall not be required to entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five years.

History.—§14, ch. 18144, 1937; §7, ch. 19473, 1939; CGL 1940 Supp. 4151(485).

CHAPTER 583

CLASSIFICATION AND SALE OF EGGS, POULTRY, ETC.

583.01 Definitions. — In construing this chapter, where the context permits, the words, phrases, or term:

(1) "Commissioner" within the intent and purposes of this chapter shall mean the Florida commissioner of agriculture.

(2) "Dealer" in eggs shall mean any person, firm or corporation selling or offering for sale in this state thirty dozen or more eggs or its equivalent in any one week.

(3) "Eggs" within the intent and purposes of this chapter shall be construed to mean all edible shell eggs, frozen whole eggs, frozen yolks, frozen whites and frozen egg products.

(4) "Shell eggs" within the intent and purposes of this chapter are construed to mean all edible eggs still in their original shell and shall be classified as follows:

(a) "Cold storage eggs" mean eggs which have been in cold storage for a period of thirty days or longer.

(b) "Shipped eggs" mean eggs which have been produced or processed outside this state which meet the grades and standards of qualification set up by the commissioner of agriculture.

(c) "Florida eggs" mean eggs which have been produced and processed in Florida which meet the grades and standards of qualification set up by the commissioner of agriculture.

(d) "Unclassified eggs" shall mean eggs which have not been in cold storage for sufficient period to be classified as "cold storage eggs" as defined in the regulations and which do not meet the grades and standards of qualification as set up by the commissioner of agriculture because they have never been graded for internal quality and size and no declaration shall be made in the sale of "unclassified eggs" as to quality grade or size and such eggs because of failure to have been graded shall not be offered at retail in the one dozen type cartons after July 1, 1957.

(e) "Shell treated eggs" are eggs which shells have been treated with oil or other substance in the interest of preserving their internal quality and when such treatment is used a descriptive declaration using the term "shell treated," shall be added to the carton legends by printing or stamping or in any other legible manner.

(f) "Fresh eggs" mean eggs of grade A or better quality which have not been held in cold storage for a period of thirty days or longer.

(5) "Frozen eggs, frozen whole eggs, frozen mixed eggs," are the food prepared by freezing liquid eggs.

(6) "Liquid eggs, mixed eggs, liquid whole eggs, mixed whole eggs," are eggs of the domestic hen, broken from the shells, and with yolks and whites in their natural proportions as so broken. They may be mixed, or mixed and strained.

(7) "Egg yolks, liquid egg yolks, yolks, liquid yolks," are yolks of eggs of the domestic hen so separated from the whites thereof as to contain a total egg solid content which conforms with the specifications prescribed by the definition and standard of identity established under the federal food, drug and cosmetic act and the Florida food, drug and cosmetic law.

(8) "Frozen yolks, frozen egg yolks," are the food prepared by freezing egg yolks.

(9) "Egg whites, liquid egg whites, whites, liquid whites," are whites of eggs of the domestic hen separated from the yolks thereof and conform with specifications prescribed or to be prescribed by the definition and standard of identity established under the federal food, drug and cosmetic act and the Florida food, drug and cosmetic law.

(10) "Frozen whites, frozen egg whites," are the food prepared by freezing egg whites.

(11) "Frozen egg products," are frozen whole eggs, frozen whites or frozen yolks or any combination thereof to which have been added salt, sugar or other foods and noninjurious food additives.

(12) Grading for internal quality shall be determined by candling and only after candling may a grade be declared by any dealer or packer of shell eggs; however, it is understood that should some new method be devised and approved by the commissioner that is accepted commercially by the industry, it shall be within the authority of the commissioner to allow such new method for determining internal quality in place of the now university accepted candling operation.

(13) "Dealer" in poultry shall mean any person, firm or corporation, including processors and retailers, engaged in the business of selling, offering for sale or holding for the purpose of sale in this state any dressed poultry in excess of one hundred pounds in any one week, that are free from disease.

(14) "Broker" shall mean any person, firm or corporation who sells dressed poultry in this state for a dealer on a commission basis.

(15) "Processor" shall mean any person, firm or corporation slaughtering and dressing poultry for commercial purposes.

(16) "Poultry" shall mean all kinds of poultry and shall include chickens, turkeys, ducks, guineas, geese, pigeons and other domesticated food birds.

(17) "Carton" within the intent and purpose of this chapter shall be construed to mean any container of paper, cardboard or other material used as a carrier of eggs where each egg has an individual cell in lots of any amount from one-half dozen to three dozen. It is understood that paper bags or other containers where eggs are packed in bulk without separation between individual eggs shall in no way be construed as being a carton as intended in this chapter.

(18) "Classifications" within the intent and purposes of this chapter, eggs shall be classified for official state inspection labeling purposes as: "Florida eggs," "shipped eggs," "unclassified eggs," and "cold storage eggs." Official labels showing these classifications shall be affixed to all cases, half-cases and cartons (with the exception of "unclassified eggs" which shall not be sold in cartons as defined in the law). "Shell treated eggs" shall not be considered a classification but must be added to the other descriptive legends on the cases, half-cases and cartons where grade and size are declared.

History.—§1, ch. 16012, 1933; §§1, 2, ch. 16982; §1, ch. 17170, 1935; CGL 1936 Supp. 4126(1), 4126(2), 4151(379); a. §1, ch. 24106, 1947; §1, ch. 57-151; (4) (a)-(c) a., (f) n. by §1, ch. 61-413.

583.02 Labeling, marking and advertising eggs; sales between dealers.—It is unlawful for any dealer:

(1) (a) To offer for sale or sell in this state any case of eggs, or partial case of eggs or any carton containing eggs which fails to carry the official inspection label.

(b) In the event a dealer who is a holder of a certificate shall sell or consign eggs to another dealer in Florida who also holds a certificate, the commissioner of agriculture may permit the consignor or original seller to deliver to the consignee the eggs so sold or consigned without labels or stamps; provided said eggs are accompanied by proper bill of lading, and provided further that the consignee, immediately upon receipt of such eggs and prior to selling or offering them for sale, shall affix to each case the inspection stamp and the label required by this chapter.

(2) To offer for sale or sell eggs in bulk (not in cases or cartons) from any open case, box, basket, or other receptacle holding said eggs in bulk without displaying conspicuously on every such case, box, basket, or other receptacle a placard or heavy cardboard not smaller than seven inches by seven inches in size, on which shall be legibly and plainly printed in letters not smaller than one inch in height, wording showing whether said eggs offered for sale or sold are "cold storage eggs" (inserting the state of origin), "shipped (inserting the state of origin) eggs," "Florida eggs," "unclassified eggs" (inserting the state of origin) or "processed eggs" (inserting the state of origin), and also stating the grade and standard to which the eggs contained therein conform.

(3) To offer eggs for sale in any newspaper advertisement, circular, radio or other form of advertising without plainly designating in such advertisement the classification, grade and standard to which the eggs being offered for sale properly belong.

(4) To use the term "Florida" in connection with the advertisement and sale of eggs not produced in this state.

(5) To bring shipped eggs into Florida labeled as Florida eggs and all eggs shipped into Florida labeled as Florida eggs shall have stop-sale order placed thereon until properly labeled.

(6) To take, send or mail to any address outside of Florida, or place into the hands of another to be taken out of Florida, egg labels for use on Florida eggs.

History.—§2, ch. 16012, 1933; §§2, 3, ch. 16982, 1935; CGL 1936 Supp. 4126(2), 4126(3); §2, ch. 57-151; (5), (6) n. by §2, ch. 61-413.

583.03 Commissioner of agriculture to fix grades and standards, etc.—The commissioner of agriculture may determine, establish, and promulgate, from time to time, reasonable grades and standards of quality for eggs to be sold or offered for sale in the state, such as will, in his judgment, promote honest and fair dealing in the interest of the consumer; and he may alter or modify such grades and standards of quality from time to time, as in his judgment, honest and fair dealing in the interest of the consumer may require; provided, however, that the grades and standards of quality so fixed by the commissioner of agriculture shall be based upon requirements not exceeding the requirements necessary to meet the grades and standards of quality prescribed by the United States department of agriculture, or which may hereafter be prescribed by such United States department of agriculture, and the tolerance to be allowed shall be the same as is allowed in each grade or standard of quality by the United States department of agriculture.

History.—§9, ch. 16982, 1935; CGL 1936 Supp. 4126(9).

583.04 Promulgation of regulations. — The commissioner of agriculture may make and promulgate such regulations as may be neces-

sary to carry out the provisions of this chapter.

History.—§8, ch. 16012, 1933; §10, ch. 16982, 1935; CGL 1936 Supp. 4126(10).

583.05 Powers of commissioner of agriculture in making inspections.—For the purpose of carrying out the provisions of this chapter, the commissioner of agriculture, individually or through his authorized inspectors or agents, is authorized:

(1) (a) To enter on any business day during the usual hours of business, any store, market or other building or place where eggs are sold, offered for sale, or held for the purpose of sale, in order to ascertain by inspection whether in the exhibition of such eggs all of the provisions and conditions of this chapter or any rule or regulation duly promulgated in relation to the sale, offering for sale, or holding for the purpose of sale have been complied with.

(b) Upon good and sufficient cause to believe that any of the provisions of this chapter are being violated, to stop and inspect any truck or other vehicle engaged in the transportation of eggs upon the highway to be sold, offered for sale, or held for the purpose of sale in the state, and to make such examination or inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade and standard required by the provisions of this law have been complied with.

(c) To enter on any business day during the usual hours of business, any restaurant kitchen, hotel dining room kitchen, or the kitchen of any other public eating place where eggs and egg products are served as food, in order to ascertain by inspection whether in the serving of such eggs or egg products as food all of the provisions and conditions of this chapter or any rule or regulation duly promulgated in relation thereto have been complied with; provided that no such restaurant, hotel dining room or other public eating place where eggs or egg products are served as food shall not be construed to be a dealer and do not come under the provisions of this law except in order to permit inspection of eggs or egg products for the protection of the public health and to insure that the provisions of this law are being complied with by the dealer from which such eggs or egg products were purchased.

(2) To issue and enforce a stop sale notice or order to the owner or custodian of any lot of eggs which the commissioner or his inspectors or agents find, or have good reason to believe, is in violation of any of the provisions of §§583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or any regulation issued hereunder which shall prohibit further sale, barter, exchange or distribution of eggs until the commissioner of agriculture is satisfied that the law has been complied with and has issued a written release or notice to the owner or custodian of such eggs.

History.—§11, ch. 16982, 1935; CGL 1936 Supp. 4126 (11); §2, ch. 24106, 1947; (1) §3, ch. 57-151.

583.06 Employment of assistants. — The commissioner of agriculture may employ such assistants as are necessary to carry out and enforce the provisions of this chapter, such assistants to be paid out of the general inspection trust fund.

History.—§12, ch. 16982, 1935; CGL 1936 Supp. 4126(12). §2, ch. 61-119.

583.07 Egg inspection fee.—An inspection fee of four cents on each thirty-dozen case of eggs, or its equivalent, is imposed, the same to be collected by the commissioner of agriculture and the proceeds thereof to be placed in the general inspection trust fund of the department of agriculture. The method and manner of collection of such inspection fee, by stamps or otherwise, shall be prescribed by the commissioner of agriculture.

History.—§3, ch. 16012, 1933; §4, ch. 16982, 1935; CGL 1936 Supp. 4126(4); §2, ch. 61-119.

583.09 Certification of dealers.—It is unlawful for any person to sell or offer for sale eggs as a dealer unless such person has obtained from the commissioner of agriculture a certificate to be issued free of charge authorizing such person to engage in the selling of eggs as such dealer in the state. Such certificate shall be subject to revocation by the commissioner of agriculture for cause. All such certificates shall be permanent registration and effective until revoked; provided that all certificates heretofore or hereafter issued shall serve as valid certificates until replaced with permanent certificates by the commissioner of agriculture.

History.—§4, ch. 16012, 1933; §6, ch. 16982, 1935; CGL 1936 Supp. 4126(6); am. §3, ch. 24106, 1947; §21, ch. 57-1; §4, ch. 57-151.

583.10 Records, inspection, invoices and information; penalty.—

(1) Egg dealers shall keep for a period of two years all invoices, manifests, bills of lading, warehouse receipts, receiving and delivery receipts, record of checks issued, bank deposits, bank account statements, and paid checks, ledgers, books of accounts, memoranda or other equivalent information, relating to the purchase, sale or transfer of eggs, showing the name of the seller or consignor, the name of the purchaser or consignee, the quantity, source and classification, and make such records readily available to the commissioner of agriculture, or his duly authorized representative during all business hours for the purpose of inspection, examination and audit.

(2) The commissioner of agriculture may for cause require any dealer so granted a certificate to mail to the office of the commissioner of agriculture at Tallahassee, duplicate copies of all invoices or equivalent information, showing the consignor, the consignee, the quantity, source, classification, grades and standard of eggs included in each purchase or sale, or such other information as the commissioner of agriculture may require; and the commissioner of agriculture may prescribe the forms to be used to give such information.

(3) Any person violating this section, upon conviction shall be punished as provided in §583.20.

History.—§5, ch. 16012, 1933; §7, ch. 16982, 1935; CGL 1936 Supp. 4126(7); §1, ch. 59-425.

583.11 Eggs in interstate commerce excepted.—This chapter shall not apply to any shipment of eggs while the same constitutes a bona fide shipment in interstate commerce, but this chapter shall apply at the very instant when an interstate shipment comes to rest within the state and the police power may be exerted thereon, or whenever such interstate shipment loses its character as such.

History.—§8, ch. 16982, 1935; CGL 1936 Supp. 4126(8).

583.12 Live and dressed poultry.—Live and dressed poultry are classified as:

(1) Live poultry, construed to mean fowl, not diseased, to be slaughtered for human consumption.

(2) Florida dressed, construed to mean any fowl, free of disease, slaughtered and offered for sale in Florida, that have not been hard-chilled or frozen.

(3) Shipped (state of origin) dressed, construed to mean any fowl, free of disease, produced and slaughtered outside of Florida, that have not been hard-chilled or frozen.

(4) Quick frozen, or frozen, construed to mean any fowl that have been processed, packed, sealed and frozen in strict conformity with accepted standards for quick freezing, or frozen, that have not developed any appearance of cold storage stock and show no evidence of deterioration from freezing.

(5) Storage (or cold storage) fowl, construed to mean all fowl free from disease and regardless of where slaughtered, that show evidence of deterioration from freezing or that which have been held at low temperature for sixty days or more.

History.—§2, ch. 17170, 1935; CGL 1936 Supp. 4151(380); am. §4, ch. 24106, 1947.

583.13 Dealers to mark slaughtered poultry as to grade.—

(1) It is unlawful for any dealer or broker to sell, offer for sale, or hold for the purpose of sale in the state any slaughtered poultry without clearly imprinting thereon or attaching thereto a label or tag, not less than two inches in diameter on which shall be plainly and legibly printed the classification, grade and standard to which the same belong. Whenever shipped, fresh dressed or cold storage poultry are sold, offered for sale, or held for the purpose of sale packed in a container other than an air-tight container, such container shall have affixed a label, not less than two inches by four inches on which shall be plainly and legibly printed in letters not less than three-eighths inch in height, the classification, grade and standard to which the contents of such container belong.

(2) It is unlawful to offer poultry for sale in any newspaper advertisement, circular, radio, or other form of advertising without plainly designating in such advertisement the classification, grade and standard to which the poultry being offered for sale properly belong.

(3) It is unlawful for any person, firm or corporation to use dressed poultry in the preparation of food served to the public, or to hold dressed poultry for the purpose of such use, unless such dressed poultry has clearly imprinted thereon or attached thereto a label or tag, not less than two inches in diameter, on which shall be plainly and legibly printed the classification, grade and standard to which the same belong. Whenever shipped, fresh dressed or cold storage poultry are used in the preparation of food served to the public, or held for the purpose of such use, packed in a container other than an air-tight container, such container shall have affixed a label, not less than two inches by four inches on which shall be plainly and legibly printed in letters not less than three-eighths inch in height the classification, grade and standard to which the contents of such container belong.

History.—§3, ch. 17170, 1935; CGL 1936 Supp. 4151(381). Am. §5, ch. 57-151.

583.14 Certification of poultry dealers.—It is unlawful to sell, offer for sale, or hold for the purpose of sale any poultry as a dealer or broker unless such person has obtained from the commissioner of agriculture a certificate authorizing such person to engage in the business of selling poultry in Florida. Such certificate shall be subject to revocation by the commissioner of agriculture for cause. All such certificates shall be permanent registration and effective until revoked; provided that all certificates heretofore or hereafter issued shall serve as valid certificates until replaced with permanent certificates by the commissioner of agriculture.

History.—§4, ch. 17170, 1935; CGL 1936 Supp. 4151(382); am. §5, ch. 24106, 1947; §22, ch. 57-1; §6, ch. 57-151.

583.15 Reports of poultry dealers.—The commissioner of agriculture may require every dealer and broker granted a certificate and every person, firm or corporation, using dressed poultry in the preparation of food served to the public on which inspection fee has not been previously paid to keep records of all purchases, sales, receipts or other transactions pertaining to the sale, purchase or use of dressed poultry and to mail to the office of the commissioner of agriculture at Tallahassee, duplicate copies of all invoices, or equivalent information, showing the consignor, the consignee, the quantity, source and classification of poultry included in each purchase or sale, or such other information as the commissioner may require; and the commissioner may prescribe the forms to be used to give such information.

History.—§5, ch. 17170, 1935; CGL 1936 Supp. 4151(383). Am. §7, ch. 57-151.

583.16 Interstate shipments exempt.—This law shall not apply to any shipment of live or dressed poultry while the same constitutes a

bona fide shipment in interstate commerce, but shall apply at the very instant when an interstate shipment comes to rest within the state and the police power may be asserted thereon, or whenever such interstate shipment loses its character as such.

History.—§6, ch. 17170, 1935; CGL 1936 Supp. 4151(384).

583.17 Grades and standards for fowls.—The commissioner of agriculture may determine, establish and promulgate, from time to time, reasonable grades and standards of quality as to each or all of the classifications for fowl to be sold or offered for sale in the state, such as will, in his judgment, promote honest and fair dealing in the interest of the consumer; and he may alter or modify such grades and standards of quality from time to time, as in his judgment honest and fair dealing in the interest of the consumer may require; provided, however, that the grades and standards of quality so fixed by the commissioner of agriculture shall be based upon requirements not exceeding the requirements necessary to meet the grades and standards of quality prescribed by the United States department of agriculture, or which may hereafter be prescribed by such United States department of agriculture, and the tolerance to be allowed shall be the same as is allowed in each grade or standard of quality by the United States department of agriculture.

The commissioner of agriculture may also make and promulgate such regulations as may be necessary to carry out the provisions of this law.

History.—§§7, 8, ch. 17170, 1935; CGL 1936 Supp. 4151(385), 4151(386).

583.18 Inspection by commissioner.—The commissioner of agriculture, his inspectors or agents, in carrying out the provisions of this law:

(1) (a) May enter on any business day during the usual hours of business, any store, market or other building or place where poultry is sold, offered for sale, or held for the purpose of sale, in order to ascertain by inspection whether in the exhibition of such poultry all of the provisions and conditions of this chapter or any rule or regulation duly promulgated in relation to the sale, offering for sale, or holding for the purpose of sale have been complied with.

(b) May, upon good and sufficient cause to believe that any of the provisions of this law are being violated, stop and inspect any truck or other vehicle engaged in the transportation of poultry upon the highway, to be sold, offered for sale, or held for the purpose of sale in Florida, and to make such examination or inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade and standard required by the provisions of this law have been complied with.

(2) May issue and enforce a stop sale notice or order, or a stop use notice or order, to the owner or custodian of any lot of poultry which the commissioner or his inspectors or agents find, or have good reason to believe, are in violation of any of the provisions of this law or any regulation issued hereunder, which shall prohibit further sale, barter, exchange, distribution or use of such poultry until the commissioner of agriculture is satisfied that the law or regulation has been complied with and has issued a written release or notice to the owner or custodian of such poultry.

(3) May enter on any business day during the usual hours of business any restaurant kitchen, hotel dining room kitchen, or the kitchen of any other public eating place where dressed poultry is used in the preparation of food served to the public, and to make such examination and inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade and standard required by the provisions of this law have been complied with.

(4) An inspection fee of not less than one-eighth of one cent per pound nor more than one-fourth of one cent per pound is hereby imposed, and shall be paid to the commissioner of agriculture on all dressed poultry sold by dealers in this state and on all dressed poultry used in the preparation of food served to the public, if the fee has not been previously paid, which said inspection fee shall be paid by the dealer who first sells, offers for sale or holds for the purpose of sale dressed poultry in this state or by any person, firm or corporation using dressed poultry in the preparation of food served to the public, on which inspection fee has not been previously paid.

It is unlawful for any dealer to sell, offer for sale or hold for the purpose of sale in this state any dressed poultry on which said inspection fee shall not have been paid, and it is unlawful to use, or hold for the purpose of use, in this state any dressed poultry in the preparation of food served to the public on which said inspection fee shall not have been paid. The manner of collection of such inspection fee shall be as prescribed by the commissioner of agriculture who is hereby authorized to so prescribe and enforce the method and manner of collecting same. All such fees so collected shall be paid into and become a part of the general inspection trust fund of the state.

(5) The possession of more than one hundred pounds of dressed poultry in any one week by any dealer or broker or any person, firm or corporation using dressed poultry in the preparation of food served to the public, shall be deemed held for the purpose of sale or for the purpose of use in the preparation of food served to the public.

History.—§§9, 10, ch. 17170, 1935; CGL 1936 Supp. 4151(387), 4151(388); §6, ch. 24106, 1947; §11, ch. 25035, 1949; §8, ch. 57-151; (4) a. by §2, ch. 61-119.

583.19 Sale of unsound, etc., fowls prohibited.—It is unlawful for any person to sell fowl, live or dressed, which is unsound, unhealthful, unwholesome, diseased or otherwise unfit for human consumption.

History.—§11, ch. 17170, 1935; CGL 1936 Supp. 4151(389).

583.20 Penalties for violations of chapter.—(1) Any person violating any provision of this chapter, or any rule or regulation promulgated by the commissioner of agriculture within this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in the county jail for not more than ninety days or shall be fined in a sum not less than fifty dollars nor more than two hundred dollars. In addition thereto, the commissioner may revoke the certificate of any dealer convicted of any violation of this chapter.

(2) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the commissioner of agriculture is hereby authorized to apply by a bill in equity to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of §§583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or from failing or refusing to comply with the requirements of said §§583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or any rule or regulation duly promulgated as in §583.04 authorized. Such injunction shall be issued without bond.

History.—§13, ch. 16982, 1935; §12, ch. 17170, 1935; CGL 1936 Supp. 4151(390), 7688(1), 8135(19); am. §7, ch. 24106, 1947; (2) by §24, ch. 57-1.

cf.—§775.06, Alternative punishment.

CHAPTER 585

STATE DEPARTMENT OF AGRICULTURE; DIVISION OF ANIMAL INDUSTRY

585.01 Definitions.—In construing this chapter, where the context permits, the word, phrase or term:

(1) "Domestic animal" shall include any equine or bovine animal, goat, sheep, swine, dog, poultry or other domesticated beast or bird;

(2) "Cattle" shall include any bull, steer, ox, cow, heifer, calf, or any other animal subject to infestation by cattle fever ticks.

(3) "Owner" shall include any owner, custodian, or other person in charge of cattle.

(4) "Commissioner" means the commissioner of agriculture of the state.

(5) "Department" means the department of agriculture of the state.

(6) "Director" means the director of the

division of animal industry who may be known as the state veterinarian.

(7) "Division" means the division of animal industry of the department of agriculture.

(8) "Technical committee" means the animal industry technical committee which may be known as the Florida livestock board.

History.—§5, ch. 9201, 1923; §2, ch. 17273, 1935; CGL 1936 Supp. 3321, 3323(2); §1, ch. 25358, 1949; §1, ch. 59-457.

585.011 Department control; continuance of powers, duties, rules, orders, etc.—

(1) This chapter shall be enforced by and under the control of the department of agriculture as provided in chapter 570.

(2) The department, through the division of animal industry, shall have and exercise all the powers, jurisdiction, duties and authority now exercised by, or required of, the Florida livestock board, and the provisions of chapter 585 shall be applicable to the division within the department. All rules, regulations, orders, quarantines and official acts of the said Florida livestock board shall remain in full force and effect until and unless repealed, amended, changed or superseded by action of the commissioner.

History.—§2, ch. 59-457.

585.08 General powers of the department; rules and regulations.—The division of animal industry is authorized through the commissioner to:

(1) Establish, maintain and enforce quarantine areas within the state, or the entire state, and restrict, regulate or prohibit the movement or transportation of domestic animals and all other animals or cattle found, determined or suspected by the commissioner, or the technical committee under its emergency powers, to be carriers of any contagious, infectious or communicable disease or cattle fever ticks, into, from and within such areas, when necessary for tick eradication, or for the carrying out of any of the purposes of this chapter, and for the prevention or the control of the spread or dissemination of cattle fever ticks or any contagious, infectious, or communicable disease among domestic animals and cattle.

(2) Prescribe quarantine areas, their locations and boundaries, for the purpose of eradicating the cattle fever tick (Margaropus Annulatus) and controlling and preventing the propagation and spread of the same, and to restrict, regulate and prohibit the movement or transportation of domestic animals or cattle into, within, or out of such quarantine areas, when deemed necessary for the prevention or the control of the spread or dissemination of the cattle fever tick (Margaropus Annulatus).

(3) Make, promulgate, amend, repeal and enforce rules and regulations:

(a) For the carrying out of the provisions, purposes and requirements of this chapter;

(b) Governing the introduction of domestic animals into or within the state, which rules and regulations, when deemed necessary by the commissioner, or the technical committee under its emergency powers, may require that all domestic animals moved into the state be covered by an official health certificate and requisite test chart approved by the livestock sanitary officer of the state or county of origin;

(c) Governing the disposal or destruction of carcasses of domestic and other animals, which are condemned or die from or while afflicted with any contagious, infectious, or communicable disease, in such manner as to prevent the spread or continuance of such contagion or infection;

(4) Condemn and destroy any domestic animals, or other animals affected with any contagious, infectious, or communicable disease, or which have been exposed to or are suspected of being liable to spread any contagious, infectious, or communicable disease.

(5) Condemn and destroy any barn, yard, shed, corral, or pen which, in the opinion of the commissioner, or the technical committee under its emergency powers, is liable to convey the said infection or contagion.

History.—§§5, 11, ch. 7345, 1917; RGS 2105, 2110, 2111; §6, ch. 9201, 1923; CGL 3322, 3339, 3340; §§5, 6, ch. 17273, 1935; CGL 3323(6); §4, ch. 23775, 1947; §2, ch. 25358, 1949; §3, ch. 59-457. (1), (3) (b), (c), (5) a. by §1, ch. 61-408.
cf.—§585.41 Violation of rules and regulations of department.

585.09 Procedure for condemnation of domestic animals and property by department.—Condemnation and destruction of domestic animals. barns, yards, sheds, corrals and pens, as provided in §585.08 shall take place only after a fair appraisal of the value of the property, which value shall be determined by the commissioner and the owner; provided, however, should the commissioner and the owner be unable to agree on such value, the value shall then be determined by three disinterested appraisers, one to be appointed by the commissioner, one by the owner of the property, and the third to be selected by these two. The appraised price, subject to the provisions of §585.10, shall be paid by the department as other expenses are paid. If the owners or person in charge of such domestic animal, barn, yard, shed, corral, or pen fails or refuses to name his or her appraiser within five days after requested by the commissioner to do so, or refuses to permit the same to be condemned and destroyed, the commissioner may make an order to the sheriff of the county wherein the property lies, directing him to destroy such domestic animal, barn, yard, shed, corral or pen, in the manner to be prescribed by such order, which order shall be executed by said sheriff forthwith. Upon the destruction of the said property by the said sheriff, the department shall have the right to recover, from the owner of the property destroyed, all costs and expenses incurred by it in connection therewith.

History.—§11, ch. 7345, 1917; RGS 2111; §11, ch. 9201, 1923; CGL 3340; §5, ch. 23775, 1947; §4, ch. 59-457.
cf.—Similar to §9, ch. 5933, 1909.

585.10 Condemned and destroyed animals; limitation on payment to owner.—The department may indemnify and reimburse the owners of all animals condemned and destroyed by or-

der of the commissioner in cases where such animals have reacted to the tuberculin test or the agglutination blood test for brucellosis (Bang's disease); provided, however, that such indemnity or reimbursement shall not exceed the sum of twelve dollars and fifty cents for any one animal.

History.—§1, ch. 18152, 1937; CGL 1940 Supp. 3348(23); §1, ch. 22886, 1945; §5, ch. 59-457.

585.11 Cooperation with United States authorities.—The department may cooperate with:

(1) The authorities of the United States in the enforcement of all acts of congress for the control, prevention, suppression and extirpation of contagious, infectious and communicable diseases affecting domestic animals or cattle and in connection therewith may:

(a) Appoint inspectors of the United States department of agriculture as temporary assistant state veterinarians or livestock inspectors; provided, they shall first consent to act without compensation or profit from the state;

(b) Accept aid or assistance from the United States in conducting the work of tuberculosis, brucellosis and hog cholera eradication or control, or from any of its officers, representatives or agents, in carrying out such work.

(2) The officials of the United States department of agriculture in tuberculosis, brucellosis and hog chlora eradication or control work and the owners of domestic animals or cattle, who accept indemnity for animals found to be diseased and slaughtered in accordance with the special acts of congress now in effect and appropriating funds for this purpose, or that may hereafter be available from such source.

(3) The United States department of agriculture in carrying out the provisions of the national poultry improvement plan and the national turkey improvement plan in Florida, and in connection therewith, may promulgate rules and regulations necessary to carry out the provisions of the national poultry improvement plan and the national turkey improvement plan in Florida.

History.—§12, ch. 7345, 1917; RGS 2112; §12, ch. 9201, 1923; CGL 3341; §7, ch. 17273, 1935; CGL 1936 Supp. 3323(7); §1, ch. 22581, 1945; §3, ch. 25358, 1949; §6, ch. 59-457; §2, ch. 61-408.

585.14 Information concerning, and control of, livestock diseases. — The department shall collect, preserve and disseminate information concerning infectious, contagious, communicable and other diseases of domestic animals, their origin, locality, nature, appearance, manner of dissemination or contagion and method of treatment required for the successful eradication and control thereof. The division shall take such measures through the director as in the judgment of the commissioner may be necessary and proper for the control, suppression, eradication and prevention of the spread thereof and to protect domestic animals in the state therefrom. The department shall also quarantine such domestic animals as it shall find, or have reason to believe, to be infected with or exposed to any such disease.

History.—§4, ch. 7345, 1917; RGS 2104; §4, ch. 9201, 1923; CGL 3320; §7, ch. 59-457; §3, ch. 61-408.

585.15 Dangerous transmissible diseases.—The following named diseases and any other contagious, infectious, or communicable diseases now or hereafter proclaimed by either the commissioner or the technical committee under its emergency powers to be of a dangerous transmissible nature, shall be known as dangerous transmissible diseases: Glanders, anthrax, blackleg, contagious pleuropneumonia, rinderpest or cattle plague, hemorrhagic septicemia, foot and mouth disease or apthous fever, southern cattle fever or Texas fever, sheep or cattle scabies, hog cholera, swine plague, swine erysipelas, fowl plague or fowl pest, rabies, dourine, tuberculosis, brucellosis, vesicular exanthema, atrophic rhinitis, sheep scrapie, equine piroplasmosis, laryngotracheitis, infectious bronchitis, newcastle disease, cochliomyiasis (screwworm infestation), or domestic animals or cattle infested with or infected by the cattle fever tick or ticks.

History.—§3, ch. 17273, 1935; CGL 1936 Supp. 3323(3); §4, ch. 25358, 1949; §8, ch. 59-457; §1, ch. 63-356.

585.16 Powers of division in connection with certain diseases.—Whenever any of the diseases enumerated in §585.15 or any disease now or hereafter proclaimed by either the commissioner or the technical committee under its emergency powers to be of a dangerous or transmissible nature, shall exist anywhere within the state, or whenever it is deemed necessary or advisable to dip, examine, test, identify, treat or destroy, the division may, or through its representatives and agents, dip, examine, test, identify, treat or destroy, any infected, exposed, suspected or susceptible animal and any goods, products or materials that may carry contagion, or may quarantine on or in, for or against any premises, areas, or localities within the state; provided that provisions of this chapter shall not apply to game animals.

History.—§4, ch. 17273, 1935; CGL 1936 Supp. 3323(4); §8, ch. 23775, 1947; §9, ch. 59-457; §2, ch. 63-356.

585.17 Care of domestic animals or cattle with transmissible diseases and liability therefor.—Any person, firm or corporation who knowingly sells or offers for sale or knowingly or wilfully transports or moves, or knowingly or wilfully allows or permits any domestic animal or cattle to stray or drift within the state, knowing such animal or cattle to be suffering from, afflicted with or affected with any of the diseases enumerated in §585.15, or who knowingly or wilfully transports or moves or knowingly or wilfully allows or permits any domestic animal or cattle to stray or drift from any quarantine area, or who knowingly or wilfully sprays or dips any domestic animal or cattle in an effort to destroy any evidence of the cattle fever tick infestation upon said domestic animals or cattle, without first obtaining permission of the division, shall be liable in damages, in addition to the penal provisions of this chapter, to the department for the expense

incurred by said department by reason thereof, or to any owner of domestic animals or cattle who might be injured thereby; provided, however, that the division may issue written permission for the movement or transportation of such animals or cattle.

History.—§9, ch. 7345, 1917; RGS 2109; CGL 3338; §5, ch. 17273, 1935; CGL 1936 Supp. 3323(5); §9, ch. 23775, 1947; §5, ch. 25358, 1949; §10, ch. 59-457.

585.18 Diseased animals.—No person who has knowledge of the existence of any contagious, infectious or communicable disease in or among domestic animals or livestock, or who shall have knowledge that any such animal or livestock is afflicted with or suffering from any such disease, shall conceal or attempt to conceal such diseased animal or livestock or knowledge that such diseased animal or livestock is afflicted with or suffering from any such disease, from the division, its agents and employees, or shall remove or attempt to remove such animal or livestock from the reach, care or control of the division, its agents and employees.

History.—§8, ch. 7345, 1917; RGS 2108; CGL 3337; §11, ch. 59-457.

585.19 Practitioners of veterinary medicine and owners of domestic animals or cattle to report communicable diseases, infection by or infestation of domestic animals or cattle with the cattle fever tick.—All practitioners of veterinary medicine, and the owner of any domestic animal or cattle afflicted with or suffering from any contagious, infectious, or communicable disease, or who know of or suspect the infection of any domestic animal or cattle or the infestation thereof with the cattle fever tick, immediately upon gaining such information of the existence of any such disease in or among such domestic animals or cattle, or the infection of any such domestic animal or cattle or infestation thereof with the cattle fever tick, shall report the same to the division, within the department. All such reports shall be in writing and shall describe the diseased domestic animal or cattle or the domestic animal or cattle infected by or infested with the cattle fever tick, and shall give the name and address of the owner or person in charge thereof and the place where the same are kept.

History.—§7, ch. 7345, 1917; RGS 2107; CGL 3336; §6, ch. 25358, 1949; §12, ch. 59-457; §4, ch. 61-408.

585.20 Injection of germs into animals.—No person may inject or otherwise administer to any domestic animal that is producing or that is to be used as food for man, any virus or other substance containing pathogenic or disease producing germs of a kind that is virulent for man or for animals except upon written permission to do so from the division.

History.—§9, ch. 17273, 1935; CGL 1936 Supp. 3323(9); §13, ch. 59-457.

585.21 Sale of biological products.—It is unlawful for any person to manufacture for sale, sell or offer for sale any biological product intended for diagnostic or therapeutic purposes with animals except upon written permission to do so from the division and unless such product is officially approved by the United States department of agriculture.

History.—§8, ch. 17273, 1935; CGL 1936 Supp. 3323(8); §1, ch. 57-140; §14, ch. 59-457.

585.22 Public notice of general quarantines.—Whenever the department shall place any area of the state under general quarantine, it shall forthwith give public notice thereof, which notice shall in general terms define the quarantine lines established, by causing said notice to be published, at least once, in a newspaper to be selected by the commissioner within the county wherein the said quarantined area lies, and by posting a copy of said notice at the door of the courthouse of said county; provided, however, if said quarantined area lies within more than one county notice shall be published in each county affected thereby. The provisions of this section shall not apply to quarantines for tick eradication.

History.—§5, ch. 7345, 1917; RGS 2105; §6, ch. 9201, 1923; CGL 3322; §15, ch. 59-457.

585.23 Owners of livestock and premises under quarantine to comply with rules and regulations.—All owners, custodians or persons in charge of quarantined domestic animals and all owners, tenants, custodians or persons in charge, or in possession of any lot, yard, pasture, field, stall, enclosure, barn or building, which has been quarantined, shall comply with all rules and regulations prescribed by the commissioner or the technical committee under its emergency powers within a reasonable time, and clean and disinfect such animals or premises, and shall destroy carriers, or cause, or means of communicating any contagious, infectious or communicable diseases affecting such animals or infecting such premises.

History.—§21, ch. 7345, 1917; RGS 2119; CGL 3345; §16, ch. 59-457.

cf.—§585.40 Violation of quarantine regulations.

585.24 Cattle fever tick eradication; quarantine.—Whenever the commissioner or the technical committee under its emergency powers decides to place any area under quarantine for the purpose of cattle fever tick eradication, public notice thereof shall be given by publishing said notice once each week, in at least one newspaper of general circulation to be selected by the commissioner in each county within said quarantine area, for two successive weeks (two publications being sufficient), before work is to commence, and by posting copies of said notice at the door of the courthouse in each county, at least eight days before the commencement of work. The time within which any right of appeal, as hereinafter provided, from any order of the department placing any area under quarantine for the purpose of cattle fever tick eradication, shall begin to run, shall be from date of issuance of said order and not the date of publication of said notice.

Upon any such area being freed of the cattle fever tick, the director shall enter his findings

of such facts upon a report to the commissioner and the technical committee.

History.—§8, ch. 9201, 1923; CGL 3324; §10, ch. 23775, 1947; §7, ch. 25358, 1949; §17, ch. 59-457.
cf.—§585.40 Violation of quarantine regulations.

585.25 Same; vats, corrals, buffer fences, acquisition of lands and equipment and dipping schedules.—Whenever the commissioner, or the technical committee under its emergency powers, shall have placed any area under cattle fever tick quarantine:

(1) The department shall construct, or cause to be constructed, or procure all necessary vats, corrals, pens and equipment, and shall be authorized and empowered to purchase or lease, upon such terms and conditions as approved by it, such lands, facilities and equipment as may be necessary to effectively and systematically prevent, suppress and control the spread of the cattle fever tick. The division is hereby authorized and empowered to construct or erect buffer or quarantine fences when deemed advisable by the department.

(2) The commissioner, or the technical committee under its emergency powers, shall fix the date when systematic dipping of cattle or other domestic animals, which shall include horses and mules, in the quarantined area or any portion thereof, shall begin, and the said regulation shall contain a schedule showing each dipping vat by name or number and the date on which the first systematic dipping of domestic animals or cattle, which shall include horses and mules, is to be held at each such vat, and the date of each subsequent dipping. Notice of adoption of such regulation and schedule shall be given by publishing said notice in some newspaper published in or near said area, once each week for two successive weeks (two publications being sufficient), and by posting a copy of said notice eight days before dipping shall begin, at the courthouse door in the county or as near as may be convenient to each and every dipping vat to be used. Each owner of domestic animals or cattle, which shall include horses and mules, then or thereafter being within said area, shall dip such domestic animals or cattle, which shall include horses and mules, at the dipping vat described in the regulation and schedule as shall be most convenient upon the dates specified for dipping, respectively, and to dip all such domestic animals or cattle, which shall include horses and mules, every fourteen days from and after the date of the first dipping, unless otherwise permitted by division director, until such time as the department shall discontinue dipping in such area or be relieved of such dipping by permission of the division director.

History.—§11, ch. 9201, 1923; CGL 3327; §11, ch. 23775, 1947; §8, ch. 25358, 1949; §18, ch. 59-457; §5, ch. 61-408.

585.26 Same; pasture rotation method.—The department may employ the pasture rotation method of tick eradication in conjunction with fever tick eradication in this state. Whenever the department shall adopt the said pasture rotation method and shall require the removal, from the area in which systematic tick eradication work is being carried on, of cattle of any owner, custodian or person in charge of such cattle, the said department shall furnish the necessary assistants required to remove such cattle; or in lieu thereof may, at its election, pay to such owner the actual, necessary or reasonable expense incurred by him in complying with the requirements of the department in removing such cattle from such area as hereinbefore provided.

History.—§§11, 13, ch. 9201, 1923; CGL 3327, 3329; §19, ch. 59-457.

585.28 Same; arbitration of costs, etc.—In the event the owner fails or refuses to dip his cattle or other domestic animals, which shall include horses and mules, or to have them inspected, the division may collect, drive, dip, and inspect such cattle or other domestic animals, which shall include horses and mules, and one-half of the expenses so incurred by the department shall become a charge against the owner and if not paid within thirty days, the department shall have a lien upon said cattle or other domestic animals, which shall include horses and mules, to secure said charge against the owner.

History.—§11, ch. 9201, 1923; CGL 3327; §7, ch. 22858, 1945; §13, ch. 23775, 1947; §20, ch. 59-457.

585.30 Same; procedure where owner fails or refuses to dip.—

(1) Any cattle, within any tick eradication area, which are not dipped in accordance with the rules and regulations of the commissioner or the technical committee under its emergency powers and under the department's supervision, shall be taken into custody, dipped and retained in its custody, at some place to be selected by the director, until redeemed or sold as hereinafter provided.

(2) The division and its agents and employees may enter into any range, premises, pen, pasture, barn or inclosure or place where cattle may be found and take into custody, remove, dip and pen any cattle which have not been dipped in accordance with the requirements of this chapter, and the rules and regulations of the department, and all expenses so incurred by the department, including expenses for penning, feeding and dipping, shall be a lien upon said cattle. If said expenses be not forthwith paid and the cattle redeemed by the owner, the division shall notify the sheriff of the county wherein said cattle are held, by written notice thereof, stating the time and place said cattle were taken into custody, the number thereof and any marks and brands thereon, and the name of the owner if known.

(3) Upon receipt of the notice aforesaid the said sheriff shall forthwith give public notice, to whom it may concern and to the owner if known, that on a day and hour to be specified in said notice, which shall not be less than ten days nor more than twenty days from and after the first publication of said notice as hereinafter provided, he will offer for public sale

and sell for cash to the highest bidder, the cattle described in said notice. Said notice shall also state the time and place such cattle were taken into custody, the number thereof and any marks and brands thereon. Said sale shall be held at the place where said cattle are situate or penned. Said public notice shall be given by publishing the same in some newspaper published in the county wherein said cattle are penned, if there be such newspaper, for two publications, the first of which shall be not less than ten days prior to the date of sale, and by publishing a copy of said notice, at least ten days prior to sale, at the courthouse door and at two dipping vats near where the cattle were taken into custody. A copy of said notice shall also be served upon the owner or one of them if more than one, or their agent, in the manner provided by law for service of summons, at least ten days before sale, if such owner or his agent, together with his address, be known to the sheriff and he resides or can be found within the state.

(4) If such cattle shall not be redeemed before the sale thereof by payment of all costs and expenses incurred by the department in taking into custody, feeding, penning and dipping of such cattle, and all sheriff's costs, then such sheriff shall offer for sale and shall sell and deliver to the highest bidder for cash all such cattle and shall deduct from the proceeds thereof all sheriff's costs, and shall pay to the department all costs and expenses incurred in taking into custody, penning, feeding and dipping such cattle, and forthwith pay into the fine and forfeiture fund of such county the balance of such proceeds; and such sale and delivery shall vest in the purchaser an absolute title and right of possession of such cattle, superior to all other title, liens and claims, except any lien for unpaid taxes on such cattle.

(5) If the former owner shall, within twelve months from and after the date of such sale, file with and establish to the satisfaction of the county commissioners of such county his claim to the net proceeds arising from said sale, the county commissioners shall deliver to such claimant the amount of such net balance.

(6) The term "sheriff's costs," as used in this section, shall be taken and held to mean such costs as sheriffs are allowed by law for similar services, and the term "expenses of keeping and feeding" shall be taken and held to mean the actual, reasonable and necessary expenses for such keeping and feeding incurred, to be shown by a sworn, itemized statement thereof filed with the clerk of the circuit court.

History.—§12, ch. 9201, 1923; CGL 3328; §21, ch. 59-457.

585.32 Purchase and distribution of hog cholera antiserum, virus, vaccine or other immunization agent.—

(1) The department is hereby authorized and required to purchase hog cholera antiserum, virus, vaccine or other immunization agent in such units as deemed advisable by the commissioner, at the lowest and best bid or bids, from one or more reliable manufacturers or suppliers producing or handling a high quality product.

(2) Except as provided in subsection (4), the department shall distribute through employees of the division, licensed veterinarians and recognized and approved agents of the state and federal governments, hog cholera antiserum, virus, vaccine or other immunization agent without cost thereof to any farmer who is an owner of swine in Florida, making application therefor on forms to be furnished by the department and approved by the administrator of said serum, virus, vaccine or other immunization agent.

(3) Whenever said serum, virus, vaccine and other immunization agents are distributed without cost as provided in subsection (2), the administrator thereof shall identify each and every hog to which said serum, virus, vaccine or other immunization agents are so administered, by means of a permanent identification without cost to the owner. The department shall designate a permanent identification to be used in all cases for this purpose.

(4) The department shall designate persons to whom it will sell serum, virus, vaccine or other immunization agent at cost, which persons so purchasing said serum, virus, vaccine or other immunization agent at cost are to sell the same to owners of swine in Florida who are unwilling to submit said swine to identification as provided in subsection (3), at a price not to exceed cost plus ten per cent; provided, however, that persons designated hereunder shall not include employees of the department or agents of the state in their capacities as such employees or agents.

(5) All moneys accruing from the sale of hog cholera antiserum, virus, vaccine or other immunization agent as provided in this section, shall be deposited in the state treasury to the credit of the current appropriation made for such purpose, which amounts are hereby appropriated to be used for the further purchase and distribution of hog cholera antiserum, virus, vaccine or other immunization agent, as provided in this section.

(6) For the purchase and distribution of the hog cholera antiserum, virus, vaccine or other immunization agent foregoing, there shall be used funds appropriated therefor by the legislature at the same session of the legislature at which this law is enacted and at all succeeding sessions of the legislature.

(7) The department is hereby authorized to promulgate and enforce all rules and regulations necessary for the administration of this section.

History.—§§1-5, ch. 7919, 1917; §1, ch. 8499, 1919; §§1-6, ch. 9329, 1923; §§1-6, ch. 10173, 1925; §§1-6, ch. 12048, 1927; §§1, 2, ch. 13656, 1929; §§1-6, ch. 15618, 1931; §§1-4, ch. 15867, 1933; §§1-4, ch. 17059, 1935; CGL 1936 Supp. 3346, 3348, 3348(8), (14), 7742(1), (2); §§1-4, ch. 18153, 1937; §§1-3, ch. 19006, 1939; §§1-3, ch. 20357, §§1, 2, ch. 20733, 1941; §1, ch. 21638; §§1-2A, ch. 21741, 1943; §585.43 consolidated with this section by §1, ch. 22517, 1945; §1, ch. 26895, 1951; (2), (4) by §2, ch. 57-140; §22, ch. 59-457; (5) by §3, ch. 61-59; (1)-(6) a. by §6, ch. 61-408.

585.321 Distribution of hog cholera antiserum, virus, vaccine or other immunization agent to farmers.—

(1) Except as otherwise provided by law, the department shall distribute through employees of the division, licensed veterinarians, recognized and approved agents of the state and federal governments, and within the boundaries of any county not adequately provided with the foregoing distributors, one or more persons selected by the board of county commissioners of such county and certified to the department, hog cholera antiserum, virus, vaccine or other immunization agent without cost thereof to any farmer who is an owner of swine in Florida making application therefor upon blanks to be furnished by the department and approved by the administrator of said serum, virus, vaccine or other immunization agent.

(2) Before any person, selected by a board of county commissioners as provided in subsection (1), shall distribute hog cholera antiserum, virus, vaccine or other immunization agent, such person shall be required to give a good and sufficient bond in the penal sum of one thousand dollars with some surety company authorized to do business in the state, as surety, payable to the department, and conditioned upon the due and faithful performance of his duties as distributor of hog cholera antiserum, virus, vaccine or other immunization agent, said bond to be approved by the clerk of the court in said county in which application is made.

History.—§§1, 2, ch. 22592, 1945; (1) by §3, ch. 57-140; §23, ch. 59-457; §7, ch. 61-408.

585.34 Inspection and transportation of meats in Florida.—

(1) Any person engaged in the slaughter of meat-producing animals within the state may make application to the department for a permit to transport and sell his products at any place within the limits of the state.

(2) The department, on receipt of such application described above, shall cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the department, a numbered permit shall be issued to the person making application for same.

(3) Municipal corporations may establish and maintain the inspection of slaughter houses, abattoirs, meat-packing plants, meat and meat food products, at establishments located within their corporate limits, and elsewhere within the counties in which such municipal corporations are located and within all other counties immediately adjoining the counties in which said municipalities are located respectively, for the purpose of ascertaining whether or not meats and meat food products intended for distribution in said municipalities are fit for human consumption. No person shall be employed as such inspector unless qualified by education and experience and is a permanent resident of the state.

(4) The officials of all municipalities maintaining such inspections may, in such municipalities and counties, fix and collect fees for such inspection of such establishments and any and all meat animals and meat food products so inspected, which may be necessary to the maintenance of such inspection service, but no further inspection charge shall be made within the state.

(5) No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of the department or its duly designated representatives.

(6) The numbered permit shall be the establishment's official state number, and such number may be used to identify all passed meats and meat food products prepared in such establishment. Such permit may be revoked by the department at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation.

(7) All meat carcasses inspected and passed shall be branded with a rubber stamp bearing the number of the establishment and the words "Florida inspected and passed."

(8) The department may make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat food products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat food products at establishments operating under this section.

(9) There shall be required by law only one inspection of meat or meat food products as herein defined, which may be an inspection by the United States department of agriculture or the department; provided, however, that inspection by local municipal authorities as permitted by this law shall be considered as state inspection within this provision.

(10) When any meat or meat food product that has been inspected as provided by this law and marked "inspected and passed," shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this law is maintained, the person preparing such meat or meat food product shall cause a label to be attached to said can, pot, tin, canvas or other receptacle or covering under the supervision of an inspector, which label shall state that the contents thereof have been "inspected and passed" under the provisions of this law; and no inspection of meat or meat food products deposited or enclosed in a can, pot, tin, canvas or other receptacle or covering in any establishment where inspection is maintained under the provisions of this law shall be deemed to be complete until such meat or meat food product has been sealed or enclosed

in said can, pot, tin, canvas or other receptacle or covering under supervision of an inspector; and no such meat or meat food product shall be sold by any person in the state under any false or deceptive name; but established trademarks that are usual to such products and which are not false or deceptive, and which shall be approved by the department are permitted. The department shall confiscate and cause to be destroyed all such labels that are found to be false or deceptive.

(11) No establishment may be operated in the state for the purpose of slaughtering animals, or for the manufacture of meat food products unless such establishment is operated under federal inspection, state inspection, or approved municipal inspection. No dressed carcasses of animals intended for food purposes, parts thereof, prepared meats or meat food products shall be sold, offered for sale, exposed for sale or be possessed for sale within the state, unless the same shall bear the "inspected and passed" stamp of an establishment operating under federal inspection, state inspection or approved municipal inspection.

(12) When it is deemed necessary in order to safeguard the public health, the department shall cause to be made an ante-mortem inspection of any animals before they are slaughtered for food purposes. Satisfactory facilities shall be provided for conducting such inspection and for separating from the passed animals those deemed unfit for immediate slaughter. If any owner or person in charge is about to slaughter for food purposes any animal which the department believes may be affected with disease, the department shall notify the owner or person in charge of said animals to refrain from slaughtering them for food purposes until the ante-mortem examination is completed. Any owner or person slaughtering animals for food purposes after such notification by the department shall be guilty of a misdemeanor. No owner or person shall be required to refrain from slaughtering animals for a period longer than seventy-two hours.

(13) The department may provide post-mortem inspection of all animals slaughtered for food purposes in any establishment in the state. The head, tongue, tail, thymus glands, viscera, and other parts and blood used in the preparation of meat, food, meat food products, or medicinal products shall be retained in such manner as to preserve their identity until after the post-mortem examination has been completed. Carcasses and parts thereof found to be sound, healthful and wholesome after inspection and otherwise fit for human food shall be passed and may be marked in the following manner: "Florida inspected and passed," or with the inspection legend of an approved and municipal inspection department, to which has been added the words "Fla. approved." This mark may also include any number given the establishment. Each carcass or part thereof which is found on post-mortem inspection to be unsound, unhealthful, unwholesome, or otherwise unfit for human food, shall be marked conspicuously by the inspector at the time of inspection with the words, "Fla. inspected and condemned," or with the condemned brand of an approved municipal inspection department and such carcass or parts thereof, under the supervision of the inspector, shall be rendered unfit for human consumption in a manner approved by the department.

(14) Inasmuch as it cannot be determined for certain, by any present known method of inspection, whether meat is unwholesome unless the organs and other tissues of an animal are inspected when slaughtered, and as meat and products thereof from uninspected animals may be unfit for human food, the department shall seize and destroy for human food purposes any meat or meat food product that does not bear the "Inspected and passed" stamp, brand, mark, or label, as provided by this law; provided nothing herein shall affect the transportation of dead and condemned carcasses of animals to rendering plants; nor the transportation of dressed carcasses of calves for inspection to points where inspection is maintained in accordance with the provisions of this article; nor meat or meat products to which a statement is attached in accordance with the provisions of this law.

(15) The dressed carcasses of all animals intended for human consumption, parts thereof, meats, or meat food products, inspected and marked in accordance with this law may be transported or sold anywhere in the state without restriction, except that imposed upon meat or meat food products bearing the inspection stamp of the United States department of agriculture.

(16) It is unlawful for any person, except employees of the United States department of agriculture, the department or a municipal inspection department, to possess, keep or use any mark, stamp, or brand provided or used for marking, stamping or branding the carcass of any animal, parts thereof, meats or meat food products, or to possess, keep or use any mark, stamp or brand having thereon a device or words the same or similar in character, or import to the marks, stamps, or brands provided or used by the United States department of agriculture, the department or of any municipal inspection department for marking, stamping, or branding the carcasses of animals or parts thereof intended for food purposes, meats, or meat food products.

(17) Every establishment in Florida, where animals are slaughtered or where meat or meat food products are prepared or processed for human consumption, shall be maintained and operated in a clean and sanitary manner and inspection conducted in accordance with the provisions of this law and the regulations of the department and in the event that an establishment is not so maintained and operated the department may suspend inspection in any establishment having state inspection or municipal inspection.

(18) Nothing contained in this law shall restrict or prevent a retail meat market as a part of its retail meat business and as a consequence of same or an incident to same, from making or preparing or selling prepared meat or meat food products that are made or prepared on its own premises from meats which bear the inspected and passed stamp of federal inspection, state inspection or approved municipal inspection; provided, that said prepared meat or meat food products are sold on the premises of said retail meat market and are not made or prepared by cooking or drying. No application is required of such retail meat markets, or the owners or operators thereof for the inspection service provided for in this law and no such inspection service is required to enable them to make, prepare or sell such prepared meat or meat food products. Nothing contained in this law shall prohibit a retail meat market from selling or offering for sale meat, prepared meat, meat products, or meat food products which bear the inspected and passed stamp of federal inspection, state inspection or approved municipal inspection.

(19) It is unlawful to sell any cold storage meat that has been imported into the state from without the United States, herein referred to as foreign cold storage meat, without having first obtained a permit from the department and without having submitted all such meat for inspection and examination at port of entry and paid inspection fee required therefor. The department shall cause all such meat to be inspected upon arrival and shall establish such bacteriological or chemical standards as it deems proper to determine the wholesomeness and fitness of such meat for human consumption; any meats found unfit for human consumption shall be marked conspicuously with the words "Fla. inspected and condemned" and the sale thereof for human food is prohibited. All meats inspected and passed for food, as provided in this subsection, shall be marked with a stamp of such size and design as shall be required by the rules and regulations established by the department for the enforcement of this section, and shall bear the words "foreign cold storage meat inspected and passed." Such meat, when displayed for sale, shall bear placard showing that it is foreign cold storage meat, which placard shall also contain the name of the country of origin. Such meats shall at all times be subject to reinspection. The department is hereby authorized to collect reasonable fees for inspection service provided for in this subsection.

(20) The department shall make available a qualified inspector at each slaughter house or meat packing or processing plant in the state at all times when the same is operating, in order that no loss or delay may result to such slaughter house or packing plant by reason of the unavailability of a qualified inspector. Should any such slaughtering, or meat processing or packing be conducted at such slaughter houses or plants at hours considered overtime for state employees, or on legal holidays, then the owner or operator of the establishment shall, by contract or agreement with the department make arrangements to defray the additional or overtime costs for salaries and expenses for inspectors to conduct the necessary meat inspection during such overtime periods.

(21) Any person, firm or corporation violating any of the provisions of this law, for which violation a specific penalty is not otherwise prescribed herein, shall, upon conviction thereof, be fined not more than $500, or sentenced to imprisonment in the county jail for not exceeding 6 months, or be both so fined and imprisoned.

(22) The legislature has determined that it is impractical to formulate and promulgate either a law or rules and regulations reasonably applicable to all persons, firms or corporations engaged in producing, slaughtering, processing, transportation, and selling of meat producing animals for human consumption in the state, and therefore the following exceptions to the general provisions contained in subsections (1) through (20) hereof shall be applicable as to the persons, firms or corporations falling within the hereinafter contained classifications, unless a request by such person, firm or corporation is made to the department, for permission to come under the provisions of subsections (1) through (20) supra, insofar as inspections are concerned:

(a) Any person, firm, or corporation slaughtering or processing for sale within the state not more than twenty head of cattle, nor more than thirty-five head of hogs per week, shall not be subject to the inspection under the terms of §585.34, as amended by chapter 26831, acts of 1951, unless such person, firm or corporation shall make a request therefor to the department for such inspection. Such person, firm or corporation so slaughtering or processing not more than twenty head of cattle nor thirty-five head of hogs per week shall be subject to the same inspection as provided by said §585.34, as the same was prior to the amendment by said chapter 26831, acts of 1951.

(b) If any person, firm or corporation slaughtering or processing for sale not more than twenty head of cattle nor more than thirty-five head of hogs per week desire to come within the inspection as provided by §585.34, as amended by chapter 26831, acts of 1951, and so request the same of the department, then said person, firm or corporation shall be subject to the said inspection.

(c) The department may, in its discretion, authorize any person, firm or corporation, permission to slaughter or process for sale more than twenty head of cattle and thirty-five head of hogs per week, however, not to exceed fifty head of hogs or twenty-five head of cattle per week to meet special emergencies or seasonal demands and in such event the same provisions of this law shall apply as applied to those slaughtering and processing not more than the

maximum of thirty-five head of hogs and twenty head of cattle per week.

(d) Any meat carcass that has been farm slaughtered or otherwise slaughtered under exemptions as prescribed herein and properly tagged for identification, may be admitted to any cooler within the state for chilling or freezing, and may be admitted to any freezer locker plant for processing and freezing.

History.—§§1-8, ch. 17096, 1935; CGL 1936 Supp. 3348(15)-(22); § §1, 2, ch. 23080, 1945; sub. § § (9)-(21) comp. § § 1, 2, ch. 26831, 1951; sub. §(22) comp. §1, ch. 28255, 1953; §24, ch. 59-457.

585.35 Power of department to enter private premises for purpose of inspection, etc.—For the purpose of carrying out the provisions and requirements of this chapter, and all rules and regulations made pursuant thereto, the department, and all its employees duly authorized, are empowered to enter upon any grounds or premises in this state for the purpose of inspection, quarantine or disinfection, or to carry out any other provisions of this chapter.

History.—§16, ch. 7345, 1917; RGS 2116; CGL 3343; §25, ch. 59-457.

585.36 Department charged with enforcement of law; duties of prosecuting attorneys.—The department shall see that the provisions of this chapter are carried out, and may require the state attorney or county solicitor or other prosecuting officer in any circuit or county to institute suits, civil or criminal, for the purpose of enforcing or carrying out the terms of this chapter and the rules of the department and preventing violations thereof, and any person or officer charged with any duty under this chapter may be compelled to perform the same by mandamus, injunction or other extraordinary remedy upon the application and in the name of the department. Injunction shall issue without bond.

History.—§13, ch. 7345, 1917; RGS 2113; CGL 3342; §26, ch. 59-457; §8, ch. 61-408.

585.37 Courts have power to enforce provisions by mandamus or injunction.—The circuit courts of this state shall have the power to enforce any of the provisions of this chapter, and any rule or regulation of the department pursuant thereto by mandamus, or temporary or permanent injunction, either or both, upon the application of the director, against any person who shall violate any provision of this chapter or any such rule or regulation.

History.—§20, ch. 7345, 1917; RGS 2118; CGL 3344; §27, ch. 59-457.

585.38 Injuring property used in the eradication of diseases of cattle, etc.—Any person who shall injure, destroy or attempt to destroy any property or equipment or facilities owned by any individual, firm, company, corporation or county or any property or equipment or facilities owned by the department or the state, used or intended to be used in the prevention, control, suppression or eradication of any infectious, contagious or communicable diseases affecting domestic animals, shall be deemed guilty of a misdemeanor and upon conviction shall be punished for each and every offense by a fine not exceeding $1000 or imprisonment not exceeding 1 year.

History.—§21, ch. 7345, 1917; RGS 5555; CGL 7741; §28, ch. 59-457.

585.39 Interference with department employees.—Any person who forcibly assaults, resists, opposes, prevents, impedes or interferes with the duly authorized inspector or representatives of the department in the execution of their duties, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not exceeding $500 or by imprisonment of not exceeding 6 months.

History.—§16, ch. 7345, 1917; RGS 5552; §4, ch. 8508, 1921; CGL 7738; §29, ch. 59-457.

585.40 Violation of quarantine regulations.—Whenever the commissioner or the technical committee under its emergency powers places any area under quarantine, it shall be unlawful for any person, while such quarantine exists, to take, drive, or transport any cattle, hogs or other domestic animals, either out of or into such quarantined locality without permission of the division director; any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not exceeding $500 or by imprisonment of not exceeding 6 months.

History.—§17, ch. 7345, 1917; RGS 5553; §5, ch. 8508, 1921; CGL 7739; §30, ch. 59-457.

585.401 Emergency; rules and regulations.—An emergency is defined as any situation wherein the animal industry technical committee has declared a livestock pest or communicable, contagious, or infectious disease of livestock to be a public nuisance or when in the opinion of the said technical committee a livestock pest or disease endangers or threatens the livestock interests of the state. Rules and regulations promulgated and adopted by the technical committee in cases where an emergency is declared to exist shall be effective immediately. These rules and regulations shall continue in effect while the emergency for which the rules and regulations were promulgated and adopted continues to exist, provided, however, that no emergency shall exist for a period in excess of six months, without review by the technical committee and redeclaration by it that such emergency continues to exist.

History.—§31, ch. 59-457.

585.402 Rules and regulations; procedure.—

(1) All rules and regulations made, adopted, or promulgated under authority of this chapter shall be divided into two classes to be known as "technical rules and regulations" and "administrative rules and regulations."

(2) The commissioner shall have full and complete power and authority to and may make, adopt, promulgate, amend and repeal, without prior notice and hearing, all rules and regulations under the classification "administrative rules and regulations" which he shall deem necessary or helpful in the efficient administration and enforcement of this chapter.

(3) "Administrative rules and regulations" are defined as those rules and regulations which control and regulate the internal affairs of the division of animal industry and define organizational, procedural or practice requirements of the said division.

(4) "Technical rules and regulations" are defined as those rules and regulations other than administrative rules and regulations.

(5) All rules and regulations under the classification technical rules and regulations shall be made, adopted and promulgated by the commissioner in the following prescribed manner subject to the approval of the technical committee on animal industry:

(a) The commissioner shall submit to each member of the technical committee on animal industry a copy of the proposed technical rule or regulation.

(b) The technical committee on animal industry may meet at any time after ten days and within thirty days from the date that the commissioner transmitted to them a copy of the proposed technical rule or regulation for the purpose of either approving or disapproving such rule or regulation. In the event the said committee takes no action on the proposed rule or regulation within the said thirty day period, the commissioner shall consider this as conclusive evidence of the said committee's approval of the said rule or regulation and the commissioner shall forthwith adopt and promulgate the said rule or regulation and file the same with the secretary of state.

(c) The director may propose technical rules or regulations relative to the activity of his division to the commissioner, copy of which shall at the same time be furnished the chairman of the technical committee on animal industry.

History.—§32, ch. 59-457.

585.403 Same; copies upon request.—Any person, firm or corporation with property in, or who is a resident of the state, or any Florida agricultural association or organization may file with the commissioner his or its name and address and request that he or it be furnished with a copy of any proposed technical rule or regulation which would affect his or its property or interests under the provisions of this chapter, and the department shall, in not less than five days before any scheduled meeting of the animal industry technical committee at which time the said technical rule or regulation is to be considered, mail a copy of such proposed rule or regulation to every person so requesting same.

History.—§33, ch. 59-457.

585.41 Violation of administrative rules or regulations.—Any person who violates or fails to keep and perform any rule or regulations of the department shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding $500 or by imprisonment of not exceeding 6 months.

History.—§19, ch. 7345, 1917; RGS 5554; §6, ch. 8508, 1921; CGL 7740; §10, ch. 17273, 1935; CGL 1936 Supp. 7742(4); §34, ch. 59-457.

585.432 Screwworm control; eradication.—

(1) The department shall formulate a program and promulgate all rules and regulations necessary for the successful implementation and administration of a comprehensive program for the control and eradication of screwworms within this state, and for the conduct of research and experimentation incidental thereto.

(2) In the discharge of its duty under this law the department shall have the power:

(a) To establish, maintain and enforce quarantine areas within the state, or the entire state, and restrict, regulate or prohibit the movement of all animals found and determined by the department to be carriers of the screwworm in any state of its life cycle when necessary for screwworm eradication, or for the carrying out of any of the purposes of this law;

(b) To acquire by gift, lease, purchase, or otherwise, facilities for breeding sterile screwworm flies; and to secure their controlled distribution;

(c) To employ such persons, and to make such contracts, as are necessary to carry out the purposes of this law.

History.—§§1-5, ch. 57-200; §35, ch. 59-457; (3) r. by §9, ch. 61-408.

585.44 Purchase, distribution and administration of brucellosis (Bang's disease) vaccine.—

(1) The department is hereby authorized and required to purchase brucellosis (Bang's disease) vaccine in such units as deemed advisable at the lowest and best bid or bids, from one or more reliable manufacturers producing a high quality product.

(2) The department shall distribute through employees of the division, licensed veterinarians and recognized and approved agents of the state and federal governments, brucellosis (Bang's disease) vaccine without cost thereof to any owner of cattle in Florida making application therefor upon blanks to be furnished by the department and approved by the administrator of said vaccine.

(3) Whenever said vaccine is distributed as provided in subsection (2), the administrator thereof shall identify each and every animal to which said vaccine is so administered by means of a permanent identification. The department shall designate one or more proper means of identification to be used for this purpose. It shall be unlawful for any person to administer said vaccine to any animal bearing such identification or to any animal known to said administrator to have been so identified.

History.—§2, ch. 22517, 1945; (4) r. by §136, ch. 26869, 1951; §36, ch. 59-457.

585.45 Right to declaratory judgment.—Any owner or custodian of any cattle or other domestic animals, which shall include horses and mules, which the department has required to be dipped or inspected, shall have the right to a judicial declaration as to the validity of the order by bringing an action for declaratory judgment in the circuit court. If the order is

affirmed, the cost shall be paid by the person applying for the declaration. In disposing of said cases the court shall have the power and authority to issue subpoenas to any witness the court may deem necessary or that may be applied for by respective parties to said cause.

History.—§15, ch. 23775, 1947; §37, ch. 59-457; §34, ch. 63-512.

585.47 **Failure of veterinarians or the owners of domestic animals or cattle afflicted or suffering with contagious, infectious or communicable diseases, or infected by or infested with the cattle fever tick, to report the same.**—Any practitioner of veterinary medicine in the state, or the owner of any domestic animal or cattle afflicted with or suffering from any contagious, infectious or communicable disease or infected by or infested with the cattle fever tick, who, upon gaining such information of the existence of any such disease or the infection by or infestation with the cattle fever tick, in, on or among such domestic animals or cattle, wilfully fails to report the same to the division, within the department, in writing, as required under the provisions of §585.19, shall be guilty of a felony and upon conviction shall be punished by imprisonment in the state prison for a term not exceeding 10 years, or by a fine not exceeding $5000.

History.—§9, ch. 25358, 1949; §38, ch. 59-457; §10, ch. 61-408.

585.48 **Policy and purpose of §§585.49-585.53, 585.59.**—Because of the existing and increasing possibility of the occurrences of highly contagious and infectious diseases in the livestock of this state which threaten to destroy the same, and because certain known agents and vectors are instrumental in the spread of certain highly infectious and contagious diseases in livestock, it is hereby found and declared to be necessary to regulate the feeding of garbage.

History.—§1, ch. 28313, 1953; §39, ch. 59-457.

585.49 **Definitions; §§585.48-585.53, 585.59.**—As used in §§585.48-585.53, 585.59:

(1) The word "garbage" shall mean all refuse matter, animal or vegetable, by-products of a restaurant, kitchen or slaughter house; and shall include every accumulation of animal, fruit or vegetable matter, liquid or otherwise. The word "garbage" shall also include the word "swill" as commonly used; provided, however, the word "garbage" shall not include fruit or vegetable matter which does not contain or has not been in contact or mixed with raw meats.

(2) The term "carcasses of domestic animals" means all or any part or portion of any dead domestic animal not slaughtered for human consumption.

History.—§§2, 3, ch. 28313, 1953; §40, ch. 59-457.

585.50 **Garbage feeding prohibited unless sterilized.**—It shall be unlawful for any person, firm, partnership or corporation (including municipalities and counties) to feed garbage to animals unless such garbage has been heated, cooked, treated or processed under such temperature, pressure, process or method, and for such a period of time as is necessary to render the same free of any infectious or contagious disease which might either affect the domestic animals of this state or the citizens of this state. The department is authorized to promulgate rules and regulations covering the method of heating, cooking, treating or processing, and to prescribe the temperature and time for such heating, cooking, treating and processing as may be determined by scientific research; provided, however, that the requirements of §§585.48-585.53, 585.59, shall not apply to an individual who feeds his own animals only the garbage from his own household.

History.—§4, ch. 28313, 1953; §41, ch. 59-457.

585.51 **Permitting of feeders of garbage.**—No person, firm, partnership or corporation shall feed garbage without first having applied for and obtained a permit from the department. Each permit shall expire as of July 1 of each year.

History.—§5, ch. 28313, 1953; §42, ch. 59-457.

585.52 **Requirement regarding the collection, transportation and distribution of garbage.**—Every permitted feeder of garbage shall keep and furnish the department such information as it may by rule and regulation require regarding the collection, transportation, distribution and processing of garbage, and further such permitted feeder shall be required to keep and maintain sanitary at all times his vehicles used in the collection, transportation and distribution of garbage under such rules and regulations as may be required. The department is authorized to promulgate such other rules and regulations as may be necessary to effectuate the purpose of §§585.48-585.53, 585.59.

History.—§6, ch. 28313, 1953; §43, ch. 59-457.

585.53 **Permit revocation.**—Every permitted feeder of garbage who shall violate the laws of this state or the rules and regulations promulgated by the department pursuant thereto upon a notice and hearing shall have his permit revoked, cancelled, or suspended.

History.—§7, ch. 28313, 1953; §44, ch. 59-457.

585.59 **Penalties for violation.**—

(1) Any person violating the provisions of §§585.48-585.53 shall, upon conviction, be guilty of a misdemeanor and punished according to law.

(2) Any person, firm or corporation violating the provisions of §§585.48-585.53 shall not be allowed to recover compensation from the department for the confiscation or destruction of any hogs fed uncooked garbage.

History.—§§15, 16, ch. 28313, 1953; §4, ch. 57-140; §45, ch. 59-457.

585.60 **Definitions for §§585.61-585.65.**—In construing §§585.61-585.65, wherever the context permits, the words, phrases or terms:

(1) "Domestic animal" shall include any equine or bovine animal, goat, sheep, swine, dog, poultry or other domesticated beast or bird.

(2) "Poultry" shall include all domesticated birds which serve man as a source of food, either eggs or meat.

History.—§1, ch. 29889, 1955; §46, ch. 59-457.

585.61 Domestic animal diagnostic disease laboratory.—There is hereby created and established a domestic animal diagnostic disease laboratory in Orange county, or in a county adjacent to Orange county, for the purposes of diagnosing diseases of domestic animals, determining their cause and methods of control and eradication of such diseases and furnishing such information for use in Florida.

History.—§2, ch. 29889, 1955; §47, ch. 59-457.

585.62 Poultry diagnostic disease laboratories.—There is hereby created and established five poultry diagnostic disease laboratories in the following locations in Florida, to-wit: One in Pasco county, which is now being operated by the agricultural experiment station; one in Dade county; one in Flagler county; one in Jackson county; one in Nassau county; for the purposes of diagnosing diseases of poultry, determining the cause and methods of control and eradication of such diseases and furnishing such information for use in Florida.

History.—§3, ch. 29889, 1955; §48, ch. 59-457.

585.621 Poultry and domestic animal disease diagnostic laboratory in Suwannee county.—

(1) There is hereby created and established a poultry and domestic animal disease diagnostic laboratory in Suwannee county, for the purposes of diagnosing diseases of poultry and domestic animals, determining their causes and methods of control and eradication of such diseases and furnishing such information for use in Florida.

(2) The land used for the laboratory shall be conveyed to the state without cost by fee simple deed by the board of county commissioners of Suwannee county.

(3) The construction and operation of the laboratory shall be under the supervision and control of the department of agriculture as provided in §585.64.

(4) The services of the laboratory shall be available as provided in §585.65.

History.—§1, ch. 63-476.
cf.—§282.011 Miscellaneous appropriations.

585.64 Poultry diagnostic disease laboratories; construction and operation under supervision of department.—The construction of the five new laboratories and the operation of all the laboratories established by §§585.61 and 585.62, shall be under the supervision and control of the department. It shall be the duty of the department to operate the said laboratories in an efficient manner so that persons, firms and corporations who maintain domestic animals or poultry in Florida may obtain prompt reliable diagnosis of domestic animal or poultry diseases in Florida, and recommendations for the control and eradication of such diseases, to the end that diseases of domestic animals and poultry may be reduced and controlled, and if scientifically possible, eradicated. The department shall from time to time adopt rules and regulations for the use of the services of the laboratories.

History.—§5, ch. 29889, 1955; §49, ch. 59-457.

585.65 Availability of services of laboratories.—Any person, firm or corporation who maintains domestic animals or poultry in the state may use the services of the laboratories under the terms of §§585.61 and 585.62 and under the rules and regulations for such use as adopted from time to time by the department. The department shall require any user of its services to pay handling, packing, postage and transportation charges necessary in rendering the services requested, which shall be deposited in the state treasury to the credit of the special account known as the animal industry account within the general inspection trust fund.

History.—§6, ch. 29889, 1955; §51, ch. 59-457; §2, ch. 61-119.

585.661 Appropriation. — The department shall include in its legislative budget request the estimated amounts needed to carry out the purposes of this chapter and the legislature shall appropriate from the general revenue fund such amounts as it deems necessary for these purposes.

History.—§50, ch. 59-457; §4, ch. 61-59.

585.671 Control and eradication of infectious anemia and piroplasmosis.—

(1) The commissioner of agriculture shall formulate a program and promulgate all rules and regulations necessary for the successful implementation and administration of a comprehensive program for the control and eradication of infectious anemia and piroplasmosis within this state, and for the conduct of research and experimentation incidental thereto.

(2) In the discharge of his duty, the commissioner shall have the power:

(a) To employ such persons and to make such contracts as are necessary to carry out the purpose of this law.

(b) To negotiate with officials of institutions of research and to make such contracts as are necessary for the conduct of research for the purpose of developing and effectuating improved methods of diagnosis, control and eradication of infectious anemia and piroplasmosis. Toward this end he may employ such competent guidance as he deems necessary in negotiating said contracts.

History.—§§1, 2, ch. 63-442.
cf.—§282.011 Miscellaneous appropriations.

CHAPTER 586

HONEY CERTIFICATION LAW

586.01 Short title. — This chapter shall be known as the Florida honey certification law.

History.—Comp. §9, ch. 28167, 1953.

586.02 Definitions.—As used in this chapter:

(1) The term "department" shall mean the department of agriculture of the state.

(2) The term "commissioner" shall mean the commissioner of agriculture of the state.

(3) The term "certified honey" shall include honey which is principally of one type or variety, such as tupelo, orange blossom, saw palmetto, gallberry or mango as shall have been inspected during its period of production, extraction and preparation for market by the department or its authorized agents and found to be reasonably free from a mixture of other types or varieties of honey, and meet other requirements as specified in the rules and regulations issued by the commissioner under the provisions of this chapter.

History.—Comp. §1, ch. 28167, 1953.

586.03 Inspection and certification of honey.

(1) Any producer of honey located in Florida may make application to the commissioner for inspection and certification of his honey crop under such rules and regulations as the commissioner may issue.

(2) The commissioner, or his authorized agents, shall issue such certificates of inspection and designate or provide such official tags or labels for marking containers of "certified tupelo honey", "certified orange blossom honey" or certified honey of other identifiable types or varieties, and establish such standards of grade and quality, as are necessary to safeguard the privileges and service provided for in this chapter.

History.—Comp. §2, ch. 28167, 1953.

586.04 Fees for certification.—The commissioner may fix, assess and collect, or cause to be collected, fees for the certification inspection service, the same to be paid in such manner as he may direct. Such fees shall be large enough to meet the reasonable expenses incurred by the commissioner or his agents in making such inspection as may be necessary for certification.

History.—Comp. §3, ch. 28167, 1953.

586.05 Unlawful to use words "certified," "registered," or "inspected."—It is unlawful to use the terms "certified," "registered," or "inspected," or any form or modification of such terms which tends to convey to the purchaser of such honey that the same has been certified, on tags, labels or containers, either orally or in writing, or in advertising material intended to promote the sale of honey, except when such honey shall have been inspected and certified to under the provisions of this chapter by the commissioner of agriculture or by his authorized agents.

History.—Comp. §4, ch. 28167, 1953.

586.06 Rules and regulations.—The commissioner may make all necessary rules and regulations to carry out the provisions of this chapter.

History.—Comp. §5, ch. 28167, 1953.

586.07 Employees.—The commissioner may employ such assistants, inspectors, specialists and others as may be necessary to carry out the provisions of this chapter, fix their salaries and pay same from such funds as may be available for the purpose.

History.—Comp. §6, ch. 28167, 1953.

586.08 Penalty.—Any person, copartnership, association or corporation, and any officer, agent, servant or employee, thereof, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine not exceeding one hundred dollars for each separate offense. Each fifty-five gallon drum of honey, or its equivalent in smaller containers, falsely tagged, labeled or otherwise falsely designated in contravention of this act shall constitute a separate offense.

History.—Comp. §7, ch. 28167, 1953.

586.09 Enforcement of chapter. — The commissioner is vested with power and authority to enforce the provisions of this act and the rules and regulations made pursuant thereto by writ of injunction in the proper court as well as by criminal proceedings. It shall be the duty of the attorney general, the state attorneys, prosecuting attorneys, county solicitors, and all public prosecutors in each county to represent the commissioner when called upon

to do so. The commissioner in the discharge of his duties and in the enforcement of the powers herein delegated may send for books and papers, administer oaths and hear witnesses, and to that end it is made the duty of the various sheriffs throughout the state to serve all summons and other papers upon request of said commissioner.

History.—Comp. §8, ch. 28167, 1953.
cf.—§30.23 Fees of sheriffs and constables.

586.10 Powers of commissioner over honeybees.—The commissioner may deal with American and European foulbrood, Isle of Wight disease and all other contagious or infectious diseases of honeybees which, in his opinion, may be prevented, controlled or eradicated; and may make, promulgate and enforce such rules, ordinances and regulations and do and perform such acts, through his agents or otherwise, as in his judgment may be necessary to control, eradicate or prevent the introduction, spread or dissemination of any and all contagious diseases of honeybees, as far as may be possible, and all such rules, ordinances and regulations shall have the force and effect of law.

History.—§1, ch. 61-415.

586.11 Certificate of inspection to accompany shipments.—All honeybees (except bees in combless packages) and used beekeeping equipment shipped or moved into the state, or shipped or moved within the state, shall be accompanied by a permit issued by the commissioner. Before any bees (except bees in combless packages) or used beekeeping equipment is shipped or moved from any other state into the state, the owner thereof shall make application on forms provided by the commissioner for a permit. The application shall be accompanied by a certificate of inspection signed by the state entomologist, state apiary inspector, or corresponding official of the state from which such bees or equipment are shipped or moved. Such certificate shall certify that all of the colonies, apiaries, and beeyards owned or operated by the applicant, his agents or representatives, have been inspected annually at a time when the bees are actively rearing brood, including one inspection within the period of thirty days immediately preceding the date of shipment or movement into Florida, and that no American foulbrood or other contagious or infectious diseases have been found in any colony, apiary, beeyard or other places where bees or equipment have been held by the applicant, within the period of two years immediately preceding the date of shipment or movement into Florida; provided that when honeybees are to be shipped into this state from other states or countries wherein no official apiary inspector or state entomologist is available, the commissioner may issue permit for such shipment upon presentation of suitable evidence showing such bees to be free from disease.

History.—§2, ch. 61-415.

586.12 Authority to enter depots, etc., to make inspections. — The commissioner, his agents and employees, may enter any depot, express office, storeroom, warehouse, or premises for the purpose of inspecting any honeybees or beekeeping fixtures or appliances therein or thought to be therein, for the purpose of ascertaining whether said bees or fixtures are infected with any contagious or infectious disease, or which they may have reason to believe have been, or are being transported in violation of any of the provisions of this chapter.

History.—§3, ch. 61-415.

586.13 Commissioner may require removal, destruction, etc., of exposed or infected bees.—The commissioner through his agents or employees, may require the removal from this state of any honeybees or beekeeping fixtures which have been brought into the state in violation of the provisions of this chapter, or if finding any honeybees or fixtures infected with any contagious or infectious disease, or if finding that such bees or fixtures have been exposed to danger of infection by such a disease, may require the destruction, treatment or disinfection of such infected or exposed bees, hives, fixtures or appliances.

History.—§4, ch. 61-415.

586.14 Compensation for destroyed property.—Whenever bees, hives or other equipment is ordered destroyed pursuant to §586.13, the commissioner shall appraise the property to be destroyed. If the commissioner and the owner are unable to agree on the value, the commissioner shall appoint a disinterested appraiser, the owner shall appoint a disinterested appraiser and these two appraisers shall appoint a third disinterested appraiser who shall appraise the property. When the property is destroyed, the commissioner shall pay any Florida resident beekeeper whose property is destroyed, a sum equal to fifty per cent of the appraised value of the property destroyed. For the purposes of this section the "property" shall include bees, hive, frames and other equipment.

History.—§5, ch. 61-415.

586.15 Penalty for violation.—Whoever violates any of the provisions of §§586.10 through 586.14, or whoever violates any of the rules and regulations promulgated by the commissioner in accordance with the provisions of said sections, shall, for the first offense be deemed guilty of a misdemeanor and upon conviction thereof be punished by a fine of not less than $100.00 nor more than $500 or by imprisonment for not more than six months in the county jail, and upon a second conviction thereof shall be deemed guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed three years. It shall be the duty of the sheriffs and the Florida highway patrol officers to enforce the provisions of said sections relating to the movement of bees, used bee equipment into the state, as well as movement thereof within the state.

History.—§6, ch. 61-415.

CHAPTER 588

LEGAL FENCES AND LIVESTOCK AT LARGE

588.01 Requirements of general fence.—All fences or enclosures of land shall be substantially constructed, whether with rails, logs, post and railing, iron, steel, or other material, and not less than five feet high; to the extent of two feet from the ground there shall not be a space between the material used in the construction of any fence greater than four inches; provided, that when any fence or enclosure shall be made with a trench or a ditch, the same shall be four feet wide; and in that case the fence shall be five feet high from the bottom of the ditch to the top of the fence.

History.—§875, RS 1892; §1, ch. 5038, 1901; GS 1233; RGS 2364; CGL 3773.

588.011 Legal fence; requirements.—

(1) Any fence or enclosure at least three feet in height made of barbed or other wire consisting of not less than three strands of wire stretched securely on posts, trees, or other supports, standing not more than twenty feet apart, shall be considered as a legal fence.

(2) Any fence or enclosure made of any other material which meets substantially the minimum requirements or specifications mentioned in subsection (1) hereof, shall be considered as a legal fence.

(3) Legal fences may include gateways or openings therein provided, (a) that any such gateways shall be equipped with gates which are so constructed as to meet the minimum requirements or specifications of a legal fence, or, (b) that any such opening shall be equipped with a cattle or livestock guard at least six feet in width extending to each end of the opening.

(4) The requirements of §588.01, shall constitute and be a legal fence to prevent the intrusion of swine where the running at large of swine is not prohibited by law.

History.—Comp. §§1-3, 8, ch. 25357, 1949.

588.07 Prohibition of stakes, etc.—No planter or other person not having a lawful fence shall fix or cause to be fixed in any of his enclosures, any canes or stakes or any thing that shall or may kill or maim, hurt or destroy any cattle, horses, sheep, goat or swine, under penalty of ten dollars for every such offense, to be recovered before the proper court; one half of the penalty thereof shall go to the informer and the other half to the county.

History.—§3, June 11, 1823; RS 878; GS 1239; RGS 2370; CGL 3779.

588.08 Right to land not in issue.—In all trials to be had by virtue of this chapter, the right to the land on which the trespass or damages shall be said to be done, of the party in possession thereof, shall not be brought into question, but the same shall be taken for granted for all intents and purposes.

History.—§5, June 11, 1823; RS 879; GS 1240; RGS 2371; CGL 3780.

588.09 Legally enclosed land; fenced and posted.—

(1) Land shall be legally enclosed land, or posted land, when enclosed by a legal fence, and when there shall be placed along the boundary of said land in the manner herein provided posted notices to the public; provided that it shall not be necessary to erect any fence along any portion of the boundaries of the land formed by any ocean, gulf, bay, river, creek, or lake.

(2) The fences, enclosures and the posted notices, when erected, placed and maintained as herein required shall be notice to the public that the land enclosed thereby is private property upon which unauthorized entry for any purpose is prohibited and shall constitute a warning to unauthorized persons to remain off of or to depart from said land.

History.—Comp. §§4, 6, ch. 25357, 1949.

588.10 Posted notices; requirement.—Posted notices to the public as required by §588.09 shall be signs upon which there shall appear prominently, in letters of not less than two inches in height, the word "posted," and in addition thereto there shall appear the name of the owner, lessee, or occupant of said land. Said posted notices shall be placed along, on, or close within the boundaries of any legally enclosed or posted land in a manner and in such position as to be clearly noticeable from the outside of the enclosure, and said notices shall be placed not farther than five hundred feet apart along, and at each corner, of the boundaries of the land, and also at each gate-

way or opening of the fence enclosing the same. Said notices shall be placed along all boundaries formed by the waters mentioned herein on trees or posts close to the banks of said waters in position so as they may be noticeable to persons approaching the boundary formed by said waters.

History.—Comp. §5, ch. 25357, 1949.

588.11 Owner to maintain fences and notices.—The owner of legally enclosed land shall maintain in reasonable good condition the fence or enclosure around such land and shall maintain in legible condition any and all posted notices as required by §§588.09, 588.10, but a substantial or reasonably effective compliance with the provisions of §§588.011, 588.09, 588.10, disregarding minor or inconsequential differences in the size, shape or condition thereof, shall be sufficient for the purpose of evidencing the legal enclosure of said land.

History.—Comp. §7, ch. 25357, 1949.

588.12 Livestock at large; legislative findings.—There is hereby found and declared a necessity for a statewide livestock law embracing all public roads of the state and necessity that its application be uniform throughout the state, except as hereinafter provided.

History.—Comp. §1, ch. 25236, 1949.

588.13 Same; definitions.—In construing §§588.12-588.25 the following words, phrases or terms shall be held to mean:

(1) "Livestock" shall include all animals of the equine, bovine or swine class, including goats, sheep, mules, horses, hogs, cattle and other grazing animals.

(2) "Owner" shall include any person, association, firm or corporation, natural or artificial, owning or having custody of or in charge of livestock.

(3) "Running at large" or "straying" shall mean any livestock found or being on any public roads of this state and not under manual control of a person.

(4) "Public roads" as used herein shall mean those highways within the state which are, or may be, maintained by the state road department, including the full width of the right of way.

History.—Comp. §2, ch. 25236, 1949.

588.14 Same; duty of owner.—No owner shall permit livestock to run at large on or stray upon the public roads of this state.

History.—Comp. §3, ch. 25236, 1949.

588.15 Same; liability of owner.—Every owner of livestock who intentionally, wilfully, carelessly or negligently suffers or permits such livestock to run at large upon or stray upon the public roads of this state shall be liable in damages for all injury and property damage sustained by any person by reason thereof.

History.—Comp. §4, ch. 25236, 1949.

588.16 Same; authority to impound livestock running at large or strays.—It shall be the duty of the sheriff or his deputies or any other law enforcement officer of the county or state highway patrolmen, where livestock is found to be running at large or straying, to take up, confine, hold and impound any such livestock, to be disposed of as hereinafter provided.

History.—Comp. §5, ch. 25236, 1949.

588.17 Same; disposition of impounded livestock.—

(1) Upon the impounding of any livestock by the sheriff or his deputies or any other law enforcement officers of the county or state highway patrolmen, the sheriff shall forthwith serve written notice upon the owner, advising such owner of the location or place where the livestock is being held and impounded, the amount due by reason of such impounding, and that unless such livestock be redeemed within three days from date thereof that the same shall be offered for sale.

(2) In the event the owner of such livestock is unknown or cannot be found, service upon the owner shall be obtained by once publishing a notice in a newspaper of general circulation where the livestock is impounded (Sundays and holidays excluded). If there be no such newspaper then by posting of the notice at the court house door and at two other conspicuous places within said county.

Such notice shall be in substantially the following form:

"To Whom It May Concern:

You are hereby notified that the following described livestock (giving full and accurate description of same, including marks and brands) is now impounded at (giving location where livestock is impounded) .... and the amount due by reason of such impounding is ..... dollars. The above described livestock will, unless redeemed within three days from date hereof, be offered for sale at public auction to the highest and best bidder for cash.

....

Date Sheriff of ..... County, Florida

(3) Unless the impounded livestock is redeemed within three days from date of notice, the sheriff shall forthwith give notice of sale thereof which shall be held not less than five days nor more than ten days (excluding Sundays and holidays) from the first publication of the notice of sale. Said notice of sale shall be published in a newspaper of general circulation in the said county (excluding Sundays and holidays) and by posting a copy of such notice at the court house door. If there be no such newspaper then by posting such copy at the court house door and at two other conspicuous places in said county.

Such notice of sale shall be in substantially the following form:

(Name of owner, if known, otherwise 'To Whom It May Concern') you are hereby notified that I will offer for sale and sell at public sale to the highest and best bidder for cash the following described livestock (giving full and accurate description of each head of livestock) at ..... o'clock, ...M. (the hour

of sale to be between 11 o'clock A. M. and 2 o'clock P. M. Eastern Standard Time) on the ..... day of ..... at the following place ..... (which place shall be where the livestock is impounded or at the place provided by the county commissioners for the taking up and keeping of such livestock) to satisfy a claim in the sum of ..... for fees, expenses for feeding and care and costs hereof.

....
Date Sheriff of ..... County, Florida

History.—Comp. §6, ch. 25236, 1949.

588.18 **Same; fees.**—The fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals, shall be as follows:

(1) For impounding each animal, the sum of two and one-half dollars and mileage as provided by law for the arrest and commitment of prisoners.

(2) For serving any notice and making return thereon, the sum of one and one-half dollars and mileage provided by law for executing writs in actions at law and making return upon the same.

(3) For feed and care of impounded animals the sum of fifty cents per day per animal.

(4) For advertising or posting notices of sale of impounded animals, the same as provided by law for advertising property for sale under process.

(5) For sale or other dispositions of impounded animals, the sum of one dollar.

(6) For report of sale of impounded animals the sum of fifty cents.

History.—Comp. §7, ch. 25236, 1949.

588.19 **Same; failure to secure purchaser or insufficient funds to defray certain costs.**—If there be no bidder for such livestock at the sale aforesaid, the sheriff shall kill or cause the same to be killed and shall dispose of the carcass thereof and if there be any money received by him on account of the said disposal, the same shall be disbursed in the manner hereinafter provided, and if there be no ready sale for said carcass the sheriff shall forthwith deliver the carcass to a public institution of the county, state or municipality within said county, or to any private charitable institution, in the order herein set forth, according to their needs.

History.—Comp. §8, ch. 25236, 1949.

588.20 **Same; report of sale and disposition of proceeds.**—

(1) The sheriff, upon making a sale or other disposal as herein provided, shall forthwith make a written return thereof to the clerk of the circuit court of such county, with a full and accurate description of the livestock sold or disposed of by him, to whom, and the sale price thereof, which report shall be filed by said clerk.

(2) At the time of making his return the sheriff shall pay over to the clerk of the circuit court the entire proceeds of the sale.

(3) The clerk of the circuit court shall pay all costs and fees as allowed in §588.18 if there be any balance remaining, such balance shall be paid to the owner of such livestock, provided the owner shall make satisfactory proof of ownership to the board of county commissioners within ninety days from the date the sheriff reports the sale. If proof of ownership, as aforesaid, be not made within the time mentioned, the clerk shall pay such proceeds into the fine and forfeiture fund of said county. The clerk shall keep a permanent record of all sales, disbursements, and distributions made under §§588.12-588.25.

(4) If the amount realized from the sale or other disposition of the animal is insufficient to pay all fees, costs and expenses as provided in §§588.12-588.25, the deficit shall be paid by the county from its fine and forfeiture fund.

History.—Comp. §9, ch. 25236, 1949.

588.21 **Same; duty of commissioners to provide places for impounding of livestock and transportation of same.**—The county commissioners of the several counties of Florida shall establish and maintain pounds or suitable places for the keeping of any livestock taken up and impounded hereunder until the same shall be sold, redeemed or otherwise disposed of. In any case such county commissioners shall provide truck transportation for the impounded animals.

History.—Comp. §10, ch. 25236, 1949.

588.22 **Same; duty of impounder.**—The sheriff shall provide feed for the impounded animals and see that such livestock shall have feed and water not less than twice a day and that all milk cows and milk goats are milked twice a day. The sheriff shall employ poundmasters, guards or other persons as may be necessary to protect, feed, care for and have custody of the impounded animals and the sheriff shall be entitled to the fees herein allowed for such feed and care.

History.—Comp. §11, ch. 25236, 1949.

588.23 **Same; right of owner.**—The owner of any impounded livestock shall have the right at any time before sale thereof to redeem the same by paying to the sheriff all impounding expenses, including fees, keeping charges, advertising or other costs incurred therewith which sum shall be deposited by the sheriff with the clerk of the circuit court who shall pay all fees and costs as allowed in §588.18. In the event there is a dispute as to the amount of such costs and expenses, the owner may give bond with sufficient sureties to be approved by the sheriff, in an amount to be determined by the sheriff, but not exceeding the fair cash value of such livestock, conditioned to pay such costs and damages; thereafter, within ten days, the owner shall institute suit in equity to have the damage adjudicated by a court of equity or referred to a jury if requested by either party to such suit.

History.—Comp. §12, ch. 25236, 1949.

588.24 **Same; penalty.**—Any owner of livestock who unlawfully, intentionally, knowingly

or negligently permits the same to run at large or stray upon the public roads of this state or any person who shall release livestock, after being impounded, without authority of the impounder, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

History.—Comp. §13, ch. 25236, 1949.

588.25 Same; application; limitation.—The provisions of §§588.12-588.25 shall not apply to counties having special laws or general laws of local application requiring the confinement and restraint of livestock; provided, however, where the provisions of such special laws or general laws of local application do not prohifit livestock from running upon or straying upon the public highways, or the provisions of such special laws or general laws of local application do not provide for liability of owners of livestock for damages and injuries caused by such livestock, or provide less severe penalties than imposed by §588.24, the provisions of this act shall apply in each such case as if the provisions hereof were inserted in full in any such special law or general law of local application. Provided, further, that if any such special law or general law of local application is found unconstitutional or in any way inoperative, then this act shall be in full force and effect in the county, or counties, affected.

History.—Comp. §14, ch. 25236, 1949.

CHAPTER 589

FLORIDA BOARD OF FORESTRY

589.01 Florida board of forestry.—The Florida board of forestry hereinafter called the board, shall be composed of five members, to be appointed by the governor for terms of four years each, dating from the termination of the now existing terms. Before entering upon the discharge of their duties as members of said board each member shall subscribe to the oath of office as required by the constitution and shall also be required to give a good and sufficient bond, in the penal sum of ten thousand dollars with some surety company authorized to do business in Florida as surety, payable to the governor and his successors in office and conditioned upon the due and faithful performance of his duties as a member of said board.

History.—§1, ch. 12283, 1927; CGL 4151(1); §1, ch. 20419, 1941.

cf.—Ch. 590, Forest protection.
Ch. 591, Forest development.
§113.07 Bonds of officials.

589.011 Same; duties, powers, etc., after name change.—

(1) The name of the governmental agency now designated as "Florida board of forestry and parks" is changed, and henceforth shall be known and officially designated as "Florida board of forestry."

(2) The present members of "Florida board of forestry and parks" hereafter to be known and designated as "Florida board of forestry" shall have and are invested with all rights, powers, duties, privileges and authority heretofore vested in "Florida board of forestry and parks" in so far as they pertain, or are applicable, to the development, production, harvesting and protection of forest lands and forest products, and the said board is charged with the duty and responsibility, under the name of "Florida board of forestry" of carrying out, performing and discharging, all duties and obligations, contractual or otherwise heretofore assumed by or imposed upon "Florida board of forestry and parks."

(3) All funds, credits, property of every nature, real, personal or mixed, which may be owned or be now vested in "Florida board of forestry and parks" acquired, held, appropriated or by any means secured for the purpose of development, production, protection and harvesting of forest lands and forest products is by this section transferred to and vested in "Florida board of forestry" with full power to own, possess, control and administer the same as though acquired in its name.

(4) The Florida board of forestry is a body corporate and shall adopt and have a corporate seal; shall act in its corporate name by its president, vice-president or secretary; sue and be sued in all courts of law and equity, provided no suit sounding in tort shall be maintained against the said corporation, and exercise all powers of a body corporate in all transactions and for all lawful purposes.

(5) The board may grant privileges, permits, leases and concessions for the use of state forest lands, timber and forest products for purposes not inconsistent with the provisions of this chapter.

(6) The board is authorized to grant easements for rights of way, over, across and upon state forest lands for the construction and maintenance of poles and lines for the transmission and distribution of electrical power, pipelines for the distribution and transportation of oils and gases and for telephone and telegraphic purposes and for public roads, under such conditions and limitations as the board may impose.

History.—§§1-4, ch. 25324, 1949; (5), (6)n. by §1, ch. 59-168.

589.02 Headquarters and meetings of board.

—The official headquarters of said board shall be in Tallahassee, but it may hold meetings at such other places in the state as it may determine by resolutions or as may be selected by a majority of the members of said board in any call for a meeting. The annual meeting of the board shall be held on the first Monday in October of each year. Special meetings may be called at any time by the president or upon the written request of a majority of the members. The said board shall annually select from its members a president, a vice-president and secretary, said election to be held at the annual meetings of the board. A majority of the members of said board shall constitute a quorum for said purposes.

History.—§§1, 2, ch. 12283, 1927; CGL 4151(1), (2).

589.03 Compensation and allowances.—Members of the board shall receive no compensation for the services which they may render under the provisions of this chapter; provided, however, that they shall be reimbursed for traveling expenses as provided in §112.061 for attending meetings of the board and in the performance of duties as members of the board; provided further that the aggregate expense of all members of the board shall not, during any fiscal year, exceed the sum of twenty-five hundred dollars.

History.—§3, ch. 12283, 1927; CGL 4151(3); §1, ch. 24034, 1947; §19, ch. 63-400.

589.04 Duties of board.—It shall be the duty of the board under such terms as in the judgment of the board will best serve the public interest to assist and cooperate with federal and state departments or institutes, county, town, corporation or individual, to gather and disseminate information in regard to forests, their care and management, to prevent and extinguish forest fires, and enforce all laws pertaining to forests and woodlands.

History.—§4, ch. 12283, 1927; CGL 4151(4).

589.05 State forester, employees, clerks, etc.—

The board shall employ a state forester, who shall have been technically trained in the profession of forestry, and, in addition, shall have had at least two years' experience in practical and administrative work of that profession, the exact extent and character of which shall be certified by the secretary of the United States department of agriculture, or state administrative officer having personal knowledge thereof, whose expenses when traveling, shall be paid from funds to the credit of the board, and whose duties shall be to take such action as is authorized by law and by the board to prevent and extinguish forest fires, and enforce all laws pertaining to forests and woodlands, and to cause prosecution for any violation of said laws, and have charge and full authority of law with the immediate direction and control of all matters relating to forestry as authorized by this chapter, or as may be otherwise authorized by law, subject to the supervision and approval of the board, and said board shall employ such assistants, agents, clerks and employees on such terms and conditions as said board shall deem advisable.

History.—§5, ch. 12283, 1927; CGL 4151(5); §1, ch. 15720, 1931; am. §1, ch. 21961, 1943; §1, ch. 25118, 1949; §7, ch. 57-401.
cf.—§112.061 Travel expenses of state officers and employees.

589.06 Warrants for payment of accounts, expenses, etc.—Upon the presentation to the comptroller of any accounts duly approved by the board, accompanied by such itemized vouchers or accounts as shall be required by him, the comptroller shall audit the same and draw a warrant on the state treasurer for the amount for which the account is audited, payable out of funds to the credit of the board.

History.—§7, ch. 12283, 1927; CGL 4151(7).

589.07 Board may acquire lands for forest purposes.—The board, on behalf of the state and subject to the restrictions mentioned in §589.08, may acquire lands, suitable for state forest purposes, by gift, donation, contribution or otherwise and may enter into agreements with the federal government, or other agency, for acquiring by gift, purchase or otherwise, such lands as are, in the judgment of the board, suitable and desirable for state forests.

History.—§1, ch. 17027, 1935; CGL 1936 Supp. 4151(10y).
cf.—§589.27, Power of eminent domain.
§253.50 Conveyances between state agencies.

589.08 Restrictions upon acquisition of lands.—The board shall enter into no agreement for the acquisition, lease or purchase of any land or for any other purpose whatsoever which shall pledge the credit of, or obligate in any manner whatsoever, the state to pay any sum of money or other thing of value for such purpose, and the said board shall not in any manner or for any purpose pledge the credit of or obligate the state to pay any sum of money. The said board may receive, hold the custody of and exercise the control of any lands, and set aside into a separate, distinct and inviolable fund, the proceeds which may be derived from the sales of the products of such lands, the use thereof in any manner, or the sale of such lands save the twenty-five per cent of the proceeds thereof to be paid into the state school trust fund as provided by the constitution. The board may use and apply such funds for the acquisition, use, custody, management, development or improvement of any lands vested in or subject to the control of such board. After full payment has been made for the purchase of a state forest, to the federal government or other grantor, then fifteen per cent of the gross receipts from a state forest shall be paid to the county or counties in which it is located in proportion to the acreage located in each county for use by the county or counties for school purposes.

History.—§3, ch. 17027, 1935; CGL 1936 Supp. 4151(10aa). §1, ch. 57-159; §2, ch. 61-119.
cf.—§589.27, Power of eminent domain.
A12 S4 State school fund.

589.081 Withlacoochee state forest; payment to counties of portion of gross receipts.—The Florida board of forestry shall pay fifteen per

cent of the gross receipts from Withlacoochee state forest to Hernando, Citrus, Sumter and Pasco counties in proportion to the acreage located in each county. The funds shall be equally divided between the board of county commissioners and the board of public instruction of each county, all the acreage of the Withlacoochee state forest being within the said four counties. The provisions of this act shall apply to the fiscal year beginning July 1, 1960.

History.—§§1, 2, ch. 61-170.

589.09 **Use of lands acquired.**—All lands acquired by the board on behalf of the state shall be in the custody of and subject to the jurisdiction, management and control of the said board, and, for such purposes and the utilization and development of such land, the said board may use the proceeds of the sale of any products therefrom, the proceeds of the sale of any such lands, save the twenty-five per cent of such proceeds which shall be paid into the state school trust fund as the constitution requires, and such other funds as may be appropriated for use by the board, and in the opinion of such board, available for such uses and purposes.

History.—§2, ch. 17027, 1935; CGL 1936 Supp. 4151(10z). §2, ch. 61-119.

589.10 **Disposition of lands.**—The board, with the concurrence of the trustees of the internal improvement trust fund and the governor, may sell, exchange or lease or otherwise dispose of any lands under its jurisdiction by the provisions of this chapter when in its judgment it is advantageous to the state to do so in the interest of the highest orderly development, improvement and management of the state forests and state parks. All such sales, exchanges or leases, or dispositions of such lands, shall be at least upon a thirty days' public notice, to be given in the manner deemed reasonable by the said board.

History.—§4, ch. 17027, 1935; CGL 1936 Supp. 4151(10bb). §24, ch. 57-1; §2, ch. 61-119.
cf.—§589.01 Florida board of forestry.

589.101 **Blackwater river state forest; lease of board's interest in gas, oil, and other minerals.**—Notwithstanding the provisions of §§253.51-253.61, the Florida board of forestry is hereby expressly granted the authority to lease its twenty-five per cent interest in oil, gas and other minerals within the boundaries of the Blackwater river state forest; provided, however, that grants shall be made only to the lessee or lessees holding the seventy-five per cent interest in said minerals retained by the United States in its conveyance to this state. The concurrence of the trustees of the internal improvement trust fund required by §589.10 shall not be necessary under the provisions of this section.

History.—§1, ch. 59-184; §2, ch. 61-119.

589.11 **Duties of board as to Clarke-McNary law.**—The board is designated and authorized as the agent of the state to cooperate with the United States secretary of agriculture under the provisions of "§§4 and 5, chapter 348, 43 statutes 654, acts of congress, June 7, 1924, known as the Clarke-McNary law," to assist owners of farms in establishing, improving and renewing wood lots, shelter belts, wind breaks and other valuable forest growth, and also in growing and renewing useful timber crops and also to cooperate with the wood using industries or other agencies governmental or otherwise interested in proper land use, forest management and conservative forest utilization.

History.—§7, ch. 17027, 1935; CGL 1936 Supp. 4151(10ee).

589.12 **Rules and regulations.**—The board may make rules and regulations and do such acts and things as shall be reasonable and necessary to accomplish the purposes of §§589.07-589.11.

History.—§8, ch. 17027, 1935; CGL 1936 Supp. 4151(10ff).

589.13 **Lien of board and other parties, for forestry work, etc.**—Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, boards, firms, or corporations upon the following described real estate, under the circumstances hereinafter mentioned:

In favor of the board, the United States government, or other governmental authority, upon all lands covered in any cooperative or other agreement entered into between the landowner and the board (which term shall embrace and include agreements with Florida board of forestry), the United States government or other governmental authority, for the prevention and control of woods fires and other forestry work to the extent of the amounts expended by such board, service or other governmental authority for and on behalf of the landowner, and not paid by the landowner under the terms of said agreement.

History.—§1, ch. 17026, 1935; CGL 1936 Supp. 4151(10t).

589.14 **Enforcement of lien; notice, etc.**—The board, Florida forest service, United States government or other governmental authority shall be entitled to subject said real estate in equity for the value of such expenditures made by it in pursuance of any such agreement, and may, at any time after the expenditure thereof and after default in payment thereof by the landowner in accordance with the terms of such agreement, file in the office of the clerk of the circuit court of the county in which the property is located, and have recorded in the record of liens kept by said clerk, a notice of the expenditures made in pursuance of said agreement and of default of the landowner in the payment of same in accordance with the terms thereof (the form of notice being provided in §589.15), and from the date of the filing of such notice the rights of purchasers or creditors of such landowner shall be subject and subordinate to the claim set out in said notice.

History.—§2, ch. 17026, 1935; CGL 1936 Supp. 4151(10u).

589.15 **Form of notice.**—The said notice shall be substantially as follows: It shall be in writing and shall be sworn to by the duly authorized agent of such board, service or gov-

ernmental authority filing same. It shall state the name of the owner of said property, the nature and character of the labor or services performed or to be performed, an itemized statement of the expenditures made in pursuance of said agreement and the value thereof, and shall also contain a description of the property covered by the said agreement and to which said services and expenditures are applicable.

History.—§3, ch. 17026, 1935; CGL 1936 Supp. 4151(10v).

589.16 Time for filing notice of lien.—The notice of lien may be filed prior to the filing of a complaint brought to enforce said lien; provided that nothing herein contained shall prevent the filing of such notice at any time after the contract or agreement has been entered into and default made by the landowner in payment of any amount due under the contract or agreement; and suit in equity to enforce the rights of the board, service or governmental authority as provided in this chapter, must be brought within twelve months from the filing of said notice of lien.

History.—§4, ch. 17026, 1935; CGL 1936 Supp. 4151(10w). Am. §2, ch. 29737, 1955.

589.17 Application of general laws.—The general laws of this state with reference to the acquisition and enforcement of statutory liens shall be applicable to the lien created by §§589.13-589.16 insofar as the same may be consistent with and pertinent hereto.

History.—§5, ch. 17026, 1935; CGL 1936 Supp. 4151(10x).

589.18 Board to make certain investigations.—The board shall conduct investigations and make surveys to determine the areas of land in the state which are available and suitable for reforestation projects and state forests, and may recommend to the trustees of the internal improvement trust fund, any state agency, or any agency created by state law which is authorized to accept lands in the name of the state, concerning their acquisition. The board shall be considered as a state agency under this law.

History.—§1, ch. 16030, 1933; CGL 1936 Supp. 4151(10a). §2, ch. 61-119.

589.19 Creation of certain state forests.—When the trustees of the internal improvement trust fund, any state agency, or any agency created by state law, authorized to accept reforestation lands in the name of the state, approve the recommendations of the board in reference to the acquisition of land and acquire such land, the said trustee, state agency, or agency created by state law, may formally designate and dedicate any area as a reforestation project, or state forest, and where so designated and dedicated such area shall be under the administration of the board which shall be authorized to manage and administer said area according to the purpose for which it was designated and dedicated.

History.—§2, ch. 16030, 1933; CGL 1936 Supp. 4151 (10b); §2, ch. 61-119.

589.20 Cooperation by board.—The board may cooperate with other state agencies, who are custodians of lands which are suitable for forestry purposes, in the designation and dedication of such lands for forestry purposes when in the opinion of the state agencies concerned such lands are suitable for these purposes and can be so administered. Upon the designation and dedication of said lands for these purposes by the agencies concerned, said lands shall be administered by the board.

History.—§3, ch. 16030, 1933; CGL 1936 Supp. 4151(10c).

589.21 Management to be for public interest.—All state forests, and reforestation projects mentioned in this chapter shall be managed and administered by the board in the interests of the public. If the public interests are not already safeguarded and clearly defined by law or by regulations adopted by the state agencies authorized by law to administer such lands, or in the papers formally transferring said projects to the board for administration, then, and in that event, the board may define the purpose of said project. Such definition of purposes shall be construed to have the authority of law.

History.—§4, ch. 16030, 1933; CGL 1936 Supp. 4151(10d).

589.26 Dedication of state park lands for public use.—The Florida board of forestry is authorized and empowered, from time to time, by resolution, to dedicate and reserve for the use of the public all or any part of the lands heretofore or hereafter acquired by the said Florida board of forestry for park purposes; provided, however, that said dedication and reservation shall be subject to such rules and regulations, as to reasonable use by the public, as may be adopted by the Florida board of parks and historic memorials.

History.—§1, ch. 20418, 1941; am. §28, ch. 29615, 1955.

589.27 Power of eminent domain; procedure.—Whenever the "Florida board of forestry" shall find it necessary to acquire private property for state forests or rights-of-way for state forest roads, or for exercising any of the powers and duties authorized and prescribed by law to be exercised and performed by the "Florida board of forestry" the said "Florida board of forestry" is hereby empowered and authorized to exercise the right of eminent domain and to proceed to condemn said property in the same manner as provided by law for the condemnation of private property by counties.

History.—§1, ch. 20900, 1941; am. §28, ch. 29615, 1955.
cf.—Ch. 73 Eminent domain.
Chs. 74, 127 Eminent domain by counties.
§592.074 Power of eminent domain; procedure.

589.28 County commissioners authorized to cooperate with Florida board of forestry in employing county forester.—For the purpose of stimulating the production of timber wealth through the proper use of forest land in any county, and in Florida in general, and making and keeping the land best suited to that purpose profitable to the owner, the county and the state, the board of county commissioners of any county is hereby authorized to appropriate funds and to enter into cooperative agreements

with the Florida board of forestry under terms and conditions specified herein, and such other terms and conditions not inconsistent herewith as in the judgment of the boards will best serve the individual landowner, the county, and the state as a whole with respect to reforestation and the utilization of forest products.

History.—§1, ch. 20899, 1941.

589.29 Same; qualifications of county forester.—Any county forester employed under the provisions of this law shall be responsible to the state forester and the Florida board of forestry and shall be equipped through forestry training and experience to handle all forestry work assigned to him in a highly efficient manner, to the end that the greatest assistance may be given and continuous value accrue to timber landowners in the county.

History.—§2, ch. 20899, 1941.

589.30 Same; duty of county forester.—It shall be the duty of the county forester, under general direction of the district forester in whose district the county is situated, to direct all work in accordance with law and rules and regulations of the board of forestry, gather and disseminate information in regard to growing timber, its care, management, utilization, and sale, assist in furthering fire prevention and control, enforce all laws pertaining to timber theft, fire, and the growing, preservation, and utilization of timber, aid in enforcing laws for the protection of ornamental trees and shrubs outside of city limits, assist timber landowners in planting idle lands with forest tree seedlings of commercial forest value where planting is deemed advisable, advise and assist timber landowners on proper timber cutting practices for pulpwood and other forest products, and perform such other work as may be mutually agreed upon by the Florida board of forestry and the county commissioners, as will aid in keeping the forest lands of the county in a high state of timber production.

History.—§3, ch. 20899, 1941.

589.31 Same; cooperative agreement.—Before any county forester is employed under this law, the county and the Florida board of forestry, through their duly constituted representatives, shall enter into a mutually satisfactory cooperative agreement covering the specific duties, and set up a budget for any fiscal period beginning July 1 and ending June 30, and the county's share of the budget provided shall be turned over to the Florida board of forestry, one-half on or before July 1, and the remainder on or before January 1, and placed in the incidental trust fund of the Florida board of forestry.

History.—§4, ch. 20899, 1941; §2, ch. 61-119.

589.32 Same; salary and expense of county forester.—The salary and expenses of any county forester employed under the provisions of this law shall be jointly determined and paid by the Florida board of forestry and the county commissioners of the county for which the forester is employed on the basis of the county assuming and paying forty per cent of such salary and expenses; provided, however, the county share shall not exceed the sum of three thousand dollars per annum for each forester employed.

History.—§5, ch. 20899, 1941; §1, ch. 63-399.

589.33 Same; expenditure of budgeted funds.—Any money budgeted for a fiscal period shall be expended by the board of forestry during the period for which it was budgeted and amounts not expended or specifically obligated by contract or other legal procedure during that period shall be available for the next fiscal period or shall be returned to the Florida board of forestry and the county in the same proportions as appropriated.

History.—§6, ch. 20899, 1941.

589.34 Same; revocation of agreement.—Any agreement or revision thereof entered into by the Florida board of forestry and the county under the provisions of this law shall continue from year to year, unless written notice is given to the other party thirty days prior to July first of any year of the intention to discontinue the work and cancel the agreement.

History.—§7, ch. 20899, 1941.

CHAPTER 590

FOREST PROTECTION

590.01 Protection of forests.—Whenever it shall appear to the Florida board of forestry, hereinafter called the board, from investigation, hearing or otherwise that areas in the state are in need of special protection from forest fires, the said board may designate and establish a forest protection district in such areas. The limits of each such fire protection district shall be defined by the board, and public notice of its establishment shall be published in some one or more newspapers of general circulation in the region affected, once each week for three successive weeks (three insertions), and such additional publicity shall be given to the establishment of said district as the board may deem necessary.

History.—§2, ch. 17029, 1935; CGL 1936 Supp. 4151(10HH).
cf.—Ch. 589, Florida board of forestry.
Ch. 591, Forest development.

590.02 Powers of board; appointment of forest investigators and rangers; powers and duties; entry upon lands; arrests, etc.—

(1) The Florida board of forestry, in connection with the enforcement of this chapter and other forest and forest fire laws, shall have the following powers, authority and duties:

(a) To enforce the provisions of this chapter and other forest fire and forest protection laws of this state;

(b) To prevent, detect, suppress, and extinguish forest fires in this state and to do all things necessary in the exercise of such powers, authority and duties;

(c) To provide forest fire fighting crews, who shall be under the control and direction of forest rangers and other designated agents of the board; and

(d) To appoint district foresters, assistant district foresters, investigators, rangers, and other employees.

(e) To use the resources of the board on state-owned parks and historic memorials wherever located within the state to prevent and suppress fires, to cut fire lines, to establish regional fire fighting crews who shall be authorized to suppress fires on state owned park lands and subject to budget commission approval, use funds not otherwise appropriated for the purchase of the necessary equipment for combatting fires in state parks.

(2) Forest rangers, and the fire fighting crews under their control and direction, may enter upon any lands for the purpose of preventing and suppressing forest fires and to enforce the provisions of this chapter and other forest fire and forest protection laws of this state.

(3) Forest rangers, employees of the board and all persons, federal and state agencies who are under contract or agreement with the board to assist in fire fighting operations as well as persons, federal or state agencies, firms, companies or corporations called upon by forest rangers or other authorized employees of the board to assist in fire fighting under the direction or supervision of employees of the board may, in the performance of their duties, set backfires, dig trenches, cut fire lines and carry on all customary activities in the fighting of forest fires without incurring liability to any person.

(4) The governor may, upon the application of the board, appoint a sufficient number of special officers, the exact number to be determined by the Board, but not to exceed twenty in number, who shall have the power and authority of arrest. Such special officers shall furnish bond in the penal sum of two thousand five hun-

dred dollars, payable to the governor of the state, conditioned upon the faithful discharge of their duties as such special officers, such bonds to be approved by the board. Such special officers shall have power and authority throughout the state, under the direction and control of the board, to enforce the criminal provisions contained in this chapter and in other laws relating to forests and forest fires.

Such special officers shall have power and authority to make arrests with or without warrants for violations of the criminal provisions of this chapter and of other laws relating to forests and forest fires to the same extent and under the same limitations and duties as do peace officers under the provisions of Chapter 901, as amended.

In each case where any of the special officers effect an arrest, the sheriff of the county in which such arrest is made shall be entitled to the lawful fees the same as though such arrest had been effected by him or his deputies.

In connection with the enforcement of the said criminal provisions, such special officers may go upon all premises, posted or otherwise, when necessary for the enforcement of such laws. All such special officers shall be ex officio forest rangers and shall be under the control and direction of the board; except, the governor may at any time, for cause, remove any powers and authority of arrest conferred by him. Such special officers shall have the same right and authority to carry arms as do the sheriffs of this state, unless otherwise provided by order of the governor. The compensation of such special officers shall be fixed and paid by the board from its funds.

History.—§14, ch. 17029, 1935; CGL 1936 Supp. 4151(10SS). Am. §1, ch. 26915, 1951; (3) by §1, ch. 57-55.
cf.—§113.07 Bonds of officials.

590.03 Authority of fire wardens.—It is unlawful for any person either willfully or carelessly, to burn or cause to be burned or to set fire to or cause fire to be set to, any forest, grass, woods, wild lands or marshes within a forest protection district, unless written permission shall have first been secured from a duly appointed fire warden. The permit must show date and hour for burning and description of lands to be burned over. The board shall prepare the necessary forms and blanks for this purpose, shall prescribe rules and regulations for the issuance of such permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, other persons who shall be authorized to issue such permits, and shall have complete jurisdiction over all other details concerned with the setting of fires within such district.

History.—§4, ch. 17029, 1935; CGL 1936 Supp. 4151 (10JJ).

590.04 Organization of districts.—The board shall organize each forest protection district so as to most effectively prevent, detect and suppress forest fires, and to that end, may employ wardens or forest rangers to have charge of its activities in each such district, may subdivide each district into patrol areas, may construct lookout towers, roads, bridges, fire lines, ranger stations, and telephone lines, purchase tools for fire fighting as well as other necessary supplies and equipment, and may carry on all other activities deemed necessary to effectively protect the district from such fires.

History.—§3, ch. 17029, 1935; CGL 1936 Supp. 4151(10II).

590.05 Road crews to extinguish fires.—Every member of a road construction or maintenance crew, whether employed by the state road department, or by the highway department or county commissioners of any county, and every road contractor or sub-contractor of said state road department, or the highway department or county commissioners of any county, and their employees shall keep all fires set by them under control and confined to the right-of-way and suppress all fires discovered and detected by them within two hundred feet of the center line of the right-of-way of any state, county or public road, or highway on which and adjacent to which the said crew, contractor, sub-contractor and employees are employed.

History.—§5, ch. 17029, 1935; CGL 1936 Supp. 4151(10KK).

590.06 Adoption of rules for road crews.—The state road department, and the county commissioners or highway departments of the several counties of this state shall require their construction and maintenance crews, contractors, sub-contractors and employees to comply with the provisions of this chapter and the said state road department, county commissioners and highway department to that end may adopt and promulgate rules and regulations for the observance of said crews, contractors, sub-contractors and employees in carrying out the purposes and provisions of this chapter.

History.—§6, ch. 17029, 1935; CGL 1936 Supp. 4151(10LL).

590.07 Refusal of road crews.—Any road foreman or member of a road construction or maintenance crew, or any foreman, superintendent or employee of any road contractor or subcontractor, who shall, without sufficient cause, willfully refuse or neglect to prevent and suppress fires as provided in this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in §590.14.

History.—§7, ch. 17029, 1935; CGL 1936 Supp. 7404(1).

590.08 Unlawful burning of lands.—It is unlawful for any person to willfully or carelessly burn or cause to be burned, or to set fire to or cause fire to be set to, any forest, grass, woods, wild lands or marshes not owned or controlled by such person.

History.—§§1, 2, ch. 3141, 1879; RS 2527; GS 3426; RGS 5284; §1, ch. 12024, 1927; CGL 7403, 7404; §8, ch. 17029, 1935; CGL 1936 Supp. 4151(10MM).

590.081 Emergency drought conditions; burning prohibited.—

(1) It is unlawful for any person to set fire to any forest, grass, woods, wild lands or marshes, or to build a campfire or bonfire or to burn trash or other material that may cause a forest, grass or woods fire, in any county, counties or area within a county, where because of emergency drought conditions, there is extra-

ordinary danger from fire, unless the setting of any backfire during the drought emergency is necessary to afford protection as determined by a representative of the Florida board of forestry, or unless it can be established that the setting of such backfire was necessary for the purpose of saving life or property. The burden of proving such shall rest on such person claiming same as a defense.

(2) The Florida board of forestry, or the state forester will advise the governor when forests in any county, counties or area within a county of this state, because of emergency drought conditions are in extraordinary danger from fire. The governor may by proclamation declare a drought emergency to exist and describe the general boundaries of the area affected.

(3) Any proclamation promulgated by the governor under authority of this section shall be effective immediately upon publication in a newspaper of general circulation in the area affected or the posting of the proclamation at the front door of the courthouse or courthouses and in at least ten public places throughout the area. Evidence of publication or posting as herein provided must be filed with the state forester.

(4) When conditions warrant, due notice of the termination of the emergency shall be promptly made by proclamation, which shall be published or posted in like manner as when officially declared.

(5) Any person violating any of the provisions of this section shall be punished as for a misdemeanor as provided by §590.14.

History.—Comp. §§1-5, ch. 57-246.

590.09 Setting fire on right-of-ways.—It is unlawful for any person to set or cause to be set willfully or carelessly a fire within the confines of the right-of-way of any public road, state road, railroad, or in any other place and allow it to escape onto and burn over any adjoining land.

History.—§10, ch. 17029, 1935; CGL 1936 Supp. 4151(10OO).

590.10 Disposing of lighted cigars, etc.—It is unlawful for any person to throw or drop from an automobile or vehicle, or otherwise, a lighted match, cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may or does cause a forest, grass, or woods fire.

History.—§11, ch. 17029, 1935; CGL 1936 Supp. 4151(10PP).

590.11 Camp fires.—It is unlawful for any individual or group of individuals to build a warming or camp fire and leave same unextinguished.

History.—§12, ch. 17029, 1935; CGL 1936 Supp. 4151(10QQ).

590.12 Procedure to lawfully burn land.—It is unlawful for any person, either willfully or carelessly, to burn or cause to be burned, or to set fire to or cause fire to be set to, any forest, grass, woods, wild lands or marshes owned or controlled by such person without first giving notice to all resident owners, managers or tenants of lands adjoining and surrounding the area to be burned, said notice to be given in the presence of at least one witness or in writing, not less than one nor more than ten days prior to such burning; or to fail to take reasonable precaution against the spreading of fire to other lands by providing adequate fire lines, man-power and fire fighting equipment for the control of such fire, or to watch over said fire until it is extinguished, or to permit fire to escape to adjoining lands; provided, however, that no notice shall be required to be given of the setting of fire in a forest protection district where written permission to set such fire has been obtained from a duly appointed fire warden.

History.—§9, ch. 17029, 1935; CGL 1936 Supp. 4151(10NN).
cf.—§§590.25-590.27 specifically do not repeal this section. See §4, ch. 26833, 1951.

590.13 Civil liability.—Any person violating any of the provisions of this chapter shall be liable for all damages caused by such violation, which damages shall be recoverable in any court of competent jurisdiction. The civil liability shall obtain whether there be criminal prosecution and conviction or not.

History.—§17, ch. 17029, 1935; CGL 1936 Supp. 4151(10UU).

590.14 Penalties.—Whoever violates any of the provisions of this chapter (1) willfully or intentionally shall, upon conviction thereof, be deemed guilty of a felony and punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for a term of not more than three years or by both such fine and imprisonment in the discretion of the court, and whoever, (2) carelessly violates any of the provisions of this chapter, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars or by imprisonment in the county jail for a term not to exceed three months, or by both such fine and imprisonment in the discretion of the court, and the penalties herein provided shall extend to both the actual violator and to the person or persons, firm or corporation causing, directing or permitting such violation.

History.—§15, ch. 17029, 1935; CGL 1936 Supp. 7404(2); §1, ch. 20898, 1941.
Am. §2, ch. 26915, 1951.
cf.—§775.06 Alternative punishment.

590.15 Burden of proof.—In any prosecution or civil action brought under the provisions of this chapter it shall not be necessary for the state or plaintiff to allege and prove absence of the right or authority of the defendant to set or cause to be set the fire, but such right and authority shall be a matter of affirmative defense to be alleged and proved by the defendant.

History.—§13, ch. 17029, 1935; CGL 1936 Supp. 4151(10RR).

590.16 Rewards.—The board, in its discretion, may offer and pay rewards for information leading to the arrest and conviction of any person violating any of the provisions of this chapter.

History.—§16, ch. 17029, 1935; CGL 1936 Supp. 4151(10TT).

590.25 Penalty for preventing or obstructing extinguishment of woods fires.—Whoever

shall interfere with, obstruct or commit any act aimed to obstruct the extinguishment of forest fires by the employees of the state board of forestry or any other person engaged in the extinguishment of a woods fire or who injures, or destroys any equipment being used for such purpose, shall be deemed guilty of a felony and upon conviction thereof shall be subject to imprisonment of not more than three years or by fine not exceeding one thousand dollars, or by both such fine and imprisonment in the discretion of the court.

History.—Comp. §1, ch. 26833, 1951.

590.26 Liability for costs of suppressing fires.—Whoever willfully or carelessly shall cause an unlawful forest, grass, or woods fire shall in addition to all other penalties provided by law be liable for payment of all reasonable costs and expenses incurred in suppressing same. Said costs and expenses shall be payable to the Florida board of forestry. When such costs and expenses are not paid in a reasonable time after demand, it shall be the duty of said board to take proper legal proceedings for the collection thereof. The liability for costs of suppression shall obtain whether there be criminal prosecution or not and the liability shall extend to the person or persons, firm or corporation causing, directing or permitting such activity as well as to the actual violator.

History.—Comp. §2, ch. 26833, 1951; §1, ch. 63-207.

590.27 Penalty for mutilating or destroying state forestry or fire control signs and posters.—Whoever intentionally breaks down, mutilates, removes or destroys any fire control or forestry sign or poster of the state board of forestry erected in the administration of its lawful duties and authorities, shall be guilty of a misdemeanor and shall be subject to imprisonment not exceeding three months or by fine not exceeding two hundred dollars, or by both such fine and imprisonment.

History.—Comp. §3, ch. 26833, 1951.

590.28 Willful, malicious or intentional burning of lands.—

(1) Whoever willfully, maliciously or intentionally burns, sets fire to, or causes to be burned or any fire to be set to, any forest, grass, or woodlands not owned by, or in the lawful possession of, the person setting such fire or burning such lands or causing such fire to be set or lands to be burned shall, upon conviction thereof, be deemed guilty of a felony and punished as provided in §590.30.

(2) The terms "willful," "malicious" and "intentional" as used in this section mean not merely gross negligence or disregard for the rights of others and not merely general criminal intent, but a specific intent to damage or destroy public property or the property of another, such intent being engendered by malice or spite or by the hope of material gain or employment to be derived either directly or indirectly.

History.—Comp. §1, ch. 29919, 1955.

590.29 Illegal possession of incendiary device.—

(1) Whoever, being outside the corporate limits of any municipality, has in his possession any incendiary device as defined by subsection (3) of this section with the intent to use such device for the purpose of burning or setting fire to any forest, grass, or woodlands, which forest, grass or woodlands such person possessing such device is not the owner of, nor in possession of lawfully, as under a lease, shall, upon conviction thereof, be deemed guilty of a felony and punished as provided in §590.30.

(2) The possession of any incendiary device as defined by subsection (3) of this section outside the corporate limits of any municipality shall be prima facie evidence of the intent of the person possessing such device to use such device for the purpose of burning or setting fire to forest, grass or woodlands which forest, grass or woodlands such person possessing such device is not the owner of, nor in possession of lawfully, as under a lease.

(3) The term "incendiary device" as used in this section is included but not limited to any "slow match" which is any device contrived to accomplish the delayed ignition of a match or matches or other inflammable material by the use of a cigarette, rope or candle to which such match or matches are attached, or a magnifying glass so focused as to intensify heat on inflammable material and thus cause a fire to start at a subsequent time, and any chemicals or chemically treated paper or material, or other combustible material so arranged or designed as to make possible its use as a delayed firing device.

History.—Comp. §1, ch. 29919, 1955.

590.30 Penalties.—

(1) Whoever violates any of the provisions of §590.28 or §590.29 or both such sections of this chapter shall, upon conviction thereof, be deemed guilty of a felony and punished by imprisonment in the state prison for a term of not more than five years.

(2) Neither the provisions of §590.14 nor the penalties provided thereby shall apply to violations of the provisions of §590.28 or §590.29 or both such §§590.28 and 590.29, but such violations shall be punished by the penalties provided in §590.30 only.

History.—Comp. §1, ch. 29919, 1955.

590.31 Southeastern interstate forest fire protection compact.—The governor on behalf

of this state is hereby authorized to execute a compact, in substantially the following form, with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, and the legislature hereby signifies in advance its approval and ratification of such compact:

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

ARTICLE I

The purpose of this compact is to promote effective prevention and control of forest fires in the southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

ARTICLE II

This compact shall become operative immediately, as to those states ratifying it whenever any two or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

ARTICLE III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the senate and one member of the house of representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

ARTICLE V

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith; provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request; provided, that nothing herein contained shall prevent any assisting member

state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

ARTICLE VII

The compact administrators may request the United States forest service to act as a research and coordinating agency of the southeastern interstate forest fire protection compact in cooperation with the appropriate agencies in each state, and the United States forest service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

ARTICLE VIII

The provisions of articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region; provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

History.—Comp. §1, ch. 29635, 1955.

590.32 Same; effective date; ratification.—When the governor shall have executed the compact on behalf of this state and shall have caused a verified copy thereof to be filed with the state secretary and when the compact shall have been ratified by one or more of the states named in §590.31, then the compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying the compact.

History.—Comp. §2, ch. 29635, 1955.

590.33 State compact administrator; compact advisory committee.—In pursuance of Art. III of the compact, the state forester of the Florida board of forestry shall act as compact administrator for Florida of the southeastern interstate forest fire protection compact during his term of office as state forester, and his successor as compact administrator shall be his successor as state forester of the Florida board of forestry. As compact administrator he shall be an ex-officio member of the advisory committee of the southeastern interstate forest fire protection compact, and chairman ex-officio of the Florida members of the advisory committee. There shall be four members of the southeastern interstate forest fire protection compact advisory committee from Florida. Two of the members from Florida shall be members of the legislature of Florida, one from the senate and one from the house of representatives, designated by the Florida commission on interstate cooperation, and the terms of any such members shall terminate at the time they cease to hold legislative office, and their successors as members shall be named in like manner. The governor shall appoint the other two members from Florida, one of whom shall be associated with forestry or forest products industries. The terms of such members shall be three years and such members shall hold office until their respective successors shall be appointed and qualified. Vacancies occurring in the office of such members from any reason or cause shall be filled by appointment by the governor for the unexpired term. The state forester of the Florida board of forestry as

compact administrator for Florida may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or other proceeding of the compact administrators or of the advisory committee. The terms of each of the initial four memberships, whether appointed at said time or not, shall begin upon the date upon which the compact shall become effective in accordance with Art. II of said compact. Any member of the advisory committee may be removed from office by the governor upon charges and after a hearing.

History.—Comp. §3, ch. 29635, 1955.

590.34 Same; powers; other state agencies, etc. — There is hereby granted to the state forester of the Florida board of forestry, as compact administrator and chairman ex-officio of the Florida members of the advisory committee, and to the members from Florida of the advisory committee all the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact in every particular. All officers of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of the compact in every particular; it being hereby declared to be the policy of the state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the state are hereby authorized and directed at convenient times and upon request of the compact administrator or of the advisory committee to furnish information data relating to the purposes of the compact possessed by them or any of them to the compact administrator of the advisory committee. They are further authorized to aid the compact administrator or the advisory committee by loan of personnel, equipment, or other means in carrying out the purposes of the compact.

History.—Comp. §4, ch. 29635, 1955.

590.35 Construction §§590.31-590.34. — Any powers herein granted to the board shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in the board by other laws of Florida or by the laws of the states of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia or by the congress or the terms of the compact.

History.—Comp. §5, ch. 29635, 1955.

590.36 State and county fire prevention committees, appointment by board.—

(1) The Florida board of forestry is authorized to appoint a forest fire prevention committee, consisting of not less than two members of each forest service administrative district, to be known as the Florida forest fire prevention committee.

(2) The Florida board of forestry is authorized to appoint a forest fire prevention committee in each of the counties of the state, to be known as the _____ (name of county) forest fire prevention committee.

(3) A member of the Florida forest fire prevention committee may also be a member of the forest fire prevention committee of the county of his residence.

History.—Comp. §§1, 2, ch. 57-54.

590.37 Same; term of office.—

(1) The Florida forest fire prevention committee shall be appointed by the Florida board of forestry to serve for a period of two years, or until its successors are appointed and qualified; provided, however, if a member of the Florida forest fire prevention committee shall move his residence from the forest service administrative district from which he was appointed his position shall become vacant immediately, and the Florida board of forestry may fill the vacancy for the unexpired term.

(2) The forest fire prevention committee of the counties, as provided in §590.36 (2) shall consist of not less than five members. The members of these committees shall be appointed for two years, and shall serve until their successors are duly appointed and qualified; provided, however, if a member moves his residence from the county from which he was appointed his position shall become vacant immediately and the Florida board of forestry may fill the vacancy for the unexpired term.

History.—Comp. §3 ch. 57-54.

590.38 Duties of state committee. — The duties of the Florida forest fire prevention committee shall be:

(1) To assist the Florida board of forestry, and the Florida forest service in implementing the policies and programs of the Florida board of forestry.

(2) To coordinate the activities of the committees in the several counties of the state appointed as provided by §590.36 (2).

(3) To assist the Florida board of forestry and the Florida forest service in forest fire prevention, law enforcement in matters related to forestry, and in other forestry activities when called upon to do so by the Florida board of forestry.

History.—Comp. §4, ch. 57-54.

590.39 Duties of county committees.—The duties of the committees appointed as set out in §590.36 (2), located within the several counties, shall be to assist the Florida board of forestry and the Florida forest service in implementing the policies and programs of the Florida board of forestry in their respective counties; to assist the Florida board of forestry and the Florida forest service and the Florida fire prevention committee in forest fire pre-

vention, law enforcement activities when called upon to do so by the Florida board of forestry.
History.—Comp. §5, ch. 57-54.

590.40 Compensation and expenses of committees.—The members of the committees shall serve without compensation. The Florida board of forestry may designate one of its employees to serve as secretary to each of the committees. The Florida board of forestry may authorize the expenditure of funds of the board for incidental operating expenses of each committee, when needed.
History.—Comp. §6, ch. 57-54.

590.41 Committee organization.—Each committee shall elect, annually, one of its members chairman and two other members to serve with the chairman an as an executive committee.
History.—Comp. §7, ch. 57-54.

CHAPTER 591

FOREST DEVELOPMENT

591.15 Community forests; short title.—The short title for §§591.16-591.26 shall be Florida Community Forest law.

History.—§2, ch. 20902, 1941.

591.16 Community forests; purposes.—The general purposes of this law are:

(1) To encourage counties, cities, towns and school districts to utilize idle lands for productive forest purposes.

(2) To encourage reduction of taxation through producing income from wise use of such lands.

(3) To encourage development and make available, in community forests, areas having desirable recreational features.

(4) To encourage forestry education by establishing permanent forests for use of vocational agriculture departments, schools, and boy and girl scout troops.

History.—§1, ch. 20902, 1941.

591.17 Community forests; definitions.—The terms hereinafter used, unless the text clearly indicates a different meaning, shall be as follows:

(1) The term "governing board" shall mean county commissioners, city commissioners, town councils, county boards of public instruction, school trustees, or any other governing body of counties, cities, towns or school districts.

(2) The term "community forest" shall mean any forest area established under this law by a county, city, town or school district.

(3) The term "forestry committee" shall mean the appointed committee for directing the activities of community forests.

(4) The term "counties, cities, towns" shall mean any recognized political subdivision of the state government.

(5) The term "school district" shall mean individual school districts of a county or vocational agricultural departments located in these districts.

(6) The term "state forester" shall mean the representative of the Florida board of forestry normally called the state forester or any forester designated by him.

(7) The term "forest products" shall mean any product produced from trees.

(8) The term "contiguous sale" shall mean sale of like forest products from adjoining areas that normally would be in the same sale area as determined by the forester on the forestry committee.

History.—§3, ch. 20902, 1941.

591.18 Community forests; purchase or establishment.—All counties, cities, towns or school districts, through their governing boards, are hereby empowered to establish, from lands owned by such county, city, town or school district in fee simple, or to acquire by purchase or gift, lands at present covered with forest or tree growth, or suitable for the growth of trees, and to administer the same under the direction of the state forester, in accordance with the practice and principles of scientific forestry, for the benefit of the said counties, cities, towns or school districts. Such tracts may be of any size suitable for the purpose but must be located within the county embracing the county, city, town or school district, provided that it shall be requisite for the governing board availing itself of the provisions of this law to submit to the state forester, and secure his approval of the area and location of any lands proposed to be acquired or used for the purposes of county, city, town or school district forests.

History.—§4, ch. 20902, 1941.
cf.—§194.55, Taxes and liens.

591.19 Community forests; tax delinquent lands.—The department of agriculture, division of lands, comptroller, the trustees of internal improvement fund, counties, cities, towns and school districts or any other public agency holding fee simple or tax certificate lands are hereby empowered to, and may, upon application to them, transfer title of fee simple lands not in other public use to any county, city, town or school district for forest purposes as described under this law, provided such lands are approved by the state forester for this purpose.

History.—§5, ch. 20902, 1941.
cf.—§194.55, Taxes and liens.

591.20 Community forests; forestry committee.—The governing board of any county, city, town or school district desiring to establish

community forests after enactment of this law shall appoint a forestry committee, consisting of three members, as follows: one member of governing board, one member of Florida board of forestry to be designated by the state forester, and one taxpayer of the county, city, town or school district not a member of the governing board. The first two members of such committee shall hold office until replaced in their respective official positions. The third member shall hold office for three years. Any vacancy shall be filled at the first regular session of the governing board after the vacancy occurs. The president of the committee shall be selected by the three members for a one-year term at their first regular meeting. The representative of the Florida forest service shall not serve as an officer of the committee nor be responsible for making reports. All members shall serve without compensation, but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§6, ch. 20902, 1941; §23, ch. 57-1; §19, ch. 63-400.

591.21 Community forests; duties of forestry committee.—

(1) It shall be the duty of the forestry committee to advise the governing board in acquiring, developing and managing the forest and in making contracts, agreements and permits for and with the forest, and, if desirable, in hiring a qualified forester and laborers and in making rules and regulations for operating the forest.

(2) For any sale in excess of one hundred dollars, the governing body shall ask for and receive open competitive bids and purchase from the lowest and best bidder. For sale of forest products in excess of five hundred dollars for the total contract, the sale shall be advertised in one issue each of two consecutive weeks in a county newspaper of general circulation, and the highest and best bid accepted. Contiguous sales shall not be made.

History.—§7, ch. 20902, 1941.

591.22 Community forests; appropriations. —Counties, cities, towns or school districts in which forestry committees have been appointed may appropriate money from available funds to be used by said committee to carry out the purposes of this law. The forestry committee shall each year make a budget of recommendation for acquisition and operation and management of the forest for approval by the governing board.

History.—§8, ch. 20902, 1941.

591.23 Community forests; revenues, use.— Revenue from the forests shall be credited to the general fund of counties, cities, towns or school districts; provided, however, revenues from lands under land use agreements with youth organizations such as chapters of the future farmers of America, shall be disposed of subject to the terms of such agreements. When the revenue from any forest other than these under such land use agreements, exceeds the necessary expenses of the forest, including desirable acquisition, the excess will be used by the governing board for regular purposes and in reduction of taxation.

History.—§9, ch. 20902, 1941; §1, ch. 57-790.

591.24 Community forests; fiscal reports.— A fiscal year report of expenditures, income, sales, development and management shall be made by the forestry committee to the governing board of the county, city, town or school district, and a copy sent to the state forester. All reports shall be audited by the regular auditor of the county, city, town or school district.

History.—§10, ch. 20902, 1941.
cf.—A5S15 Auditor of the county.
§21.101 Duties of state auditor; annual audits.

591.25 Community forests; fire protection, etc.—All lands entered or acquired under the provisions of this law shall be protected at all times from wild fire and shall be kept and maintained as a permanent public forest except as hereinafter provided. The timber growing thereon shall be cut in accordance with forestry methods approved by the state forester and in such a manner as to perpetuate succeeding stands of trees. All such forest lands shall be open to the use of the public for recreational purposes so far as such recreational purposes do not interfere with, or prevent the use of, such lands to the best advantage as a public forest as determined by the forestry committee.

History.—§11, ch. 20902, 1941.

591.26 Community forests; sale; election; etc.—If it becomes desirable to sell any community forest or portion thereof as determined jointly by the governing board and forestry committee, it shall be put to a vote of the people at any regular election and a majority of those voting must approve the action. Any funds received from such sale shall be deposited in the general fund of the county, city, town or school district making the sale and used in consolidating existing community forests or in establishing another community forest.

History.—§12, ch. 20902, 1941.

591.27 Designating and marking seed trees; definitions.—Wherever the following words are used in §§591.28-591.34, they shall be defined as follows:

(1) "Owner." The person, and in the event there is more than one, all those in whom the fee simple title to real estate stands of record.

(2) "Real estate." All lands located in this state, including the trees standing or growing thereon.

(3) "Seed trees." All standing or growing trees marked with the letters S. T.

(4) "Person." The word "person" wherever it appears in said sections shall include persons, firms and corporations.

History.—Preamble, ch. 21940, 1943.
Sub. §(2) am. §10, ch. 26484, 1951. Transferred from §590.17.

591.28 Same; designation and dedication of trees.—The owner of real estate shall have the right to cause to be designated and marked at the rate of not less than three or more than eight trees per acre as seed trees and such designating

and marking shall by law operate as a dedication, transfer and conveyance of the legal title to such trees to the department of agriculture of the state without further words or evidence of transfer of title.

History.—§1, ch. 21940, 1943. Transferred from §590.18.

591.29 Same; form of designation and dedication.—Seed trees shall be designated as such by filling out and signing an instrument by the owner in substantially the following form:

CONVEYANCE AND/OR DEDICATION OF STANDING TIMBER TO DEPARTMENT OF AGRICULTURE OF FLORIDA.

State of Florida,
County of_____
Owner(s) of Land_____
Description of Land_____
_____
_____

Approximate number
of seed trees designated_____
This_____day of_____19____.
Signed:_____
(Owner(s))

Upon the filling out and execution of said instrument and upon same being properly acknowledged in the same manner as is now provided by law for the acknowledgment of deeds, said instrument shall be recorded in the office of the clerk of the circuit court of the county in which said real estate is located and in the record where deeds are recorded.

History.—§2, ch. 21940, 1943. Transferred from §590.19.

591.30 Same; Florida board of forestry; duty.—It shall be the duty of the board of forestry of this state to cause to be made a branding hammer and a sufficient number of reproductions thereof to accomplish the purpose of this law, which said hammers shall bear the letters "S. T.," which letters shall mean "seed tree," and shall be as distinctively constructed as possible. Said branding hammers shall at all times remain in the custody and possession of said board or its duly authorized representatives. It shall be the duty of said board, upon the application of any owner of real estate to the effect that such owner is desirous of marking and designating trees on his real estate as seed trees, to direct as soon as is convenient and practical an employee or representative of said board, trained in the field of forestry, to contact such owner and mark and designate seed trees in accordance with the rules and practices of good forestry. Each of said seed trees shall be marked as such by branding on the trunk the letters S. T. at a point not more than four and one-half feet from the ground and again at a point not more than six inches from the ground with the branding hammer or reproduction thereof hereinbefore described. Immediately upon said trees being so marked title thereto shall vest in the department of agriculture of Florida as aforesaid.

History.—§3, ch. 21940, 1943. Transferred from §590.20.

591.31 Same; designated trees not transferred by deed, lease, etc.—All standing trees marked with the letters "S. T." as provided in this law shall by operation of law be excluded from any subsequent sale, deed, conveyance, lease or transfer of title to such trees or the real estate on which same are located.

History.—§4, ch. 21940, 1943. Transferred from §590.21.

591.32 Same; duty of landowner.—It shall be the duty of every owner of real estate who has designated or marked seed trees thereon in accordance with the terms of this law, to expressly exclude said seed trees from any deed of conveyance or transfer thereof; provided, however, the failure so to do shall not pass title to said seed trees to the purchaser or grantee; provided, further, however, should the owner fail to expressly exclude said trees from any deed of conveyance or other evidence of transfer of title the grantee or transferee shall have the same remedy against the owner as is now provided by law.

History.—§5, ch. 21940, 1943. Transferred from §590.22.

591.33 Same; penalties for cutting, destroying, etc., trees.—Any person, firm or corporation who shall willfully or carelessly cut, destroy, burn or damage any trees marked with the letters "S. T." without obtaining permission of the commissioner of agriculture shall be guilty of a misdemeanor and shall be punished therefor by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment. The cutting of each seed tree shall constitute a separate offense under this section.

History.—§6, ch. 21940, 1943. Transferred from §590.23.

591.34 Same; cutting trees, procedure; commissioner of agriculture, duty.—Permission may be obtained from the commissioner of agriculture of Florida to cut seed trees by any owner of real estate on which same have been marked in accordance with the provisions of this law, upon filing with said commissioner an affidavit that he is the owner and that all timber and trees on his land have been cut except seed trees and shade trees and that it is the intent of such owner to cultivate the land on which the seed trees sought to be cut are located, or that said seed trees sought to be cut are over mature, and if the said commissioner is satisfied as to the truth of the contents of said affidavit he may in his discretion issue a certificate giving such owner permission to cut said seed trees and said certificate shall be made a permanent record of the office of said commissioner and a certified copy thereof may be obtained by the owner upon request. Upon the issuance of said certificate the owner shall have the right to cut the seed trees on the real estate designated in the certificate.

History.—§7, ch. 21940, 1943. Transferred from §590.24.

CHAPTER 592

BOARD OF PARKS AND HISTORIC MEMORIALS

592.01 Florida board of parks and historic memorials created.—There is created a department of state government which is designated as Florida board of parks and historic memorials, which shall be administered under the direction of a board of five members, appointed and commissioned by the governor, in the manner hereinafter provided. The headquarters of said department shall be located at or near the city of Tallahassee and if in the city of Tallahassee the board of commissioners of state institutions shall assign to the department suitable office room in the state capitol or other state building at the capital.

History.—§1, ch. 25353, 1949; §1, ch. 59-467.

592.02 Park regions.—For the purpose of administering the Florida board of parks and historic memorials, the state is divided into five park regions which are defined as:

(1) FIRST REGION.—The counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Washington, Holmes, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Wakulla, Leon and Jefferson shall constitute the first park region.

(2) SECOND REGION.—The counties of Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Levy, Gilchrist, Columbia, Baker, Union, Bradford, Alachua, Marion, Putnam, Clay, Duval, Nassau and St. Johns shall constitute the second park region.

(3) THIRD REGION.—The counties of Citrus, Sumter, Lake, Hernando, Pasco, Hillsborough, Pinellas, Polk, Manatee, Hardee, Highlands, Sarasota, DeSoto, Charlotte, and Glades shall constitute the third park region.

(4) FOURTH REGION.—The counties of Flagler, Volusia, Seminole, Orange, Osceola, Brevard, Indian River, Okeechobee, St. Lucie, and Martin shall constitute the fourth park region.

(5) FIFTH REGION.—The counties of Lee, Hendry, Palm Beach, Collier, Broward, Dade and Monroe shall constitute the fifth park region.

History.—Comp. §2, ch. 25353, 1949.

592.03 Appointment of board members; term of office.—The governor shall appoint one member of the governing board from each of the park regions defined in §592.02, subject to confirmation of the senate. Each member of the board shall have been a citizen and resident of the state for a period of five years immediately preceding the date of appointment. Members of the board shall serve for a term of four years, except that one member of the board first appointed shall serve for a term of one year, one member for a term of two years, one member for a term of three years and two members for a term of four years. Members shall serve without compensation, provided they shall be reimbursed for traveling expenses as provided in §112.061.

History.—§3, ch. 25353, 1949; §19, ch. 63-400.

592.04 Members of board; oath, bond.—Before entering upon the discharge of their duties as members of the board, each member shall subscribe to the oath of office as required by the constitution and shall give a good and sufficient bond in the penal sum of ten thousand dollars with a surety company authorized to do business in the state as surety, payable to the governor and his successors in office, conditioned upon the due and faithful performance of the duties of their office.

History.—Comp. §4, ch. 25353, 1949.
cf.—§113.07 Bonds of officials.

592.05 Meetings of board.—The annual meeting of the board shall be held at the headquarters in Tallahassee during the month of October, the date thereof to be set by the chairman. The board shall at this meeting select from its membership a chairman, a vice-chairman and a secretary to serve during the ensuing year, whose duties shall be those generally appertaining to such offices. A regular meeting shall be held each year within each of the regions at such locations as the board may designate.

History.—§5, ch. 25353, 1949; §1, ch. 63-478.

592.06 Duties of board.—It shall be the duty of the board to supervise, administer, regulate and control:

(1) The operation of all public parks, including all monuments, memorials, sites of historic interest and value, sites of archeological interest and value owned, or which may be ac-

quired, by the state, or to the operation, development, preservation and maintenance of which the state may have made or may make contribution or appropriation of public funds.

(2) To employ a director of park service whose qualifications shall be fixed by the board and who shall be designated as director of state parks and to employ such other persons as the board may consider necessary to efficiently administer the provisions of this chapter; to determine and fix the compensation to be paid to the director and such employees. The director of state parks shall perform such duties as may be assigned to him by the board.

History.—Comp. §6, ch. 25353, 1949.

592.07 Powers of board.—

(1) The board shall have power to acquire, in the name of the state, any property real or personal, by purchase, grant, devise, condemnation, donation, or otherwise, in which in its judgment may be necessary or proper toward the administration of the purposes of this chapter, provided, however, that no property of any nature may be acquired by purchase, lease, grant, donation, devise, or otherwise, under conditions which shall pledge the credit of, or obligate in any manner whatsoever the state to pay any sum of money; provided, that the power of condemnation as herein granted is limited to the acquisition of property or property rights which may be required for park purposes and which are contiguous to areas under the jurisdiction of the board on July 1, 1949. Express legislative approval is required for the acquisition by condemnation of any new area or memorial which the board may desire for the purposes set forth in this chapter.

(2) The board shall make and publish such rules and regulations as it may deem necessary or proper for the management and use of the parks, monuments and memorials under its jurisdiction, and the violation of any of the rules and regulations authorized by this section shall be a misdemeanor and punishable accordingly.

(3) The board may grant privileges, leases, concessions and permits for the use of land for the accommodation of visitors in the various parks, monuments and memorials, provided no natural curiosities or objects of interest shall be granted, leased or rented on such terms as shall deny or interfere with free access to them by the public; provided, further, such grants, leases and permits may be made and given without advertisement or securing competitive bids; and provided further that no such grant, lease or permit shall be assigned or transferred by any grantee without consent of the board.

(4) The board is authorized to grant easements for rights of way over, across and upon lands of the state for the maintenance of poles and lines for the transmission and distribution of electrical power and for telephone and telegraphic purposes, under such conditions and with such limitations as the board may impose.

(5) (a) The Florida board of parks and historic memorials is authorized and empowered to select and designate sites of historic interest and value of state-wide significance and to erect and maintain appropriate signs or markers indicating said sites upon public property as well as upon private property where permission is obtained.

(b) The state road department, the governing body of each county and municipality is authorized to permit the Florida board of parks and historic memorials to erect and maintain said historic signs or markers within the right-of-way of any state highway, county road or municipal street or any other property under their jurisdiction and control, under such conditions and limitations as may be appropriate. The Florida board of parks and historic memorials is hereby vested with the exclusive authority and power to erect and maintain said historic signs or markers within the right-of-way of any state highway.

(c) The Florida board of parks and historic memorials is authorized to receive gifts and donations from any source to carry out the purpose of this section.

History.—§7, ch. 25353, 1949; (5)n. by §7, ch. 29615, 1955; (5)n. by §1, ch. 59-392.

592.071 Rules and regulations for certain parks.—The board may adopt and enforce such rules and regulations as may be necessary for the protection, utilization, development, occupancy, and use of said parks, and consistent with existing laws and with the purpose, or purposes, for which said areas were acquired, designated, and dedicated, and when such rules and regulations shall have been adopted they shall have the force and effect of law.

History.—§5, ch. 16030, 1933; CGL 1936 Supp. 4151(10e). Transferred from §589.22, 1955.

592.072 Fees for use of state parks.—

(1) The Florida board of parks and historic memorials shall have the power to charge reasonable fees, rentals or charges for the use or operation of facilities and concessions in state parks, and all such fees, rentals and charges so collected shall be deposited in the state treasury to the credit of "state park trust fund," which is hereby created, the continuing balance of which fund is hereby appropriated to be expended by said board for the administration, improvement and maintenance of state parks and for the acquisition and development of lands hereafter acquired for state park purposes. The appropriation of said fund shall be continuing, and shall not revert to the general revenue fund at the end of any fiscal year or at any other time but shall, until expended, be continually available to said board for the uses and purposes set forth.

(2) Any moneys received in trust by the Florida board of parks and historic memorials by gift, devise, appropriation or otherwise shall, subject to the terms of such trust, be deposited with the state treasurer in a fund to be known as the "state park trust fund," and shall be subject to withdrawal upon application of said board for expenditure or investment in accordance with the terms of said trust. Unless prohibited by the terms of the trusts by which said moneys are derived, all of such moneys

may be invested from time to time by said board in such securities as trust companies organized under the laws of this state are permitted to invest in.

History.—§§1, 2, ch. 20417, 1941; transferred from §589.25, 1955; §2, ch. 61-119.
cf.—§§518.07, 518.15, 654.05, 659.20 Authorized investments for trust companies.

592.073 Dedication of state park lands for public use.—The Florida board of parks and historic memorials is authorized and empowered, from time to time, by resolution, to dedicate and reserve for the use of the public all or any part of the lands acquired by the said board for park purposes; provided, however, that said dedication and reservation shall be subject to such rules and regulations, as to reasonable use by the public, as may be adopted by the Florida board of parks and historic memorials.

History.—Comp. §28, ch. 29615, 1955.
cf.—§589.26 Dedication of state park lands for public use—Florida board of forestry.

592.074 Power of eminent domain; procedure.—Whenever the Florida board of parks and historic memorials shall find it necessary to acquire private property for state parks, or rights-of-way for state parks, or for exercising any of the powers and duties authorized and prescribed by law to be exercised and performed by the board, the said Florida board of parks and historic memorials is hereby empowered and authorized to exercise the right of eminent domain and to proceed to condemn said property in the same manner as provided by law for the condemnation of private property by counties.

History.—Comp. §28, ch. 29615, 1955.
cf.—§589.27 Power of eminent domain; procedure—Florida board of forestry.
Chs. 73, 74, 127 Eminent domain.

592.08 Board to take over certain functions.—The board is vested with all rights, powers, duties, privileges and authority relating to park matters heretofore vested in and exercised by the Florida board of forestry and parks and is charged with the responsibility of carrying out, performing and discharging all duties and liabilities, contractual and otherwise heretofore imposed upon or incurred by the Florida board of forestry and parks in connection with or appertaining to the management, control, improvement, operation and administration of state parks. All park property, real, personal and mixed now owned by, or held under management, direction and control, of Florida board of forestry is transferred to and vested in Florida board of parks and historic memorials.

History.—Comp. §8, ch. 25353, 1949.

592.09 State road department to assist board.—The state road department is authorized and directed to construct, reconstruct, maintain and improve, in cooperation with and under the direction of the board, roads, and trails, including necessary bridges, within and adjacent to state parks, monuments and memorials which roads and trails when constructed, reconstructed and improved shall become a part of the state system of highways, provided the board is vested with and shall exercise jurisdiction over the use of all such roads and trails lying within state parks, monuments and memorials and shall make and enforce reasonable rules and regulations regarding their use for travel.

History.—Comp. §9, ch. 25353, 1949.

592.10 Advisory committee. — The board shall select and appoint an advisory council of five members for each of the parks or memorials under the jurisdiction of the board. The members of this council shall be residents of the respective counties wherein such park or memorial may be situate, and shall be selected from persons who are interested and competent in the fields of history, archaeology, architecture or landscape gardening. They shall serve at the pleasure of the board without salary or compensation, but shall be reimbursed for traveling expenses as provided in §112.061. It shall be the duty of said councils to advise the board on any matter relating to the development and use of parks or memorials in their respective counties. The council may also recommend policies to the board pertaining to state parks generally and to the restoration, reconstruction, conservation and general administration of historic and archaeologic sites, buildings and properties.

History.—§10, ch. 25353, 1949; §19, ch. 63-400.

592.11 State park trust fund created.—There is created a "state park trust fund" to which shall be credited all money deposited in the state treasury by appropriations, or from any other source, whether in trust, by gift, devise, fees, rentals and charges, together with any unexpended balance of any appropriation heretofore made for the expenditure of public funds toward the support, maintenance and preservation of any monument, memorial or historic site which under this chapter comes under the jurisdiction of the Florida board of parks and historic memorials, to be expended by the board for the administration, improvement and maintenance of state parks and historic memorials by this chapter placed under the jurisdiction of the board and for the acquisition and development of lands hereafter acquired for state park purposes.

History.—§11, ch. 25353, 1949; §2, ch. 61-119.

592.12 Policy of board.—It shall be the policy of the board: To promote the state park system for the use, enjoyment and benefit of the people of Florida and visitors; to acquire typical portions of the original domain of the state which will be accessible to all of the people, and of such character as to emblemize the state's natural values; conserve these natural values for all time; administer the development, use and maintenance of these lands and render such public service in so doing, in such a manner as to enable the people of Florida and visitors to enjoy these values without depleting them; to contribute materially to the development of a strong mental, moral and physical

fibre in the people; to provide for perpetual preservation of historic sites and memorials of statewide significance and interpretation of their history to the people; to contribute to the tourist appeal of Florida.

History.—Comp. §12, ch. 25353, 1949.

592.121 Cooperation of Florida park service with counties, etc.—The board may cooperate with counties in county and state park work, and in this connection county commissioners may acquire, by gift, devise, or purchase from general funds, from individuals, corporations, the United States government or any of its departments or agencies, any lands, which are suitable for public parks or for the preservation of natural beauty or places of historic association, and operate the same as public parks. Said county commissioners may also convey any such lands so acquired to the trustees of the internal improvement trust fund or the board, provided such lands are acceptable by said trustees or board.

History.—§§4-6, ch. 17025, 1935; CGL 1936 Supp. 1749(4)-1749(6); transferred from §589.24, 1955; §2, ch. 61-119.

592.13 Exemption from chapter.—This chapter shall not apply to the Stephen Foster memorial commission created by §265.13, nor to its powers and duties as prescribed by §§265.14 and 265.15, nor to any appropriations existing or that may be made for the Stephen Foster memorial.

History.—Comp. §12a, ch. 25353, 1949.
Am. §10, ch. 26484, 1951.

592.14 Drew mansion, Madison county.—This appropriation is contingent on the Florida board of parks and historic memorials receiving without cost to said board, the following described lands necessary for the administration and protection of the Drew mansion:

A portion of the SW¼ of SW¼ of section 13 and of the SE¼ of SE¼ of section 14, township 1 south range 11 east, described as follows:

From the United States coast and geodetic survey bench mark No. U-145, which is set in the concrete base at the southeast corner of the Florida power corporation tower immediately north of the Seaboard air line railway grade crossing on Madison county secondary road 141, proceed north 80° 30′ west a distance of 335.5 feet, thence north 76° 57′ west a distance of 247.7 feet, to a point of beginning, which lies on the north line of the Seaboard air line railroad right of way.

From this point, proceed north 10° 00′ east a distance of 650 feet, thence due west 800 feet, thence due south 487.2 feet to the north line of the Seaboard air line railroad right of way; thence easterly along the said right of way a distance of 691 feet to the point of beginning. Said property to embrace the Drew house, the burial plot, and the remaining structures of the stables and silos.

Also a strip of land 30 feet wide along and parallel to the Seaboard air line railway right of way from the boundary of the above described property to the west right of way of Madison county secondary road 141 for access to the Drew house.

History.—§§1-3, ch. 57-835; §1, ch. 59-240.

592.15 Sale of state land in Lake county; Lake Griffin park trust fund.—

(1) The Florida board of parks and historic memorials is empowered to sell any lands owned by the state on January 1, 1959 as park property in sections thirty-five and thirty-six, township eighteen south range twenty-four east of the Tallahassee meridian and in sections one, two and three, township nineteen south, range twenty-four east of the Tallahassee meridian, all in Lake county, in the same manner as is prescribed for the sale of public lands by the trustees of the internal improvement trust fund and the state board of education in §§270.07-270.09, and 270.10, provided however such sale shall only be for the purpose of acquiring funds for the Lake Griffin park trust fund of the state.

(2) There is hereby created a trust fund in the state treasury as contemplated by §592.072 (2), to be known as the Lake Griffin park trust fund, this fund to be administered by the Florida board of parks and historic memorials and the funds to be expended only for:

(a) The development and expansion of Lake Griffin park, Lake county.

(b) Construction and maintenance of park and public facilities at or in connection with Lake Griffin park, Lake county.

(c) The administration, operation and management of Lake Griffin park, Lake county.

History.—§§1, 2, ch. 59-523; §2, ch. 61-119.

592.16 Bahia Honda park, Long Key area; acquisition by board.—The Florida board of parks and historic memorials is authorized to accept a deed, without cost to the said board to the following areas:

(1) The Bahia Honda park area more particularly described as:

Commencing at the intersection of the East abutment of Bahia Honda bridge and the centerline of U. S. Highway No. 1; thence Easterly along said centerline 1369 feet; the point of beginning: thence N 45° 48′ W, 189.93 feet; thence N 77° 18′ W, 370 feet, more or less, to the M.H.W.L. of Florida bay; thence meandering said M.H.W.L. Southwesterly, Northwesterly and Southeasterly to the East bank of a canal; thence S 44° 12′ W, 100 feet, more or less, across said canal to the West bank of said canal; thence meander said M.H.W.L. of Florida bay Southeasterly and Southwesterly to a seawall; thence along said seawall Southwesterly and Southeasterly to the M.H.W.L. of the Atlantic ocean; thence meander said M.H.W.L. of the Atlantic ocean to a point S 45° 48′ E of the Point of Beginning; thence N 45° 48′ W, 175 feet,

to the Point of Beginning: except the 100 foot right-of-way of U. S. Highway No. 1 traversing this area, all in Sec. 34, T66S, R30E, Tallahassee Meridan, Bahia Honda Key, Monroe County, Florida.

(2) The Long Key area more particularly described:

Commencing at the intersection of the SE R/W line of U. S. Highway No. 1 and the West line of Sec. 4, T65S, R35E, Tallahassee Meridian, Monroe county, Florida; thence South along said West line of Sec. 4 to the M.H.W. line of the Atlantic ocean, the point of beginning: Thence meander said M.H.W. Easterly 2,670 feet, more or less, to the East line of Gov't Lot 3, said Sec. 4; thence North along said East line of Gov't Lot 3 to the M.H.W. line of a shallow lake; thence meander said M.H.W. line in a Westerly direction, to the West line of said Sec. 4; thence South along said West line of Sec. 4, 750 feet, more or less, to the Point of Beginning: containing 54.56 acres, more or less; excepting a strip of land 100 feet wide and lying 50 feet on each side of a centerline, more particularly described as follows: Beginning at a point on the East line of said Gov't Lot 3, Sec. 4, T65S, R35E, Tallahassee Meridian, Monroe county, Florida, located 300 feet due North of an existing concrete monument which lies 60 feet, more or less, due North of the M.H.W. line of the Atlantic ocean; thence West 2,145 feet, more or less, to the point of curve of a 2° 21′ curve right; thence along the centerline of said curve 495 feet, more or less, to its intersection with the West line of said Section 4: containing 6.06 acres, more or less.

History.—§1, ch. 61-249.

592.17 John Pennekamp, coral reef state park taking or damaging of coral prohibited.—

(1) It is unlawful for any person, firm or corporation to bring into or transport through any part of the state, including its waters, any coral or other material taken from the subsoil or sea bed of any portion of the John Pennekamp coral reef state park adjacent to or in the vicinity of the state which has been taken in violation of any law or regulation of the federal government.

(2) It is unlawful for any person, firm or corporation to destroy, damage, remove, deface, or take away any coral, rock or other formation or any part thereof, of any portion of the John Pennekamp coral reef state park adjacent to or in the vicinity of the state in which such action is in violation of any law or regulation of the federal government.

(3) Violation of any of the provisions of this act shall be a misdemeanor and subject to a fine of not more than $1,000.00 or imprisonment in the county jail not to exceed six months, or both such fine and imprisonment.

History.—§§1-3, ch. 61-454.

CHAPTER 600

FLORIDA CITRUS MARKETING ACT

600.011 Short title.—This act may be known and cited as "Florida citrus marketing act."

History.—§6, ch. 61-88.

600.021 Declaration of state policy.—This act is passed:

(1) In the exercise of the police power of this state to promote and protect the public health, peace, safety and general welfare, and to stabilize and protect the citrus fruit industry of the state.

(2) Because the citrus fruit crop grown in Florida comprises the major agricultural crop of Florida and the marketing thereof is affected with a public interest.

(3) Because it is hereby found and declared that because of the increased and ever-increasing production of citrus fruit in Florida and elsewhere, except in years of freezes or other disasters that substantially reduce the total crop, the marketing of citrus fruit grown in Florida in excess of reasonable and normal market demands therefor, disorderly marketing of such citrus fruit, unfair methods of competition in the marketing of such citrus fruit, and the inherent inability of individual producers to develop new and larger markets for Florida grown citrus fruit, result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of quality citrus fruit for the people of this and other states and areas, and prevent citrus fruit producers from obtaining a fair return from their labor, the citrus fruit which they produce, and impair the economic value of their citrus fruit groves. As a consequence, the purchasing power of such producers has been in the past, and in all likelihood will continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations within this state. Citrus fruit producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to unfairly increase the tax burdens of other citizens of this state.

(4) Because the conditions hereinbefore described and set forth vitally concern the health, peace, safety and general welfare of the people of this state, it is hereby declared to be the policy of this state to aid citrus fruit producers and handlers in preventing economic waste in the production and marketing of their citrus fruit, to develop more efficient and equitable methods in the marketing of citrus fruit, and to aid citrus fruit producers and handlers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

History.—§1, ch. 61-88.

600.031 Purposes of law.—The purposes of this act are:

(1) To enable citrus fruit producers of this state, with the aid and under the direction and control of the state, more effectively to correlate the production and marketing of their citrus fruit with market demands therefor.

(2) To establish and maintain orderly marketing of citrus fruit grown in Florida.

(3) To provide methods and means for the development of new and larger markets for citrus fruit grown in Florida.

(4) To eliminate or reduce economic waste in the production, handling and marketing of citrus fruit grown in Florida.

(5) To restore and maintain adequate purchasing power for the citrus fruit producers of Florida; and

(6) To conserve the agricultural wealth of the state.

History.—§2, ch. 61-88.

600.041 Definitions.—As used in this act the following terms have the following meaning:

(1) "Commissioner" means the commissioner of agriculture of the state.

(2) "Person" means an individual, partnership, corporation, association, business trust, legal representative or any organized group of individuals.

(3) "Citrus fruit" and/or "fruit" means and includes grapefruit, oranges, tangerines, Temples, tangelos and murcott honey oranges grown in Florida as defined in and by §601.03, and when regulated by the Florida citrus commission, all other citrus fruit grown in Florida, including lemons, sour oranges, limes and citrus hybrids.

(4) "Variety" or "varieties" means any one or all of the following classifications or groupings of citrus fruit:

(a) Early and mid-season oranges, including Temple oranges, navel types and other varieties commonly called "round oranges," except Valencias, Lue Gim Gongs, and similar late maturing oranges of the Valencia type;

(b) Valencias, late Valencias, Lue Gim Gongs and similar late maturing oranges of the Valencia type;

(c) Marsh and other seedless grapefruit, including pinks and reds;

(d) Duncan and other seeded grapefruit, including pinks and reds;

(e) Tangerines;

(f) Tangelos;

(g) Persian, Key and Tahiti limes;

(h) Murcott honey oranges; and
(i) Lemons.

(5) "Producer" means any person growing or producing citrus fruit within this state for market.

(6) "Handler" means any person engaged within this state as a distributor in the business of handling and distributing citrus fruit in fresh fruit form in the primary channel of trade, whether such citrus fruit be purchased from the producer thereof or handled for his account.

(7) "Distributor" means any person who engages in the operation of packing, selling, marketing, handling and distributing, in the primary channel of trade, citrus fruit in fresh fruit form in commerical quantities (other than express or gift fruit shippers) which he has produced, or purchased or acquired from a producer or which he is marketing on behalf of a producer, but shall include only such persons who own and operate or have available to them facilities for packing the fresh citrus fruit handled by them; provided however, that any common marketing agency handling the sales of fresh citrus fruit for the account of any of such persons who do not maintain their own sales force or organization shall be deemed a distributor as herein defined.

(8) "Marketing agreement" means an agreement entered into, pursuant to the provisions of this act, by and between the commissioner and handlers and distributors engaged in the handling and distributing of citrus fruit in fresh fruit form regulating the handling of such citrus fruit.

(9) "To handle" means to engage in the business of handler and distributor as herein defined.

(10) "To distribute" means to engage in the business of a distributor as herein defined.

(11) "Standard packed box" means a unit of measure as defined in §601.15 (3).

(12) "Shipping season" means that period of time beginning August 1 of one year and ending July 31 of the following year.

(13) Whenever and wherever the context so admits any word or term used in this act which is not herein specifically defined shall have the meaning given by the laws of Florida.

History.—§3, ch. 61-88.

600.051 Marketing agreements; powers of commissioner.—

(1) In order to effectuate the declared policy and purposes of this act, the commissioner shall have the power, after due notice and opportunity for hearing, to enter into, administer and enforce marketing agreements with handlers and distributors engaged in any one or more of the citrus districts established in and by §601.09, in the handling and distributing of citrus fruit in fresh fruit form or any variety or varieties, grade, size or quality thereof, regulating the handling of such citrus fruit in the way and manner and to the extent therein prescribed and agreed upon, which said marketing agreements shall be binding only upon the signatories thereto exclusively. The execution of any such marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order otherwise provided for by chapter 601, and any marketing agreement executed hereunder shall be ineffective to the extent that it is in conflict with any rule, regulation, marketing order or marketing agreement under any federal law relating to the handling of citrus fruit grown in Florida.

(2) After such notice and opportunity for hearing, the commissioner may issue and execute a marketing agreement, or any amendment thereof after its issuance, if he finds and sets forth in such marketing agreement that such agreement or amendment, as the case may be, will, with respect to the citrus fruit covered thereby, tend to:

(a) Re-establish or maintain prices received by producers for citrus fruit at a level which will give to such citrus fruit a purchasing power, with respect to the articles and services which producers commonly buy, equivalent to the purchasing power of such citrus fruit in the base period. The base period shall be such prior period in which the commissioner finds that:

1. The volume of production of citrus fruit was adequate to supply the requirements of consumers thereof; and

2. The returns to producer of citrus fruit were sufficient to provide an adequate standard of living to the citrus fruit producer and his family.

(b) Approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for citrus fruit.

(c) Prevent the unreasonable or unnecessary waste of the wealth of the citrus fruit industry of Florida by developing new and larger markets for citrus fruit.

(d) Protect the interests of consumers of citrus fruit by exercising the powers of this act only to such extent as is necessary to establish the equality of purchasing power described in §600.051(2)(a).

(3) In making the findings set forth above in this section, the commissioner shall take into consideration any and all facts available to him with respect to the following economic factors:

(a) The quantity of citrus fruit available for distribution.

(b) The quantity of citrus fruit normally required by consumers.

(c) The cost of producing citrus fruit as determined by available records, statistics and surveys.

(d) The purchasing power of consumers as indicated by reports and indices.

(e) The level of prices of similar and other commodities which compete with or are utilized as substitutes for Florida citrus fruit.

(4) Subject to the legislative restrictions and limitations set forth herein, any marketing agreement entered into between the com-

missioner and signatories thereto pursuant to this act may contain any or all of the following provisions for regulating the handling or distributing of citrus fruit in fresh fruit form within this state, in the primary channel of trade, but no others:

(a) Provisions for determining the existence and extent of the surplus of citrus fruit or of any variety, grade, size or quality thereof, and providing for the control and distribution of such surplus and for equalizing the burden of such surplus elimination or control among the handlers or other distributors affected.

(b) Provisions for limiting the total quantity of citrus fruit, or of any variety, grade, size or quality thereof, which may be distributed or otherwise handled in the primary channel of trade by any and all affected persons engaged in such distributing or handling during any specified period or periods. The total quantity of any such citrus fruit so regulated and permitted to be distributed, or otherwise handled, shall not be less than the quantity which the commissioner finds is reasonably necessary to supply the market demands of consumers of such citrus fruit.

(c) Provisions for allotting the quantity of citrus fruit, or of any variety, grade, size or quality thereof, which each handler signatory to such agreement may purchase or acquire from, or handle on behalf of any and all producers thereof in the primary channel of trade during any specified period or periods, under a uniform rule applicable to all handlers so regulated based upon the current season's production or sales of such producers, or upon production or sales of such producers in such prior period as the commissioner determines to be representative, or both, to the end that the total quantity of such citrus fruit or any variety, grade, size or quality thereof, so purchased or handled in the primary channel of trade, shall be apportioned equitably among the producers thereof.

(d) Provisions for the establishment of surplus or reserve pools of citrus fruit, or of the representative value of such citrus fruit, or of any variety, grade, size or quality thereof, and providing for the sale or other disposition of such surplus citrus fruit and the equitable distribution among the persons interested therein of the net returns or other consideration derived from the sale or other disposition of such citrus fruit or such distribution of such representative value of such citrus fruit.

(e) Prohibiting unfair methods of competition and unfair trade practices.

(f) Provisions for the establishment of plans or programs for advertising, merchandising, sales promotion and incentive payments, or matters connected therewith, to create new or larger markets for citrus fruit or any variety, grade, size or quality thereof grown in the state.

(g) Provisions incidental to and not inconsistent with the terms, conditions and provisions hereinbefore specified and necessary to effectuate the other provisions of such marketing agreement and the provisions of this act, including, but not limited to, provisions for paying the costs and expenses of administration of any such agreement, and provisions for penalties and for liquidated damages for violation of any such agreement.

History.—§4, ch. 61-88.

CHAPTER 601

FLORIDA CITRUS CODE

601.01 Short title.—This chapter may be known and cited as "The Florida citrus code of 1949."

History.—Comp. §1, ch. 25149, 1949.

601.02 Purposes.—This chapter is passed:

(1) In the exercise of the police power to protect health and welfare and to stabilize and protect the citrus industry of the state.

(2) Because the planting, growing, cultivating, spraying, pruning, and fertilizing of citrus groves and the harvesting, hauling, processing, packing, canning, and concentrating of the citrus crop produced thereon is the major agricultural enterprise of Florida and, together with the sale and distribution of said crop, affects the health, morals, and general economy of a vast number of citizens of the state who are either directly or indirectly dependent thereon for a livelihood, and said business is therefore of vast public interest.

(3) Because it is wise, necessary, and expedient to protect and enhance the quality and reputation of Florida citrus fruit and the canned and concentrated products thereof in domestic and foreign markets.

(4) To provide means whereby producers, packers, canners, and concentrators of citrus fruit and the canned and concentrated products thereof may secure prompt and efficient inspection and classification of grades of citrus fruit and the canned and concentrated products thereof at reasonable costs, it being hereby recognized that the standardization of the citrus fruit industry of Florida by the proper grading and classification of citrus fruit and the canned and concentrated products thereof by prompt

and efficient inspection under competent authority is beneficial alike to producer, packer, shipper, canner, concentrator, carrier, receiver, and consumer in that it furnishes them prima facie evidence of the quality and condition of such products and informs the carrier and receiver of the quality of the products carried and received by them and assures the ultimate consumer of the quality of the products purchased.

(5) To stabilize the Florida citrus industry and to protect the public against fraud, deception, and financial loss through unscrupulous practices and haphazard methods in connection with the processing and marketing of citrus fruit and the canned or concentrated products thereof.

(6) Because said act is designed to promote the general welfare of the Florida citrus industry, which in turn will promote the general welfare and social and political economy of the state.

History.—Comp. §2, ch. 25149, 1949.

601.03 Definitions.—In construing this chapter, where the context permits the word, phrase, or term:

(1) "Additive" means any foreign substance which, when added to any citrus fruit juice, will change the amount of total soluble solids or anhydrous citric acid therein, or the color or taste thereof, or act as an artificial preservative thereof;

(2) "Agent" means any person who, on behalf of any citrus fruit dealer, negotiates the consignment or purchase of citrus fruit;

(3) "Broker" means any person engaged in the business of negotiating the sale or purchase of citrus fruit for others;

(4) "Canned products" means juices, segments or sections of citrus fruits sealed in hermetically sealed containers at a concentration of not exceeding twenty degrees Brix and sufficiently processed by heat to insure preservation of the product, and when regulated by the commission, these same products packed in any other manner or in any other type container;

(5) "Canning plant" means any building, structure, or place where citrus fruit or the juice thereof is canned or prepared for canning at a concentration of not exceeding twenty degrees Brix for market or shipment;

(6) "Cash buyer" means any person who purchases citrus fruit in this state from the producer for the purpose of resale;

(7) "Citrus fruit" means grapefruit, oranges, tangerines, Temples and tangelos as defined by law; and when regulated by the commission, all other citrus fruit, including lemons, sour oranges, and citrus hybrids, and juices, segments and other food products thereof for human consumption, but shall not include limes (meaning the fruit citrus aurantifolia, variety Persian, Tahiti, or Barrs, grown in Florida), and shall not include Florida Key limes, nor marmalades, jellies, preserves, or candies, or any other citrus product, or by-product containing less than twenty per cent of citrus or citrus juice;

(8) "Citrus fruit dealer" means any consignor, commission merchant, consignment shipper, cash buyer, broker, association, cooperative association, express or gift fruit shipper, or person who in any manner makes or attempts to make money or other thing of value on citrus fruit in any manner whatsoever, other than of growing or producing citrus fruit, but the term shall not include retail establishments whose sales are direct to consumers and not for resale;

(9) "Citrus producing area" means that part or parts of the state in which citrus fruit is grown or produced;

(10) "Color-add" or "color-added" means the application or use of any coloring matter to any citrus fruit;

(11) "Coloring matter" means any dye, or any liquid or concentrate or material containing a dye or materials which react to form a dye used or intended to be used for the purpose of enhancing the color of citrus fruit by the addition of artificial color to the peel thereof; provided that said term shall not include any process or treatment of fruit which merely brings out or accelerates the natural color of the fruit;

(12) "Coloring room" means any room or place where citrus fruit is placed, with or without the use of heat or any gas, for the purpose of bringing out the natural color of the fruit;

(13) "Commission" means the Florida citrus commission as established by §601.04 hereof;

(14) "Commissioner" means the commissioner of agriculture of the state;

(15) "Commission merchant" means any person engaged in the business of receiving any citrus fruit for sale on commission for or on behalf of another;

(16) "Concentrated products" means (a) frozen citrus fruit juice frozen at a concentration of exceeding twenty degrees Brix and kept at a sufficiently freezing temperature to insure preservation of the product; and (b) citrus fruit juice sealed in hermetically sealed containers at a concentration of exceeding twenty degrees Brix and sufficiently processed by heat to insure preservation of the product;

(17) "Concentrating plant" means any building, structure, or place where citrus fruit is canned, or frozen, or prepared for canning or freezing at a concentration of more than twenty degrees Brix for market or shipment;

(18) "Consignment shipper" means any person who contracts with the producer of citrus fruit for the marketing thereof for the sole account and risk of such producer and who agrees to pay such producer the net proceeds derived from such sale;

(19) "Consignor" means any person (other than a producer) who ships or delivers to any commission merchant or dealer any citrus fruit for handling, sale, or resale;

(21) "Express or gift fruit shipper" means

any person having an established place of business who ships or delivers for transportation in any manner, citrus fruit to a consumer and not for the purpose of resale;

(22) "Fresh fruit juice distributor" means any person extracting and preparing for market or shipment any citrus fruit juice in fresh form;

(23) "Grapefruit" means the fruit citrus paradisi, Macf, commonly called grapefruit and shall include white, red and pink meated varieties;

(24) "Handler" means any person engaged within this state in the business of distributing citrus fruit in the primary channel of trade or any person engaged as a processor in the business of processing citrus fruit;

(25) "Manufacturer" means any person who shall manufacture, or sell or offer for sale, or license or offer for license for use any coloring matter, or any soaps, oils, waxes, gases, gas-forming material, or other similar compositions, or the component parts thereof on or in the processing of citrus fruits;

(26) "Oranges" means the fruit citrus sinensis, Osbeck, commonly called sweet oranges;

(27) "Packing house" means any building, structure, or place where citrus fruit is packed or otherwise prepared for market or shipment in fresh form;

(28) "Person" means any natural person, partnership, association, corporation, trust, estate, or other legal entity;

(29) "Primary channel of trade" means that fruit shall be deemed to have been delivered into the primary channel of trade when it is sold or delivered for shipment in fresh form, or when it is received and accepted at a canning, concentrating, or processing plant for canning, concentrating or processing;

(30) "Producer" means any person growing or producing citrus in this state for market;

(31) "Ship" or "shipping" means to move or cause citrus fruit or the canned or concentrated products thereof to be moved in intrastate, interstate, or foreign commerce by rail, truck, boat, or airplane, or any other means.

(32) "Shipper" means any person engaged in shipping, or causing to be shipped, citrus fruit or the canned or concentrated products thereof in intrastate, interstate, or foreign commerce, whether as owner, agent, or otherwise;

(33) "Shipping season" means that period of time beginning August 1 of one year and ending July 31 of the following year;

(34) "Standard packed box" means one and three-fifths bushels of citrus fruit, whether in bulk or containers;

(35) "Tangerines" means the fruit citrus reticulata, Blanco, commonly called tangerines;

(36) "Temple oranges" (probably Tangor hybrid, citrus reticulata X C sinensis) commonly called Temples.

(37) "Tangelo" is defined as a hybrid between tangerine or mandarin orange (citrus reticulata) with either the grapefruit or pummelo (C. paradisi and C. grandis).

(38) "Lemons" including "rough" lemons means the acid lemons of Citrus Limon, including the varieties Eureka, Genoa, Wheatley, Amerfo, Belair and Villafranca of the Eureka group; varieties Bonnie Brae, Kennedy, Lisbon, Messer, Messina and Sicily of the Lisbon group; varieties Meyer, Cuban, Ponderosa, Rough of the Anomalous group; varieties Dorshapo and Millsweet of the sweet lemon group and other varieties not included above such as everbearing, Palestine sweet, Perrine, and Spheriola.

(39) "Sour oranges"—"sour" or "bitter" oranges means the fruit of Citrus Aurantium Linnaeus and contains several sub-species. Among the most important are varieties African, Brazilian, Rubidoux, and standard of the normal group; varieties Daidai, Goleta, Bouquet of the Aberrant group; variety Chinooto of the Myrtifolia group and varieties bittersweet and Paraguay of the bittersweet group.

(40) "Citrus hybrids" means citrus fruits other than grapefruit, oranges, tangerines, and the hybrids tangelos and Temples as may be defined by law, may also be defined as citrus hybrids. Such citrus hybrids shall include hybrids between or among sour orange (C. aurantium), pummelo (C. grandis), lemon (C. limon), citron (C. medica), grapefruit (C. paradisi), tangerine or mandarin orange (C. reticulata), sweet orange (C. sinensis), tangelo (C. reticulata x C. paradisi or C. grandis), tangor (C. reticulata x C. sinensis), kumquat (Fortunella, species) and trifoliate orange (Poncirus trifoliata), and varieties of these species.

(41) "Murcott honey oranges" (probably tangor hybrid, C. reticulata x C. sinensis) commonly called Murcotts.

(42) "Variety" or "varieties" means any one or all of the following classifications or groupings of citrus fruit:

(a) Early and mid-season oranges, including Temple oranges, navel types and other varieties commonly called "round oranges," except Valencias, Lue Gim Gongs, and similar late maturing oranges of the Valencia type;

(b) Valencias, late Valencias, Lue Gim Gongs and similar late maturing oranges of the Valencia type;

(c) Marsh and other seedless grapefruit, including pinks and reds;

(d) Duncan and other seeded grapefruit, including pinks and reds;

(e) Tangerines;

(f) Tangelos;

(g) Persian, Key and Tahiti limes;

(h) Murcott honey oranges;

(i) Lemons; and

(j) Sour oranges.

(43) "Processor" means any person engaged within this state in the business of canning, concentrating, or otherwise processing citrus fruit for market other than for shipment in fresh fruit form.

(44) "Marketing order" means an order, issued by the commission pursuant to law, pre-

scribing rules and regulations governing the advertising, merchandising, promotion or research in any manner, of citrus fruit or the products thereof.

History.—Comp. §3, ch. 25149, 1949.
Sub. §§(7), (23), (27) and (36) am. §§1-4, ch. 26492, 1951; sub. §(37) am. §5, ch. 26492, 1951; sub. §(7) am. and sub. § (38) comp. §2, ch. 29757, 1955; (7), (8), (21), (38), A. by §§1, 2, 4, 7, (39)-(41) N. by §§ 5, 6, 8, ch. 57-28, (20) R. by §3, ch. 57-28; (4)a. by §1, ch. 59-16; (7)a. by §1, ch. 59-20; (25) R. by §2, ch. 59-20 and subsequent subsections renumbered; (40)a. by §3, ch. 59-20; (41) n. by §1, ch. 59-12; (8), (24), (30) a. §1, (42)-(44) n. §2, ch. 61-91; (31) §1, ch. 63-71.

601.04 Florida citrus commission.—

(1) There is hereby created and established a state citrus commission to be known and designated as the "Florida citrus commission" to be composed of twelve practical citrus fruit men who are resident citizens of the state, each of whom is and has been actively engaged in growing, or growing and shipping, or growing and processing of citrus fruit in the state for a period of at least five years immediately prior to his appointment to the said commission and has, during said period, derived a major portion of his income therefrom or, during said time, has been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership which has, during said time, derived the major portion of its income from the growing, or growing and shipping, or growing and processing of citrus fruit.

Seven members of said commission shall be designated as grower members and shall be primarily engaged in the growing of citrus fruit as an individual owner, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm or partnership primarily engaged in citrus growing, and none of whom shall receive any compensation from any licensed citrus fruit dealer or handler as defined in §601.03 (other than gift fruit shippers), but any of said grower members shall not be disqualified as a member if, individually, or as the owner of, a member of, an officer of or a stockholder of a corporation, firm or partnership primarily engaged in citrus growing which processes, packs and markets its own fruit and whose business is primarily not purchasing and handling fruit grown by others, and one of said seven grower members shall be a resident of and appointed from each of the seven citrus districts as defined in §601.09. Five members of said commission shall be designated as grower-handler members and shall be engaged as owners, or paid officers or employees of a corportation, firm, partnership or other business unit engaged in handling citrus fruit. Two of said five grower-handler members shall be engaged in the fresh fruit business and three of the said five grower-handler members shall be engaged in the processing of citrus fruits. One of the said five grower-handler members shall be appointed from citrus district No. 7 and the remaining four shall be appointed from the state-at-large but of these four no two members shall be appointed from the same citrus district.

(2) The members of such commission shall be appointed by the governor for terms of two years each, and such members shall serve until their respective successors are appointed and qualified. The regular terms shall begin on the first day of June and shall end on the thirty-first day of May of the second year after such appointment. The present members of the commission shall continue to serve until the expiration of their present terms of office. Thereafter, upon the termination of any term, the governor shall appoint a successor having the qualifications herein provided. When appointments are made the governor shall publicly announce the actual classification and district (or state-at-large as the case may be) that each appointee represents. A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission. Before entering upon the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office prescribed in §2, Art. XVI of the constitution of the state. The qualification of each member of the Florida citrus commission as herein required shall continue throughout the respective term of his office and in the event a member should, after appointment, fail to meet the qualifications or classification which he possessed at the time of his appointment as above set forth, said member shall resign or be removed and be replaced with a member possessing the proper qualifications and classification.

History.—§3, ch. 16854, 1935; CGL 1936 Supp. (57); §1, ch. 20449, 1941; §1, ch. 22535, 1945; transferred from §595.01, am. as §595.01 by §4, ch. 25149, 1949; sub. §(2) am. §10, ch. 26484, 1951; §1, ch. 59-11.

601.05 Commission a body corporate.—The Florida citrus commission shall be a body corporate, and shall have power to contract and be contracted with, and shall have and possess all the powers of a body corporate for all purposes necessary for fully carrying out the provisions and requirements of this chapter. The said commission shall adopt a corporate seal with which it shall authenticate its proceedings.

History.—Comp. §5, ch. 25149, 1949.

601.06 Compensation and traveling expenses of members.—No member of the commission shall receive any salary or other compensation, but each member shall be reimbursed for traveling expenses pursuant to §112.061, while in actual attendance in regular or special meetings of the commission, or meetings of committees of the commission, or in transacting other business authorized by the commission.

History.—§6, ch. 25149, 1949; §16, ch. 63-400.
cf.—§112.061 Travel expenses of state officials and employees.

601.07 Location of executive offices.—The executive offices of the commission shall be established and maintained at Lakeland.

History.—Comp. §7, ch. 25149, 1949.

601.071 Citrus museum authorized; location, operation.—

(1) There is hereby authorized, created and established the Florida citrus museum which

said museum shall be located, maintained and operated at or in the environs of Winter Haven.

(2) The Florida citrus commission is authorized, empowered and directed to develop, operate and maintain the said Florida citrus museum and for that purpose and in that connection the said Florida citrus commission is hereby authorized to accept and receive and to hold in trust for the state gifts, gratuities, donations of money and other property to be used for and in connection with the establishment, development, operation and maintenance of the Florida citrus museum, using therefor such funds within its control as in its judgment may be necessary.

(3) In carrying out the purpose and intent of this section the Florida citrus commission is authorized to cooperate with and enter into contracts and agreements with the Florida citrus mutual, Florida citrus exposition, Florida horticultural society, Florida historical society and the department of agriculture of Florida, the latter being hereby authorized to expend reasonable sums from the general inspection trust fund of Florida to be used in carrying out and promoting the purpose and intent of this section.

History.—§§1-3, ch. 26728, 1951; (3) §2, ch. 61-119; (1) §1, ch. 63-74.

601.08 Authenticated copies of records as evidence.—Copies of the proceedings, records, and acts of the commission and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chairman of the commission and authenticated by the seal of the commission, shall be prima facie evidence thereof in all the courts of the state.

History.—Comp. §8, ch. 25149, 1949.

601.09 Citrus districts.—The citrus belt of the state, for the purpose of this chapter, shall be divided into seven citrus districts composed of the following counties, to-wit:

Citrus district one: Hillsborough, Pinellas, and Manatee.

Citrus district two: Citrus, Sumter, Lake, Hernando, and Pasco.

Citrus district three: Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Seminole, and that portion of Volusia county lying west of a line beginning at a point on the shore of the Atlantic ocean where the line between Flagler and Volusia counties intersects said shore, thence follow the line between said two counties to the southwest corner of section 23, township 14 south, range 31 east; thence continue south to the southwest corner of section 35, township 14 south, range 31 east; thence east to the northwest corner of township 15 south, range 32 east; thence south to the southwest corner of township 17 south, range 32 east; thence east to the northwest corner of township 18 south, range 33 east; thence south to the St. Johns river.

Citrus district four: Orange and Osceola.

Citrus district five: Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward, Dade, and that portion of Volusia county lying east of a line beginning at a point on the shore of the Atlantic ocean where the line between Flagler and Volusia counties intersects said shore, thence follow the line between said two counties to the southwest corner of section 23, township 14 south, range 31 east; thence continue south to the southwest corner of section 35, township 14 south, range 31 east; thence east to the northwest corner of township 15 south, range 32 east; thence south to the southwest corner of township 17 south, range 32 east; thence east to the northwest corner of township 18 south, range 33 east; thence south to the St. Johns river; thence along the main channel of the St. Johns river and through Lake Harney; and thence along the main channel of the St. Johns river to a point in said river where Orange and Volusia counties corner with each other.

Citrus district six: Sarasota, Hardee, Highlands, Okeechobee, Glades, DeSoto, Charlotte, Lee, Hendry, Collier, and Monroe.

Citrus district seven: Polk.

History.—Comp. §9, ch. 25149, 1949.

601.10 Powers of the commission.—The commission shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which such powers shall include, but not be confined to, the following:

(1) To elect a chairman and a vice-chairman and, from time to time, such other officers as it may deem advisable, and to adopt and, from time to time, alter, rescind, modify, or amend all proper and necessary rules, regulations, and orders for the exercise of its powers and the performance of its duties under this chapter and other statutes of the state, and which said rules and regulations shall have the force and effect of law when not inconsistent therewith.

(2) To act as the general supervisory authority over the administration and enforcement of this chapter and to exercise such other powers and perform such other duties as may be imposed upon it by other laws of the state.

(3) To employ and, at its pleasure, discharge a manager or secretary and such attorneys, clerks, and employees as it deems necessary, and to outline their powers and duties and fix their compensation; provided, however, that the entire overhead expenses of the said commission of the salaries of the manager, attorney and attorneys and other persons employed in the headquarters of the commission in its actual administrative departments shall not exceed one hundred thousand dollars per annum, and provided further that this limitation shall not apply to or include the expenses and salaries of the field department, statistical department or the employees therein or other necessary expenses of the commission or its agent or employees for the necessary and proper administration and functioning of the commission herein authorized to be incurred by the commission.

(4) To purchase or authorize the purchase of all office equipment and supplies and to incur all necessary expenses in connection with and required for the proper carrying out of the provisions of this chapter and other applicable laws.

(5) To investigate violations of the provisions of this chapter and other laws conferring powers and duties upon said commission, and to report its findings or recommendations in connection therewith to the commissioner.

(6) To incur such reasonable obligations and expenses as may be necessary and proper for the discharge of its powers and duties hereunder or other laws, and to have such obligations and expenses paid out of the funds authorized by law to be collected and expended.

(7) To adopt, promulgate, alter, rescind, modify, amend and enforce rules and regulations and establish minimum maturity and quality standards for citrus fruits not inconsistent with existing laws, to regulate and control methods and practices followed or used in the harvesting, grading, packing, extracting, canning, concentrating, sectionizing, or otherwise processing citrus fruits or citrus juices or the products thereof for human consumption, including the addition or prohibition of any and all additives, and including application to or use of coloring matter thereon and coloring of fruit by placing in coloring room with or without use of heat or any form of gas in such process, to the end that such methods and practices as affect the eating and keeping qualities and depreciate the value of citrus fruits or the juices or other food products thereof in any form may be minimized to the greatest extent possible, if not altogether eliminated.

History.—§ § 3A, 8, ch. 16854, 1935; § § 1-4, ch. 16863, 1935; CGL 1936 Supp. 3254(62), 3254(63); § § 1-4, ch. 19309, 1939; CGL 1940 Supp. 3254(177)-3254(181); §2, ch. 20449, 1941; §1, ch. 23680, 1947; transferred from §595.07, which was amended by §10, ch. 25149, 1949; (7) by §1, ch. 57-14.

cf.—§216.19 Budget of Florida citrus advertising fund.

601.11 Power of commission to establish standards.—The commission shall have full and plenary power to and may establish state grades and minimum maturity and quality standards not inconsistent with existing laws for citrus fruits and food products thereof containing twenty per cent or more citrus, or citrus juice, whether canned or concentrated, or otherwise processed, including standards for frozen concentrate for manufacturing purposes, and for containers therefor, and shall prescribe rules or regulations governing the marking, branding, labeling, tagging, or stamping of citrus fruit, or products thereof whether canned or concentrated, or otherwise processed, and upon containers therefor for the purpose of showing the name and address of the person marketing such citrus fruit or products thereof whether canned or concentrated or otherwise processed; the grade, quality, variety, type or size of citrus fruit, the grade, quality, variety, type, and amount of the products thereof whether canned or concentrated or otherwise processed, and the quality, type, size, dimensions, and shape of containers therefor, and to regulate or prohibit the use of containers which have been previously used for the sale, transportation, or shipment of citrus fruit or the products thereof whether canned or concentrated or otherwise processed, or any other commodity; provided, however, that the use of secondhand containers for sale and delivery of citrus fruit for retail consumption within the state shall not be prohibited; provided, however, that no standard, regulation, rule, or order under this section which is repugnant to any requirement made mandatory under federal law or regulations shall apply to citrus fruit, or the products thereof whether canned or concentrated or otherwise processed, or to containers therefor, which are being shipped from this state in interstate commerce. All citrus fruit and the products thereof whether canned or concentrated or otherwise processed sold, or offered for sale, or offered for shipment within or without the state shall be graded and marked as required by this section and the regulations, rules, and orders adopted and made under authority of this section, which regulations, rules, and orders shall, when not inconsistent with state or federal law have the force and effect of law.

History.—§11, ch. 25149, 1949; §1, ch. 57-30.

601.111 Minimum maturity standards.—

(1) The legislature of the state finds and declares that emergencies creating abnormal conditions in the Florida citrus industry, such as unusual climatic conditions that produce unusual growing conditions of citrus fruit, freezes and hurricanes or other acts of God that may affect a substantial part of the citrus industry, require that the Florida citrus commission be given the power and authority to lower the maturity standards established by law for citrus fruit or any variety thereof, not including oranges except as to minimum juice content requirement, under and subject to the limitations, conditions, restrictions and provisions and within the standards hereinafter prescribed and established.

(2) That in the event of an emergency such as is mentioned in subsection (1), and after a public hearing, to be called and held by the Florida citrus commission, the said commission, in addition to all other powers and authority which it now possesses, which have heretofore been granted or delegated to it by the legislature of the state, shall have the additional power to issue rules and regulations to:

(a) Lower by not more than ten percent the existing minimum requirement as to the total soluble solids of the juice of citrus fruit or any variety, except oranges, or size thereof;

(b) Lower by not more than ten percent the existing ratio of total soluble solids of the juice of citrus fruit or any variety thereof, except oranges, to the anhydrous citric acid; and

(c) Lower by not more than ten percent the existing minimum requirement for juice content of citrus fruit or any variety or size thereof.

Any action under this subsection shall not be taken until after a public hearing has been

called by the vote or with the consent of at least nine members of the Florida citrus commission and any regulation adopted pursuant to this section shall be by the affirmative vote of at least nine members of said Florida citrus commission and every such regulation shall contain an expiration date not later than one year from its effective date.

(3) Any order, rule or regulation adopted by the Florida citrus commission under and in accordance with the provisions of this act, shall take effect at a time to be fixed by the commission but not less than twenty-four hours from the time same is adopted, irrespective of the provisions of §601.12.

(4) This act shall not repeal any other section or part of chapter 601, but shall be deemed as supplemental and additional to the express power vested in the Florida citrus commission, subject only to the limitations, restrictions, conditions, provisions and standards herein set forth.

History.—§1, ch. 63-104.

601.12 Power to promulgate rules and regulations.—All rules, regulations, and orders promulgated by the commission under the provisions of this chapter shall be published one time within ten days after the same are promulgated in at least one daily newspaper of general circulation in each of two cities within the citrus-producing area of the state to be selected by the commission. All such rules, regulations, and orders shall become effective ten days after the same are promulgated, unless otherwise ordered by the commission, but no rule, regulation, or order shall be effective sooner than seventy-two hours after promulgation thereof, except orders and regulations as may be promulgated under §§601.89 and 601.90. In case written protests by any interested persons shall be made to any one or more of such rules, regulations, or orders within thirty days after publication of same, hearings shall be conducted at places and at times to be determined by the commission, or its authorized agent or representative, at which all interested persons shall have a right to be heard. Due notice of the time and place of such hearings by the commission, or its authorized agent or representative, shall be given to the persons making such protests. In all cases such written protests shall be filed with the commission and, if there be no such written protests filed with the commission within thirty days after such rules, regulations, or orders become effective, then and in that event such rules, regulations, or orders shall be final. Any action of the commission refusing to modify the rules or regulations or orders protested shall be subject to review by any court of competent jurisdiction.

History.—§12, ch. 25149, 1949; am. §1, ch. 28197, 1953.

601.13 Citrus research; administration by commission.—

(1) The administration of this section shall be vested in the commission which shall prescribe suitable and reasonable rules and regulations for the proper carrying out of the provisions hereof.

(2) It shall be the duty of the commission, and it is empowered:

(a) To conduct or cause to be conducted a thorough and comprehensive study of citrus fruit and the juices thereof (1) with respect to the quality and maturity of said fruit and the juices thereof, including proper effort to assemble data and arrive at a proper standard of quality, grade, and maturity with reference to its texture, stability, and general marketability and so far as possible reduce such findings to specific and readily understood chemical, mathematical, or descriptive terms, and (2) with respect to the nutritional and other value or values of such fruit and the juices thereof; and to provide suitable facilities and equipment of every kind whatsoever proper and necessary in connection with all such work.

(b) To conduct or cause to be conducted such study and research as is necessary to provide all the information and data required to be disseminated pursuant to the provisions of this section.

(c) To provide suitable and sufficient laboratory facilities and equipment, making use of the laboratory facilities and equipment of the university of Florida, in so far as it is practicable, for the purpose of conducting thorough and comprehensive study and research to determine all possible new and further uses for citrus fruit and citrus fruit juices and the products and by-products into which the same can be converted or manufactured, as well as to determine and develop new and profitable methods and instruments of distribution thereof.

(d) To carry on or cause to be carried on suitable experiments in an effort to prove the commercial value of each, determine and develop new and further use for citrus fruit and citrus fruit juices or the products and by-products into which the same can be converted or manufactured.

(e) To carry on or cause to be carried on suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and by-products into which the same can be converted or manufactured.

(f) To enter into any mutually satisfactory contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency which the commission deems wise, necessary, and expedient in the carrying out of any of the provisions of this chapter.

(g) To incur and pay such expenses and obligations as are necessary in connection with and required for the proper carrying out of the provisions of this chapter, subject only to the limitations hereinafter imposed.

(3) (a) There is hereby appropriated and made available for defraying the expenses of the administration of this section from the moneys derived from advertising excise taxes

levied on citrus fruit, such amounts as may be necessary, not to exceed however, in each of the fiscal years ending, respectively, June 30, 1964, June 30, 1965, expenditures in excess of eleven percent of moneys collected from such excise taxes in such year. Provided, however, that any excess of surplus funds which may be on hand at the end of either or all of said fiscal years may be carried over and expended from year to year in addition to such eleven percent, in such amount, however, so that the money carried over shall at no time exceed one hundred thousand dollars.

(b) Beginning with the fiscal year ending June 30, 1966, there is hereby appropriated and made available for defraying the expenses of the administration of this section from the moneys derived from advertising excise taxes levied on citrus fruit, such amounts as may be necessary, not to exceed however, in any one fiscal year ending June 30 expenditures in excess of ten percent of moneys collected from such excise taxes in such year. Provided, however, that any excess of surplus funds which may be on hand at the end of the fiscal year may be carried over and expended from year to year in addition to such ten percent, in such amount, however, so that the money carried over shall at no time exceed one hundred thousand dollars.

(4) There is hereby also appropriated and made available for defraying the expenses of the administration of economic and marketing research programs from the moneys derived from advertising excise taxes levied on citrus fruit, such amounts as may be necessary, not to exceed, however, in any one fiscal year ending June 30, expenditures in excess of five per cent of moneys collected from such excise taxes in such year. Provided, however, that any excess of surplus funds which may be on hand at the end of the fiscal year may be carried over and expended from year to year in addition to such five per cent, in such amount, however, so that the money carried over shall at no time exceed thirty thousand dollars.

History.—§13, ch. 25149, 1949; (3) a. by §7, ch. 26492, 1951; (4) n. §1, ch. 61-48; (3) §1, ch. 63-80.

601.14 Transportation problems affecting citrus; investigation by commission; appropriation.—

(1) It shall be the duty of the commission to cause to be investigated the transportation problems affecting the Florida citrus industry and the lawfulness of any and all existing or proposed rates, charges, rules, regulations, or practices affecting any rate or charge in so far as the same may affect the Florida citrus industry and, to that end, shall cause such proper investigations to be made by other agencies established and existing for the purpose of handling such problems. The commission may authorize such other agency as selected by it to compile the facts concerning the transportation rates, charges, rules, regulations, or practices affecting the Florida citrus industry and, when any such transportation rate, charge, rule, regulation, or practice is in its opinion excessive, unjust, unreasonable, discriminating in nature or otherwise unlawful, may cause such agency to file with the interstate commerce commission or other proper regulatory body complaints, protests, petitions, or other pleadings and papers and to participate in any proceedings or hearings concerning the same to the end that the Florida citrus industry may be fully protected in obtaining and enjoying just, reasonable, and otherwise lawful transportation rates and charges. In the performance of any such duties, the commission shall pay such agency so selected by it such reasonable compensation as the commission may fix for defraying the expenses of the agency, including the employment of counsel, rate experts, accountants, or other assistants in any such proceeding or hearing.

(2) There is hereby appropriated and made available during each year for the expenses of the administration and enforcement of this section from the moneys derived from excise taxes levied for advertising on citrus fruit such amount as may be necessary not to exceed, however, in any one fiscal year ending June 30 expenditures in excess of three percent of such money collected from such excise taxes in such year; provided further that in case any expenditure is made as authorized herein, it shall be charged against the excise taxes levied upon oranges, grapefruit, temples and tangerines, respectively, pro rata as the commission may find they are affected by such expenditure, and in no event shall the expenditure in any one fiscal year concerning citrus be in excess of three percent of the amount collected in such year from the excise taxes levied on citrus fruit; but provided further, however, that any excess of surplus funds which may be on hand at the end of the fiscal year may be carried over and expended from year to year as may be deemed proper by the commission in addition to such three percent of each of the moneys derived from each respective type of citrus fruit in an amount, however, so that the total amount of money carried over from all funds shall at no time exceed twenty thousand dollars.

History.—Comp. §14, ch. 25149, 1949.
Sub.§(2) am. §8, ch. 26492, 1951; (2) by §4, ch. 59-20.

601.15 Advertising campaign; methods of conducting; excise tax to support enforcement provisions; citrus research.—

(1) The administration of this section shall be vested in the commission which shall prescribe suitable and reasonable rules and regulations for the enforcement hereof and the commission shall administer the taxes levied and imposed hereby. Said commission shall have power to cause its duly authorized agent or representative to enter upon the premises of any handler of citrus fruits and to examine or cause to be examined any books, papers, records, or memoranda bearing on the amount of taxes payable and to secure other information directly or indirectly concerned in the enforcement hereof. Any person required to

pay the taxes levied and imposed who shall by any practice or evasion make it difficult to enforce the provisions hereof by inspection or any person who shall, after demand by the commission or any agent or representative designated by it for that purpose, refuse to allow full inspection of the premises or any part thereof or any books, records, documents, or other instruments in any manner relating to the liability of the tax payer for the tax imposed or shall hinder or in anywise delay or prevent such inspection shall be guilty of a misdemeanor and, upon conviction, shall be punished accordingly.

(2) The commission shall plan and conduct a campaign for commodity advertising, publicity, and sales promotion to increase the consumption of citrus fruits and may contract for any such advertising, publicity, and sales promotion service. To accomplish such purpose, the commission shall have power, and it shall be its duty to disseminate information:

(a) Relating to citrus fruits and the importance thereof in preserving the public health, the economy thereof in the diet of the people and the importance thereof in the nutrition of children;

(b) Relating to the manner, method, and means used and employed in the production and marketing of citrus fruits and to laws of the state regulating and safeguarding such production and marketing;

(c) Relating to the added cost to the producer and dealer in producing and handling citrus fruits to meet the high standards imposed by the state that insure a pure and wholesome product;

(d) Relating to the effect upon the public health which would result from a breakdown of the Florida citrus industry or any part thereof;

(e) Relating to the reasons why producers and dealers should receive a reasonable return on their labor and investment;

(f) Relating to the problem of furnishing the consumer at all times with an abundant supply of fine quality citrus fruits at reasonable prices;

(g) Relating to factors of instability peculiar to the citrus fruit industry, such as unbalanced production, effect of the weather, influence of consumer purchasing power and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be created;

(h) Relating to the possibilities with particular reference to increased consumption of citrus fruits;

(i) Relating to such other, further, and additional information as shall tend to promote increased consumption of citrus fruits and as may foster a better understanding and more efficient cooperation among producers, dealers, and the consuming public;

(j) To decide upon some distinctive and suggestive trade name and to promote its use in all ways to advertise Florida citrus fruit.

(3) (a) 1. There is hereby levied and imposed the following excise taxes upon each standard packed box of the following citrus fruits grown in this state, to-wit: grapefruit, six cents per box; oranges, six cents per box; Murcotts, five cents per box; Temples, five cents per box; tangerines, five cents per box; and tangelos, five cents per box.

2. There is hereby levied and imposed an additional excise tax of three cents per box upon each standard packed box of oranges grown in Florida. The additional excise tax hereby levied and imposed on oranges shall expire on June 30, 1967. Wherever the terms "citrus excise tax" or "citrus excise taxes" appear in the Florida citrus code, such terms shall be deemed to include the additional excise taxes imposed by this subparagraph.

(b) When grapefruit are purchased, acquired, or handled on a weight basis rather than under the standard-packed-box basis, eighty-five pounds thereof shall be considered equal to or the equivalent of one standard-packed box for tax purposes under this section.

(c) When oranges, including Temples and Murcotts, are purchased, acquired, or handled on a weight basis rather than under the standard-packed-box basis, ninety pounds thereof shall be considered equal to or the equivalent of one standard-packed box for tax purposes under this section.

(d) When tangerines are purchased, acquired, or handled on a weight basis rather than under the standard-packed-box basis, ninety-five pounds thereof shall be considered equal to or the equivalent of one standard-packed box for tax purposes under this section.

(e) The taxes imposed by the provisions of this section shall not apply to citrus fruit consumed for domestic purposes on the premises where produced.

(f) When tangelos are purchased, acquired or handled on a weight basis rather than under the standard-packed-box basis ninety pounds shall be equal to, or the equivalent of, one standard-packed box for tax purposes under this section.

(4) Every handler shall keep a complete and accurate record of all citrus fruit handled by him. Such record shall be in such form and contain such other information as the commission shall by rule or regulation prescribe. Such records shall be preserved by such handlers for a period of one year and shall be offered for inspection at any time upon oral or written demand by the commission or its duly authorized agents or representatives.

(5) Every handler shall, at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the number of standard-packed boxes of each kind of citrus fruit handled by such handler in the primary channel of trade during the period of time prescribed by the commission. Such returns

shall contain such further information as the commission may require.

(6) (a) All taxes levied and imposed under and pursuant to the provisions of this section shall be due and payable and shall be paid, or the amount thereof provided for and guaranteed, as hereinafter provided, when the citrus fruit is first handled in the primary channels of trade. All such taxes shall be paid to the commission or the payment thereof guaranteed to the commission by the person first handling the fruit in the primary channel of trade, except that all taxes on fruit delivered or sold for canning, concentrating, or processing in this state shall be guaranteed to the commission by the person so canning, concentrating, or processing such fruit by the giving of a security bond, or cash deposit under rules and regulations promulgated by the commission.

(b) Payment of the taxes upon the several citrus fruits may be evidenced by stamps to be known and designated as "Florida citrus advertising stamps" or by periodic payment by the person liable for the payment thereof upon such terms and under such rules and regulations as shall be prescribed by the commission for the payment thereof. In all instances, unless such taxes shall be paid by the use of stamps, as herein provided, the commission shall require the payment to be secured by the filing and posting of sufficient bond to be approved by the commission or the depositing of a sufficient cash deposit to be determined by the commission. The methods of payment shall be in the alternative, and either method of payment may be used at the option of the person liable for the payment of the tax under regulations promulgated by the commission, except canners, concentrators, or processors shall give bond or cash deposit as above set forth.

(c) In the event said taxes are paid by the use of stamps, the commission may provide for both the use of adhesive stamps or the impression by use of stamp machines to be approved by the commission. Said stamps or impressions shall indicate the amount paid therefor and shall, in every instance be affixed to or impressed on the grade certificate showing the grade of fruit covered thereby, and, in all other cases, such stamps or impressions shall be affixed to the return provided for in this section.

(d) In the event that periodic payment of said taxes is made under rules and regulations of the commission, evidence of the guarantee of the payment of such taxes shall be made to appear on the grade certificate or on the return provided in this section in such manner and form as shall be prescribed by the commission.

(e) The commission shall cause such stamps to be made and distributed for the payment of taxes provided in this chapter and shall make regulations for the use of stamp machines and impressions thereby and for the periodic payment of such taxes with payment guaranteed as shall be necessary to carry out and comply with the intent and purposes of this chapter.

(f) All taxes collected by the commission shall be delivered to the state treasury for payment into the proper advertising fund.

(g) All of the other provisions of said chapter 601, as to payment of advertising tax, inspection fees, maturity standards and penalties shall apply to tangelos the same as applicable under said chapter to other citrus fruits as they are therein defined.

(7) All taxes levied and collected under the provisions of subsection (3) of this section upon the respective citrus fruits shall be paid into the state treasury on or before the fifteenth day of each month, such moneys to be kept in a special fund to be designated as the Florida citrus advertising trust fund, and all moneys in such fund are hereby appropriated to the commission for the following purposes:

(a) Two percent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof, shall be deposited in the general revenue fund in lieu of the three percent service charge provided for in §215.20,

(b) An amount equal to one half of the amount deposited in the general revenue fund pursuant to paragraph (a) of this subsection, shall be set aside in the Florida citrus advertising trust fund to be used exclusively for citrus research by the commission,

(c) During the period beginning July 1, 1963, and ending June 30, 1967, an amount equal to twenty percent of the aggregate amount of the citrus excise taxes levied and imposed upon oranges shall be set aside in the Florida citrus advertising trust fund as an emergency reserve fund to be used only in the event of serious economic emergencies which will result in a direct and serious adverse effect upon the market value of oranges, processed orange products, or orange by-products in sales thereof by producers and handlers.

The authority and duty to determine the existence of such an emergency is hereby vested in the commission which shall make such a determination only upon the affirmative vote of at least nine of its members after a public hearing. Notice of the time, place, and purpose of such hearing shall be published at least two times in at least one newspaper of general circulation in each of three cities within the citrus producing area of the state to be selected by the commission. The first of such notices shall be so published at least ten days prior to such hearing and the last of such notices shall be so published not less than two nor more than five days prior to such hearing. Such hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at such hearing shall be made and filed by the commission in its offices. Such record, when signed by the chairman of the commission and authenticated by the seal of the commission, shall constitute prima facie evidence of such proceedings in all courts of the state.

If, after such notice and hearing, the commission so determines that such an emergency exists, then it shall plan and conduct an intensive campaign of commodity advertising and sales promotion of oranges, processed orange products, or orange by-products utilizing such portion of the emergency reserve fund as may be required for such purpose. Upon the completion of any such intensive campaign of commodity advertising and sales promotion, the balance remaining shall be retained in said emergency reserve fund to be used only in the event of another such emergency, in which event the determination of the existence of such emergency shall be made under the same procedure and upon the same criterion, and the funds shall be used in the same manner and for the same purpose and for no other purpose.

The sums to be so set aside in said special reserve fund during said period shall not be removed therefrom but shall continue to be so held solely for such use; provided, however, that in the event the balance in said special reserve fund should, at any time after June 30, 1967, be less than five hundred thousand dollars then and in that event, the commission may, after formal notification of such action and of the amount of such balance to the comptroller of the state, remove said balance from said special reserve fund upon the affirmative vote of nine of its members and without notice, or hearing, or a finding of the existence of an emergency, in which event the balance so removed may thereafter be used by the commission for any purpose authorized by the Florida citrus code.

(d) An amount equal to two hundred thousand dollars out of the citrus excise taxes levied and imposed upon grapefruit shall be set aside in the Florida citrus advertising trust fund as a grapefruit brand advertising fund, one hundred thousand dollars of which shall be used exclusively for making refunds to handlers as an incentive to encourage brand advertising of fresh grapefruit produced in Florida and one hundred thousand dollars of which shall be used exclusively for making refunds to handlers as an incentive to encourage brand advertising of grapefruit products produced in Florida.

1. The Florida citrus commission is hereby authorized and directed, on or before September 15, 1963, to issue and promulgate rules and regulations providing for such refunds to handlers payable as soon as practicable following the end of each shipping season, and providing for prorating the funds hereby appropriated in the event the total claims for such brand advertising so conducted during any shipping season should exceed the total funds hereby appropriated;

2. No handler shall receive in grapefruit advertising incentive payments more than one dollar for each two dollars spent by such handler in such brand advertising.

3. The term advertising shall be restricted to point of sale material, retail price cards, or other printed matter used in the display of grapefruit, processed grapefruit products, and to newspaper, billboard, magazine, radio or television advertising;

4. As of September 15 of each year the balance remaining in the grapefruit brand advertising fund over and above the aggregate of all claims filed against said grapefruit brand advertising reserve fund shall be removed from said grapefruit advertising reserve fund after formal notification to the comptroller of the state and may thereafter be used by the commission for any other purposes authorized by the Florida citrus code.

(e) The balance of moneys in the Florida citrus advertising trust fund shall be used by the commission for defraying the expenses of the commission in the administration and enforcement of this section. After the payment of all necessary administrative expenses of the commission and other expenditures provided for in this chapter, the money levied and collected under the provisions of subsection (3) of this section shall be used exclusively for the advertisement of citrus fruits, either in fresh or processed form, including citrus cattle feed and all other products of citrus fruits, produced in the state in such equitable manner and proration as the commission may determine, but provided that funds expended for advertising thereunder shall be expended through an established advertising agency.

(8) (a) On certification by any employee of the Florida citrus commission that his actual and necessary expenses on any particular day while traveling outside of the state, exceeded the per diem provided by law, such employee shall show such excess on his regular expense voucher and support the same by the proof required pursuant to rules and regulations to be promulgated by the Florida citrus commission.

(b) The Florida citrus commission is authorized to spend such amount as it deems advisable, not to exceed twenty-five thousand dollars, during any shipping season, for guests involved in promotional activities in the sale of Florida citrus fruits and products.

(c) All obligations, expenses, and costs incurred under the provisions of this section shall be paid out of the citrus advertising fund upon warrant of the comptroller when vouchers thereof, approved by the commission, are exhibited.

(9) (a) Any handler who fails to file a return or to pay any tax within the time required shall thereby forfeit to the commission a penalty of five percent of the amount of tax determined to be due; but the commission, if satisfied that the delay was excusable, may remit all or any part of said penalty. Such penalty shall be paid to the commission and disposed of as provided with respect to moneys derived from the taxes levied and imposed by subsection (3) of this section.

(b) The commission may collect the taxes levied and assessed by subsection (3) of this section in either or all of the following methods:

1. By the voluntary payment by the person liable therefor;

2. By a suit at law;

3. By a suit in equity to enjoin and restrain any handler, citrus fruit dealer, or other person owing said taxes from operating his business or engaging in business as a citrus fruit dealer until the delinquent taxes are paid. Such action may include an accounting to determine the amount of taxes plus delinquencies due. In any such proceeding, it shall not be necessary to allege or prove that an adequate remedy at law does not exist;

4. By use of the method provided for in §205.10, in the collection of delinquent license or privilege taxes by state and county officials.

(10) The powers and duties of the commission shall include the following:

(a) To adopt and from time to time alter, rescind, modify, and amend all proper and necessary rules, regulations, and orders for the exercise of its powers and the performance of its duties under this chapter;

(b) To employ and at its pleasure discharge an advertising manager, agents, advertising agencies, and such clerical and other help as it deems necessary and to outline their powers and duties and fix their compensation;

(c) To make in the name of the commission such advertising contracts and other agreements as may be necessary;

(d) To keep books, records, and accounts of all of its doings, which books, records, and accounts shall be open to inspection and audit by the state auditor at all times;

(e) To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this chapter.

(f) To conduct and pay out of the Florida citrus advertising trust fund premium and prize promotion designed to increase the use of citrus in any form.

(g) To advertise citrus cattle feed and promote its use.

History.—Comp. §15, ch. 25149, 1949. Sub. §§(3)(a), (b) am. §§9, 10, ch. 26492, 1951; sub. §(6)(b) am. §10, ch. 26484, 1951; sub. §(7) am. §11, ch. 26492, 1951. Sub. §(9) am. §2, ch. 29737, sub. §§(3), (6) am. §§3, 6, ch. 29757, 1955; (3)(a) by §1-3, ch. 57-31, (7), (10)(f)-(h) N. by §§1, 2-4, ch. 57-49; (3)(a) am. by §§1-3, ch. 59-5; (3)(e) r. and subsequent paragraphs relettered by §5, ch. 59-20; (8) §1, ch. 59-10; (7), (10) §2, ch. 61-119; (7) §1, ch. 61-297; (3)(a) §§1, chs. 62-2 and 63-320; (3)(c) §1, ch. 63-79; (7) §2, ch. 63-320; (8)(b) §1, ch. 63-78.

cf.—§215.20 Certain trust funds to contribute to general fund.

601.151 Additional tax on grapefruit; brand advertising.—

(1) There is hereby levied and imposed an additional excise tax of two cents per box upon each standard-packed box of grapefruit grown in Florida.

(2) The Florida citrus commission is hereby authorized and directed on or before September 15, 1959, to issue and promulgate rules and regulations to create from the proceeds of this tax a one hundred thousand dollar reserve fund each shipping season to be used exclusively to refund handlers as a rebate for brand advertising for fresh grapefruit only, upon a basis not to exceed one dollar for each two dollars spent in brand advertising. No handler shall receive in rebate during any shipping season more than he has paid in such shipping season in additional taxes levied by this section.

(3) The term "advertising" shall be restricted to point of sale material, price cards or other printed matter used in the display of fresh grapefruit and to newspaper, billboard, magazine, radio or television advertising.

(4) As of September 15 of each year the Florida citrus commission shall determine what claims have been filed against the one hundred thousand dollar reserve fund and thereupon any balance remaining in said reserve fund over and above the amount of such claims shall revert to and become a part of the Florida citrus advertising trust fund, and the comptroller of the state, upon formal notification of the excess in said fund over the amount of any claims for refund, is hereby authorized and directed to transfer such excess to and for the benefit of the Florida citrus advertising trust fund. If with respect to any shipping season such claims for refund exceed in the aggregate the amount of such reserve fund for that season such claims shall be paid on a pro rata basis.

(5) All the provisions hereof shall take effect August 1, 1959, and shall remain in full force and effect only until July 31, 1963, but for the purpose of filing claims, refunding to handlers and the reversion of any unclaimed parts of said reserve fund the effects hereof shall continue until September 15, 1963.

History.—§§1, 2, 4, ch. 28130, 1953; §1, ch. 29647, 1955; §1, ch. 59-6; (4) a. by §2, ch. 61-119.

601.152 Special campaigns.—

(1) Whenever upon its own motion or upon application of any handler or producer or group or association of handlers or producers of citrus fruit, the commission upon affirmative vote of nine of its members, determines that the conduct of a special advertising and promotional campaign or the conduct of market and product research and development, in addition to the advertising campaign being conducted pursuant to §601.15, and the research being conducted pursuant to the other provisions of the Florida citrus code, will substantially further increase the consumer acceptance and consumption of and strengthen the market for any variety or varieties of citrus fruit in fresh form or any type or types of processed citrus product by further increasing the number of families buying such products or further increasing the quantity of such citrus fruit in fresh form or processed citrus product purchased by buying families and that such substantial further increase and strengthening will be of substantial benefit to handlers thereof, producers thereof, and to the economy and well-being of the state, it shall formulate and propose a plan for a special campaign of commodity advertising and sales promotion or the conduct of market and product research development for such variety or varieties of citrus fruit in fresh form or type

or types of processed citrus product and hold a public hearing to consider the implementation of such a special campaign. Notice of the time, place, and purpose of such hearing shall be published, as hereinafter specified, in at least one daily newspaper of general circulation in each of three cities, to be selected by the commission, within the citrus producing area of the state and shall be mailed, by certified mail, return receipt requested, as hereinafter specified.

The first of such published notices shall be so published at least ten days prior to such hearing and the last of such published notices shall be published not less than two nor more than five days prior to such hearing. Such hearing shall be open to the public. A full and complete record of all proceedings at such hearing shall be made and filed by the commission at its offices which record when signed by the chairman of the commission and authenticated by the seal of the commission shall constitute prima facie evidence of said proceedings in all courts of this state.

If such plan proposes a specified variety of citrus fruit in fresh form, such mailed notices shall be addressed to each handler who, during the twelve months immediately preceding such mailing has handled such specified variety of citrus fruit for shipment in fresh form in the primary channel of trade and to each handler who the commission has good cause to believe will, during the twelve months next succeeding such mailing, handle such specified variety of citrus fruit for shipment in fresh form in the primary channel of trade.

If such plan proposes a specified type of processed citrus product such mailed notices shall be addressed to each handler who has during the twelve months immediately preceding such mailing handled such specified type of processed citrus product in the primary channel of trade and to each handler who the commission has good cause to believe will, during the twelve months next succeeding such mailing, handle such specified type of processed citrus product in the primary channel of trade.

Copies of the plan so formulated and proposed shall be made available to the public at the offices of the commission at Lakeland, Florida, at least five days prior to such hearing and shall be in sufficient detail to apprise all persons having an interest therein of the approximate amount of moneys proposed to be expended and the general details of the proposed special campaign of commodity advertising and sales promotion or the conduct of market and product research development.

Every such plan shall provide that the imposition of all assessments thereunder shall be confined to not more than two consecutive shipping seasons, provided, however, that the expenditure of the funds received from the imposition of such assessments shall not be so confined, but may be expended over such greater or lesser period as may be specified in such plan if the same be approved as hereinafter provided. If the assessments levied during a single shipping season are deemed by the commission to be insufficient to fully accomplish the purposes for which such a special campaign is to be conducted, then and in that event, the commission, at any time after an order implementing a plan pursuant to this section has become effective, may formulate and propose an additional special campaign subject to all of the provisions and conditions imposed by this section.

(2) After such notice and hearing, the commission shall determine whether or not the conduct of such a campaign will substantially further increase the consumer acceptance and consumption of the citrus fruit in fresh form or processed citrus product specified in such plan and that such substantial further increase in the consumer acceptance and consumption thereof will be of substantial benefit to the handlers thereof, producers thereof, and to the economy and well-being of the state of Florida. If the commission so determines and if it approves the plan so formulated and proposed, the commission shall enter an order directing that such plan be implemented subject to a referendum of the handlers who have during a representative period to be selected by the commission handled the variety or varieties of citrus fruit for shipment in fresh form specified in such plan or the type or types of processed citrus product specified in such plan.

(3) No order issued pursuant to this section shall become effective unless and until the commission finds such order has been assented to in writing by at least sixty-seven percent of the handlers covered by the order who during the representative period determined by the commission handled in the primary channel of trade not less than fifty-one percent of the total volume of the variety of citrus fruit in fresh form or type of processed citrus product specified in the order and handled in the primary channel of trade.

(4) The commission is authorized to prescribe by rules or regulations such procedures as it deems necessary to properly conduct a referendum among handlers covered by the order to determine whether such order has been assented to in writing by at least sixty-seven per cent of the handlers covered by such order who during the representative period determined by the commission handled in the primary channel of trade not less than fifty-one per cent of the volume of the variety of citrus fruit in fresh form or type of processed citrus product covered by the order.

(5) Every order entered pursuant to this section shall become effective ten days after the same is issued. In case written protests by any persons adversely affected by such order shall be made to such order, or any part or parts thereof within thirty days after such publication thereof, a hearing shall be conducted at such place and time as the commission shall determine, at which all such persons shall have a right to be heard. Due notice of the time and place of such hearing shall be given to the persons making such protests. In all cases such written protests shall be verified and filed with

the commission and shall show the way and manner in which the protestant claims to be adversely affected by such order. Except for persons filing protests as before provided, every such order shall be final and conclusive as to all persons covered and affected thereby. Any action of the commission refusing to grant in whole or in part the relief sought by any such protest so filed shall be subject to review by any court of competent jurisdiction.

(6) For the purpose of carrying out any and all provisions of this section, the commission, or its duly authorized or designated representative or representatives, may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records or documents, relevant and material to the subject matter of such hearings. Copies of the proceedings, records and acts of the commission and certificates purporting to relate the facts concerning such proceedings, records and acts signed by the chairman of the commission and authenticated by the seal of the commission shall be prima facie evidence thereof in all the courts of the state.

(7) For the privilege of handling citrus fruit for shipment in fresh form in the primary channel of trade or the privilege of handling processed citrus products, in the primary channel of trade, every person so engaged within this state with respect to any variety or varieties of citrus fruit in fresh form or any type or types of processed citrus products covered by any order issued pursuant to this section, shall pay to the commission such handler's pro rata share of the total of the necessary expenses incurred by the commission in the formulation, issuance, administration, and enforcement of such order and in the conduct of the special campaign carried out pursuant to such order. Each such handler's pro rata share of the total of such expenses shall be computed as follows: Divide the total quantity of the variety or varieties of citrus fruit handled for shipment in fresh form in the primary channel of trade or the type or types of processed citrus product handled in the primary channel of trade and specified in such order during the shipping season, during which assessments are imposed by such order into the quantity of such citrus fruit handled for shipment in fresh form or such processed citrus product specified in such order which was handled in the primary channel of trade by such handler during such shipping season to determine such handler's percentage of such total quantity; then multiply such handler's percentage as so determined by the total of such expenses to obtain such handler's pro rata share thereof. Provided, however, that the aggregate of any and all assessments imposed hereunder with respect to one or more orders shall not exceed five cents per standard packed box of citrus (or the equivalent thereof, as determined by the commission) during any shipping season; provided further that with respect to any such order pertaining to a variety of citrus fruit handled for shipment in fresh form in the primary channel of trade, such assessment shall be levied only against such variety of citrus fruit handled for shipment in fresh form in the primary channel of trade and shall not be levied against such variety of citrus fruit handled for sale to another handler; provided further that no assessment shall be levied against any box of citrus fruit or unit of processed citrus product against which an assessment issued pursuant to this section has previously been issued.

(8) The commission shall prescribe rules and regulations with respect to the assessment and collection of such funds to defray the necessary expenses incurred by the commission in the formulation, issuance, administration and enforcement of any order issued by it and in the conduct of any special campaign to be carried out pursuant to such order.

Every handler shall, at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of each variety of citrus fruit handled for shipment in fresh form in the primary channel of trade and the quantity of processed citrus products handled in the primary channels of trade by such handler during any period of time prescribed by the commission. Such returns shall contain such further information as the commission may reasonably require in order to enforce the provisions of this section.

All assessments imposed under and pursuant to the provisions of this section shall be due and payable and shall be paid by such handlers at such times and in such installments as the commission shall prescribe in such order, or the amount thereof shall be provided for and guaranteed by giving a security bond or cash deposit or as the commission may prescribe in such order.

(9) All money so collected by the commission shall be deposited for its account in a special fund to be known as the special citrus campaign fund in a bank or banks approved by the comptroller of the state and paid out upon warrant of the commission for the actual expenses incurred by the commission with respect to the formulation, issuance, administration and enforcement of any order and in the conduct of the special campaign to be carried out pursuant to any such order. Upon termination of any order, any and all moneys remaining and not required by the commission to defray the expenses of such order shall be returned by the commission upon a pro rata basis to the handlers from whom such funds were collected.

If the commission finds it necessary to do so, it may advance to said special citrus campaign fund out of the Florida citrus advertising trust fund created by §601.15, such sum of money as the commission determines is initially required to formulate, issue, administer, and enforce any such order and conduct the special campaign to be carried out pursuant to such order until moneys in said special citrus campaign fund

derived from assessments imposed and collected pursuant to this section are sufficient for such purposes, and thereafter repay such advance out of the special citrus campaign fund, and the comptroller of the state is authorized and directed to issue his warrant for such advance upon written request of the commission.

(10)(a) Any handler who fails to file a return or to pay any assessment within the time required shall thereby forfeit to the commission a penalty of five per cent of the amount of assessment then due. Such penalty shall be paid to the commission and disposed of as provided with respect to moneys derived from the assessments imposed pursuant to this section.

(b) The commission may collect the assessments imposed pursuant to this section in either or all of the following methods:

1. The voluntary payment by the handler liable therefor;

2. By a suit at law;

3. By a suit in equity to enjoin and restrain any handler owing said assessments from operating his business or engaging in business as a citrus fruit dealer until the delinquent assessments are paid. Such action may include an accounting to determine the amount of assessments plus delinquencies due. In any such proceeding, it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

(11) This section shall be liberally construed to effectuate the purposes set forth and as additional and supplemental powers vested in the Florida citrus commission under the police power of this state.

History.—§§1, 3, ch. 61-87; (16) §2, ch. 61-119; §1, ch. 63-81.

601.16 Grapefruit; maturity standards.—

(1) Seedless grapefruit shall be deemed to be mature only when each grapefruit, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than twenty-five percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is no less than seven and five-tenths percent; and the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in §601.17; and when the juice content of each grapefruit is not less than the minimum requirements for their sizes as set forth in §601.18; provided, however, that from January 1 to July 31, both dates inclusive, seedless grapefruit shall be deemed to be mature when after meeting the previous requirements of this paragraph with respect to ratio, juice content and color break, the total soluble solids of the juice of the sample thereof is no less than seven percent, and provided further, that from April 15 to July 31, both dates inclusive, seedless grapefruit shall be deemed to be mature when after meeting the previous requirements of this paragraph with respect to minimum solids, juice content and color break it has a minimum ratio of total soluble solids of the juice of the sample thereof to anhydrous citric acid of six to one.

(2) Provided, however, that from November 1 to November 30, both dates inclusive, red and pink seedless grapefruit meeting all other requirements of subsection (1) shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than seven percent, and that from December 1 to July 31, both dates inclusive, red and pink seedless grapefruit meeting all other requirements of subsection (1) shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than six and five-tenths percent.

(3) Seeded grapefruit shall be deemed to be mature only when each grapefruit, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than twenty-five percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is not less than eight percent; and when the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in §601.17; and when the juice content of each grapefruit is not less than the minimum requirements for their sizes as set forth in §601.18; provided, however, that from January 1 to July 31, both dates inclusive, seeded grapefruit shall be deemed to be mature when after meeting the previous requirements of this paragraph with respect to ratio, juice content and color break the total soluble solids of the juice of the sample thereof is not less than seven and five-tenths percent, and, provided further, that from April 15 to July 31, both dates inclusive, seeded grapefruit shall be deemed to be mature when after meeting the previous requirements of this paragraph with respect to minimum solids, juice content and color break it has a minimum ratio of total soluble solids of the juice thereof to anhydrous citric acid of six to one.

(4) Provided, however, that from December 1 to December 31, both dates inclusive, grapefruit shall be deemed to be mature for canning and concentrating purposes when the total soluble solids of the juice of the sample thereof is not less than seven percent and when the minimum ratio of the total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in §601.17 with no minimum requirements as to the juice content, acid, or color break; provided, further, that from January 1 to July 31, both dates inclusive, grapefruit meeting all other requirements of this subsection shall be deemed to be acceptable for canning or concentrating purposes when the total soluble solids of the juice of the sample thereof is not less than six and five-tenths percent and when the minimum ratio of the total soluble solids of the juice of the sample thereof to the anhydrous citric acid is six to one.

(5) Irrespective of any minimum requirement for total soluble solids of grapefruit to be used for processing purposes, now or hereafter provided by law, the Florida citrus commission, after a public hearing to be called and held for that purpose may waive such minimum requirements for the period of time between April 15 and July 31 of any particular year. Any regulation adopted pursuant to this subsection shall expire on July 31 following its adoption.

History.—§16, ch. 25149, 1949; §12, ch. 26492, 1951; am. §1, ch. 28090, 1953; (5) n. by §1, ch. 59-13; (2) a. by §1, ch. 61-50.

601.17 Grapefruit; minimum ratios of solids to acid.—The minimum ratios of the total soluble solids of the juice of grapefruit to the anhydrous citric acid shall be as follows:

(1) When the total soluble solids of the juice is not less than six and five-tenths percent and not more than nine and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven to one.

(2) When the total soluble solids of the juice is not less than nine and one-tenth percent and not more than nine and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and ninety-five hundredths to one.

(3) When the total soluble solids of the juice is not less than nine and two-tenths percent and not more than nine and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and ninety-hundredths to one.

(4) When the total soluble solids of the juice is not less than nine and three-tenths percent and not more than nine and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and eighty-five hundredths to one.

(5) When the total soluble solids of the juice is not less than nine and four-tenths percent and not more than nine and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and eighty-hundredths to one.

(6) When the total soluble solids of the juice is not less than nine and five-tenths percent and not more than nine and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and seventy-five hundredths to one.

(7) When the total soluble solids of the juice is not less than nine and six-tenths percent and not more than nine and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and seventy-hundredths to one.

(8) When the total soluble solids of the juice is not less than nine and seven-tenths percent and not more than nine and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and sixty-five hundredths to one.

(9) When the total soluble solids of the juice is not less than nine and eight-tenths percent and not more than nine and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and sixty-hundredths to one.

(10) When the total soluble solids of the juice is not less than nine and nine-tenths percent and not more than ten percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and fifty-five hundredths to one.

(11) When the total soluble solids of the juice is not less than ten percent and not more than ten and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and fifty-hundredths to one.

(12) When the total soluble solids of the juice is not less than ten and one-tenth percent and not more than ten and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and four-hundred-and-seventy-five thousandths to one.

(13) When the total soluble solids of the juice is not less than ten and two-tenths percent and not more than ten and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and forty-five hundredths to one.

(14) When the total soluble solids of the juice is not less than ten and three-tenths percent and not more than ten and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and four-hundred-and-twenty-five thousandths to one.

(15) When the total soluble solids of the juice is not less than ten and four-tenths percent and not more than ten and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and forty-hundredths to one.

(16) When the total soluble solids of the juice is not less than ten and five-tenths percent and not more than ten and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and three-hundred-and-seventy-five thousandths to one.

(17) When the total soluble solids of the juice is not less than ten and six-tenths percent and not more than ten and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and thirty-five hundredths to one.

(18) When the total soluble solids of the juice is not less than ten and seven-tenths percent and not more than ten and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and three-hundred-and-twenty-five thousandths to one.

(19) When the total soluble solids of the juice is not less than ten and eight-tenths percent and not more than ten and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and thirty-hundredths to one.

(20) When the total soluble solids of the juice is not less than ten and nine-tenths percent and not more than eleven percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and two-hundred-and-seventy-five thousandths to one.

(21) When the total soluble solids of the juice is not less than eleven percent and not more than eleven and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and twenty-five hundredths to one.

(22) When the total soluble solids of the juice is not less than eleven and one-tenth percent and not more than eleven and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and two-hundred-and-twenty-five thousandths to one.

(23) When the total soluble solids of the juice is not less than eleven and two-tenths percent and not more than eleven and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and twenty-hundredths to one.

(24) When the total soluble solids of the juice is not less than eleven and three-tenths percent and not more than eleven and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and one-hundred-and-seventy-five thousandths to one.

(25) When the total soluble solids of the juice is not less than eleven and four-tenths percent and not more than eleven and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and fifteen-hundredths to one.

(26) When the total soluble solids of the juice is not less than eleven and five-tenths percent and not more than eleven and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and one-hundred-and-twenty-five thousandths to one.

(27) When the total soluble solids of the juice is not less than eleven and six-tenths percent and not more than eleven and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and ten-hundredths to one.

(28) When the total soluble solids of the juice is not less than eleven and seven-tenths percent and not more than eleven and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and seventy-five thousandths to one.

(29) When the total soluble solids of the juice is not less than eleven and eight-tenths percent and not more than eleven and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and five-hundredths to one.

(30) When the total soluble solids of the juice is not less than eleven and nine-tenths percent and not more than twelve percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six and twenty-five thousandths to one.

(31) When the total soluble solids of the juice is not less than twelve percent or is more than twelve percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be six to one.

History.—§17, ch. 25149, 1949; sub. §(1) am. §2, ch. 28090, 1953.

601.18 Grapefruit; minimum juice content.—

(1) During that period of time beginning with August 1 of each year and ending with October 15 of the same year, both dates inclusive, the minimum juice content of the juice of the respective sizes of grapefruit are as follows, each size being designated by the commercial number assigned to it based on the number of grapefruit of said size packed commercially in a standard Florida packed box of grapefruit containing two compartments each having inside dimensions of twelve inches by twelve inches by twelve inches:

(a) A grapefruit of size twenty-eight shall contain not less than 400 cubic centimeters of juice.

(b) A grapefruit of size thirty-six shall contain not less than 350 cubic centimeters of juice.

(c) A grapefruit of size forty-six shall contain not less than 320 cubic centimeters of juice.

(d) A grapefruit of size fifty-four shall contain not less than 280 cubic centimeters of juice.

(e) A grapefruit of size sixty-four shall contain not less than 255 cubic centimeters of juice.

(f) A grapefruit of size seventy shall contain not less than 230 cubic centimeters of juice.

(g) A grapefruit of size eighty shall contain not less than 210 cubic centimeters of juice.

(h) A grapefruit of size ninety-six shall contain not less than 185 cubic centimeters of juice.

(i) A grapefruit of size one hundred twelve shall contain not less than 175 cubic centimeters of juice.

(j) A grapefruit of size one hundred twenty-six shall contain not less than 165 cubic centimeters of juice.

(k) A grapefruit of size one hundred fifty shall contain not less than 145 cubic centimeters of juice.

(2) During that period of time beginning with October 16 of each year and ending with March 1 of the following year, both dates inclusive, the minimum juice content of the juice of the respective sizes of grapefruit shall be as follows:

(a) A grapefruit of size twenty-eight shall contain not less than 380 cubic centimeters of juice.

(b) A grapefruit of size thirty-six shall contain not less than 335 cubic centimeters of juice.

(c) A grapefruit of size forty-six shall contain not less than 305 cubic centimeters of juice.

(d) A grapefruit of size fifty-four shall contain not less than 270 cubic centimeters of juice.

(e) A grapefruit of size sixty-four shall contain not less than 240 cubic centimeters of juice.

(f) A grapefruit of size seventy shall con-

tain not less than 220 cubic centimeters of juice.

(g) A grapefruit of size eighty shall contain not less than 200 cubic centimeters of juice.

(h) A grapefruit of size ninety-six shall contain not less than 180 cubic centimeters of juice.

(i) A grapefruit of size one hundred twelve shall contain not less than 170 cubic centimeters of juice.

(j) A grapefruit of size one hundred twenty-six shall contain not less than 160 cubic centimeters of juice.

(k) A grapefruit of size one hundred fifty shall contain not less than 135 cubic centimeters of juice.

(3) During that period of time beginning with March 2 of each year and ending with July 31 of the same year, both dates inclusive, the minimum juice content of the juice of the respective sizes of grapefruit shall be as follows:

(a) A grapefruit of size twenty-eight shall contain not less than 360 cubic centimeters of juice.

(b) A grapefruit of size thirty-six shall contain not less than 320 cubic centimeters of juice.

(c) A grapefruit of size forty-six shall contain not less than 290 cubic centimeters of juice.

(d) A grapefruit of size fifty-four shall contain not less than 255 cubic centimeters of juice.

(e) A grapefruit of size sixty-four shall contain not less than 230 cubic centimeters of juice.

(f) A grapefruit of size seventy shall contain not less than 210 cubic centimeters of juice.

(g) A grapefruit of size eighty shall contain not less than 190 cubic centimeters of juice.

(h) A grapefruit of size ninety-six shall contain not less than 170 cubic centimeters of juice.

(i) A grapefruit of size one hundred twelve shall contain not less than 160 cubic centimeters of juice.

(j) A grapefruit of size one hundred twenty-six shall contain not less than 150 cubic centimeters of juice.

(k) A grapefruit of size one hundred fifty shall contain not less than 130 cubic centimeters of juice.

(4) Provided, however, that if the Florida citrus commission determines that unusual or abnormal conditions exist and a change in the juice requirements will be in the best interests of the citrus industry, it may, by resolution, decrease the required juice content of grapefruit, by varieties, during the period beginning October 16 and ending March 1 of the following year, both dates inclusive as provided in subsection (2) of this section, but in no event shall the required juice content during this period be less than the juice content required during the period beginning March 2 of each year and ending July 31 of the same year, as provided in subsection (3) of this section.

(5) Provided further, however, that the commission is hereby authorized by regulation to establish different sizes, including changes in diameter ranges for existing sizes, for grapefruit based on the number of grapefruit as packed commercially. At that time it shall also fix for each period the minimum juice content for the respective sizes so established, but in no event shall the juice content, during any period, be proportionately less than as above fixed.

History.—§18, ch. 25149, 1949; §1, ch. 29760, 1955. §1, ch. 57-12; (5) n. by §1, ch. 61-93.

601.19 Oranges; maturity standards.—

(1) During that period of time beginning with August 1 of each year and ending with October 31 of the same year, both dates inclusive, oranges, not including Temple oranges, shall be deemed to be mature only when each orange, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than fifty percent of the fruit's surface in the aggregate, but provided that oranges of the Parson Brown variety need show only such a break in color on not less than twenty-five percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is not less than nine percent; and when the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in §601.20; and when the juice of the sample contains not less than four-tenths of one percent of anhydrous citric acid; and when the juice content of said orange sample is in an amount not less than at the rate of four and one-half gallons of juice per standard-packed box.

(2) During that period of time beginning with November 1 of each year and ending with November 15 of the same year, both dates inclusive, oranges, not including Temple oranges, shall be deemed to be mature only when each orange, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than fifty percent of the fruit's surface in the aggregate, but provided that oranges of the Parson Brown variety need show only such a break in color on not less than twenty-five percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is not less than eight and seven-tenths percent; and when the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in §601.20; and when the juice of the sample contains not less than four-tenths of one percent of anhydrous citric acid; and when the juice content of said orange sample is in an amount not less than at the rate of

four and one-half gallons of juice per standard-packed box.

(3) During that period of time beginning with November 16 of each year and ending with July 31 of the following year, both dates inclusive, oranges, not including Temple oranges, shall be deemed to be mature only when each orange, after having been clipped, picked, or otherwise severed from the tree, shows a break in color caused solely by nature with yellow color predominating on not less than twenty-five percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is not less than eight and five-tenths percent; and when the ratio of the total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in §601.20; and when the juice of the sample contains not less than four-tenths of one percent of anhydrous citric acid; and when the juice content of said orange sample is in an amount not less than at the rate of four and one-half gallons of juice per standard-packed box but provided however that if in any particular shipping season it shall appear to the commission, after a public hearing held not earlier than October 5 and called and held to determine such question, that oranges, not including Temple oranges, are then maturing earlier than normally as herein defined in this section, then the commission may by order, rule or regulation to be issued or promulgated and to become effective not later than October 10, declare and provide that during that period of time beginning with August 1 and ending with October 16, both dates inclusive, oranges, not including Temple oranges, meeting all other maturity standards, shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than nine percent, and during that period of time beginning with October 17 and ending with October 31, both dates inclusive, oranges, not including Temple oranges, meeting all other maturity standards, shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than eight and seven-tenths percent, and during that period of time beginning with November 1 and ending July 31 of the following year, both dates inclusive, oranges, not including Temple oranges, meeting all other maturity standards, shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than eight and five-tenths percent.

(4) Provided, however, that from December 1 of each year to July 31 of the following year, both dates inclusive, oranges, not including Temple oranges, shall be deemed to be mature for canning and concentrating purposes when the total soluble solids of the juice thereof is not less than eight percent and when the minimum ratio of the total soluble solids of the juice thereof to the anhydrous citric acid is as set forth in §601.20, with no minimum requirement as to juice content, acid or color break.

History.—Comp. §19, ch. 25149, 1949.

601.20 Oranges; minimum ratios of solids to acid.—The minimum ratios of the total soluble solids of the juice of oranges, but not including Temple oranges, to the anhydrous citric acid shall be as follows:

(1) When the total soluble solids of the juice is not less than eight percent and not more than eight and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and fifty-hundredths to one.

(2) When the total soluble solids of the juice is not less than eight and one-tenth percent and not more than eight and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and forty-five hundredths to one.

(3) When the total soluble solids of the juice is not less than eight and two-tenths per cent and not more than eight and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and forty-hundredths to one.

(4) When the total soluble solids of the juice is not less than eight and three-tenths percent and not more than eight and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and thirty-five hundredths to one.

(5) When the total soluble solids of the juice is not less than eight and four-tenths percent and not more than eight and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and thirty-hundredths to one.

(6) When the total soluble solids of the juice is not less than eight and five-tenths percent and not more than eight and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and twenty-five-hundredths to one.

(7) When the total soluble solids of the juice is not less than eight and six-tenths percent and not more than eight and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and twenty-hundredths to one.

(8) When the total soluble solids of the juice is not less than eight and seven-tenths percent and not more than eight and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and fifteen hundredths to one.

(9) When the total soluble solids of the juice is not less than eight and eight-tenths percent and not more than eight and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and ten-hundredths to one.

(10) When the total soluble solids of the juice is not less than eight and nine-tenths percent and not more than nine percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and five-hundredths to one.

(11) When the total soluble solids of the juice is not less than nine percent and not more than nine and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten to one.

(12) When the total soluble solids of the juice is not less than nine and one-tenth percent and not more than nine and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and ninety-five hundredths to one.

(13) When the total soluble solids of the juice is not less than nine and two-tenths percent and not more than nine and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and ninety-hundredths to one.

(14) When the total soluble solids of the juice is not less than nine and three-tenths percent and not more than nine and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and eighty-five hundredths to one.

(15) When the total soluble solids of the juice is not less than nine and four-tenths percent and not more than nine and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and eighty-hundredths to one.

(16) When the total soluble solids of the juice is not less than nine and five-tenths percent and not more than nine and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and seventy-five hundredths to one.

(17) When the total soluble solids of the juice is not less than nine and six-tenths percent and not more than nine and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and seventy-hundredths to one.

(18) When the total soluble solids of the juice is not less than nine and seven-tenths percent and not more than nine and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and sixty-five hundredths to one.

(19) When the total soluble solids of the juice is not less than nine and eight-tenths percent and not more than nine and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and sixty-hundredths to one.

(20) When the total soluble solids of the juice is not less than nine and nine-tenths percent and not more than ten percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and fifty-five hundredths to one.

(21) When the total soluble solids of the juice is not less than ten percent and not more than ten and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and fifty-hundredths to one.

(22) When the total soluble solids of the juice is not less than ten and one-tenth percent and not more than ten and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and forty-five hundredths to one.

(23) When the total soluble solids of the juice is not less than ten and two-tenths percent and not more than ten and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and forty-hundredths to one.

(24) When the total soluble solids of the juice is not less than ten and three-tenths percent and not more than ten and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and thirty-five hundredths to one.

(25) When the total soluble solids of the juice is not less than ten and four-tenths percent and not more than ten and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and thirty-hundredths to one.

(26) When the total soluble solids of the juice is not less than ten and five-tenths percent and not more than ten and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and twenty-five hundredths to one.

(27) When the total soluble solids of the juice is not less than ten and six-tenths percent and not more than ten and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and twenty-hundredths to one.

(28) When the total soluble solids of the juice is not less than ten and seven-tenths percent and not more than ten and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and fifteen-hundredths to one.

(29) When the total soluble solids of the juice is not less than ten and eight-tenths percent and not more than ten and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and ten-hundredths to one.

(30) When the total soluble solids of the juice is not less than ten and nine-tenths percent and not more than eleven percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and five-hundredths to one.

(31) When the total soluble solids of the juice is not less than eleven percent and not more than eleven and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine to one.

(32) When the total soluble solids of the juice is not less than eleven and one-tenth percent and not more than eleven and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and ninety-five hundredths to one.

(33) When the total soluble solids of the juice is not less than eleven and two-tenths percent and not more than eleven and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and ninety-hundredths to one.

(34) When the total soluble solids of the juice is not less than eleven and three-tenths per-

cent and not more than eleven and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and eighty-five hundredths to one.

(35) When the total soluble solids of the juice is not less than eleven and four-tenths percent and not more than eleven and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and eighty-hundredths to one.

(36) When the total soluble solids of the juice is not less than eleven and five-tenths percent and not more than eleven and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy-five hundredths to one.

(37) When the total soluble solids of the juice is not less than eleven and six-tenths percent and not more than eleven and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy-hundredths to one.

(38) When the total soluble solids of the juice is not less than eleven and seven-tenths percent and not more than eleven and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and sixty-five hundredths to one.

(39) When the total soluble solids of the juice is not less than eleven and eight-tenths percent and not more than eleven and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and sixty-hundredths to one.

(40) When the total soluble solids of the juice is not less than eleven and nine-tenths percent and not more than twelve percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and fifty-five hundredths to one.

(41) When the total soluble solids of the juice is not less than twelve percent or is more than twelve percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and fifty-hundredths to one.

History.—§20, ch. 25149, 1949; sub. §§(22) and (41), am. §10, ch. 26484, 1951; §1, ch. 59-8.

601.21 Tangerines and Temple oranges; maturity standards.—

(1) Tangerines and Temple oranges shall be deemed to be mature only when each tangerine or Temple orange, after having been clipped, picked, or otherwise severed from the tree, shows a break in color caused solely by nature, with yellow color predominating on not less than fifty percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice thereof is not less than nine percent; and when the ratio of total soluble solids of the juice thereof to the anhydrous citric acid is as set forth in §601.22, provided, however, that the minimum ratio of the total soluble solids of the juice of Temple oranges for shipment in fresh form to the anhydrous citric acid shall not be less than eight and one-half to one.

(2) Provided, however, that from December 1 of each year to July 31 of the following year, both dates inclusive, Temple oranges shall be deemed to be mature for canning and concentrating purposes when the total soluble solids of the juice thereof is not less than nine percent and when the minimum ratio of the juice thereof to the anhydrous citric acid is as set forth in §601.22 with no minimum requirement as to juice content, acid, or color break.

(3) Provided, however, that from November 15th of each year to July 31st of the following year, both dates inclusive, tangerines shall be deemed to be mature only when each tangerine, after having been clipped, picked, or otherwise severed from the tree, shows a break in color caused solely by nature, with yellow color predominating on not less than fifty percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice thereof is not less than 8.75 percent; and when the ratio of total soluble solids of the juice thereof to the anhydrous citric acid is as set forth in §601.22.

(4) Provided, however, that from November 15th of each year to July 31 of the following year, both dates inclusive, tangerines shall be deemed to be mature for canning and concentrating purposes when the total soluble solids of the juice thereof is not less than 8.75 per cent and when the minimum ratio of the juice thereof to the anhydrous citric acid is as set forth in §601.22, with no minimum requirements as to juice content, acid, or color break.

History.—§21, ch. 25149, 1949; §13, ch. 26492, 1951.
Am. (1) by §1, ch. 57-13; (1) by §1, ch. 59-17.

601.22 Tangerines and Temple oranges; minimum ratios of solids to acid.—The minimum ratios of the total soluble solids of the juice of tangerines and Temple oranges to the anhydrous citric acid shall be as follows:

(1) When the total soluble solids of the juice is not less than nine percent and not more than nine and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine to one.

(2) When the total soluble solids of the juice is not less than nine and one-tenth percent and not more than nine and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and nine-tenths to one.

(3) When the total soluble solids of the juice is not less than nine and two-tenths percent and not more than nine and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and eight-tenths to one.

(4) When the total soluble solids of the juice is not less than nine and three-tenths percent and not more than nine and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seven-tenths to one.

(5) When the total soluble solids of the juice is not less than nine and four-tenths percent and not more than nine and five-tenths percent, the minimum ratio of the total soluble

solids to anhydrous citric acid shall be eight and six-tenths to one.

(6) When the total soluble solids of the juice is not less than nine and five-tenths percent and not more than nine and six-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and five-tenths to one.

(7) When the total soluble solids of the juice is not less than nine and six-tenths percent and not more than nine and seven-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and four-tenths to one.

(8) When the total soluble solids of the juice is not less than nine and seven-tenths percent and not more than nine and eight-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and three-tenths to one.

(9) When the total soluble solids of the juice is not less than nine and eight-tenths percent and not more than nine and nine-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and two-tenths to one.

(10) When the total soluble solids of the juice is not less than nine and nine-tenths percent and not more than ten percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and one-tenth to one.

(11) When the total soluble solids of the juice is not less than ten percent and not more than ten and one-tenth percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight to one.

(12) When the total soluble solids of the juice is not less than ten and one-tenth percent and not more than ten and two-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and nine-tenths to one.

(13) When the total soluble solids of the juice is not less than ten and two-tenths percent and not more than ten and three-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and eight-tenths to one.

(14) When the total soluble solids of the juice is not less than ten and three-tenths percent and not more than ten and four-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and seven-tenths to one.

(15) When the total soluble solids of the juice is not less than ten and four-tenths percent and not more than ten and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and six-tenths to one.

(16) When the total soluble solids of the juice is not less than ten and five-tenths percent or is more than ten and five-tenths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and five-tenths to one.

(17) Provided, however, that after November 15th of each year to July 31st of the following year, both dates inclusive, the minimum ratio of the total soluble solids of the juice of tangerines to the anhydrous citric acid shall be as follows:

(a) When the total soluble solids of the juice is not less than eight and seventy-five hundredths percent and not more than eight and eighty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy-five hundredths to one.

(b) When the total soluble solids of the juice is not less than eight and eighty hundredths percent and not more than eight and ninety hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy-five hundredths to one.

(c) When the total soluble solids of the juice is not less than eight and ninety hundredths percent and not more than nine percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy-five hundredths to one.

(d) When the total soluble solids of the juice is not less than nine percent and not more than nine and ten hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy-five hundredths to one.

(e) When the total soluble solids of the juice is not less than nine and ten hundredths percent and not more than nine and twenty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and sixty-five hundredths to one.

(f) When the total soluble solids of the juice is not less than nine and twenty hundredths percent and not more than nine and thirty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and fifty-five hundredths to one.

(g) When the total soluble solids of the juice is not less than nine and thirty hundredths percent and not more than nine and forty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and forty-five hundredths to one.

(h) When the total soluble solids of the juice is not less than nine and forty hundredths percent and not more than nine and fifty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and thirty-five hundredths to one.

(i) When the total soluble solids of the juice is not less than nine and fifty hundredths percent and not more than nine and sixty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and twenty-five hundredths to one.

(j) When the total soluble solids of the

juice is not less than nine and sixty hundredths percent and not more than nine and seventy hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and fifteen hundredths to one.

(k) When the total soluble solids of the juice is not less than nine and seventy hundredths percent, and not more than nine and eighty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and five hundredths to one.

(l) When the total soluble solids of the juice is not less than nine and eighty hundredths percent and not more than nine and ninety hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and ninety-five hundredths to one.

(m) When the total soluble solids of the juice is not less than nine and ninety hundredths percent and not more than ten percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and eighty-five hundredths to one.

(n) When the total soluble solids of the juice is not less than ten percent and not more than ten and ten hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and seventy-five hundredths to one.

(o) When the total soluble solids of the juice is not less than ten and ten hundredths percent and not more than ten and twenty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and sixty-five hundredths to one.

(p) When the total soluble solids of the juice is not less than ten and twenty hundredths percent and not more than ten and thirty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and fifty-five hundredths to one.

(q) When the total soluble solids of the juice is not less than ten and thirty hundredths percent and not more than ten and forty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and forty-five hundredths to one.

(r) When the total soluble solids of the juice is not less than ten and forty hundredths percent and not more than ten and fifty hundredths percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and thirty-five hundredths to one.

(s) When the total soluble solids of the juice is not less than ten and fifty hundredths percent or is more than ten and fifty hundredths percent the minimum ratio of the total soluble solids to anhydrous citric acid shall be seven and twenty-five hundredths to one.

History.—§22, ch. 25149, 1949; sub. § § (1)-(16) am. §13; sub. § (17) comp. §14, ch. 26492, 1951.

601.231 Tangelos; maturity standards.—

(1) During that period of time beginning with August 1 of each year and ending with October 31 of the same year, both dates inclusive, tangelos for shipment in fresh form shall be deemed to be mature only when each tangelo, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than fifty percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is not less than nine percent; and when the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in §601.232; and when the juice of the sample contains not less than four-tenths of one per cent of anhydrous citric acid.

(2) During that period of time beginning November 1 of each year and ending with November 15 of the same year, both dates inclusive, tangelos for shipment in fresh form shall be deemed to be mature only when each tangelo, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than fifty per cent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is not less than eight and five-tenths per cent; and when the ratio of total soluble solids of the juice of the sample thereof to anhydrous citric acid is as set forth in this subsection; and when the juice of the sample contains not less than four-tenths of one per cent anhydrous citric acid.

(3) During that period of time beginning November 16 and ending November 30 of the same year, both dates inclusive, tangelos for shipment in fresh form shall be deemed to be mature only when each tangelo, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than fifty per cent of the fruit's surface in the aggregate; and when the total soluble solids of the juice of the sample thereof is not less than eight per cent; and when the ratio of total soluble solids of the juice of the sample thereof to anhydrous citric acid is as set forth in this subsection; and when the juice of the sample contains not less than four-tenths of one per cent anhydrous citric acid.

(4) During that period of time beginning with December 1 of each year and ending with January 31 of the following year, both dates inclusive, tangelos for shipment in fresh form shall be deemed mature only when each tangelo, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color pre-

dominating on not less than fifty per cent of the fruit's surface in the aggregate; and when the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid shall be eight and fifty-five hundredths to one, or above.

(5) During that period of time beginning with February 1 of each year and ending July 31 of the same year, both dates inclusive, tangelos for shipment in fresh form shall be deemed mature only when each tangelo, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than fifty per cent of the fruit's surface in the aggregate; and when the ratio of total soluble solids of the juice of the sample thereof to anhydrous citric acid shall be eight to one, or above.

(6) Provided, however, that from December 1 of each year to July 31 of the following year, both dates inclusive, tangelos shall be deemed to be mature for canning and concentrating purposes when the minimum ratio of total soluble solids to anhydrous citric acid shall be eight to one, with no minimum requirements as to juice content, acid, or color break.

History.—§4, ch. 29757, 1955; (4) A. (5), (6) N by §1, ch. 57-26.

601.232 Tangelos; minimum ratios of solids to acid.—The minimum ratios of the total soluble solids of the juice of tangelos, to the anhydrous citric acid shall be as follows:

(1) When the total soluble solids of the juice is not less than eight per cent and not more than eight and one-tenth per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and fifty hundreths to one.

(2) When the total soluble solids of the juice is not less than eight and one-tenth per cent and not more than eight and two-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and forty-five hundredths to one.

(3) When the total soluble solids of the juice is not less than eight and two-tenths per cent and not more than eight and three-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and forty hundredths to one.

(4) When the total soluble solids of the juice is not less than eight and three-tenths per cent and not more than eight and four-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and thirty-five hundredths to one.

(5) When the total soluble solids of the juice is not less than eight and four-tenths per cent and not more than eight and five-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and thirty hundredths to one.

(6) When the total soluble solids of the juice is not less than eight and five-tenths per cent and not more than eight and six-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and twenty-five hundredths to one.

(7) When the total soluble solids of the juice is not less than eight and six-tenths per cent and not more than eight and seven-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and twenty hundredths to one.

(8) When the total soluble solids of the juice is not less than eight and seven-tenths per cent and not more than eight and eight-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and fifteen hundredths to one.

(9) When the total soluble solids of the juice is not less than eight and eight-tenths per cent and not more than eight and nine-tenths per cent, the minimum ratio of total soluble solids to anhydrous citric acid shall be ten and ten hundredths to one.

(10) When the total soluble solids of the juice is not less than eight and nine-tenths per cent and not more than nine per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be ten and five hundredths to one.

(11) When the total soluble solids of the juice is not less than nine per cent and not more than nine and one-tenth per cent, the minimum ratio of total soluble solids to anhydrous citric acid shall be ten to one.

(12) When the total soluble solids of the juice is not less than nine and one-tenth per cent and not more than nine and two-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and ninety-five hundredths to one.

(13) When the total soluble solids of the juice is not less than nine and two-tenths per cent and not more than nine and three-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and ninety hundredths to one.

(14) When the total soluble solids of the juice is not less than nine and three-tenths per cent and not more than nine and four-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and eighty-five hundredths to one.

(15) When the total soluble solids of the juice is not less than nine and four-tenths per cent and not more than nine and five-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and eighty hundredths to one.

(16) When the total soluble solids of the juice is not less than nine and five-tenths per cent and not more than nine and six-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and seventy-five hundredths to one.

(17) When the total soluble solids of the juice is not less than nine and six-tenths per cent and not more than nine and seven-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and seventy hundredths to one.

(18) When the total soluble solids of the juice is not less than nine and seven-tenths per cent and not more than nine and eight-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and sixty-five hundredths to one.

(19) When the total soluble solids of the juice is not less than nine and eight-tenths per cent and not more than nine and nine-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and sixty hundredths to one.

(20) When the total soluble solids of the juice is not less than nine and nine-tenths per cent and not more than ten per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and fifty-five hundredths to one.

(21) When the total soluble solids of the juice is not less than ten per cent and not more than ten and one-tenth per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and fifty hundredths to one.

(22) When the total soluble solids of the juice is not less than ten and one-tenth per cent and not more than ten and two-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and forty-five hundredths to one.

(23) When the total soluble solids of the juice is not less than ten and two-tenths per cent and not more than ten and three-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and forty hundredths to one.

(24) When the total soluble solids of the juice is not less than ten and three-tenths per cent and not more than ten and four-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and thirty-five hundredths to one.

(25) When the total soluble solids of the juice is not less than ten and four-tenths per cent and not more than ten and five-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and thirty hundredths to one.

(26) When the total soluble solids of the juice is not less than ten and five-tenths per cent and not more than ten and six-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and twenty-five hundredths to one.

(27) When the total soluble solids of the juice is not less than ten and six-tenths per cent and not more than ten and seven-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and twenty hundredths to one.

(28) When the total soluble solids of the juice is not less than ten and seven-tenths per cent and not more than ten and eight-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and fifteen hundredths to one.

(29) When the total soluble solids of the juice is not less than ten and eight-tenths per cent and not more than ten and nine-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and ten hundredths to one.

(30) When the total soluble solids of the juice is not less than ten and nine-tenths per cent and not more than eleven per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine and five hundredths to one.

(31) When the total soluble solids of the juice is not less than eleven per cent and not more than eleven and one-tenth per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be nine to one.

(32) When the total soluble solids of the juice is not less than eleven and one-tenth per cent and not more than eleven and two-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and ninety-five hundredths to one.

(33) When the total soluble solids of the juice is not less than eleven and two-tenths per cent and not more than eleven and three-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and ninety hundredths to one.

(34) When the total soluble solids of the juice is not less than eleven and three-tenths per cent and not more than eleven and four-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and eighty-five hundredths to one.

(35) When the total soluble solids of the juice is not less than eleven and four-tenths per cent and not more than eleven and five-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and eighty hundredths to one.

(36) When the total soluble solids of the juice is not less than eleven and five-tenths per cent and not more than eleven and six-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy-five hundredths to one.

(37) When the total soluble solids of the juice is not less than eleven and six-tenths per cent and not more than eleven and seven-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and seventy hundredths to one.

(38) When the total soluble solids of the juice is not less than eleven and seven-tenths per cent and not more than eleven and eight-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and sixty-five hundredths to one.

(39) When the total soluble solids of the juice is not less than eleven and eight-tenths per cent and not more than eleven and nine-tenths per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and sixty hundredths to one.

(40) When the total soluble solids of the juice is not less than eleven and nine-tenths per cent or is more than eleven and nine-tenths

per cent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be eight and fifty-five hundredths to one.

History.—§4, ch. 29757, 1955; (1)-(40) by §1, ch. 57-26.

601.24 Commission to prescribe methods of testing and grading.—The commission shall by rule or regulation provide the manner and method to be used in drawing samples and the quantity to be used in testing and grading of citrus fruit and the canned and concentrated products thereof and shall provide specifications and methods for use of juice extractors to be used in extracting juice for such tests and grading purposes.

History.—§24, ch. 25149, 1949; §1, ch. 61-49.

601.25 Determination of soluble solids and acid.—The commission by rule or regulation shall determine the method by which juice is tested for percentage of total soluble solids, the method by which juice is tested for acidity and the method for testing fruit for juice content. Until such time as the commission may see fit to determine such method by rule or regulation, the Brix hydrometer shall be used and the reading of the hydrometer corrected for temperature shall be considered as the per cent of the total soluble solids; and anhydrous citric acid shall be determined by titration of the juice using standard alkali and phenolphthalein as indicator, the total acidity being calculated as anhydrous citric acid.

History.—§25, ch. 25149, 1949; §1, ch. 61-68.

601.26 Color break; minimum standard.—In determining the color break required for citrus fruit, the color shown and appearing on plate 22, color designation L-2 (page 67) of dictionary of color, by Maerz and Paul, first edition, published by McGraw-Hill Book Company, Inc., New York, 1930, shall be the minimum standard for yellow color predominating.

History.—Comp. §26, ch. 25149, 1949.

601.27 Commissioner of agriculture; citrus inspectors.—The inspection in the state of all citrus fruit and the canned and concentrated products thereof, and the certifying as to grades and qualifications thereof, and the enforcement of all provisions of this chapter and/or rules, regulations and/or orders made pursuant to and under authority of this chapter shall be under the direction, supervision, and control of the commissioner; and all citrus fruit inspectors performing inspection work, services, or duties pursuant to or under the provisions of this chapter and said rules, regulations, and orders made pursuant to and under authority of this chapter shall be persons who are duly licensed or certified by the United States department of agriculture as citrus fruit inspectors.

History.—Comp. §27, ch. 25149, 1949.

601.28 Inspection fees.—

*(1) There is hereby levied upon all citrus fruit and the canned and concentrated products thereof sold, offered for sale, or offered for shipment within or without the state the following state inspection fees:

*(a) Upon grapefruit, oranges (including Temples and Murcotts) tangelos and tangerines to be shipped in fresh form, the sum of two and one-fourth cents per standard packed box, or the equivalent thereof; together with such additional assessment as may be found necessary and fixed by the commissioner of agriculture after release of the citrus crop estimate in October of each year by the United States department of agriculture during the time this act is in force.

*(b) Upon grapefruit, oranges (including Temples and Murcotts) tangelos and tangerines to be canned or concentrated, the sum of seven-eighths cent per standard packed box, or the equivalent thereof; together with such additional assessment as may be found necessary and fixed by the commissioner of agriculture after release of the citrus crop estimates in October of each year by the United States department of agriculture during the time this act is in force;

*(c) Upon the canned or processed products thereof, a sum of three-fourths cent per standard case of twenty-four No. 2 cans, or the equivalent thereof; together with such additional assessment as may be found necessary and fixed by the commissioner of agriculture after release of the citrus crop estimates in October of each year by the United States department of agriculture during the time this act is in force.

*(d) Upon the concentrated products thereof, a sum of three-fourths cent per standard case of twenty-four No. 2 cans, or the equivalent thereof, to which such concentrate should be reconstituted; together with such additional assessment as may be found necessary and fixed by the commissioner of agriculture after release of the citrus crop estimates in October of each year by the United States department of agriculture during the time this act is in force.

(e) There is hereby also levied upon all citrus fruit to be canned or concentrated, or offered for shipment in fresh form within or without the state, an additional fee of one mill per standard-packed box or the equivalent thereof. Said fee shall be collected at the time and in the same manner as the inspection fees are collected and shall be deposited in a trust fund of the state department of agriculture entitled citrus crop estimates service and research fund to be administered by the commissioner of agriculture. The statistician in charge of the Florida crop and livestock reporting service shall recommend to the commissioner the annual operating budget to be approved by the commissioner. The funds accumulating in the citrus crop estimates service and research fund shall be spent only on service and research related to citrus crop estimates, including, but not limited to tree counts, limb counts, frame counts, other objective and opinion citrus surveys, internal quality investigations, methodology research and other work and survey programs connected with citrus estimates, utilization, disposition, yields, and related activities. The cash balance in the

citrus crop estimates service and research fund on June 30 of each year shall be limited to one hundred thousand dollars and any funds in excess of this amount shall be transferred to the general inspection trust fund to be used as an emergency reserve for inspection of citrus.

(2) All such assessments shall be due upon the inspection of said citrus fruit or the canned or concentrated products thereof as required by this chapter and shall be evidenced by citrus stamps attached to the certificate of inspection; but provided it shall be lawful for the person liable for the payment thereof to make the payment of such fees and for the commissioner to accept payment of such fees at such periodic intervals and under such terms, rules, and regulations as may be prescribed by the commissioner, such regulations to provide for the posting of sufficient bond to be approved by the commissioner or cash deposit to guarantee the payment of such fees.

(3) The commissioner is hereby authorized and empowered to promulgate such rules and regulations as may be necessary to allow or permit the collection of such fees by the use of stamps or stamp vending machines and to promulgate and establish such further rules and regulations as may be necessary to effectuate the purpose of this section; but such rules and regulations shall permit the mode of payment to be at the option of the person liable for the payment of such fees.

History.—§28, ch. 25149, 1949; sub. §(1)(a),(b),(e),(f) am. §16, ch. 26492, 1951; sub. §(1) am. §5, ch. 29757, 1955.

Am. (1) (e) by §1, ch. 57-84; (1) (a), (b), (e), (f) am. by §1, ch. 59-15; (1) (c) r. by §7, (1) (d) r. by §8, ch. 59-20, paras. of (1) renum.; (1) a. by §1, ch. 61-97; (1)(e) a. by §2, ch. 61-119; (1)(a)-(d) §1, ch. 63-108.

*Note.—Subsection (1)(a)-(d) as amended by ch. 63-108 shall be in force only to and including June 30, 1965.

cf.—§601.30, Payment of fees.
§601.83, Assessment of tax, upon colored orange and tangelos.

601.29 Powers.—The powers of the commissioner shall include, but not be limited to, the following:

(1) To make such rules, regulations, and orders as may be necessary to carry out such of the provisions of this chapter as impose duties and powers on the commissioner or his authorized inspectors, employees, or agents which said rules, regulations, and orders shall have the effect and force of law when consistent therewith.

(2) To enter and inspect personally or through his authorized inspector, employee, or agent any place within the state where citrus fruit is being prepared, packed, loaded, or stored for shipment either in fresh, canned, or concentrated form; to stop and inspect personally or through his authorized inspector, employee, or agent, any shipment of citrus fruit or the canned or concentrated products thereof.

(3) Personally or through his authorized inspector, employee, or agent, to forbid and prohibit the shipment or sale of any citrus fruit or the canned or concentrated products thereof found to be in violation of any of the provisions of this chapter, or in violation of any rule, regulation, or order made or adopted under the authority of this chapter.

(4) In furtherance of the right and privilege of any shipper or canning or concentrating plant to have citrus fruit or the canned or concentrated products thereof graded according to the standards as now fixed by the United States department of agriculture, or as such standards may be hereafter changed to make any and all necessary contracts and agreements with the United States department of agriculture or any of its branches, divisions, or extensions to provide complete and adequate inspection of such citrus fruit and the canned and concentrated products thereof.

(5) To cause prosecution to be instituted for violation of any of the citrus laws or for violation of any rule, regulation, or order promulgated by the commission or by the commissioner.

(6) To institute such action at law or in equity as may appear necessary to enforce compliance with any provisions of this chapter, or to enforce compliance with any rule, regulation, or order of the commission or the commissioner made pursuant to the provisions of this chapter, and, in addition to any other remedy, to apply to any circuit court of this state for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist.

(7) To employ and fix the compensation of such attorneys as he deems necessary to aid and assist him in exercising the powers and discharging the duties conferred and imposed upon him by law, and particularly by subsections (5) and (6) of this section.

History.—Comp. §29, ch. 25149, 1949.

601.291 Filing reports of sale of citric acid with commissioner of agriculture.—Any person who sells one hundred or more pounds of citric acid or any substance or product containing ten per cent or more of citric acid to one customer shall, within fifteen days after making each such sale, file with the commissioner of agriculture a true and correct copy of the invoice or shipping documents relating to such sale. For the purpose of this section, the terms citric acid and anhydrous citric acid shall be synonymous.

History.—§1, ch. 63-76.

601.30 Payment of fees into state treasury.—There shall be paid into the state treasury on or before the fifteenth day of each month all moneys received from the inspection fees provided for in §601.28, which moneys shall be paid into the general inspection trust fund. Said moneys shall be kept in said general inspection trust fund and are appropriated and made available for defraying the expenses of the commissioner and of the administration and enforcement of all provisions of this chapter. All inspection fees prescribed by and required to be paid under the provisions of §601.28 shall be paid to the commissioner in the first instance.

History.—§30, ch. 25149, 1949; §2, ch. 61-119.

cf.—§601.83, Assessment of tax upon colored oranges and tangelos.

601.31 Citrus inspectors; employment.—The commissioner of agriculture may in each year employ as many citrus fruit inspectors for such

period or periods, not exceeding one year, as said commissioner shall deem necessary for the effective enforcement of the citrus fruit laws of this state. All persons authorized to inspect and certify to the maturity and grade of citrus fruit shall be governed in the discharge of their duties as such inspectors by the provisions of law and by the rules and regulations prescribed by the commission and the commissioner and shall perform their duties under the direction and supervision of the commissioner of agriculture. All citrus inspectors appointed for the enforcement of this chapter shall be persons who are duly licensed or certified by the United States department of agriculture as citrus fruit inspectors.

History.—Comp. §31, ch. 25149, 1949.

601.32 **Compensation.**—The salaries of the chief citrus inspector, the chief laboratory inspector, the district supervising inspectors, the junior and senior inspectors, and all other necessary inspectors shall be in the amount as determined and fixed by the commissioner of agriculture and, in addition thereto, each of said inspectors shall be reimbursed for traveling expenses as provided in §112.061, which shall be paid upon approval of accounts therefor by the commissioner of agriculture. The commissioner may employ such additional field and other agents and clerical assistance at such times and for such periods and incur and pay any other expenses, including traveling expenses, as provided in §112.061, of the commissioner of agriculture during the citrus fruit season, as may be necessary for the effective enforcement of the citrus fruit laws of this state and of the regulations of the citrus commission and assure the payments of the inspection fees imposed or that may be imposed under the authority of law.

History.—§32, ch. 25149, 1949; §19, ch. 63-400.

601.33 **Interference.**—It is unlawful for any person to obstruct, hinder, resist, interfere with, or attempt to obstruct, hinder, resist, or interfere with any authorized inspector in the discharge of any duty imposed upon or required of him by the provisions of law or by any rule or regulation prescribed by the commission or the commissioner, or to change or attempt to change any instrument, substance, article or fluid used by such inspector or emergency inspector in making tests of citrus fruit, or the canned or concentrated products thereof.

History.—§33, ch. 25149, 1949; §1, ch. 59-19.

601.34 **Duties of law enforcement officers.**—Each state or county law enforcement officer shall make arrests for violations of the citrus fruit laws of this state or of any rule, regulations, or order promulgated by the commission or the commissioner under authority of law when notified of such violation by the commissioner or his duly authorized agent or representative.

History.—Comp. §34, ch. 25149, 1949.

601.35 **Disputes as to quality, etc.; procedure.**—When any dispute as to quality, grade, or condition of citrus friut or the canned or concentrated products thereof arises, the shipper or any financially interested person may call in at his, her, or its expense an inspector licensed or certified only by the United States department of agriculture to inspect such citrus fruit or its canned or concentrated products. Such inspector shall issue a regular official certificate to the applicant showing the quality, grade, and condition thereof and, in all cases, such certificate shall be prima facie evidence. If such certificate shows the citrus fruit or the canned or concentrated products thereof therein-mentioned and described to conform to the provisions of this chapter and the rules, regulations, or orders of the commission and of the commissioner, such shipper or such financially interested person may present the original certificate to the person or representative of the person having charge of the vehicle of transportation by which such citrus fruit or the canned or concentrated products thereof is to be transported, which person or representative shall then accept such citrus fruit or the canned or concentrated products thereof for shipment provided that all other provisions of this chapter and of the rules, regulations, and orders of the commission and of the commissioner have been met and complied with.

History.—Comp. §35, ch. 25149, 1949.

601.36 **Inspection where two or more lots of fruit.**—In the event that any packing house packing citrus fruit or canning plant canning citrus fruit or concentrating plant concentrating citrus fruit shall have present therein or shall be packing, canning, or concentrating two or more lots of fruit simultaneously, the manager or other person in charge of said packing house or said canning plant or said concentrating plant shall notify the citrus fruit inspector conducting inspections at said packing house or canning plant or concentrating plant of said fact and furnish to said inspector full information as to the source of said several lots of fruit and the number of boxes in each several lots.

History.—Comp. §36, ch. 25149, 1949.

601.37 **Unlawful acts of inspectors.**—It is unlawful for any authorized inspector to make or deliver a certificate of inspection and maturity and quality of any citrus fruit or the canned or concentrated products thereof upon which the inspection fees and advertising taxes have not been paid or the payment thereof guaranteed, or to make or issue any false certificate as to inspection, maturity, quality, or payment of inspection fees.

History.—Comp. §37, ch. 25149, 1949.

601.38 **Citrus inspectors; authority.** — For the purpose of enforcing the provisions of the citrus fruit laws of this state, as well as the regulations of the commission, citrus fruit inspectors may enter into any packing house or canning plant or concentrating plant at any hour of day or night and have and demand access and admission to any enclosed portion of said packing house, canning plant, or concentrating plant. Said citrus fruit inspectors may also inspect all packing house or canning plant records pertaining

to receipts from groves and to details of receiving, handling, running, processing, packing, or canning citrus fruit.

History.—§38, ch. 25149, 1949; am. §10, ch. 26484, 1951.

601.39 Special inspectors.—In cases of emergency or necessity, when no citrus fruit inspector is available for inspection of a particular lot of citrus fruit or the canned or concentrated products thereof, the commissioner may designate some fit and competent individual to inspect, test, and certify as to such lot of fruit or the canned or concentrated products thereof. Certificates made or issued by such designated individuals shall be signed by him as "special citrus fruit inspector." He shall not be required to give any bond, but shall be subject to the penalties imposed for violation of any of the provisions of the citrus fruit laws.

History.—Comp. §39, ch. 25149, 1949.

601.40 Registration of citrus packing houses, canning plants, etc.—The owner, manager, or operator of each packing house, canning plant, or concentrating plant, at which it is intended to pack, can, or concentrate, or prepare citrus fruit for market or transportation during the then present or the next ensuing citrus fruit shipping season, shall register such packing house, canning plant, or concentrating plant and its location, shipping point, and post office with the commissioner of agriculture not less than ten days before packing, canning, concentrating, or otherwise preparing any citrus fruit or the canned or concentrated products thereof for sale or transportation in or at such packing house, canning plant, or concentrating plant; and he shall, in addition to such registration, give the said commissioner not less than seven days' written notice of the date on which packing, canning, concentrating, or other preparation for sale or transportation of citrus fruit of the then current or the next ensuing season's crop will be begun. The commissioner of agriculture shall issue a certificate of registration to each such packing house, canning plant, or concentrating plant registering; provided, however, that no such certificate of registration shall be issued to any packing house, canning plant, or concentrating plant unless the operator thereof shall have first applied for and received his license as a citrus fruit dealer and furnished his bond as such citrus fruit dealer in accordance with law.

History.—Comp. §40, ch. 25149, 1949.

601.41 Operation without registration unlawful.—It is unlawful for any person to operate a citrus fruit packing house, canning plant, or concentrating plant, or to pack or otherwise prepare for sale or transportation any citrus fruit at such packing house, canning plant, or concentrating plant without having previously registered said packing house, canning plant, or concentrating plant and given the notice required in §601.40 and having received and still having unrevoked from the commissioner of agriculture a certificate; provided, that no certificate of inspection and maturity of any fruit shall be issued by any authorized inspector except to a person who has registered with the commissioner during the then current year and has an unrevoked certificate of registration and has given to said commissioner the notice required.

History.—Comp. §41, ch. 25149, 1949.

601.42 Revocation of registration.—Whenever the commissioner of agriculture shall issue a certificate of registration to any packing house, canning plant, or concentrating plant for the purpose of processing citrus fruit or citrus products, as provided by §601.40, and said commissioner shall thereafter, after due notice and hearing, as provided by §601.67, or any section of chapter 601, revoke or suspend the license of any citrus fruit dealer who may own, operate, or have any proprietary or ownership interest in, any such packing house, canning plant or concentrating plant aforesaid, the certificate of registration as provided for in §601.40, shall automatically and without further proceedings, stand suspended or revoked during the entire period of the suspension or revocation of the citrus fruit dealer's license under §601.67.

History.—§42, ch. 25149, 1949; §1, ch. 59-18.

601.43 Immature and unfit citrus fruit.—Any citrus fruit not conforming to the minimum maturity requirements set forth in this chapter shall be deemed and held to be immature and unfit for human consumption. In the testing of fruit to determine whether the same conforms to such standards and minimum requirements, any inspector shall have the right and authority to test the individual fruit in any given sample of fruit drawn in the number and by the manner as prescribed by regulations of the commission. If, upon the testing of the juice of said individual fruit in any sample, more than ten percent of said individual fruit shall fail by more than one-half percentage point to meet the minimum ratio of total soluble solids to anhydrous citric acid which is required for such fruit, then all of the fruit in the lot from which said sample was drawn shall be deemed and held to be immature and unfit for human consumption.

History.—Comp. §43, ch. 25149, 1949.

601.44 Destruction of immature fruit.—All citrus fruit, or the canned or concentrated products thereof, prepared for sale or transportation, or which is being prepared for such purpose, or which has been or is being delivered for sale or transportation that may be found immature or otherwise unfit for human consumption upon inspection and testing shall be seized and destroyed by a citrus fruit inspector or the sheriff of the county where found as may be provided by regulations prescribed by the commission; provided that said determination of immaturity or unfitness for human consumption may be made by a citrus fruit inspector at any place where such citrus fruit may be found after severance from the tree, and such seizure and destruction may likewise occur at any such place; but provided, however, that in the event

of seizure of citrus fruit upon the grounds that such citrus fruit fails to show a break in color required by this chapter for that particular variety of citrus fruit the owner or person in charge of such citrus fruit shall be allowed to separate and to retain for subsequent use, in accordance with the provisions of this chapter, that portion of such citrus fruit which shows a break in color required by this chapter for that particular variety and. in such case, only that portion thereof which fails to show a break in color for such variety, as required by this chapter, shall be destroyed by a citrus fruit inspector or the sheriff of the county as may be prescribed by regulations of the commission.

History.—Comp. §44, ch. 25149, 1949.

601.45 Grading of citrus fruit.—All citrus fruit, except as provided in §601.50, intended for consumption in fresh form sold, or offered for sale, or offered for shipment, or being shipped by common carrier or otherwise, shall be graded according to the standards established from time to time by the commission, or at the option of the shipper according to the standards as now fixed by the United States department of agriculture, or as such standards may be hereafter modified or changed; and all such citrus fruit shall have stamped thereon the grade thereof according to such standards, or, under such order or regulations the commission may prescribe, the shipper or seller shall have the privilege of stamping on citrus fruit either brands or trademarks which shall represent state grades or United States grades and be registered with the commission, and the commission may receive and file for record such brands or trademarks, except that, in case such citrus fruit is sold, offered for sale, or offered for shipment, or being shipped by common carrier or otherwise, enclosed in a container which meets the standards established by the commission, it shall be sufficient if the grade of said citrus fruit shall be stamped upon said closed container in the way and the manner prescribed by the commission; provided that, under such order or regulation as the commission may prescribe, the shipper or seller using closed containers shall have the privilege of using instead of marking either labels, brands, or trademarks which shall represent state grades or United States grades and be registered with the commission, and the commission may receive and file for record such labels, brands, or trademarks. For the use and benefit of those shippers desiring to have said citrus fruit graded according to the standards as now fixed by the United States department of agriculture, or as such standards be hereafter amended, modified, or changed, the official United States standards for citrus fruits as applied to Florida are adopted.

History.—§45, ch. 25149, 1949; §1, en. 57-29.

601.46 Condition precedent to sale of citrus fruit.—

(1) It is unlawful, except as provided in §601.50, for any person to sell or offer for sale, to transport, prepare, receive, or deliver for transportation or market any citrus fruit in fresh form unless such fruit has matured in accordance with the maturity standards and is accompanied by a certificate of inspection and maturity thereof issued by a duly authorized citrus fruit inspector of the department of agriculture of Florida.

(2) Inspection for maturity may be made at any time, anywhere, after the fruit is severed from the tree until the shipment, after inspection and certification, is accepted by common carrier or until it has been transported beyond the state lines where being transported other than by a common carrier; and with the further proviso that shipments in bulk, either by common carrier or otherwise, to a packing house for repacking in Florida must be reinspected and recertified before final delivery to a carrier; provided, however, that only one inspection fee shall be paid by the shipper; provided that it shall be unlawful at any time for any person to sell or offer for sale, to transport, to prepare, receive, or to deliver for transportation or market any citrus fruit which is immature or otherwise unfit for human consumption, or for any person to receive any such citrus fruit under a contract of sale, or for the purpose of sale, offering for sale, transportation, or delivery for transportation thereof; provided further that these provisions shall not apply to sale of citrus fruit "on the trees," nor to common carriers or their agents when the fruit accepted for transportation or transported by any common carrier is accompanied by a proper certificate of maturity and grade of such fruit.

History.—Comp. §46, ch. 25149, 1949.

601.461 Falsification of weights; penalty.—

(1) It shall be unlawful for any person, firm, association or corporation to falsify or alter any certificate, slip or other document evidencing or pretending to evidence the weight of citrus fruit bought by weight or knowingly to make, utter or deliver any such certificate, slip or document which shall be false or to counsel, assist in or procure any such act.

(2) Any person, firm, association or corporation convicted of the violation of any provision of this section shall, upon conviction, be punished by fine not exceeding $500, or imprisonment for not exceeding six months or by both such fine and imprisonment.

History.—Comp. §§1, 2, ch. 29814, 1955.

601.47 Condition precedent to canning or concentrating citrus.—It is unlawful for any person to can any citrus fruits or to can or concentrate the juices thereof unless such fruit is mature in accordance with the maturity standards and is accompanied by a certificate of inspection and maturity thereof issued by a duly authorized citrus fruit inspector of the department of agriculture of Florida. Inspection for maturity shall be made at the canning or concentrating plant with the further proviso that shipments either by common carrier or otherwise to a canning plant or a concentrating

plant in Florida must be reinspected and recertified before use by the canner or concentrator.

History.—Comp. §47, ch. 25149, 1949.

601.48 Grading of canned or concentrated citrus fruit products.—All canned or concentrated products of citrus fruit, except as provided in §601.50, sold, or offered for sale, or offered for shipment shall be graded according to the standards established from time to time by the commission, or at the option of the shipper according to the standards as now fixed by the United States department of agriculture, or as such standards may be hereafter modified or changed, and the immediate containers of such canned or concentrated products shall have the grade stated thereon in such manner as the commission may prescribe by rule or regulation, but, provided, however, that if such canned or concentrated products shall meet the requirements of the two highest grades according to the standards established from time to time by the commission, or at the option of the shipper the two highest grades according to the standards as fixed by the United States department of agriculture, or as such standards may be hereafter modified or changed, the shipper shall have the privilege of using either labels, brands or trademarks which shall represent such state grades or United States grades and be registered with the commission in lieu of stating the grade on the immediate container and the commission shall receive and file for record such labels, brands or trademarks.

History.—Comp. §48, ch. 25149, 1949.

601.49 Condition precedent to selling canned or concentrated citrus fruit products.—It is unlawful for any person, except as provided in §601.50, to sell or offer for sale, to transport, receive, or deliver for transportation or market any canned or concentrated products of citrus fruits unless the same has been inspected and is accompanied by a certificate of inspection issued by a duly authorized inspector of the department of agriculture of Florida, provided, however, that the commission shall by regulation provide that in lieu of the accompaniment of such shipment by a certificate of inspection, the fact of such inspection may be shown by appropriate means on the manifest or bill of lading covering such shipment.

History.—§49, ch. 25149, 1949; §17, ch. 26492, 1951.

601.50 Sale or shipment of citrus or citrus products for certain purposes exempt.—Irrespective of the provisions of §§601.45, 601.46, 601.48, 601.49, 601.51, and 601.52, the commission under such precautionary rules and regulations as it may deem expedient shall permit sale or shipment of citrus fruit or the canned or concentrated products thereof without the issuance of and filing of inspection certificate and without the grade being shown on the container thereof, of:

(1) Intrastate shipments of fresh citrus fruit for consumption or use within the state.

(2) Shipments to be used for charitable or unemployment relief purposes;

(3) Shipments to the United State government or any of its agencies and interstate shipments to any packing house, canning plant or concentrate plant for commercial processing, as may be defined by the commission; or to fresh fruit juice distributors outside the state.

(4) Shipments by any method of transportation by "gift fruit shippers," as defined by the commission, but such shipments shall not be for the purpose of resale by the consignee thereof;

But, provided, however, that no such rule or regulation issued hereunder shall permit or allow the sale or shipment of citrus fruit deemed by this act to be immature and unfit for human consumption nor of canned or concentrated products thereof prepared or made from citrus fruit deemed by this law to be immature and unfit for human consumption; but provided further that shipments under subsections (1) and (4) above shall meet such minimum grade standards as may, from time to time, be established by the Florida citrus commission; and provided further that such rules and regulations shall provide for the due collection of any advertising taxes and inspection fees that may be due thereon.

History.—§50, ch. 25149, 1949; §18, ch. 26492, 1951; (4) by §1, ch. 59-41; §1, ch. 63-100.

601.501 Exemption of tax for charitable purposes.—Shipments of citrus fruit when permitted under §601.50, for charitable purposes shall be exempt from all advertising taxes.

History.—Comp. §3, ch. 28197, 1953.

601.51 Shipments of citrus fruit or products.—No common carrier, or other carrier, or person, except as provided in §601.50, shall accept for shipment, ship, or transport any citrus fruit or the canned or concentrated products thereof until a grade certificate is issued showing the grade thereof, which certificate or a duplicate thereof shall be filed with the carrier at the point of shipment, nor shall any common carrier, or other carrier, or person accept for shipment or ship any citrus fruit or the canned or concentrated products thereof where written notice has been given to such common carrier, or other carrier, or person, or his representative or agent by the commissioner or his authorized agent, employee, or inspector that said citrus fruit or the canned or concentrated products thereof does not comply with the provisions of law or the rules and regulations promulgated by the commission or the commissioner; provided that the shipper or handler of such citrus fruit or the canned or concentrated products thereof shall have the privilege of repacking or remarking, and that, if or when the same shall have been repacked or remarked to conform to the provisions of law or said rules, regulations, or orders promulgated by the commission or the commissioner, the commissioner or his authorized inspector or agent shall notify said common carrier or other carrier, or person, or his agent that such citrus fruit or the canned or

concentrated products thereof may be accepted for shipment, and such shipper or handler shall not be considered as having violated this chapter or said rules, regulations, or orders, but provided further that this section shall be deemed to have been complied with if the shipper shall have conformed to regulations issued by the citrus commission under the provisions of §601.49.

History.—§51, ch. 25149, 1949; §19, ch. 26492, 1951.

601.52 Carriers not to accept fruit unless same bears evidence of payment of excise taxes.—No common carrier or other carrier or person, except as provided in §601.50, shall accept for shipment, or ship, or transport any citrus fruit, or the canned or concentrated products thereof unless the grade certificate, manifest or bill of lading covering said citrus fruit or the canned or the concentrated products thereof bears evidence of the payment, as provided by law, of the advertising excise tax provided for in §601.15, and of the payment of inspection tax, as provided by §601.28, and, if applicable, the excise tax for color-add, as provided by §601.83.

History.—§52, ch. 25149, 1949; §20, ch. 26492, 1951.

601.53 Unlawful to can or concentrate unwholesome citrus.—It is unlawful for any person to can or concentrate, or buy for canning or concentrating purposes, or sell for canning or concentrating purposes in Florida any citrus fruit that is unwholesome or decomposed so that it is unfit for canning or concentrating purposes.

History.—Comp. §53, ch. 25149, 1949.

601.54 Seizure of unwholesome fruit.—

(1) The commissioner or his duly authorized inspectors shall seize and destroy all citrus fruit found by said commissioner or inspectors to be unwholesome or decomposed so that it is unfit for canning or concentrating purposes as defined by law or by any regulation of the commission pursuant to authority given in this chapter and, in the event any inspector shall find that any canner or concentrator is canning or concentrating fruit prohibited to be used, he may seize and destroy not only such fresh fruit found in the canning or concentrating plant but also citrus fruit or juice in the process of being canned or concentrated or which has been canned or concentrated from the same lot or shipment wherein the fresh fruit is found by said inspector to be subject to seizure under the provisions of this section.

(2) Whenever any inspector finds citrus fruit in the canning or concentrating plant which should be destroyed under the provisions of this law, the operator, manager, or other person in charge of the canning or concentrating plant shall make known to the inspector the code number or other manner of identifying any fruit or the canned or concentrated products thereof that has been canned or concentrated from the same lot or shipment wherein is found the said fruit subject to be seized.

History.—Comp. §54, ch. 25149, 1949.

601.55 Citrus fruit dealer; license required.—No person shall act as a citrus fruit dealer in this state without first having obtained a license for each shipping season.

History.—Comp. §55, ch. 25149, 1949.

601.56 Application for license; requirements.—Any person desiring to engage in the business of citrus fruit dealer in the state shall make application to the commission for a license. The commission shall by regulation prescribe the information to be contained in such application.

(1) All such applications, in addition to other information which may be prescribed by the commission, must contain the following information:

(a) Name and address of the individual, firm, partnership, association, corporation, or other business unit applying for a license;

(b) Names and addresses of the principal stockholders, officers, partners or other individuals belonging to or connected with the applicant if the applicant for a license is a firm, partnership, association, corporation, or other business unit, whether it be for profit or otherwise;

(c) The length of time the applicant has been engaged in the citrus fruit business in Florida in any manner whatsoever;

(d) A statement of delinquent accounts growing out of the ordinary course of business with producers, if any there be;

(e) A financial statement of the applicant, if required by the commission, showing such information as the commission may prescribe regarding the financial conditions of the applicant; and

(f) Whether or not the applicant or any of its officers, directors, or stockholders have previously been licensed as a citrus fruit dealer, or connected with a licensed citrus fruit dealer in the state and, if so, the date all such licenses were obtained; and

(g) The number of boxes of citrus fruit, measured in terms of standard-packed boxes, which the applicant intends to deal with during the current or ensuing shipping season.

(2) If the applicant is an individual and is shown to be a nonresident of the state, or is a copartnership and each member is shown to be a nonresident of the state, in either event, the said applicant shall designate some bona fide resident of the state as such applicant's resident agent upon whom process may be served. The service of process of any of the courts of this state upon such resident agent shall be as effectual and binding upon said applicant as if personally served upon said applicant.

(3) If the applicant is a corporation, then such corporation must be one organized and existing under the laws of this state or having an unrevoked permit authorizing it to transact business in this state.

History.—Comp. §56, ch. 25149, 1949.

601.57 Examination of application; granting of license.—The commission shall, within a reasonable time, examine the application and consider the information submitted therewith, including the applicant's financial statement, the reputation of the applicant is shown by applicant's past and current history and activities, including applicant's method and manner of doing business. The commission shall also consider the past history of any applicant, either individually or in connection with any individual, copartnership, corporation, association, or other business unit with whom any applicant shall have been connected in any capacity, and may in proper cases impute to any individual, corporation, copartnership, association, or other business unit liability for any wrong or unlawful act previously done or performed by said individual, corporation, copartnership, association, or any other business unit. If the commission shall, by a majority vote, be of the opinion that the applicant is qualified and is entitled to a license as a citrus fruit dealer, the said commission shall approve said application; otherwise said application shall be disapproved. Grounds for the disapproval for the application shall include, but shall not be limited to, the following:

(1) Any previous conduct which would have been grounds for revocation or suspension of a license as hereinafter provided if the applicant were licensed.

(2) Delinquent accounts owing to and growing out of the ordinary course of business with producers.

(3) Delinquent accounts with any person or persons with whom applicant has dealt in his operations under previous license.

History.—Comp. §57, ch. 25149, 1949.

601.58 Application disapproval; procedure.—If the application is disapproved, the commission shall cause an information to be prepared stating the reasons for such disapproval and file the same and serve a copy thereof upon the applicant within five days thereafter. If, within five days after the service of such information, the applicant shall file with the commission an answer to such information and a request for public hearing, said applicant shall be granted a public hearing, and be given full opportunity to be heard in person or through an attorney. The commission, through its chairman or any member thereof, or any officer or employee thereof, designated by the commission for such purpose, may hold hearings, sign and issue witness subpoenas in the name of the commission, administer oaths, examine witnesses, receive evidence and require, by subpoena, attendance and testimony of witnesses and the production of such necessary records and memoranda as may be material for the determination of the question made out by such information as to whether or not the application for license shall be approved or disapproved by the commission under the provisions of this chapter. In case of disobedience to a witness subpoena issued in the name of the commission and served upon the witness, the commission, or any of its members or employees, may invoke the aid of any court of competent jurisdiction in requiring attendance and testimony of witnesses, and the production of accounts, records, and memoranda, and any such court may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the commission, or any member thereof, or its officers or employees, or to produce accounts, records, and memoranda as so ordered, or to give evidence touching any matter pertinent to such public hearing, and any failure to obey such order of the court shall be punished by the court as a contempt thereof. If after such hearing the commission shall find and determine that its previous action was not justified, it shall approve such application, and, if it determines that its previous action was justified, it shall affirm its previous action. If the applicant fails to file an answer and request a public hearing within said five days, said application shall stand disapproved. If the application is approved, the commission shall immediately forward such application with its approval endorsed thereon to the commissioner of agriculture of the state, who shall issue to such applicant a license as mentioned in §601.60. No license shall be issued to any applicant whose application has been disapproved by the commission.

History.—§58, ch. 25149, 1949; am. §10, ch. 26484, 1951.

601.59 Annual license fee.—Each applicant shall pay to the commissioner a fee of ten dollars per annum, except where any applicant expects to deal only as an agent, such applicant shall pay the sum of five dollars. All such license fees collected hereunder shall be paid by the commissioner into the state treasury monthly to the credit of the general inspection trust fund and are appropriated and made available for defraying the expenses incurred in the administration and enforcement of this law.

History.—§59, ch. 25149, 1949; §2, ch. 61-119.

601.60 Issuance of license.—Whenever an application bears the approved endorsement of the commission and the applicant has paid the prescribed fee, the commissioner shall issue to such applicant a license which shall entitle the licensee to do business as a citrus fruit dealer in the current or ensuing shipping season to be in force unless and until it is suspended or revoked by the commissioner in accordance with the provisions of this law.

History.—Comp. §60, ch. 25149, 1949.

601.601 Registration of agents.—Every licensed citrus fruit dealer shall:

(1) Register with the commissioner of agriculture each and every agent authorized to represent said dealer in transactions involving the consignment, purchase or sale of citrus fruit; and make application for registration of said agent or agents on a form approved by the commissioner and filed with the commis-

sioner not less than five days prior to the active participation of said agent or agents on behalf of said dealer in any transaction involving the consignment, purchase or sale of citrus fruit; and be held fully liable for and legally bound by all contracts and agreements, verbal or written, involving the consignment, purchase or sale of citrus fruit, executed by a duly registered agent on his behalf, during the entire period of valid registration of said agent the same as though said contracts or agreements were executed by said dealer. Registration of each agent shall be for the entire shipping season for which the applying dealer's license is issued; provided, however, said licensed dealer may cancel the registration of any agent registered by him by giving formal written notice to the commissioner of not less than ten days and in addition, said dealer shall make every effort to alert the public to the fact that said agent is no longer authorized to represent him. An agent may be registered by more than one licensed dealer for the same shipping season, provided that each licensed dealer shall apply individually for registration of said agent, and further provided that written consent is given by each and every dealer under whose license said agent has valid prior registration.

(2) When the above requirements for registration of an agent have been met and the prescribed fee of five dollars as required by §601.59 has been paid, the commissioner shall duly register said agent and issue an identification card certifying such registration. Said identification card, among other things, shall show in a prominent manner:

(a) The name and address of the agent;

(b) The authorizing dealer's name and address and license number;

(c) The effective date and season for which registration is made;

(d) A space for signature of the agent;

(e) A space to be countersigned by the licensed dealer;

(f) A statement providing that the card shall not be valid unless so signed and countersigned.

In addition, the Florida citrus commission may, from time to time, adopt additional requirements or conditions relating to the registration of agents as may be necessary.

History.—§1, ch. 63-75.

601.61 Bond required prior to issuance of license.—

(1) Except as hereinafter provided, before any license is granted by the commissioner to any person other than an agent for a licensed citrus fruit dealer, the applicant therefor must deliver to the commissioner a good and sufficient cash bond or surety company bond executed by the applicant as principal and by a surety company qualified to do business in this state as surety in the following amounts for the number of standard packed boxes of citrus fruit, or the equivalent thereof, which the applicant intends to deal with during the current or next ensuing shipping season as set forth in his application:

$2,000.00 up to 5,000 boxes
$3,750.00 between 5,000 and 7,500 boxes
$5,000.00 between 7,500 and 10,000 boxes
$10,000.00 between 10,000 and 20,000 boxes
$1,000.00 for each additional 20,000 boxes or fraction thereof in excess of 20,000 boxes, with a maximum bond of $100,000.00.

The commission shall advise the commissioner as to the amount of bond required. Said bond shall be in the form approved by the commissioner and shall be conditioned upon full compliance with the terms and conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers, or with other citrus fruit dealers, relative to the purchasing, handling, sale, and accounting of sales of citrus fruit, and upon applicant accounting for the proceeds and paying for any citrus fruit contracted for in accordance with the terms of the contracts with producers, and upon applicant accounting for any advance payments or deposits made and delivering all citrus fruit contracted for in accordance with the terms of the contracts with other citrus fruit dealers. Said bond shall be to the commissioner and his successors in office, in favor and for the use and benefit of every producer and of every citrus fruit dealer with whom applicant deals in the purchase, handling, sale, and accounting of purchases and sales of citrus fruit. The aggregate accumulative liability under any bond shall not exceed the amount named therein. Said bond shall provide that the surety thereon shall not be liable to any citrus fruit dealer claiming to be injured or damaged by the applicant if the aggregate of the amounts found to be due to producers pursuant to §601.62 or §601.63 equals or exceeds the amount of the bond, unless such citrus fruit dealer is also a producer and is acting in the capacity of a producer and not in the capacity of a citrus fruit dealer in the transaction wherein he claims to have been injured or damaged by applicant; but if the aggregate of such amounts is less than the amount of the bond, then the surety may be held liable to such citrus fruit dealers, but not in excess of the sum by which the amount of the bond exceeds the aggregate of the amounts found to be due to producers pursuant to §601.62 or §601.63. Every such bond shall continue in force and effect until ninety days after the termination of the shipping season for which the bond is given. The commission or the commissioner or any officer or employee designated by the commission or the commissioner, shall have the right to inspect such accounts and records of any citrus fruit dealer as may be deemed necessary to determine whether a bond which has been delivered to the commissioner is in the amount required by this section or that a previously licensed nonbonded dealer should be required to furnish bond. If any such citrus fruit dealer refuses to permit such inspection, the commissioner may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspec-

tion is given. Upon a finding by the commissioner that any citrus fruit dealer will deal with more fruit during the season than shown by the application the commissioner may order such bond increased to such an amount as will meet the above requirements. Upon failure to file such increased bond within such time fixed by the commissioner, the commissioner may revoke the license of such citrus fruit dealer.

(2) Citrus fruit which the applicant produces, or, in the case of a cooperative marketing association, citrus fruit which is handled for its members, or citrus fruit handled by the applicant which has been prepared or processed and packaged by a registered packing house or canning or concentrating plant other than the applicant or citrus fruit handled by the applicant from citrus groves for which applicant provides complete grove management services under direct contract with the owner or producer, shall not be considered as fruit which the applicant intends to deal with for the purpose of determining the amount of the surety bond required under subsection (1) of this section. If an applicant does not intend to deal with any citrus fruit other than that which comes within the classification in the foregoing sentence, or in the case of an express or gift fruit shipper who handles only fruit which the applicant produces or purchases from a licensed citrus fruit dealer, the commissioner shall issue a license without the posting of a bond. Such a license shall bear a descriptive statement to the effect that the licensee is not a bonded citrus fruit dealer.

Cooperative marketing association means one organized and existing under the provisions of either chapter 618 or chapter 619.

History.—§61, ch. 25149, 1949; §21, ch. 26492, 1951; sub. §(2) n. §2, ch. 28197, 1953; §1, ch. 29762, 1955; §1, ch. 61-45; §1, ch. 61-389; (2) §1, ch. 63-61.

601.611 Applicable law in event ch. 61-389 held invalid.—If any of the provisions of ch. 61-389, amending §§601.61-601.63 shall be held to be unconstitutional or invalid for any reason by any court of competent jurisdiction, or if any such court shall find or declare that no applicant shall be required to furnish the bond required by this act, then and in that event this entire act, including section 5 hereof, shall be ineffective for any and all purposes, and the laws in effect on August 1, 1961, which are amended or repealed by this act shall not be deemed to be amended or repealed by this act but shall instead remain in full force and effect, it being the intention of the legislature that in that event this entire act shall be ineffective for any and all purposes and the laws in effect on August 1, 1961, including ch. 61-45, which are amended or repealed by this act shall not be deemed to be amended or repealed by this act but shall instead remain in full force and effect.

History.—§4, ch. 61-389.

601.62 Actions on bond of dealer.—Any producer and any citrus fruit dealer claiming to be injured or damaged by any act of said citrus fruit dealer, or the commissioner on behalf of all producers and all citrus fruit dealers contracting with the said citrus fruit dealer, may maintain an action on said bond against the citrus fruit dealer and the surety named in said bond or any of them and any judgment in any such action shall include costs. If such an action is brought by a producer or citrus fruit dealer and if the surety named in said bond is made a party defendant therein, then, within one hundred days immediately following the end of the shipping season for which such bond was given, notice of the pendency of such action shall be served upon each producer and citrus fruit dealer who shall have duly filed with the commissioner a claim under said bond prior to the expiration of ninety days immediately following the end of such shipping season. Each of said producers and citrus fruit dealers shall have the right to intervene in such action by filing a motion for leave to intervene prior to the expiration of one hundred twenty days immediately following the end of such shipping season. In the event the aggregate of the amounts found to be due the plaintiff and intervenors by the defendant does not exceed the amount of the bond, then judgment shall be entered in favor of each of them in the amount found to be due. In the event the aggregate of the amounts found to be due the plaintiff and intervenors exceeds the amount of the bond, and if the aggregate of the amounts found to be due to those parties who are producers (and who were acting in that capacity in the transaction involved) exceeds the amount of the bond, then judgment shall be entered in favor of each such producer in an amount equal to his pro rata share of the amount of said bond. In the event the aggregate of the amounts found to be due to the plaintiff and intervenors exceeds the amount of the bond, and if the aggregate of the amounts found to be due to those parties who are producers (and who were acting in that capacity in the transaction involved) does not exceed the amount of the bond, then judgment shall be entered in favor of each such producer in the amount found to be due him, and judgment shall be entered in favor of each of those parties who were acting in the capacity of a citrus fruit dealer in the transaction involved in an amount equal to his pro rata share of the sum by which the amount of the bond exceeds the aggregate of the judgments entered in favor of such producers. Provided, however, that nothing in this chapter shall be construed to limit the liability of any citrus fruit dealer to the amount of the bond required.

History.—§62, ch. 25149, 1949; §2, ch. 61-389.

601.63 Procedure where liability under bond admitted.—In cases where liability under and by virtue of any bond given pursuant to the provisions of §601.61 is admitted, without suit, the commissioner shall ascertain the amounts due claimants who have duly filed a claim under and in connection with such bond prior

to the expiration of ninety days immediately following the end of the shipping season for which such bond was given. Thereafter, if the full amount of said bond, or the aggregate of the amounts found to be due such claimants, is paid by the surety to the commissioner, then the commissioner shall make distribution thereof in the following manner. In the event the aggregate of the amounts found to be due such claimants does not exceed the amount of the bond, then the commissioner shall distribute to each claimant the amount found to be due such claimant. In the event the aggregate of the amounts found to be due to such claimants exceeds the amount of the bond and if the aggregate of the amounts found to be due to those claimants who are producers (and who were acting in that capacity in the transaction involved) exceeds the amount of the bond, then the commissioner shall distribute to each such producer an amount equal to his pro rata share of the amount of the bond. In the event the aggregate of the amounts found to be due to such claimants exceeds the amount of the bond and if the aggregate of the amounts found to be due to those claimants who are producers (and who were acting in that capacity in the transaction involved) does not exceed the amount of the bond, then the commissioner shall distribute to each such producer the amount found to be due him, and the commissioner shall distribute to each of those claimants who were acting in the capacity of a citrus fruit dealer in the transaction involved an amount equal to his pro rata share of the sum by which the amount of the bond exceeds the aggregate of the sums found to be due to such producers.

History.—§63, ch. 25149, 1949; §3, ch. 61-389.

601.64 Citrus fruit dealers; unlawful acts, etc.—It is unlawful in, or in connection with any transaction relative to the purchase, handling, sale, and accounting of sales of citrus fruit:

(1) For any citrus fruit dealer to make or exact any fraudulent charge to or from any person;

(2) For any citrus fruit dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any citrus fruit bought, sold, or contracted to be bought or sold by such citrus fruit dealer;

(3) For any citrus fruit dealer to discard, dump, or destroy without reasonable cause any citrus fruit received by such citrus fruit dealer;

(4) For any citrus fruit dealer to make, for a fraudulent purpose, any false or misleading statement concerning the condition, quality, quantity, or disposition of, or the condition of the market for, any citrus fruit which is received by such citrus fruit dealer or bought or sold or contracted to be bought or sold by such citrus fruit dealer; or the purchase or sale of which is negotiated by such citrus fruit dealer; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any such transaction in any such citrus fruit to the person with whom such transaction is had, or to fail or refuse on such account to make full payment of such amounts as may be due thereon, or to fail without reasonable cause to perform any specification or duty express or implied arising out of any undertaking in connection with any such transaction;

(5) For any citrus fruit dealer to knowingly buy, sell, receive, process, or handle stolen citrus fruit.

History.—§64, ch. 25149, 1949; sub. §(5) am. §10, ch. 26484, 1951.

601.641 Fraudulent representations, penalties.—

(1) It shall be unlawful for any person, firm, association or corporation to claim or represent to be a licensed citrus fruit dealer, or a bonded citrus dealer unless such person, firm, association or corporation is licensed and bonded under the laws of Florida.

(2) It shall be unlawful for any person, firm, association or corporation to advertise falsely as to his status as a seller of citrus fruit or to make any false claim as to the status of such seller of citrus fruit, or to make any false claim as to the condition, grade, quality, quantity, or producer's name and address of any citrus fruit sold by any such person, firm, association, or corporation.

(3) It shall be unlawful for any person, firm, association or corporation licensed under chapter 601 to advertise or to use on his letterhead, or on any advertising material, or in any way pretend to be a bonded shipper unless said person, firm, association or corporation has filed and had approved a performance bond in addition to the bond required under chapter 601.

(4) This section is supplemental, making provisions in addition to any other provisions of law and shall be construed liberally.

(5) Any person, firm, association or corporation violating any of the provisions of this section shall be punished by fine not exceeding $500 or by imprisonment not exceeding 6 months or by both such fine and imprisonment. Such criminal penalties shall be in addition to any other penalties provided by law. If the violator be a licensed citrus fruit dealer then such license may be revoked or suspended in the manner provided by § 601.67.

History.—§§1-5, ch. 57-4; (2) a. by §1, ch. 61-92.

601.65 Liability of citrus fruit dealers.—If any citrus fruit dealer violates any provisions of this law he shall be liable to the person injured thereby for the full amount of damages sustained in consequence of such violation. Such liability may be enforced either (1) by complaint to the commissioner, as provided in §601.66 or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and these provisions are in addition to such remedies.

History.—Comp. §65, ch. 25149, 1949.

601.66 Complaints of violations by citrus fruit dealers; procedure.—Any person complaining of any violation of any of the provisions of this chapter by any citrus fruit dealer during any shipping season may at any time prior to the expiration of ninety days immediately following the end of such shipping season apply to the commissioner by complaint, which shall briefly state the facts; whereupon, if in the opinion of the commissioner the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the commissioner to the citrus fruit dealer, who shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be prescribed by the commissioner. After an opportunity for hearing on a complaint, the commissioner shall determine whether or not the citrus fruit dealer has violated any of the provisions of this chapter. If, after hearing on a complaint made by any person under this section, the commissioner determines that the citrus fruit dealer has violated any provisions of this chapter, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. If any citrus fruit dealer does not comply with an order for the payment of money within the time limited in such order, the complainant, or any person for whose benefit such order was made, may within ninety days from the date of the order, file in any court of competent jurisdiction complaint, setting forth briefly the causes for which he claims damages and the order of the commissioner in the premises. Such suit in such court shall proceed in all respects like other civil suits for damages except that the successful party in the proceedings before the commissioner of agriculture shall not be liable for costs in such court nor for costs in any subsequent stage of the proceedings, unless they accrue upon his appeal. In any suit between the same parties involving the same facts as were involved in a proceeding under this chapter, the findings and order of the commissioner hereunder shall be prima facie evidence of the facts herein stated, and in any such suit if the party who was successful before the commissioner of agriculture finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.

History.—§66, ch. 25149, 1949; §2, ch. 29737, 1955.

601.67 Disciplinary action by commissioner with reference to citrus fruit dealer's license.—The commissioner may, after notice and hearing, impose a fine not exceeding $50,000.00 against any citrus fruit dealer, which fine, when imposed and paid, shall be deposited by the commissioner in the general inspection trust fund, or in the alternative, the commissioner may revoke or suspend the license of any such dealer when he shall be satisfied that such dealer has violated any of the provisions of this chapter or has:

(1) Obtained a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the commission;

(2) Violated or aided or abetted in the violation of any law of Florida governing or applicable to citrus fruit dealers, or any lawful rules or regulations of the commission;

(3) Been guilty of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealing, or had become legally incompetent to contract or be contracted with;

(4) Made, printed, published, distributed, or caused, authorized, or knowlingly permitted the making, printing, publication or distribution of false statements, descriptions, or promises of such a character as to reasonably induce any person to act to his damage or injury, if the said citrus fruit dealer then knew, or, by the exercise of reasonable care and inquiry, could have known of the falsity of such statements, descriptions or promises;

(5) Knowingly committed or been a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the citrus fruit dealer shall act to his injury or damage;

(6) Committed any act or conduct of the same or different character of that hereinabove enumerated which shall constitute fraudulent or dishonest dealing;

(7) Violated any of the provisions of §§506.19 through 506.28, both sections inclusive.

Whenever any administrative order has been made and entered by the commissioner, imposing a fine pursuant to this section, said order shall specify a time limit for payment thereof, not exceeding fifteen days, and upon failure of the dealer involved to pay said fine within said time, the citrus fruit dealer's license of such dealer shall become automatically suspended; and whenever order is entered suspending such license for a definite period of time, and the end of any shipping season shall occur during the period of such suspension, such suspension order shall continue and be effective into the ensuing shipping season and until the entire period of time set forth in such order has elapsed; and whenever any such administrative order of the commissioner is sought to be reviewed by the offending dealer involved in a court of competent jurisdiction, such administrative order shall be subject to any and all orders that may be entered by such court or courts, but if such court proceedings should finally terminate in such administrative order of the commissioner being upheld or not quashed, such order shall thereupon, upon the filing with the commissioner of a certified copy of the mandate or other order of the last court having to do with the matter in the judicial process, become immediately

effective and shall then be carried out and enforced notwithstanding such time will be during a new and subsequent shipping season from that during which the administrative order was first originally entered by the commissioner.

History.—§67, ch. 25149, 1949; intro. para. and (7) a. by §1, ch. 61-90; intro. para. by §2, ch. 61-119.

601.68 **Investigation of violations.**—The commissioner may instigate and make investigation of any citrus fruit dealer whom he has reason to believe has violated any law of Florida governing and applicable to citrus fruit dealers and, whenever the commissioner determines after notice to the citrus fruit dealer and hearing that any citrus fruit dealer has violated any law of the state governing and applicable to citrus fruit dealers, he may publish the facts and circumstances of such violation and, by order, suspend the license of such offender for a specific period or revoke the same or make such other appropriate order as he may deem just and proper, and any such order shall specify the effective date thereof and any order other than one suspending or revoking a license shall automatically suspend such license until said order is complied with. Any action of the commissioner with reference to the revocation or suspension of any license granted under the provisions of this law may be reviewed by certiorari by the appropriate circuit court; but provided, however, any administrative order of the commissioner issued under the provisions of §§601.66-601.68, or 601.70 shall be deemed to have been issued in the county wherein the licensee has his main office, as disclosed in his application for citrus dealer's license.

History.—§68, ch. 25149, 1949; §10, ch. 26484, 1951; §35, ch. 63-512.

601.69 **Records to be kept by citrus fruit dealers.**—Every citrus fruit dealer shall make and keep a correct record showing in detail the following with reference to the purchase, handling, sale, and accounting of sale of citrus fruit handled by him, namely:

(1) The name and address of the producers or other persons from whom the citrus fruit was procured (and, if same was procured from some person other than a licensed citrus fruit dealer, the name and address of the producer of said fruit);

(2) The date citrus fruit is received and the amount thereof, and the purchase price paid therefor if purchased for the purpose of resale;

(3) The condition of such citrus fruit upon receipt by the citrus fruit dealer;

(4) If the citrus fruit is handled on consignment for the account of the producer, the date of sale and the selling price;

(5) An itemized statement of the charges to be paid by the producer in connection with any sale;

(6) A detailed statement of all claims made by producers against the citrus fruit dealer, a copy of each when received to be certified and filed with the commissioner;

(7) A copy of the record and account of sale of citrus fruit handled on consignment or commission shall be delivered to the producer upon the consummation of the sale, together with all moneys received by the citrus fruit dealer in payment for such transaction made upon account of the producer, less the agreed commission and other charges which must be separately itemized, and said payment and accounting must be made by said citrus fruit dealer to the producer within fifteen days after said citrus fruit dealer receives the money in payment of said citrus fruit unless otherwise specified in contract between citrus fruit dealers and producer.

History.—Comp. §69, ch. 25149, 1949.

601.70 **Inspection of records by commissioner.**—In the investigation of complaints the commissioner, or his duly authorized agents shall have the right to inspect such accounts, records, and memoranda of any citrus fruit dealer as may be required for the determination of any such complaint. If any such citrus fruit dealer refuses to permit such inspection, the commissioner may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspection is given.

History.—Comp. §70, ch. 25149, 1949.

601.701 **Penalty for failure to keep records.—**

(1) It shall be unlawful to fail to keep any records required to be kept under the provisions of the Florida citrus code of 1949, or any amendments thereto, or required to be kept by any other law or by any authorized regulation of the commissioner of agriculture of the state or the Florida citrus commission, or to falsify or cause the falsification of any such records or to keep false records.

(2) The violation of any of the provisions of this act shall constitute a misdemeanor and, upon conviction, any person, firm or corporation violating any of the provisions of this act shall be fined not exceeding $1,000.00 or imprisoned in the county jail not exceeding one year or be punished by both fine and imprisonment in the discretion of the court.

History.—§§1, 2, ch. 61-96.

601.71 **Hearings; procedure.**—The commissioner or any officer or employee of the commissioner and designated by the commissioner for such purpose may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint. In case of disobedience to a subpoena, the commissioner or such officer or employee designated by the commissioner to hold such hearing may invoke the aid of the circuit court within which circuit of the state the attendance and testimony of such witnesses is required and within which the production of accounts,

records, and memoranda is required; and any such court may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the commissioner or his officer or employee or to produce accounts, records, and memoranda as so ordered or to give evidence touching any matter pertinent to any complaint; and any failure to obey such order of the court shall be punished by such court as a contempt thereof. The commissioner or his designated officer or employee may hold such hearings at any place within the state in the discretion of the commissioner or his designated officer or employee most convenient to the commissioner or his designated officer or employee and the parties to such complaint and the witnesses whose presence and testimony are required.

History.—Comp. §71, ch. 25149, 1949.

601.72 Penalties for violations.—Any person who acts as a citrus fruit dealer without a license or having a license, violates or aids violation of any provision of this chapter or any person who represents himself as a citrus fruit dealer, but is not, shall for each and every offense be guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail for not more than one year; but provided, however, that no person shall be convicted hereunder for the nonpayment of any debt arising out of the purchase or sale of citrus fruits. Civil suits and criminal prosecutions arising by virtue of any of the provisions of this chapter may be instituted in the county where the said citrus fruit was received by the citrus fruit dealer, or in the county in which the principal place of business of such citrus fruit dealer is located within the state, or within the county in which the violation occurred; or, if such violation occurs in more than one county, then within any county in which such violation occurred.

History.—Comp. §72, ch. 25149, 1949.

601.73 Additional methods of enforcement.—The several circuit courts of the state, sitting in chancery, are vested with jurisdiction specifically to enforce, and to enjoin and restrain any citrus fruit dealer from violating the provisions of this law, or any rule, regulation, or order made by the commissioner, in any proceeding brought by the commissioner in any of said circuit courts; and in any such proceeding it shall not be necessary for the commissioner to allege or prove that an adequate remedy at law does not exist.

History.—Comp. §73, ch. 25149, 1949.

601.731 Motor vehicles transporting on highways; designation and identification requirements.—

(1) It shall be unlawful to operate any truck, tractor, trailer or other motor vehicle hauling citrus fruit in bulk or in unclosed containers for commercial purposes, on the highways of this state unless said truck, tractor, trailer or other motor vehicle is designated by lettering of not less than three inches minimum in height on both sides, or the rear end and the front end, plainly showing the name of the firm or the name of the corporation or person owning same, or the name of any lessee or other person operating same, and if said truck, tractor, trailer, or other motor vehicle is owned by a licensed fruit dealer under chapter 601, there shall also appear the words Licensed Citrus Fruit Dealer by lettering of not less than three inches minimum in height under the name of the owner of said vehicle; when both a tractor and trailer or when two units are used in the operation of hauling both of said units shall be so marked; the designation shall be placed upon the vehicle or units in a permanent manner or in a substantial way so as to be not easily removed; provided, however, that the provisions of this section shall not apply to any such fruit being hauled from the farm or grove by the producer of such fruit in his own vehicle to market or place of first processing.

(2) Any person driving any truck, tractor, trailer or other motor vehicle hauling citrus fruit in bulk or in unclosed containers for commercial purposes on the highways of the state shall have on his person when driving such vehicle, a certificate or other paper showing the approximate amount of fruit being hauled, the name of owner and the origin of such fruit, and it shall be unlawful to drive any such vehicle without having such certificate or other paper as aforesaid.

(3) Whoever violates or fails to comply with any of the provisions of this act shall, upon conviction therefor, be punished by fine of not more than $500.00 or by imprisonment in the county jail for not more than 6 months, or both, in the discretion of the court.

History.—§§1, 2, ch. 59-37; §2, ch. 63-77.

601.74 Analysis of processing materials.—

(1) Every manufacturer before selling or offering for sale, or licensing or offering to license, any soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, for use on or in the processing of citrus fruits, shall furnish the commissioner of agriculture of the state with the complete formula followed in the manufacture of such composition, together with a sample of such composition, except gases, and a description of the manner in and conditions under which such composition is intended to be so used.

(2) The commissioner shall cause the said formula to be examined and the said sample to be analyzed and if there shall be found in either any ingredient the use of which upon or in the processing of such citrus fruit shall render the same dangerous to health or otherwise unfit for human consumption, or injurious to such fruit or its keeping qualities, then such composition shall not be used on citrus fruit and the manufacturer shall be denied the license hereinafter required.

(3) Likewise, if the process followed in applying or using the said soaps, oils, waxes, gases, gas-forming materials, and other similar compositions and the component parts thereof, on or in the processing of citrus fruits as furnished by the manufacturer, is found to be injurious to citrus fruit or to its keeping qualities, then such soaps, oils, waxes, gases, gas-forming materials and other similar compositions, and the component parts thereof, shall not be used on citrus fruits and the manufacturer shall be denied the license hereinafter required.

(4) If such composition is found suitable for use on or in the processing of citrus fruits, and the process is likewise found suitable for use on or in the processing of citrus fruits, then such composition shall be authorized for use on or in the processing of citrus fruits and the manufacturer shall be licensed as hereinafter provided.

(5) Thereafter the commissioner of agriculture shall, from time to time, cause samples of such compositions to be taken at the manufacturer's place of business or at the place being used and samples of fruit on or in the processing of which such composition has been used, at such times and places as the same may be found, and shall cause the same to be analyzed and examined and, if said composition shall be found to violate any of the conditions hereinabove made a prerequisite to the issuance of the license, or if it be found to vary in any material or substantial degree from the formula therefor as filed with the commissioner of agriculture, then such composition shall not be used on citrus fruits and the manufacturer thereof shall be subjected to the penalties of this chapter; provided, however, that the formula so filed with the commissioner of agriculture shall be held as confidential and shall only be divulged to the said commissioner or his duly authorized representatives or upon orders of a court of competent jurisdiction when necessary in the enforcement of this section.

(6) Likewise the commissioner shall, from time to time, cause inspection to be made at the packing house or other place where said soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, are being used in the processing of citrus fruit and, if the application of said soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, shall be found to be injurious to the citrus fruit, or to the keeping qualities thereof, the manufacturer shall be advised thereof and, if such condition is not remedied within a reasonable time, the commissioner shall be authorized to cancel the license of the manufacturer to sell or license the use of such soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, on or in the processing of citrus fruits.

(7) Before offering any such soaps, oils, waxes, gases, gas-forming materials and other similar compositions, or the component parts thereof, for sale or use on or in the processing of citrus fruits, the manufacturer thereof shall first procure from the commissioner of agriculture a license to manufacture and sell or license the use of the same. Each manufacturer shall pay to the commissioner a fee of ten dollars per annum. All such license fees collected hereunder shall be paid by the commissioner into the state treasury monthly to the credit of the general inspection trust fund and appropriated and made available for defraying the expenses incurred in the administration of this law.

(8) It is unlawful for any person to use on or in the processing of citrus fruits any such composition which has not fully received the approval of the commissioner as herein provided.

History.—§74, ch. 25149, 1949; (7) a. by §2, ch. 61-119.

601.75 Dyes and coloring matter for citrus fruit to be certified prior to use.—It is unlawful for any manufacturer to use or include in the manufacture of any coloring matter any dye or color other than one that has been duly certified by the United States department of agriculture as harmless and suitable for use in foods; provided, that, in the case of a dye or color for which certification is pending, the commissioner shall issue a temporary permit allowing the use of such dye or color pending such certification when, upon analysis thereof made pursuant to regulations promulgated by the commission, the said dye or color shall have been found to contain no amount of antimony, arsenic, barium, lead, copper, mercury, or zinc, or other substances known to be injurious to health in excess of amounts thereof permitted in certified food colors by regulations of the United States department of agriculture; and provided further, that the cost of such analysis shall be paid by the manufacturer desiring to use such color.

History.—Comp. §75, ch. 25149, 1949.

601.76 Manufacturer to furnish formula, etc.—

(1) Every manufacturer, before selling or offering for sale, or licensing or offering to license for use any coloring matter, shall furnish the commissioner with the complete formula followed in the manufacture of such coloring matter (including, in event of the use of a non-certified dye, the formula for such dye), together with a sample of such coloring matter in such amount as the commissioner may direct.

(2) He shall likewise furnish the commissioner with a complete description of the process followed in applying said coloring matter to the peel of citrus fruit, including the following:

(a) The list of materials (other than the coloring matter) and of all machinery, apparatus and equipment used in said process;

(b) An explanation of the amount and kind of heat used in said process, how applied to the citrus fruit and for what period of time;

(c) A specific showing as to whether or not the coloring matter used in said process on

the peel of the citrus fruit is of such nature or operates in such manner that the color of citrus fruit which has been treated with such coloring matter under such process is stable or changeable.

(3) The commissioner shall cause the said formula to be examined, and the said sample to be analyzed, and, if there shall be found in either any ingredient prohibited by law, or any other ingredient known to be dangerous to health under the conditions of its use, or if the said coloring matter shall vary in any material or substantial degree from the formula so furnished, then such coloring matter shall not be used on citrus fruits, and the manufacturer shall be denied the license required.

(4) Likewise, if the process followed in applying said coloring matter to the peel of citrus fruits as furnished by the manufacturer to the commissioner is found to be injurious to citrus fruit or to its keeping qualities or to result in the creation of an unstable and unsatisfactory color on the peel of citrus fruit, then such coloring matter shall not be used on citrus fruits and the manufacturer shall be denied the license required.

(5) If such coloring matter is found suitable for use in food, and the process is likewise found suitable for use on citrus fruit, both in respect to effecting no injury to said fruit or its keeping qualities and in resulting in the creation of a stable and satisfactory color on the peel thereof, then the coloring matter shall be authorized for use on citrus fruit, and the manufacturer shall be licensed as provided in this chapter.

History.—Comp. §76, ch. 25149, 1949.

601.77 Subsequent analysis of coloring matter, etc.—

(1) Thereafter the commissioner shall, from time to time, cause samples of coloring matter to be taken at the manufacturer's place of business, and shall cause the same to be analyzed, and if the said coloring matter shall be found to contain any ingredient prohibited, or if it varies in any material or substantial degree from the formula therefor as filed with the commissioner, then such coloring matter shall not be used on citrus fruit, and the manufacturer thereof shall be subjected to the penalties of this law; provided, however, that the formula so filed with the commissioner shall be held as confidential, and shall only be divulged to the commissioner or his duly authorized representatives or upon orders of a court of competent jurisdiction when necessary in the enforcement of this law.

(2) Likewise the commissioner shall from time to time cause inspections to be made at the packing houses or other places where said coloring matter is being applied to citrus fruits and, if the application of said coloring matter to citrus fruits through the use of said process or otherwise shall be found to be injurious to the citrus fruits, or to the keeping qualities thereof, or to result in an unstable and unsatisfactory color, the manufacturer shall be advised thereof, and, if said condition is not remedied, the commissioner may, after notice and hearing, cancel the license of the manufacturer to manufacture and sell or license the use of such coloring matter.

History.—Comp. §77, ch. 25149, 1949.

601.78 Manufacturer to procure license and post bond.—Before offering any such coloring matter for sale or use the manufacturer thereof shall first procure from the commissioner a license to manufacture and sell or license the use of the same. Each manufacturer shall pay to the commissioner a fee of ten dollars per annum. All such license fees collected hereunder shall be paid by the commissioner into the state treasury monthly to the credit of the general inspection trust fund and are appropriated and made available for defraying the expenses incurred in the administration of this law. At the same time the manufacturer shall execute and deliver to the commissioner a cash bond or surety bond executed by such manufacturer as principal and by a surety company qualified and authorized to do business in this state, as surety, in the amount of five thousand dollars. Said bond shall be in the form approved by the commissioner and shall be conditioned to guarantee that such coloring matter is free from any matter or ingredient that is harmful to the quality of such citrus fruit and is free from any ingredient that is in any way injurious to health. Said bond shall be to the governor of the state and his successors in office and the aggregate accumulated liability under any such bond shall not exceed the amount named therein. Any person claiming to be injured by a breach of any of the conditions of said bond may maintain an action on the same against the principal and surety named in said bond, or either of them, and any judgment against the principal and surety, or either of them, in any such action shall include costs.

History.—§78, ch. 25149, 1949; §2, ch. 61-119.

601.79 To color grapefruit and tangerines prohibited.—It is unlawful for any person to use on grapefruit or tangerines or apply thereto any coloring matter.

History.—§79, ch. 25149, 1949; §§1-3, ch. 29808, 1955.
(1), (3) a. by §§1-3, ch. 57-27; §§1-3, ch. 59-32; §1, ch. 61-89.

601.80 Unlawful to use uncertified coloring matter.—It is unlawful for any person to use on oranges (including Temples) or tangelos or apply thereto any coloring matter which has not first received the approval of the commissioner, as provided in §601.76.

History.—Comp. §80, ch. 25149, 1949; §2, ch. 61-89.
cf.—§601.80 Coloring of temple oranges.

601.81 Standards of oranges to be colored.—

(1) It is unlawful at any time to use on oranges or apply thereto any coloring matter unless the juice content of said oranges shall be at least five gallons to each standard-packed box thereof and unless the minimum ratio of total soluble solids of the juice thereof to anhydrous citric acid is not less than nine to one.

(2) It is unlawful between the first day of August and the thirty-first day of October, both dates inclusive, of each year for any person to use on oranges or apply thereto any coloring matter unless such oranges pass the requirement of the state maturity tests and the total soluble solids of the juice of the sample shall be not less than nine and two-tenths percent and the total anhydrous citric acid of juice thereof shall be not less than one-half of one percent, and, in addition thereto, oranges shall meet the appropriate minimum requirements for ratio of total soluble solids of the juice thereof to anhydrous citric acid as is set forth in §601.20.

(3) It is unlawful between the first day of November and the fifteenth day of November, both dates inclusive, of each year for any person to use on oranges or apply thereto any coloring matter unless such oranges pass the requirement of the state maturity tests and the total soluble solids of the juice of the sample shall be not less than nine percent and the total anhydrous citric acid of juice thereof shall be not less than one-half of one percent, and, in addition thereto, oranges shall meet the appropriate minimum requirements for ratio of total soluble solids of the juice thereof to anhydrous citric acid, as is set forth in §601.20.

(4) It is unlawful between the sixteenth day of November of each year and the thirty-first day of July of the succeeding year, both dates inclusive, for any person to use on oranges or apply thereto any coloring matter unless such oranges pass the requirements of the state maturity tests and the total soluble solids of the juice of the sample shall be not less than eight and seven-tenths percent and the total anhydrous citric acid of the juice thereof shall be not less than one-half of one percent, and, in addition thereto, oranges shall meet the appropriate minimum requirements for ratio of total soluble solids of the juice thereof to anhydrous citric acid as is set forth in §601.20 but provided however that if in any particular shipping season it shall appear to the commission after a public hearing held not earlier than October 5 and called and held to determine such question, that oranges, not including Temple oranges, are then maturing earlier than normally as herein defined, then the commission by order, rule or regulation to be issued or promulgated and to become effective not later than October 10, may permit or allow the use on and application to oranges, not including Temple oranges, meeting all other maturity standards, of coloring matter between the first day of August and the sixteenth day of October, both dates inclusive, when the total soluble solids of the juice of the sample shall be not less than nine and two-tenths percent and between the seventeenth day of October and the thirty-first day of October, both dates inclusive, when the total soluble solids of the juice of the sample shall be not less than nine percent and between the dates of November first and July thirty-first of the following year, both dates inclusive, when the total soluble solids of the juice of the sample shall be not less than eight and seven-tenths percent.

(5) It is unlawful at any time to use on Temple oranges or apply thereto any coloring matter unless such oranges pass the requirements of the maturity laws and the minimum ratio of the total soluble solids of the juice to anhydrous citric acid is not less than nine to one.

History.—§81, ch. 25149, 1949; (1) by §1, ch. 59-9; (5) n. by §3, ch. 61-89.

601.82 Power of commissioner to make inspections.—The commissioner may enter upon and inspect personally, or through his authorized inspectors or agents, any place within the state where citrus fruit is being prepared or colored under the provisions of this law, and inspect oranges (including Temples) and tangelos found therein, and he or they shall issue certificates of inspection in the form prescribed by him certifying that such oranges (including Temples) and tangelos comply with the provisions of this chapter in the event that he or they shall so find upon such inspection.

History.—§82, ch. 25149, 1949; §4, ch. 61-89.
cf.—§601.80 Coloring of temple oranges.

601.83 Assessment of tax upon colored oranges and tangelos.—

(1) All oranges, (including Temple oranges) and tangelos, treated with coloring matter or to which coloring matter is applied, as provided in this chapter, shall be assessed at the rate of not to exceed one-half cent for each standard packed box as determined by the commission. The moneys raised from such assessment shall be paid to the commissioner by the person applying coloring matter to such oranges (including Temple oranges) and tangelos, and shall be credited to and paid into the general inspection trust fund to be used for the purpose of defraying the expenses of the administration and enforcement of this law. All such assessments shall be due when such citrus is so treated or coloring matter applied thereto and prepared for shipment.

(2) The assessment herein provided for shall be paid, collected, and used in the same manner as provided in §601.28 for the payment and collection of inspection fees.

History.—§83, ch. 25149, 1949; §5, ch. 29757, 1955; (1) a. by §2, ch. 61-119; §5, ch. 61-89.
cf.—§601.30 Payment of fees.
§601.80 Coloring of Temple oranges.

601.84 Unlawful to ship or sell colored oranges (including Temples) and tangelos unless law complied with.—It is unlawful for any person to ship, sell, or offer for sale any oranges (including Temples) and tangelos which have been treated with coloring matter or to which coloring matter is applied unless all of the provisions of this law in regard to such citrus fruit shall have been previously complied with and unless such fruit is accompanied by a certificate of inspection, except as provided in §601.50.

History.—§84, ch. 25149, 1949; §6, ch. 61-89.
cf.—§601.80 Coloring of temple oranges.

601.85 Standard shipping box for fresh fruit.—The specifications for the standard legal shipping box, crate, or container to be used in shipping fresh citrus fruits shall be as established by the commission; but provided that the unit of a standard-packed box, commonly called one and three-fifths bushels, shall contain an inside cubical measurement of three thousand four hundred and fifty-six cubic inches.

History.—Comp. §85, ch. 25149, 1949.

601.86 Standard field boxes for fresh citrus fruit.—All field boxes used in the purchase, sale, or handling of citrus fruit from or for the grower by a citrus fruit dealer in the state shall be of the uniform standard size of thirty-one and one-half inches long, thirteen inches high, and twelve inches wide, inside measurements, and shall be divided into two compartments by a center partition of at least three-fourths-inch thickness; and each of these compartments thus created shall have a cubical capacity of not to exceed twenty-four hundred cubic inches.

History.—Comp. §86, ch. 25149, 1949.

601.87 Use of cleats on boxes.—The height of the end heads and the center partition of field boxes shall in no case be increased more than one and one-fourth inches by the addition of cleats or any similar addition to the height so that the total height of said boxes from the inside bottom to the top of said cleats shall not exceed fourteen and one-fourth inches. It is unlawful to place cleats or any other device or thing on the bottom or top, other than herein provided, of any standard citrus field box whereby the space between the field boxes when stacked will be greater than the space that exists between such standard field boxes as herein defined.

History.—Comp. §87, ch. 25149, 1949.

601.88 Oversized boxes to be stamped.—

(1) It is unlawful to use any field box that exceeds the total capacity of forty-nine hundred cubic inches in the purchase, sale, or handling of oranges, grapefruit, or tangerines by a citrus fruit dealer from or for a grower, unless all field boxes exceeding this dimension shall have plainly stamped on both ends of the box in letters of the dimension of one inch in height and width the words "over size."

(2) It is unlawful to use any "tractor box" or other bulk harvesting equipment or special type field box that exceeds the total capacity of forty-nine hundred cubic inches in the purchase, sale, or handling of oranges, grapefruit or tangerines by a citrus fruit dealer from or for a grower, unless such tractor box or other bulk harvesting equipment or special type field box exceeding this dimension shall have plainly stamped on both ends of the tractor box or other bulk harvesting equipment or special type field box in letters of the dimension of one inch in height and width the actual content expressed in terms of standard field box equivalent as defined in §601.86.

History.—§88, ch. 25149, 1949; §9, ch. 59-20; §1, ch. 63-72.

601.89 Citrus fruit; when damaged or seriously damaged by freezing.—

(1) Citrus fruit shall be deemed to be seriously damaged by freezing when:

(a) It causes marked drying to extend into the segments of oranges and grapefruit more than one-half inch at the stem end, or into segments of the mandarin groups more than one-fourth inch at the stem end, or more than the equivalent of these respective amounts by volume when occurring in other portions of the fruit;

(b) It causes, before the drying process develops, other injury as evidenced by

1. A water-soaked appearance or evidence of previous water soaking;
2. Broken-down juice cells;
3. Mushy condition;
4. Open spaces in the pulp;

or when any condition or combination of conditions, as described in 1., 2., 3., and 4., may be interpreted as affecting any portion or portions of the fruit with seriousness equal to that defined in paragraph (a) above.

(2) Citrus fruit shall be deemed to be damaged by freezing when:

(a) It causes marked drying to extend into the segments of oranges and grapefruit more than one-quarter inch at the stem end or into segments of the mandarin groups more than one-eighth inch at the stem end or more than the equivalent of these respective amounts by volume when occurring in other portions of the fruit;

(b) It causes, before the drying process develops, other injury as evidenced by

1. A water-soaked appearance or evidence of previous water soaking;
2. Broken-down juice cells;
3. Mushy condition;
4. Open spaces in the pulp;

or when any condition or combination of conditions, as described above in 1., 2., 3., and 4., may be interpreted as affecting any portion or portions of the fruit with seriousness equal to that defined in paragraph (a) of this subsection.

History.—Comp. §89, ch. 25149, 1949.

601.90 Frozen citrus fruit; power of commission.—

(1) Whenever freezing temperatures of sufficient degree to cause serious damage to citrus fruit occur in any section of the citrus producing areas, the commission shall determine whether or not serious damage has resulted to citrus fruit from such freezing temperatures.

(2) If the commission does determine that serious damage, as defined in §601.89, has been caused by such temperature to citrus fruit, it may at any time within ninety-six hours after the occurrence of such freezing temperature order either or both of the following:

(a) That no citrus fruit shall be sold or offered for sale, or transported for a period not to exceed ten days after such order becomes effective.

(b) That, without an order under paragraph (a) above or subsequent to the termination of any such order for a period not to exceed fourteen days, no citrus fruit showing damage, as defined by §601.89, caused by freezing temperatures shall be sold or offered for sale or transported.

(3) Such order or orders shall not affect or be applicable to any citrus fruit which was prepared for shipment and a certificate of inspection issued thereon prior to the time the order or orders herein provided for become effective.

(4) No order or orders hereunder shall apply to citrus fruit transported to canning or concentrating plants for the purpose of processing.

(5) Any order, rule, or regulation of the commission issued pursuant to this section shall become effective at a time to be fixed by the commission.

History.—§90, ch. 25149, 1949; (2)-(5) by §1, ch. 59-7.

601.901 Amount of freeze damage; frozen concentrated products.—

(1) Whenever the Florida citrus commission, pursuant to §601.90, as may be amended, determines that serious damage has resulted to citrus fruit from freezing temperatures, it shall, any time thereafter, also determine and establish the maximum freeze damage of citrus fruit to be used in any frozen concentrated products, including concentrate for manufacturing purposes, to the end that such maximum freeze damage as affecting the quality of such processed products may enhance the value thereof and not depreciate the value thereof.

(2) Any order, rule, or regulation adopted by the Florida citrus commission pursuant hereto shall become effective at a time to be fixed by the commission but not less than twenty-four hours from the time same is adopted, irrespective of the provisions of §601.12.

(3) This section shall not repeal any other authority now or hereafter delegated to the Florida citrus commission, but shall be deemed as additional and supplemental authority vested in the Florida citrus commission and should any part of this section be held to be unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court shall not affect the remaining portions of this section. It is the intention of the legislature that this section would have been adopted had such unconstitutional or such unenforceable provision not been included herein.

History.—§§1-3, ch. 59-21.

601.91 Unlawful to sell, etc., frozen citrus.—

(1) It shall be unlawful at any time for any person to sell or offer for sale, to transport, to prepare, receive or deliver for transportation or market (except for canning, concentrating or by-product purposes within the state) any citrus fruit seriously damaged by freezing, as defined in §601.89. Not more than fifteen per cent by count of the citrus fruit in any one container or bulk lot may be seriously damaged by freezing injury; but not more than one-third of this tolerance shall be allowed for citrus fruit now or hereafter deemed adulterated by federal law or regulation.

(2) No lot of citrus fruit seriously damaged by freezing may be mixed with other lots of citrus fruit which are free from damage by freezing resulting in concealment of inferior fruit and thereby reducing the percentage of defective fruit in the seriously damaged lot to within the tolerance permitted for error in grading only.

(3) The manner and method of drawing samples and conducting tests under this section shall be prescribed by rules and regulations of the commission. The inspection in the state of all citrus fruits seriously damaged by freezing and the enforcement of this section and of rules, regulations, and orders made by the commission pursuant to and under authority of this section shall be under the direction, supervision, and control of the commissioner of agriculture and his duly authorized agents and inspectors who are qualified under existing laws to inspect for grade and maturity; and all citrus fruits that may be found to be seriously damaged by freezing, as defined by §601.89, upon inspection and testing shall be seized and after seventy-two hours' notice to the owner thereof may be confiscated and destroyed under the supervision of the citrus fruit inspector at the expense of the owner unless previous disposition is made by the owner or other person who offered the same for inspection, all the provisions of this section being subject to such reasonable rules and regulations as may be promulgated by the commission.

History.—Comp. §91, ch. 25149, 1949.

601.92 Use of arsenic in connection with citrus.—Persons owning, managing, or tending and cultivating citrus groves or trees shall not use arsenic or any of its derivatives, or any combination, compound, or preparation containing arsenic as a fertilizer or spray on bearing citrus trees, except grapefruit trees.

History.—Comp. §92, ch. 25149, 1949.

601.93 Sale of citrus containing arsenic.—No person shall sell or offer for sale, transport, prepare, secure, or deliver for transportation or market any fruit of any variety except grapefruit which contains any arsenic or any compound or derivative of arsenic.

History.—Comp. §93, ch. 25149, 1949.

601.94 Fruit containing arsenic; powers of inspection.—Citrus fruit inspectors are authorized:

(1) to inspect citrus fruit, except grapefruit, for arsenic content at any packing house, canning plant, concentrating plant, or other place where citrus fruit, except grapefruit, is being received or prepared for sale or transportation, and

(2) to enforce the provisions of these arsenic laws under the direction and supervision of the commissioner of agriculture in accordance with the law and rules and regulations prescribed by the said commissioner.

History.—Comp. §94, ch. 25149, 1949.

601.95 Seizure of citrus fruit containing arsenic.—Whenever any citrus fruit inspector shall find citrus fruit, except grapefruit, at any packing house, canning plant, or concentrating plant, or other place that the same is being received or prepared for sale or transportation which citrus fruit shall, when tested, show an abnormal and excessively high ratio of total soluble solids of the juice thereof to the anhydrous citric acid thereof indicating the presence of arsenic therein, said inspector shall at once seize and take possession of said citrus fruit, except grapefruit, pending the procuring of the chemical analysis provided for in this chapter notifying the manager or other person in charge of said packing house, canning plant, or concentrating plant, or other place where the said fruit is being received of such seizure. It is unlawful for the manager of said packing house, canning plant, or concentrating plant, or other place where the fruit is being received, or the owner of said citrus fruit, or any person whomsoever to sell, transport, or in any way move or dispose of any of said fruit from the time of seizure thereof until after the making of said chemical analysis and the receipt of the chemist's report thereon; provided that no citrus fruit so seized may be held by any inspector more than ninety-six hours after the time of seizure thereof unless the same shall be shown by the chemist's analysis to contain arsenic.

History.—§95, ch. 25149,1949; am. §10, ch. 26484, 1951.

601.96 Seized fruit; taking samples for analysis.—Upon the making of seizure of any citrus fruit as provided in §601.95, the inspector making said seizure shall immediately draw samples therefrom, as shall be provided for by regulations to be issued by the commissioner of agriculture, drawing said samples either from the packing house, canning plant, or concentrating plant bins, or elsewhere in the packing house, canning plant, or concentrating plant, or from field boxes, or vehicles delivering said citrus fruit to said packing house. Such samples so drawn by said inspector shall be transported with all possible haste to such chemist as may be designated by the commissioner of agriculture for the making by such chemist of a chemical analysis thereof to determine whether or not the said citrus fruit contains arsenic. Said chemist shall make said analysis with all the proper haste and report by the quickest means available the result of said analysis as soon as the same is completed to the inspector making the seizure. If the said analysis shall show that the said citrus fruit contains no arsenic, the inspector shall release the fruit from seizure as soon as he receives the report of the chemist thereon.

History.—Comp. §96, ch. 25149, 1949.

601.97 Destruction of certain fruit containing arsenic.—All citrus fruit, except grapefruit, prepared for sale or transportation, or which is being prepared for such purpose, or which has been or is being delivered for sale, or transportation that may be shown by the chemical analysis provided for in §601.96 to contain arsenic, or any compound, or derivative of arsenic shall be destroyed by the inspector making seizure of the same, or by any citrus fruit inspector, or by the sheriff of the county where found, as may be provided by regulations prescribed by the commissioner of agriculture. Regulations for the application and enforcement of §§601.92 through 601.97, inclusive, shall be promulgated by the commissioner.

History.—Comp. §97, ch. 25149, 1949.

601.98 Shipment, sale, etc., of imported citrus fruit or citrus products.—It is unlawful for any person to quote, offer for sale, sell, ship, or invoice in or from Florida any citrus fruit or the canned or concentrated products thereof grown and canned or concentrated in any other state or country other than Florida in such manner as to indicate in any form whatsoever that the said citrus fruit or the canned or concentrated products thereof were produced and canned in Florida.

Every such person in Florida shall specifically advise and notify the buyer of any citrus fruit or the canned or concentrated product thereof produced and canned or concentrated in any state or country other than Florida which is being sold, quoted, offered for sale, or shipped to such buyer that the said citrus fruit or the canned or concentrated products thereof were not produced in Florida, and the failure to so notify and advise such buyer will be construed as a violation of this section.

History.—Comp. §98, ch. 25149, 1949.

601.981 Permits for export to foreign countries.—During that period of time beginning October 1 of each year and ending with December 31 of the same year, the Florida citrus commission is authorized and empowered to issue permits permitting oranges grown in Florida, whether color-added or otherwise—not including Temple oranges, to be exported to all foreign countries other than Canada and Mexico, when the total soluble solids of the juice thereof and the minimum ratio of the total soluble solids of the juice thereof to the anhydrous citric acid is within a tolerance not exceeding five per cent of standards established by law, provided such oranges are loaded on chartered vessels at a Florida port and provided further that all oranges so exported under such permits, shall have total soluble solids of the juice thereof and minimum ratio of the total soluble solids of the juice to the anhydrous citric acid at least equivalent to or higher than the standards that are legally required for oranges from other areas competing in the same foreign market to which such Florida oranges are being exported. The commission shall promulgate such rules and regulations as it may deem necessary or required to control such permits.

History.—§1, ch. 61-94.

601.99 Unlawful to misbrand wrappers or packages containing citrus fruit.—It is unlawful for any person to misbrand any package or any wrapper containing citrus fruits or any con-

tainer of the canned or concentrated products thereof, and all citrus fruits and the canned or concentrated products thereof shall be deemed misbrands if the package or the wrapper or the container thereof shall bear any statement, design, or device regarding the fruit therein contained which is false or misleading either as to the name, size, quality, or brand of such fruit or the canned or concentrated products thereof or as to the locality in which it was grown.

History.—Comp. §99, ch. 25149, 1949.

601.0100 Certificates of inspection; form.—All certificates of inspection prescribed by this chapter shall be of such number, form, size, and character as the commission may by rule and regulation prescribe and shall be used in such manner as to identify the fruit or the canned or concentrated products thereof to which they relate.

History.—Comp. §100, ch. 25149, 1949.

601.0101 Payment of salaries and expenses.—All salaries, costs, and expenses incurred by the commission in the administration and the enforcement of this chapter and in the performance of its duties and the exercise of its powers under the laws of this state shall be paid from the moneys derived from the "orange advertising tax," the "grapefruit advertising tax," and the "tangerine advertising tax," each of such funds to pay its pro rata share of such salaries, costs, and expenses in such proportion as the commission may find oranges, grapefruit, and tangerines, respectively, are affected by such expenditures.

History.—§101, ch. 25149, 1949; §10, ch. 59-20.

601.0102 Report by commission.—The commission shall make an annual report to the governor upon the work of the commission. It shall also make such special reports upon any phase of the work of the commission as may be called for by the governor, the legislature, or either house thereof.

History.—Comp. §102, ch. 25149, 1949.

601.0103 Rules and regulations; frozen citrus juices.—The commission is hereby authorized and required to promulgate and enforce rules and regulations concerning the contents, preparation, concentrating, other processing and keeping or storing of frozen concentrated fresh citrus juices and such rules and regulations may cover but are not limited to the sanitary conditions under which such product is prepared; the type of equipment and machinery used therein; and the manner and method of storage within this state and the manner and method of shipment.

History.—Comp. §103, ch. 25149, 1949.

601.0104 Canned orange juice; standards; labeling.—No canned orange juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from raw juice containing before the addition of any additive less than eight and five-tenths percent total soluble solids; or

(2) When canned, contains less than ten percent total soluble solids; or

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than nine to one; or

(4) Contains less than 0.55 percent or more than 1.60 percent anhydrous citric acid; or

(5) Contains more than 0.050 percent recoverable oil; or

(6) Does not meet requirements to be established by the commission regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the commission and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

History.—§104, ch. 25149, 1949; sub. § § (2), (3) am. §22, ch. 26492, 1951.

601.0105 Canned grapefruit juice; standards; labeling.—No canned grapefruit juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from raw juice containing before the addition of any additive, less than seven and five-tenths percent total soluble solids; or

(2) When canned, contains less than nine percent total soluble solids; or

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than seven and one-half to one; provided, this subsection shall not apply to canned grapefruit juice produced prior to July 1, 1963; or

(4) Contains less than 0.75 percent anhydrous citric acid; or

(5) Contains more than 0.020 percent recoverable oil; or

(6) Does not meet requirements to be established by the commission regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the commission and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

History.—§105, ch. 25149, 1949; (3) §§1, 2, ch. 63-107.

601.0106 Canned blended juice; standards; labeling.—No canned blend of orange and grapefruit juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from mixed raw juice of oranges and grapefruit containing before the addition of any additive less than eight percent total soluble solids; or

(2) When canned, contains less than nine and five-tenths percent total soluble solids; or

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than eight to one; or

(4) Contains less than 0.65 percent or more than 1.80 percent anhydrous citric acid; or

(5) Contains more than 0.040 percent recoverable oil; or

(6) Contains when mixed and before can-

ning more or less than the percentage of orange juice determined by rule or regulation of the commission required to be contained therein, and does not meet requirements to be established by the commission regarding color, absence of defects, taste and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the commission, and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

History.—Comp. §106, ch. 25149, 1949.

601.0107 Canned tangerine juice; standards; labeling.—No canned tangerine juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from raw juice containing before the addition of any additive less than nine percent total soluble solids; or

(2) When canned, contains less than ten percent total soluble solids; or

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than nine to one; or

(4) Contains less than 0.55 percent or more than 1.60 percent anhydrous citric acid; or

(5) Contains more than 0.050 percent recoverable oil; or

(6) Does not meet requirements to be established by the commission regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the commission and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

History.—Comp. §107, ch. 25149, 1949.

601.0108 Frozen concentrated orange juice; requirements; labeling.—No frozen concentrated fresh orange juice shall be sold, or offered for sale, or shipped, or offered for shipment which:

(1) Is concentrated to less than 41.8 or more than 44 degrees Brix. The Brix reading, if determined refractometrically, shall include corrections for citric acid; or

(2) Has a lower ratio of total soluble solids to anhydrous citric acid of less than twelve to one or a higher ratio of total soluble solids to anhydrous citric acid than nineteen to one; or

(3) Contains more than 0.120 milliliter of recoverable oil per 100 grams of concentrate; or

(4) Contains any additives of any kind; or

(5) Does not taste essentially the same as freshly-expressed orange juice of similar quality and is not completely free of all fermented, cooked terpeny, or other off-flavors; or does not meet requirements to be established by the commission regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the commission, and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

(6) Provided, however, that this section shall not prohibit the sale or shipment of 4 plus 1 (five fold) frozen concentrated orange juice which meets the foregoing requirements, except the Brix requirements of subsection (1), in institutional size containers. The commission may, by rule or regulation, define institutional size containers and establish the Brix range for 4 plus 1 (five fold) frozen concentrated orange juice.

History.—§108, ch. 25149, 1949; §1, ch. 29759, 1955; (6) n. by §1, ch. 61-67.

601.0109 Legislative findings of fact; strict enforcement of maturity standards in public interest.—

(1) FINDINGS.—(a) The legislature finds and determines and so declares that, for many years past, the shipment of raw, immature citrus fruit, generally designated as "green fruit," from the state to consuming markets has caused the loss of millions of dollars to the citrus growers of Florida; also has resulted in the lowering of the standard of living of many of its citizens; adversely affected the economic conditions of the entire state; reduced the receipts in the collection of ad valorem taxes, thereby reducing revenue needed by counties and cities; caused financial loss to the growers and shippers and processors who did not engage in the shipment of green fruit; and that such practice each year hurts the good name and reputation of all of Florida citrus.

(b) The legislature, after extensive hearings, and after many hearings attended by its citrus committees immediately prior to the convening of the 1949 session at various citrus industry meetings throughout the citrus area, and after having had the advice and counsel of the best qualified and most expert technical advisers in the Florida citrus industry, and after having had the benefit of the advice of some of the most expert and best informed growers, shippers, and processors, and after having made a careful study of the reaction of all citrus fruits by reason of changes in climatic conditions, and having found that regardless of the color of an orange or the color of a grapefruit or regardless of the juice content of such fruit, finds such fruit may be immature and unfit for human consumption. It is also recognized by experts that there are certain factors entering into the maturity of fruit which are not now measurable by chemical tests. There is a change brought about by time and nature in the blending of solids and acids into juice which characterizes maturity but not in a manner susceptible to chemical determination. Because of this, it is scientifically sound that the minimum requirements for solids and the ratio of solids to anhydrous citric acid in determining maturity be relaxed as the season progresses and the raw, immature flavor characteristic of fruit early in the season has disappeared through the workings of time and nature. Therefore, the legislature hereby finds and determines and so declares that, until nature has completed its process of removing the raw, immature flavor,

such citrus fruit will still be immature and unfit for human consumption and, when marketed, will result in dissatisfied consumers who will cease purchasing Florida citrus for some time and will classify that fruit which they had purchased as "Florida green fruit."

(c) The legislature finds and determines and so declares that there is no better method of determining when such raw and immature flavor leaves Florida citrus than by the standards set forth in this chapter; and that experience has demonstrated over a period of many years, by the best available records and under various climatic conditions and various seasonal changes, that generally speaking prior to November 1 of each season oranges which do not have a total soluble solids of nine percent with a minimum ratio of total soluble solids, as set forth in §601.20, still have a raw, immature flavor; and that, beginning on or about November 1 of each season, such raw, immature flavor gradually disappears from the orange and by November 15 the same orange may have a still lower soluble solids percentage and not be immature; and after November 15 can still have a further lower soluble solids percentage without being immature; and by December 1 nature has completed its process of removing the raw, immature flavor which might have existed prior to that time, provided such fruit meets the other minimum maturity requirements set forth in this chapter. On December 1 oranges, while not being sufficiently mature to ship in fresh form, may be safely used in canning or concentrating by being blended with fruit of higher maturity without the finished product having a raw, immature flavor. On December 1 grapefruit, while not being sufficiently mature to ship in fresh form, may be safely used in canning or concentrating by blending with fruit of higher maturity or by the addition of additives, without having a raw, immature flavor.

(d) The legislature finds and determines and so declares that the enforcement of the maturity standards, as set forth in this chapter, will not result in preventing any grower from marketing his fruit at some time during the marketing season, whenever nature has removed the raw, immature flavor; and, if there is a delay in such marketing, it will result in higher prices for the entire season, bringing additional millions of dollars to the growers of Florida and resulting in benefit to all growers, including the grower or growers who were delayed a short time in the shipment of their fruit.

(2) DECLARATION.—Therefore, the legislature declares that the strict enforcement of the maturity standards, as set forth in this chapter, is definitely in the public's interest and for the public's welfare, and that no citrus should be shipped from Florida and sold in the consuming markets which has a raw, immature flavor, and which could be classed by the consuming public as "Florida green fruit."

History.—Comp. §109, ch. 25149, 1949.

601.0110 Fruit may be sold or transported, etc., direct from producer.—Any citrus producer may transport his own citrus fruit or any citrus fruit may be sold or purchased and transported in interstate or intrastate commerce in truckload lots direct from a producer and any such fruit so sold, purchased or transported need not be processed, handled by any packing house, washed, polished, graded, stamped, labeled, branded, placed in containers or otherwise prepared for market as may be provided herein. Such fruit shall be certified at the time of inspection as tree run grade of fruit, but shall, otherwise, remain subject to the maturity standards and all other conditions, restrictions, embargoes and other requirements of this chapter and shall be inspected for such compliance as all other fruit is inspected at such convenient locations as may be determined by the commissioner. Any such fruit violating any of the provisions of this chapter, or any rule or regulation of the commission made pursuant to this chapter, but not inconsistent with this section, may be seized, condemned and destroyed as provided herein. At the time of such inspection all fees, assessments and excise taxes provided in this chapter shall be paid and collected at the same rate as paid by all other fresh fruit growers or shippers.

History.—Comp. §109½, ch. 25149, 1949.

601.0111 Penalties.—Any person violating any provision of this chapter, or of the rules or regulations of the commission, or of the commissioner shall be guilty of a misdemeanor and be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment in the discretion of the court.

History.—Comp. §112, ch. 25149, 1949.

601.0112 Exemption.—The provisions of this chapter shall not apply to any citrus products heretofore processed or which may be processed prior to August 1, 1949, from the 1948-49 citrus crop.

History.—Comp. §1, ch. 25195, 1949.

601.0114 Permits for experimental shipping and sale of orange juice concentrate.—

(1) The Florida citrus commission is hereby authorized and empowered to issue special permits for experimental purposes for the shipping and sale of frozen concentrated orange juices of any degree Brix less than 41.8 degrees or more than 44 degrees Brix and in any size or type of container, and shall promulgate such rules and regulations as it may deem necessary to control such permits. Such rules and regulations shall among other things include the following provisions:

(a) The label on each container shall include words and figures relative to the proper reconstitution, such as "Florida 5 to 1 concentrate" in conspicuous type consistent with the size of the container.

(b) The applicant shall designate

1. Type and size of containers;
2. Proposed labeling;

3. Proposed avenue of distribution; and
4. Proposed volume of pack.

(c) The results of the experimental shipments and sales shall be furnished the commission for the information of the industry.

(2) All frozen concentrated orange juices to be shipped under said permits shall be inspected as now provided by law for the inspection of frozen concentrated orange juices and all fees and taxes paid in the manner and as provided by law.

(3) All frozen concentrated orange juice shall conform to the restrictions and provisions contained in §601.0108, except as to Brix.

History.—Comp. §§1-3, ch. 57-25.

601.0115 Regulation by commission of standards of frozen concentrated orange juice and other citrus products.—After a public hearing to be called and held by the Florida citrus commission, the said Florida citrus commission, in addition to all other powers it now possesses, which have heretofore been delegated to it by the legislature of the state, shall have the additional power to issue rules and regulations to:

(1) (a) Raise the existing minimum and/or maximum Brix requirements for frozen concentrated orange juice;

(b) Raise the existing minimum ratio of total soluble solids to anhydrous citric acid requirement and to change the existing maximum ratio of total soluble solids to anhydrous citric acid requirement for frozen concentrated orange juice;

(c) Change the existing maximum recoverable oil content requirement for frozen concentrated orange juice;

(2) For all other citrus products over and above the minimum requirement of law, to:

(a) Raise the existing minimum percent of total soluble solids;

(b) Raise the existing minimum ratio of total soluble solids to anhydrous citric acid requirements;

(c) Change the percentage of anhydrous citric acid requirements;

(d) Change the percentage of recoverable oil;

Any action under this section shall not be taken until after a public hearing has been called by the vote of nine members of the Florida citrus commission and any regulation adopted pursuant to this section shall be by the affirmative vote of at least nine members of the Florida citrus commission.

History.—§1, ch. 59-14; reenacted and am. §1, ch. 62-6.
Note.—1959 enactment expired July 31, 1961.

601.0116 Canners' quality committee and chilled juice quality committee; membership, powers, duties, etc.—

(1) The Florida citrus commission shall, among other committees, appoint the following committees:

(a) Canners' quality committee,

(b) Chilled juice quality committee, each committee consisting of at least five members all of whom shall have had at least five years' experience in the citrus industry of Florida and who devote the major portion of their time to the citrus industry.

(2) The five members of the canners' quality committee shall especially be experienced in the processing of canned citrus products other than concentrated juices.

(3) The five members of the chilled juice quality committee shall be especially experienced in the processing of chilled orange or grapefruit or blended juices and segments.

(4) The term of office of each member shall be one year, beginning November 20, 1962, and upon resignation, death or disability, the commission shall immediately fill the vacancy.

(5) The commission, in the selection of such members, shall endeavor to follow the recommendation of the particular segment of the industry affected as to the membership of each committee.

(6) The commission shall, from time to time advise and consult with each of said committees on matters particularly concerning and affecting the segment of the citrus industry represented by such committees.

(7) It shall be the duty of each of these committees, in its respective field, to recommend to the Florida citrus commission, as circumstances warrant, proposals for the improvement of minimum quality or grade standards, and the Florida citrus commission shall, at its discretion, and if requested by a committee, call a public hearing on such proposal and any recommendation from a committee shall be given due weight in and become a part of the hearing record. After such public hearing the Florida citrus commission may issue rules and regulations which shall deal with any additional quality or grade standard that it may promulgate under law.

History.—§§2-6, ch. 59-14; reenacted and am. §§2-6, ch. 62-6.
Note.—1959 enactment expired July 31, 1961.

601.0117 Concentrate quality committee; membership, terms, etc.—There is hereby created and established a state committee to be known and designated as the concentrate quality committee to be composed of twelve practical men who are resident citizens of this state, each of whom is experienced in and has been actively engaged in an executive capacity as an officer, employee, or owner of a corporation, firm, partnership, or other business unit engaged in the business of producing frozen concentrated orange juice in this state.

The members of said committee shall be appointed by the governor for terms of two years each, except that six of the initial members of said committee shall be appointed for a term of one year each, and such members shall serve until their respective successors are appointed and have qualified. The regular terms shall begin on November 20 and shall end on November 19 of the second year after such appointment, except that the term of the six of the initial members whose appointment is for one year shall end on November 19 of the first year after such appointment. Thereafter, upon the termination of any term, the governor shall ap-

point a successor having the qualifications herein provided. Nine of the members of said committee shall constitute a quorum for the transaction of all business and the carrying out of the duties of said committee. Before entering upon the discharge of their duties as members of said committee, each member shall take and subscribe to the oath of office prescribed in §1, Art. XVI, state constitution.

History.—§8, ch. 59-14; reenacted and am. §8, ch. 62-6.
Note.—1959 enactment expired July 31, 1961.

601.0118 Regulation of quality standards of frozen concentrated orange juice as recommended by concentrate quality committee.—Upon the recommendation and approval of not less than nine members of the concentrate quality committee, hereinafter provided for, and after a public hearing to be called and held by the Florida citrus commission, the said Florida citrus commission, in addition to all other powers it now possesses, which have heretofore been delegated to it by the legislature of the state, shall have the power by a majority vote to issue such rules and regulations as are recommended and approved by a majority of said concentrate quality committee which:

(1) Raise the existing minimum and/or maximum Brix requirements for frozen concentrated orange juice.

(2) Raise the existing minimum ratio of total soluble solids to anhydrous citric acid requirement and to change the existing maximum ratio of total soluble solids to anhydrous citric acid requirement for frozen concentrated orange juice;

(3) Change the existing maximum recoverable oil content requirement and establish and enforce a minimum recoverable oil content requirement for frozen concentrated orange juice;

all to the end and purpose that the quality of frozen concentrated orange juice may be further improved and consumption and value of oranges further increased and enhanced.

History.—§7, ch. 59-14; reenacted and am. §7, ch. 62-6.
Note.—1959 enactment expired July 31, 1961.

601.0119 Effective date of rules and regulations.—Any order, rule or regulation adopted by the Florida citrus commission under §§601.0115, 601.0116, and 601.0118 shall take effect at a time to be fixed by the Florida citrus commission but not less than twenty-four hours from the time same is adopted, irrespective of the provisions of §601.12.

History.—§9, ch. 59-14; reenacted §9, ch. 62-6.
Note.—1959 enactment expired July 31, 1961.

601.0120 Construction of act.—This act shall not repeal any other section or part of section of chapter 601, but shall be deemed as supplemental and additional express powers vested in the Florida citrus commission.

History.—§10, ch. 59-14; reenacted §10, ch. 62-6.
Note.—1959 enactment expired July 1, 1961.

601.0121 Severability clause; expiration date.—

(1) The provisions of subsections (1) and (2) of §601.0115 and subsections (1) through (3) of §601.0118 are severable and it is the intention of the legislature to confer all or any part of the powers provided for in subsections (1) and (2) of §601.0115 and subsections (1) through (3) of §601.0118 and if the provisions of any of the subsections (1) and (2) of §601.0115 and subsections (1) through (3) of §601.0118 shall be held to be unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect the remaining portions of this act. It is the intent of the legislature that this act would have been adopted had such unconstitutional provision in subsections (1) and (2) of §601.0115 and subsections (1) through (3) of §601.0118 not been included herein.

(2) This act shall expire July 1, 1965.

History.—§11, ch. 59-14; reenacted and am. §§11, 12, ch. 62-6.
Note.—1959 enactment expired July 31, 1961.

601.0122 Products manufactured from citrus oil or citrus seed oil; labeling.—Products manufactured from citrus oil or citrus seed oil may be labeled and marketed within this state as "citrus oil butter" or "citrus seed oil butter."

History.—§1, ch. 59-242.

CHAPTER 603

DEPARTMENT OF AGRICULTURE; MARKETING DIVISION

603.11 Standard grades of fruits and vegetables.—The standard grades of all fruits and vegetables shall be the same as those of the United States grades as now promulgated or which may be promulgated by the United States department of agriculture.

History.—§1, ch. 12292, 1927; CGL 2006.

603.12 Inspection of fruits and vegetables; certificates.—The commissioner of agriculture of Florida, acting for the department of agriculture of the state, cooperating with the United States department of agriculture, shall, when requested by the shipper, furnish carlot inspection of fruits and vegetables at shipping point, furnishing certificates in conformity with those used by the United States Department of agriculture in shipping point inspection; provided the expense or charge of such inspection shall be paid by the shipper.

History.—§2, ch. 12292, 1927; CGL 2007; am. §1, ch. 23677, 1947.

603.13 Fees for inspections.—All fees for inspection performed under the preceding section shall be paid to the commissioner of agriculture of Florida who shall deposit the same in the state treasury in the general inspection trust fund from which all expenses for inspection services performed and other expenses incurred under the provisions of §603.12 shall be paid upon the approval and at the direction of the commissioner of agriculture of Florida, but the expenditures from the general inspection trust fund for all such expenses shall not exceed the amount of fees charged and collected as authorized and provided by said §603.12 of this chapter. Any amount of fees so charged and collected in excess of the requirements for paying all expenses for inspection services shall be held in the state treasury in the general inspection trust fund, subject to any contract or agreement entered into by and between the commissioner of agriculture of Florida and the United States department of agriculture, for carrying out the provisions of §603.12.

History.—§3, ch. 12292, 1927; CGL 2008; §1, ch. 17948, 1937; am. §2, ch. 23677, 1947; §2, ch. 61-119.

603.14 Cooperative certificates as evidence.—All such cooperative government certificates shall be accepted as prima facie evidence in the courts of Florida.

History.—§4, ch. 12292, 1927; CGL 2009.

603.15 United States inspection certificates as evidence.—Any inspection certificate issued by any licensed inspector of the bureau of agricultural economics, of the United States department of agriculture under the laws of the United States or the regulations of the secretary of agriculture of the United States, showing the grade, quality, condition or the size, pack or method of loading for shipment of any agricultural, horticultural or citricultural products shall be received as competent evidence in all proceedings in any of the courts of this state, except when offered in behalf of the state in criminal prosecutions.

Every such certificate when offered in evidence shall be prima facie evidence of the truth of all matters and things set forth therein.

History.—§§1, 2, ch. 12056, 1927; CGL 2011; am. §7, ch. 22858, 1945.

603.151 Enforcement of federal marketing agreement act by state as to certain vegetables.—

(1) During the period of time in each year that tomatoes, cucumbers, avocados, or limes are subject to any regulations issued by the secretary of agriculture of the United States pursuant to an order issued by said secretary of agriculture under the authority and provisions of the act of congress known as the agricultural marketing agreement act of 1937, as amended, (48 Stat. §1, as amended; 7 U.S.C., §601, et seq.), it shall be unlawful for any producer, shipper, forwarding company, private carrier, or common carrier, to ship or transport outside the production area defined in said regulations and order of the secretary of agriculture, any lot or cargo of tomatoes, cucumbers, avocados or limes subject to the provisions of any such existing regulations, unless the same has been inspected by the commissioner of agriculture of this state, or his authorized inspectors or agents, and a certificate of such inspection obtained.

(2) Failure to have at all times a copy of such inspection certificate present with such lot or cargo of tomatoes, cucumbers, avocados or limes being shipped or transported outside the production area as defined in said regulations or order of the secretary of agriculture, shall be prima facie evidence of violation of the provisions of subsection (1).

(3) The commissioner of agriculture of the state is hereby authorized to make such rules, regulations, and orders as may be necessary to carry out the provisions and intent of this section, and such rules, regulations, and orders issued by the commissioner of agriculture shall have the force and effect of law when not inconsistent therewith.

(4) Whoever violates the provisions of subsection (1) shall be punished by a fine not exceeding $100 for each offense, or by imprisonment not exceeding 60 days.

History.—Comp. §§1-4, chs. 59-501, 59-502, 59-503.

603.152 Maturity standard for limes; applicability; testing of limes; rules and regulations.—The provisions of this section shall be applicable and effective only in the event that there shall cease to be a federal marketing agreement as referred in §603.151. In such event, the following shall be applicable:

(1) As used in this section, the word limes shall mean and include limes of all varieties and clones of acid limes grown in the state classified botanically as citrus aurantifolia (Christm.) Swingle and includes the group known as large fruited limes (Tahiti, Persian, Bearss, Pond, Idemor).

(2) Limes shall be deemed to be mature only when clipped or picked, or otherwise severed from the tree and the limes in each lot have been found by inspection as herein provided to contain an average of forty-two per cent juice content by volume, and no limes in any such lot shall contain less than thirty-eight per cent juice content by volume.

(3) The tests of the juice content of limes hereunder shall be based upon the average maximum amount of liquid contents which can be extracted from the flesh and pulp of not less than ten average individual specimens of said limes of any lot of limes. The testing of the juice content of limes on a percentage basis by volume shall be the total maximum amount of liquid contents of the limes being tested when determined by the percentage of such juice contents as compared to the total volume displacement of said limes before the juice is extracted. The commissioner of agriculture shall, by proper rules and regulations, be authorized to prescribe the manner, method, cost and expense of drawing of said samples and of conducting said tests. In the making of such tests, the juice of the limes being tested shall not be strained through a cloth or other strainer but shall be considered for testing as said juice comes from the juice extractor. The juice extractor used shall be any suitable mechanical device or fruit press used for extracting juice, such type or kind of extractor or fruit press to be determined and approved by the commissioner of agriculture.

(4) Any limes not conforming to the standards of limes, as set forth herein, shall be deemed and held to be immature and unfit for food.

(5) It shall be unlawful for any producer, shipper, forwarding company, private carrier, or common carrier, to sell, ship or transport limes, unless the same has been inspected by the commissioner of agriculture of this state, or his authorized inspectors or agents, and a certificate of such inspection obtained.

(6) Failure to have at all times a copy of such inspection certificate present with such a lot or cargo of limes being shipped shall be prima facie evidence of violation of the provisions of this act.

(7) The commissioner of agriculture of the state is hereby authorized to make such rules, regulations, and orders as may be necessary to carry out the provisions and intent of this section, and such rules, regulations, and orders issued by the commissioner of agriculture shall have the force and effect of law when not inconsistent therewith.

(8) Whoever violates the provisions of this act shall be punished by a fine not exceeding $100.00 for each offense, or by imprisonment not exceeding sixty days.

History.—§1, ch. 61-437.

CHAPTER 604

GENERAL AGRICULTURE, HORTICULTURE, ETC., LAWS

604.01 State wide soil survey and mapping; declaration of policy.—A thorough and careful survey and mapping of the soils of Florida is hereby declared as a matter of legislative policy, basic to (1) the development of intelligent research programs on the agricultural potentialities of the soils of the state; (2) the organization of effective soil conservation and land use planning programs; (3) agricultural extension and home demonstration work; (4) highway and secondary road planning; (5) establishment of equitable land tax assessments; (6) agricultural teaching; (7) the development of a sound body of helpful agricultural information for nationwide distribution to prospective land owners; and a number of other social and agricultural enterprises of broad public interest.

History.—§1, ch. 20454, 1941.

604.02 Costs of surveys, by whom payable.—The cost of the survey shall be borne jointly by the state and county or any other local agency and by the federal government in a proportion to be determined by the availability of funds and of trained personnel for the purpose.

History.—§2, ch. 20454, 1941.

604.04 Administration of law.—The agricultural experiment station of the University of Florida shall administer this law and shall be responsible for the general supervision of this cooperative enterprise between and among federal, state, county and local agencies, and that it be charged with the duty of developing an energetic soil survey program for the state accordingly as funds are made available for this purpose from federal, state, county, or other sources.

History.—§4, ch. 20454, 1941.

604.05 Standard procedure to be used; cooperation with federal and other agencies.—The methods used in the survey shall be the standard procedures developed by the United States department of agriculture now in common use; all correlation work shall be carried out jointly by the regular soil survey inspectors of the United States department of agriculture in cooperation with representatives of the state agricultural experiment station.

History.—§5, ch. 20454, 1941.

604.06 Determination of soils to be surveyed.—The successive selection of units to be surveyed shall be by type areas well distributed over the state, just as far as possible or practicable, especially during the early stages of the program, though determination shall naturally depend, too, on the feeling of need by the people in the area and the willingness of county or other local officials to cooperate.

History.—§6, ch. 20454, 1941.

604.07 Analyses of type materials, etc.—Suitable physical, chemical and other analyses of type materials associated with the work of the survey shall be carried out in the laboratories of the Florida agricultural experiment station or of the proper bureau of the United States department of agriculture.

History.—§7, ch. 20454, 1941.

604.08 Reports; maps; publications; etc.—The preparation of soil survey reports and maps for such areas surveyed shall be a joint responsibility of state and federal workers, although publication shall be by the United States department of agriculture, especially for the purpose of full conformity with the many reports of this same type that are regularly being published for other states where survey work of this type is making notable advances.

History.—§8, ch. 20454, 1941.

604.09 Limited agricultural association; purpose of law.—In order to promote, foster and encourage more efficient and progressive agriculture and to enable the farmers and growers of Florida to enjoy the manifold benefits of joint and collective effort without personal liability and without the expense and technical involvements incident to corporate structure, this bill is enacted.

History.—§1, ch. 20620, 1941.

604.10 Limited agricultural association; powers, membership, etc.—Any three or more persons engaged in agricultural pursuits may form a limited agricultural association under the provisions of this law, and such association shall have and may exercise all the powers granted by the laws of this state to persons, partnerships and corporations for profit and not for profit, so far as the same may be applicable to agriculture or livestock in all its phases and the operations incident thereto and which are not inconsistent with the provisions of this law. Persons may become members of such association upon such terms as may be prescribed in its by-laws. No member shall be held personally liable for any of the claims against or the indebtedness and obligations of the association.

History.—§2, ch. 20620, 1941.

604.11 Limited agricultural association; formation, fees, etc.—The articles of association shall be subscribed by the original members and acknowledged by one of them before an officer authorized by the laws of this state to take acknowledgments and administer oaths.

Two copies of the proposed articles of association, together with a certificate of the secretary of state to the effect that there is no other limited agricultural association within the state having the same name, shall be filed with the clerk of the circuit court in the county within which the principal place of business of the association is to be located. The said articles shall then be presented to a circuit judge of the circuit within which the principal place of business of the association is to be located, and, if such judge shall find that the proposed articles of association are for purposes authorized by law, he shall approve the same and endorse his approval thereon. The articles of association, with their endorsements, shall thereupon be recorded by the clerk of the circuit court, and thereafter the association and the subscribers shall be a limited agricultural association for profit. The clerk of the circuit court shall transmit a certified copy of the articles of association to the secretary of state for filing. The original articles of association, or any certified copy thereof, shall be received as conclusive evidence of the contents thereof. The secretary of state and the clerk of the circuit court shall each be entitled to a fee of two dollars and fifty cents for all services rendered by them in connection with the formation of the association.

History.—§3, ch. 20620, 1941.

604.12 Limited agricultural association; articles of association, name, etc.—

(1) The articles of association shall be subscribed by three or more persons, and shall set forth:

(a) The name of the association and the location of the principal place of business.

(b) The purpose for which the association is formed.

(c) The term for which the association is to exist.

(d) By what officers the business, or businesses, of the association is to be conducted, and the names of the officers who are to conduct the business, or businesses, until their successors shall have qualified.

Officers shall be members of the association.

(e) The number, to be not less than three, of the association's managing committeemen. Managing committeemen shall be members of the association.

(f) The fact that the members are not to be held personally liable for any of the claims against or the indebtedness and obligations of the association.

(2) The name of the proposed association shall be different from that of any other limited agricultural association in the state and shall include the words "Limited Agricultural Association", or the letters "LAA", to indicate that it is a limited agricultural association as distinguished from a natural person, firm, copartnership or corporation.

History.—§4, ch. 20620, 1941.

604.13 Limited agricultural association; by-laws; elections, etc.—Each association organized hereunder shall, by a majority vote of its members, within thirty days after its organization, adopt for its government and management a code of by-laws, which shall be taken and deemed to be the law of the association. The by-laws shall provide for such matters as may be pertinent and necessary to the business, including the matter of the acceptance of memberships, the issuance of certificates of membership, the fixing of the voting and participation rights of the owners of such certificates, the assignability of such certificates, the election of a managing committee and the determination of its powers, the time and place of meetings of the association and the election, powers and duties of its officers.

History.—§5, ch. 20620, 1941.

604.14 Limited agricultural association; dissolution of.—Any limited agricultural association may be dissolved upon the presentation by its members of a petition for dissolution to the circuit judge of the circuit wherein its principal place of business is located. Such judge may make all orders necessary to the preservation of the rights of the members and creditors and the winding up of the affairs of the association. Such notice of hearing on the petition for dissolution shall be given as may by the judge be deemed proper.

History.—§6, ch. 20620, 1941.

604.15 Dealers in agricultural products; definitions.—For the purpose of §§604.15-604.30

the following words and terms, when used shall be construed to mean:

(1) "Dealer in agricultural products" means any person, association, itinerant dealer, copartnership or corporation engaged in the state in the business of buying, receiving, selling, exchanging, negotiating, processing for resale or soliciting the sale, resale, exchange, or transfer of any agricultural products purchased from the producer or his agent or representative or received on consignment from the producer or his agent or representative or received to be handled on net return basis from the producer.

(2) "Commissioner" means the commissioner of agriculture of the state.

(3) Agricultural products shall mean and include the natural products of the farm, orchard, vineyard, garden and apiary, raw and manufactured; and livestock, and poultry products, except citrus, shade tobacco, dairy and sugar cane grown within the state.

(4) "Net return basis" means a purchase for sale of agricultural products from a producer or shipper at an unfixed or unstated price at the time the agricultural products are shipped from the point of origin, and it shall include all purchases made "at the market price," "at net worth," and on similar terms, which indicate that the buyer is the final arbiter of the price to be paid.

(5) "On consignment" means any receiving or sale of agricultural products for the account of a person, other than the seller, wherein the seller acts as the agent for the owner.

(6) "Producer" means any producer of agricultural products produced in the state.

History.—§1, ch. 20678, 1941; §1, ch. 23812, 1947; §1, ch. 28183, 1953; (1), (3), (6) §1, ch. 57-139; (3), §1, ch. 63-291.
cf.—§1.01 (14), Agriculture, agricultural purposes, etc., definitions.

604.16 Exceptions to provisions of §§604.15-604.30.—The provisions of §§604.15-604.30 shall not apply to:

(1) Farmers or groups of farmers in the sale of agricultural products grown by themselves.

(2) All persons who buy for cash and pay at the time of purchase with United States currency.

(3) A dealer in agricultural products who operates as a bonded licensee under the federal packers and stockyards act.

History.—§2, ch. 20678, 1941; §1, ch. 21878, 1943; §2, ch. 23812, 1947; (2)r. §1, ch. 59-437; (2), (3) n. §1, ch. 63-351.

604.17 License required.—From and after July 1, 1941, it shall be unlawful for any dealer in agricultural products, who comes within the terms of this law to engage in such business in this state without a state license issued by the commissioner.

History.—§3, ch. 20678, 1941.

604.18 Application; form; contents.—Every dealer in agricultural products, desiring to transact business within the state, shall, prior to transacting any business as such, file an application for such license with the commissioner. License shall be renewed annually on its anniversary date. The application shall be on a form furnished by the commissioner and, together with such other information as the commissioner shall require, shall state:

(1) The kind or kinds of agricultural products the applicant proposes to handle;

(2) The full name or title of the applicant, or if the applicant be an association or co-partnership, the name of each member of such association or co-partnership, or if the applicant be a corporation, the name of each officer of the corporation;

(3) The names of the local agent or agents of the applicant, if any;

(4) The cities, and towns, within which places of business of the applicant will be located, together with the street or mailing address of each.

History.—§4, ch. 20678, 1941; intro. para. a. by §1, ch. 61-412.

604.19 License; fee; bond; penalty.—Unless the commissioner refuses the application on one or more of the grounds hereinafter provided, he shall issue to an applicant, upon the payment of proper fees and the execution and delivery of a bond as hereinafter provided, a state license entitling the applicant to conduct business as a dealer in agricultural products for one year from the date of issue. The license fee for the principal place of business for a dealer in agricultural products shall be based upon the amount of agricultural dealer's surety bond furnished by each dealer under the provisions of §604.20 as follows: For bonds in the amount of one thousand dollars to four thousand nine hundred and ninety-nine dollars, the license fee is ten dollars. For bonds in the amount of five thousand dollars to nine thousand nine hundred and ninety-nine dollars, the license fee is twenty dollars. For bonds in the amount of ten thousand dollars to fourteen thousand nine hundred and ninety-nine dollars, the license fee is thirty dollars. For bonds in the amount of fifteen thousand dollars to twenty thousand dollars or more, the license fee is forty dollars. For each additional place of business which the applicant desires to conduct and names in the application, the additional license fee shall be ten dollars annually. Should any dealer in agricultural products fail, refuse or neglect to apply and qualify for the renewal of a license on or before the date of expiration thereof, a penalty of ten dollars shall apply to and be added to the original license fee and shall be said by the applicant before the renewal license may be issued.

History.—§5, ch. 20678, 1941; §2, ch. 59-437; §2, ch. 61-412; §2, ch. 63-351.

604.20 Bond prerequisite; amount; form.—

(1) Before any license shall be issued the applicant therefor shall make and deliver to the commissioner a surety bond in the amount of at least one thousand dollars or in such greater amount as the commissioner may determine, not exceeding the maximum amount of business done or estimated to be done in any month by the applicant, executed by a surety corporation authorized to transact business in the state. Such

bond shall be upon a form prescribed or approved by the commissioner and shall be conditioned to secure the faithful accounting for and payment to producers, their agents or representatives, of the proceeds of all agricultural products handled or sold by such dealer.

(2) The amount of such bond shall, upon the order of the commissioner at any time, be increased, if in his discretion the commissioner finds such increase to be warranted by the volume of agricultural products being handled by the principal or maker of such bond. In the same manner, the amount of such bond may be decreased when a decrease in volume of products handled warrants such decrease in bond. These provisions shall apply to any bond, regardless of the anniversary date of its issuance, expiration or renewal.

(3) In order to effectuate the purposes of this section, the commissioner or his agents may require from any licensee verified statements of the volume of his business, and failure to furnish such statement or make and deliver a new or additional bond shall be cause for suspension of license. If, at a hearing after reasonable notice, the commissioner finds such failure to be willful, the license may be revoked.

History.—§6, ch. 20678, 1941; am. §1, ch. 28032, 1953; §2, ch. 57-139; (2) and (3) n. by §3, ch. 61-412.

604.21 Breach of bond; investigation, action; insufficient bond, etc.—Any person claiming himself to be damaged by any breach of the conditions of a bond given by a licensed dealer in agricultural products as hereinbefore provided may enter complaint thereof to the commissioner, which complaint shall be a written statement of the facts constituting said complaint. Such complaint shall be filed within six months from the date of the last transaction between the complaining producer and the dealer complained against. Upon filing such complaint in the manner herein provided, the commissioner shall investigate the charges made; whereupon, if in the opinion of the commissioner the facts contained in the complaint warrant such action, a copy of the complaint shall be forwarded by the commissioner to such dealer who shall be called upon to answer the complaint in writing within a reasonable time to be prescribed by the commissioner. At his discretion the commissioner may order a hearing before him giving the complainant and the respondent notice of the time and place of such hearing. At the conclusion of such a hearing the commissioner shall report his findings and make his order upon the matters complained of to the complainant and the respondent in each case, who shall then have fifteen days in which to make effective and satisfy the commissioner's order. If such settlement is not effected within the time aforesaid, the commissioner or the producer may maintain a civil action against the principal and surety on the bond of the party against whom the order was directed, setting forth briefly in the complaint in said civil action the causes for which damages are complained. In any such suit, if the party who was successful before the commissioner finally prevails, he shall be allowed court costs and a reasonable attorney's fee to be taxed and collected as a part of the cost of the suit. If the order of the commissioner is against the producer and if said producer is not satisfied with such ruling, he may, upon obtaining the approval of the commissioner, commence and maintain an action against the principal and surety on the bond of the parties complained of as in any civil action, provided that no action may be maintained in any instance against the bondsman of a licensee without the written approval of the commissioner. It is further provided that if the bond thus posted is insufficient to pay in full the valid claims of producers, the commissioner shall direct that the proceeds of such bond be divided pro rata among such producers.

History.—§7, ch. 20678, 1941; §3, ch. 57-139; §4, ch. 61-412.

604.211 Limitation on successive consignments.—No dealer in agricultural products or commission merchant to whom any consignment of an agricultural product by a Florida producer, his agent or representative, has been made shall consign such consignment to another commission merchant or broker and receive, collect, or charge more than one commission or brokerage for making the sale thereof for the consignor, unless by written consent by such consignor.

History.—§5, ch. 61-412.

604.22 Dealers to keep records, contents; notice, etc.—Every dealer in agricultural products shall, upon the receipt of agricultural products on consignment basis and as he handles and disposes of the same, make and preserve for at least one year a record thereof, specifying the name and address of the producer consigning such agricultural products, the date of receipt, the kind and quality of such produce, the amount of goods sold, the name and address of the purchaser, except that where sales total less than five dollars in value, such sales may be made to order of "cash," the selling price thereof, and the items of expenses connected therewith. An "account sales," together with payment in settlement for said shipment, shall be mailed to the producer within forty-eight hours after the sale of such agricultural products, unless otherwise agreed in writing.

History.—§8, ch. 20678, 1941.

604.23 Examination of records, sales, accounts, books, etc.—The commissioner shall have power to investigate upon complaint of any interested person or upon his own initiative, the record of any applicant or licensee, or any transaction involving the solicitation, receipt, sale or attempted sale of agricultural products, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market

conditions with intent to deceive, or the failure to make payment for goods received, or other alleged injurious transactions. For such purposes the commissioner or his agents may examine, at the place or places of business of the applicant or licensee, his ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, and may take testimony thereon under oath.

History.—§9, ch. 20678, 1941.

604.24 Inspection of spoiled or unmarketable products; notice.—Whenever produce is shipped to or received by a licensed dealer for handling, purchase or sale in this state at any market point, and said dealer finds the same to be in a spoiled, damaged, unmarketable or unsatisfactory condition, unless both parties shall waive inspection before sale or other disposition thereof, he shall cause the same to be examined by an inspector assigned by the commissioner for that purpose, and said inspector shall execute and deliver a certificate to the applicant thereof stating the day and the time and place of such inspection and the condition of such produce, and mail or deliver a copy of such certificate to the shipper thereof.

History.—§10, ch. 20678, 1941.

604.25 Refusal to grant license; suspension; revocation, etc.—The commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has either:

(1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied; or

(2) Made false charges for handling or services rendered; or

(3) Failed to account promptly and properly, or to make settlements with any producer; or

(4) Made any false statement or statements as to condition, quality or quantity of goods received or held for sale when he could have ascertained the true condition, quality or quantity by reasonable inspection; or

(5) Made any false or misleading statement or statements as to market conditions or service rendered; or

(6) Been guilty of a fraud in the attempt to produce or the procurement of a license; or

(7) Directly or indirectly sold agricultural products received on consignment or on a net return basis for his own account, without prior authority from the producer, consigning the same, or without notifying such producer.

History.—§11, ch. 20678, 1941.

604.26 Hearing before commissioner.—Before the commissioner shall refuse a license or revoke any license he shall give ten days' notice, by registered mail, to the applicant or licensee of a time and place of hearing. At such hearing the applicant or licensee shall be privileged to appear in person or by or with counsel and to produce witnesses. If the commissioner shall find the applicant or licensee shall have been guilty of any of the acts provided in §604.25, the commissioner may refuse, suspend or revoke such license, and shall give immediate notice of his action to the applicant or licensee.

History.—§12, ch. 20678, 1941.

604.27 Rules and regulations.—The commissioner shall adopt rules and regulations deemed necessary to carry out the provisions of this law and enforce same.

History.—§14, ch. 20678, 1941.

604.28 Commissioner may employ help, etc.—The commissioner may employ all help and services necessary to carry out and enforce the provisions of this law and fix their compensation. All expenses and salaries shall be paid out of the general inspection trust fund.

History.—§15, ch. 20678, 1941; §2, ch. 61-119.

604.29 License fees; disposition.—All moneys received as license fees under this law shall be placed in the general inspection trust fund.

History.—§16, ch. 20678, 1941; §2, ch. 61-119.

604.30 Penalties.—

(1) Any dealer in agricultural products violating the provisions of §§604.15-604.30, or interfering with an agent of the commissioner in the enforcement of said §§604.15-604.30 shall be deemed guilty of a misdemeanor and upon conviction shall for the first offense be fined not less than $250 or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, imprisoned not exceeding six months, and for a second or subsequent offense shall, upon conviction thereof, be fined not less than $500 or imprisoned not exceeding 1 year, or both, at the discretion of the court.

(2) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the commissioner is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of §§604.15-604.30 or for failing or refusing to comply with the requirements of said §§604.15-604.30 or any rule or regulation duly adopted by the commissioner as in §604.27 provided, such injunction to be issued without bond.

History.—§13, ch. 20678, 1941; am. §3, ch. 23812, 1947. Am. §29, ch. 29737, 1955; (1) by §4, ch. 57-139.

TITLE XXXIV

CORPORATIONS AND BUSINESS TRUSTS

CHAPTER 608

CORPORATIONS

PART I

CORPORATIONS GENERALLY

608.01 Application of part I of chapter.—The provisions of part I of this chapter shall extend to all corporations whether chartered by special acts or general laws except that where special statutes for the regulation and control of types of business and corporations therein specified conflict herewith the provisions of such statutes shall control. The validity of no corporation heretofore created nor the validity of any provision of any existing charter or certificate of incorporation or by-laws or any corporate action heretofore taken thereunder shall be in any way affected hereby; nor shall the effectiveness or validity of any property, grant, right, franchise or privilege heretofore acquired by any such corporation, or of its right thereto or possession thereof, be in any way affected hereby. No action previously taken by any corporate board of directors, managers or trustees shall be held invalid for the reason that such board consisted of more than thirteen members at the time of such action.

History.—Comp. §1, ch. 28170, 1953, §2, ch. 28089, 1953; provisions contained herein formerly covered by § § 610.01 and 612.64.

cf.—§615.18 Applicable provisions of general corporation law to state fair.

608.02 Definitions.—In part I of this chapter, unless the context requires otherwise:

"Articles of incorporation" means the agreement between the subscribers regarding the details of organization of the proposed corporation before approval thereof as provided in part I of this chapter.

"Certificate of incorporation" means the articles of incorporation after the subscribers thereof have complied with every prerequisite and corporate existence has begun, and includes the endorsement of approval on the articles of incorporation by the secretary of state. Any amendment of a certificate of incorporation, any consolidation or merger agreement and any resolution, certificate or other document required or permitted to be filed in the office of the secretary of state as a part of or affecting the certificate of incorporation shall be included in the term "certificate of incorporation" from the time of its approval, or filing as required or permitted by law.

History.—Comp. §1, ch. 28170, 1953.

608.03 Formation of corporations; articles of incorporation, contents, filing.—

(1) (a) Corporations may be organized and incorporated under part I of this chapter for any lawful purpose, by three or more persons who shall make, subscribe, acknowledge, and file in the office of the secretary of state and secure approval of the articles of incorporation of the proposed corporation and pay the fees and filing taxes required by part I of this chapter.

(b) Cooperative associations shall have not less than ten incorporators.

(2) The articles of incorporation shall contain:

(a) The name of the proposed corporation, which shall include the word "company", "corporation", "incorporated", or such other word, abbreviation, affix or prefix as will clearly indicate that it is a corporation instead of a natural person or partnership. The name shall be such as will distinguish it from any other corporation authorized to do business in Florida.

(b) The general nature of the business or businesses to be transacted.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common, of non par common and of preferred stock, and of every kind, class or series of each, with their distinguishing characteristics and the par value of all shares having par value.

(d) The amount of capital with which the corporation will begin business, which shall be not less than five hundred dollars unless, by reason of the special purposes of such proposed corporation a greater amount may otherwise be required by law.

(e) Whether the corporation is to have perpetual existence and if not, the term of its existence.

(f) The post office address of the principal office of the proposed corporation in this state.

(g) The number of its directors, which shall not be less than three.

(h) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected or appointed and have qualified.

(i) The name and post office address of each subscriber of the articles of incorporation.

(j) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors and the stock-

holders or any class of the stockholders, including, but not limited to, provision for cumulative voting for directors, a list of officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates.

(3) If the articles of incorporation are for a railroad, canal, telephone or telegraph company, they shall also include:

(a) a statement of the places from and to which the railroad, canal, telephone or telegraph line is to be constructed and operated and its approximate length;

(b) the counties into or through which it will extend, and

(c) a statement that it is intended in good faith to construct, maintain and operate the railroad, canal, telephone or telegraph line.

(4) The articles of incorporation shall be in writing, subscribed by not less than three natural persons competent to contract and acknowledged by all of the subscribers before an officer authorized to take acknowledgments, and filed in the office of the secretary of state for approval. A duplicate copy so subscribed and acknowledged may also be filed.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly covered by §§611.01, 611.02, 611.35-611.37, 612.02, 612.03 and 612.28.

Sub. § (2) am. §§1-3, ch. 29886, 1955; (2) (h), (i) by §1, ch. 57-8; (2) (i) by §1, ch. 59-183.

608.031 Reservation of proposed corporate name; length of reservation.—

(1) Any group of incorporators may reserve a name for a proposed corporation by filing in the office of the secretary of state a request for reservation of the proposed name. The secretary of state may prescribe the form of such request. If such name complies with the requirements of §608.03 (2) (a), as to corporate names, and the request is otherwise proper, the request shall be granted.

(2) The reservation period in each case shall be determined by the secretary of state, but such period shall not exceed fifteen days from the date reservation is granted.

(3) No other corporation shall be permitted to adopt the name reserved, or one not clearly distinguishable from the name reserved, until after the end of the reservation period.

(4) The secretary of state, may, in his discretion renew such reservation upon the request of the applicant; provided, however, that only one such renewal shall be granted and such renewal shall not exceed fifteen days.

History.—§1, ch. 61-82.

608.04 Approval of articles; beginning of corporate existence.—When the articles of incorporation have been filed in the office of the secretary of state and approved by him and all filing fees and taxes have been paid, the subscribers thereof, their successors and assigns shall constitute a corporation. The approval of the articles of incorporation by the secretary of state shall be indicated by his endorsement thereof with the date and time of approval on the original. The original shall be filed in the records of his office. If a duplicate is received with the original, it shall, on receipt of the fee required for certified copies, be so endorsed, certified and returned to the person from whom received.

History.—Comp. §1, ch. 28170, 1953; the first sentence of this section was formerly contained in §§611.05 and 612.04.

608.041 Effective dates; corporate existence, amendments to articles, merger or consolidation and voluntary dissolution.—Notwithstanding the provisions of any other law:

(1) The date when corporate existence shall begin, which in no event shall be prior to or more than ninety days after filing of articles of incorporation with the secretary of state, may be specified in the articles of incorporation of any corporation; failing which, corporate existence of any such corporation shall take effect as now provided by law.

(2) The date when any amendment to articles of incorporation shall become effective, which in no event shall be prior to or more than ninety days after filing of the amendment with the secretary of state, may be specified in such an amendment; failing which, such amendment shall take effect as now provided by law.

(3) The date when a merger or consolidation of any corporation shall become effective may be specified in the agreement of merger or consolidation or in any instrument filed simultaneously therewith, which in no event shall be prior to or more than ninety days after filing of the agreement of merger or consolidation with the secretary of state, failing which, any merger or consolidation shall take effect as now provided by law.

(4) The date when voluntary dissolution of a corporation shall take effect may be stated in the application therefor, which shall in no event be prior to nor more than ninety days after the publication by the secretary of state of certificate of dissolution; failing which, dissolution shall occur as provided by law.

History.—§1, ch. 63-357.

608.05 Filing fees and taxes.—

(1) Upon filing any articles of incorporation, amendment thereof or other paper relating to the incorporation, merger, consolidation or dissolution of any corporation in the office of the secretary of state, the fees and taxes provided in the following schedules shall be paid to him for the use of the state.

(2) The fees under this section shall be as follows:

(a) For receiving, filing and indexing certificates, statements, affidavits, decrees, agreements, reports and any other papers not otherwise provided for by part I of this chapter, five dollars in each case.

(b) For certified copies of certificates of incorporation or other documents concerning a corporation, three dollars, in each case.

(3) The filing tax for a corporation organized under part I of this chapter to conduct a banking, safe deposit, trust, insurance, surety, express, railroad, canal, telegraph, telephone or cemetery company, a building and loan association, mutual fire insurance association, co-

operative association, fraternal benefit society, state fair or exposition shall be based upon the authorized capital stock thereof according to the following schedule:

(a) Two dollars upon each thousand dollars of par value of capital stock up to and including one hundred twenty-five thousand dollars.

(b) Fifty cents upon each thousand dollars of par value of capital stock in excess of one hundred twenty-five thousand dollars and not in excess of two million dollars.

(c) Twenty-five cents upon each thousand dollars of par value of capital stock in excess of two million dollars.

(d) For the purpose of this subsection, all no par value stock shall be valued at one hundred dollars per share.

(4) The filing tax for any corporation organized under this chapter, and not included in subsection (3) of this section, shall be based upon the authorized capital stock thereof according to the following schedule:

(a) Two dollars upon each one thousand dollars of par value of capital stock up to and including one hundred twenty-five thousand dollars.

(b) Fifty cents upon each one thousand dollars of par value of capital stock in excess of one hundred twenty-five thousand dollars and not in excess of one million dollars.

(c) Twenty-five cents upon each one thousand dollars of par value of capital stock in excess of one million dollars and not in excess of two million dollars.

(d) Ten cents upon each one thousand dollars of par value of capital stock in excess of two million dollars.

(e) Twenty cents upon each share of no par value stock up to and including twelve hundred fifty shares.

(f) Five cents upon each share of no par value stock in excess of twelve hundred fifty and not in excess of ten thousand shares.

(g) One-fourth of one cent upon each share of no par value stock in excess of ten thousand shares and not in excess of twenty thousand shares.

(h) One-tenth of one cent upon each share of no par value stock in excess of twenty thousand shares.

(i) In no case shall the filing tax be less than ten dollars.

(5) (a) The amount of fees and filing taxes to be collected by the secretary of state before he shall approve any amendment or merger or consolidation agreement increasing authorized capital stock shall be equal to the fees and filing taxes required for an original certificate of incorporation authorizing the total capital stock to be outstanding after the amendment or consolidation or merger agreement, except that all filing taxes paid with respect to shares authorized prior to such amendment or agreement, and which are actually included in authorized capital existing at the time of increase, shall be deducted.

(b) The fee for filing a certificate of dissolution or an amendment of a certificate of incorporation or a merger or consolidation agreement which does not increase the authorized capital stock shall be ten dollars.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly covered by § § 611.04 and 612.58.

Sub. § (5) (a) am. §4, ch. 29886, 1955; (4) by §24, ch. 57-1.

608.06 Certificate of incorporation, composite certificate of incorporation, as evidence, etc.—

(1) From and after October 1, 1953 no letters patent shall be issued. The original of any letters patent or charter heretofore issued or a copy thereof or a copy of a certificate of incorporation, composite certificate of incorporation or any other paper relating to the incorporation or existence of any corporation with thereon the certificate of the secretary of state that it is copied from his records shall be prima facie evidence of the contents and effect of such paper or instrument.

(2) The secretary of state shall prepare and furnish upon request therefor a certified copy of a certificate of incorporation or a certified copy of a composite certificate of incorporation. The composite certificate of incorporation shall contain only such provisions as are in effect at the time of certification by reason of amendments, merger or consolidation agreements and any resolutions, certificates or other documents required or permitted to be filed as a part of or affecting the certificate of incorporation. The secretary of state shall make such reasonable charge therefor as he deems proper.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.21 and 612.63.

608.07 Adoption and effect of by-laws.— Unless the certificate of incorporation provides otherwise, the board of directors shall have authority to adopt or amend by-laws not inconsistent with any by-laws that may have been adopted by the stockholders. The by-laws shall be for the government of the corporation subordinate only to the certificate of incorporation and the laws of the United States and of this state.

History.—Comp. §1, ch. 28170, 1953; material contained herein formerly covered by § §611.13 and 612.29.

608.08 Directors; election; classes; vacancies.—

(1) The directors of every corporation shall be chosen at the annual meeting of the stockholders, to be held at the time and place provided for by the certificate of incorporation or the by-laws, by a plurality of the votes cast at such election. The certificate of incorporation may provide that the directors be divided into two or more classes whose terms of office shall respectively expire at different times, but no such term shall continue longer than three years and at least one-fourth in number of the directors of every corporation shall be elected annually.

(2) Vacancies in the board of directors shall be filled until the next annual meeting

of stockholders by the directors remaining in office unless otherwise provided in the certificate of incorporation. An increase in the number of directors shall create vacancies for the purpose of this section.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly covered by §§611.14, 611.16 and 612.31.

608.09 Directors; powers; qualifications; executive committee.—

(1) The business of every corporation shall be managed and its corporate powers exercised by a board of not less than three directors. All of them shall be of full age and at least one shall be a citizen of the United States. Where not required by the certificate of incorporation or by the by-laws, it shall not be necessary for directors to be stockholders, unless specifically required by law for corporations engaged in any of the businesses regulated by specific statutes. Unless the certificate of incorporation or by-laws provide otherwise, the presence of a majority of all the directors shall be necessary at any meeting to constitute a quorum to transact business. The act of a majority of directors present at a meeting where a quorum is present shall be the act of the board of directors. Directors' meetings may be held within or without the state.

(2) Unless otherwise provided in the certificate of incorporation, the board of directors may, by resolution, designate two or more of their number to constitute an executive committee, who, to the extent provided in such resolution or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§611.14, 612.29, 612.30.

608.10 Stockholders' meetings; notice; qualifications of voters; proxies.—

(1) Whenever the provisions of part I of this chapter, the certificate of incorporation or the by-laws require or authorize the stockholders to take any action at a meeting, a notice of such meeting, signed by the secretary or other officer permitted by the by-laws, shall be mailed to each stockholder having the right and entitled to vote at such meeting, at his address as it appears on the records of the corporation, not less than ten nor more than sixty days before the date set for such meeting. The certificate of incorporation or by-laws may require that such notice also be published in one or more newspapers. The notice shall state the purpose of the meeting and the time and place it is to be held. Such notice shall be sufficient for said meeting and any adjournment thereof unless otherwise provided in the certificate of incorporation or by-laws, and if any stockholder shall transfer any of his stock after notice, it shall not be necessary to notify the transferee. Such meetings may be held either within or without the state. Any stockholder may waive notice of any meeting either before, at or after the meeting.

(2) The directors may, unless prohibited by the certificate of incorporation or the by-laws, fix a date not more than forty days prior to the date set for such meeting as the record date as of which the stockholders of record who have the right to and are entitled to notice of and to vote at such meeting and any adjournment thereof shall be determined, but in such case notice that such day has been fixed shall be published at least five days before the day so fixed in a newspaper published in the city, town or county where the principal office of the corporation is located and in each city or town where an agency for transfer of shares is maintained.

(3) Unless otherwise provided in the certificate of incorporation, every such stockholder shall be entitled at each meeting and upon each proposal presented at such meeting to one vote for each share of voting stock recorded in his name on the books of the corporation on the record date fixed as above provided, or if no such record date was fixed, on the day of meeting. The books of record of stockholders shall be produced at any stockholders meeting upon the request of any stockholder.

(4) A majority of the stock entitled to vote shall constitute a quorum at any stockholders' meeting unless the certificate of incorporation or by-laws otherwise provide.

(5) At any meeting of said stockholders or any adjournment thereof, any stockholder of record having the right and entitled to vote thereat may be represented and vote by a proxy appointed by an instrument in writing. In the event that any such instrument shall designate two or more persons to act as proxies, a majority of such persons present at the meeting, or, if only one be present, that one, shall have all of the powers conferred by the instrument upon all the persons so designated unless the instrument shall otherwise provide.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly covered by §§611.17, 611.21, 611.22, 612.24, 612.26, 612.27.

608.11 How meetings may be held when not legally called.—Unless otherwise provided in the certificate of incorporation, or in the by-laws, when stockholders who hold four-fifths of the voting stock having the right and entitled to vote at any meeting shall be present at such meeting, however called or notified, and shall sign a written consent thereto on the record of the meeting, the acts of such meeting shall be as valid as if legally called and notified.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§611.20, 611.28, 612.25.

608.12 When meeting may be called by county judge; presiding officer. - Whenever from want of sufficient by-laws, or of officers duly authorized, or from neglect or refusal of such officers, or from any other impediment, a legal meeting of any corporation cannot otherwise be called, the county judge of the county wherein it is desirable to hold such meeting, on a written application of stockholders holding one-third or more of the stock of such corporation, may issue a warrant directed to any of such stockholders directing him to call a meeting of the stockholders of the

corporation by giving the usual notice. When a meeting is called by such a warrant, the person to whom it is directed shall preside until a presiding officer is chosen, unless there be an officer present whose duty it may be to preside.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly § § 611.18, 611.19.

608.13 Corporate powers. — Every corporation shall, unless otherwise provided by its certificate of incorporation or by law have power to:

(1) Have succession by its corporate name, for the period limited in its certificate of incorporation, and if not so limited, perpetually.

(2) Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

(3) Adopt and use a common corporate seal and alter the same.

(4) Appoint such officers and agents as its affairs shall require and allow them suitable compensation.

(5) Adopt, change, amend and repeal by-laws, not inconsistent with law or its certificate of incorporation, for the exercise of its corporate powers, the management, regulation and government of its affairs and property, the transfer on its records of its stock or other evidence of interest or membership, and the calling and holding of meetings of its stockholders.

(6) Increase or diminish, by vote of its stockholders, shareholders or members, cast as the by-laws may direct, the number of directors, managers or trustees, provided, that the number shall never be less than three.

(7) Make and enter into all contracts necessary and proper for the conduct of its business.

(8) (a) Conduct business, have one or more offices in, and buy, hold, mortgage, sell, convey, lease, or otherwise dispose of real and personal property, and buy, hold, mortgage, sell, convey, or otherwise dispose of franchises in this state and in any of the several states, territories, possessions and dependencies of the United States, the district of Columbia, and in foreign countries.

(b) Purchase the corporate assets of any other corporation and engage in the same character of business.

(c) Acquire, enjoy, utilize and dispose of patents, copyrights and trade marks and any licenses or other rights or interests thereunder or therein.

(d) Take, hold, sell and convey such property as may be necessary in order to obtain or secure payment of any indebtedness or liability to it.

(9) (a) Guarantee, endorse, purchase, hold, sell, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or other evidences of indebtedness created by any other corporation of this state or any other state or government; while owner of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote such stock.

(b) Purchase, hold, sell and transfer shares of its own capital stock, provided that no corporation shall purchase any of its own capital stock except from the surplus of its assets over its liabilities including capital. Shares of its own capital stock owned by the corporation shall not be voted directly or indirectly, or counted as outstanding for the purpose of any stockholders' quorum or vote.

(10) Do all and everything necessary and proper for the accomplishment of the objects enumerated in its certificate of incorporation or necessary or incidental to the benefit and protection of the corporation, and to carry on any lawful business necessary or incidental to the attainment of the objects of the corporation whether or not such business is similar in nature to the objects enumerated in its certificate of incorporation.

(11) (a) Contract debts and borrow money at such rates of interest not to exceed the lawful interest rate and upon such terms as it or its board of directors may deem necessary or expedient and shall authorize or agree upon, issue and sell or pledge bonds, debentures, notes and other evidences of indebtedness, whether secured or unsecured, and execute such mortgages, or other instruments upon or encumbering its property or credit to secure the payment of money borrowed or owing by it, as occasion may require and the board of directors deem expedient.

(b) Provision may be made in such instruments for transferring corporate property of every kind and nature then belonging to or thereafter acquired by such corporation, as security for any bonds, notes, debentures or other evidences of indebtedness issued or debts or sums of money owing by said corporation.

(c) In case of the sale of any property by virtue of any such instrument or of any foreclosure, the party acquiring title shall have the same rights, privileges, grants, franchises, immunities and advantages, in and by such instrument enumerated or conveyed, as belonged to and were enjoyed by the corporation executing the instrument or contracting the debt.

(12) Cooperative associations incorporated under part I of this chapter may (a) limit and regulate the right of stockholders to transfer their stock and provide terms and limitations of stock; (b) provide for the government of the association by the purely cooperative custom of one man, one vote, and (c) distribute earnings, wholly or in part, on the basis of or in proportion to the amount of property bought from or sold to its members or other customers or of labor performed for or services rendered to the association.

(13) Make gifts for educational, scientific or charitable purposes.

(14) Indemnify any person made a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of

his being or having been a director or officer of the corporation, or of any other corporation which he served as such at the request of the corporation, against the reasonable expenses including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to matters as to which such director or officer is adjudged to have been guilty of negligence or misconduct in the performance of his duty to the corporation.

(15) Indemnify any person made a party to an action, suit or proceeding other than one by or in the right of the corporation to procure a judgment in its favor, whether civil or criminal, brought to impose a liability or penalty on such person for an act alleged to have been committed by such person in his capacity of director or officer of the corporation, or of any other corporation which he served as such at the request of the corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein, if such director or officer acted in good faith in the reasonable belief that such action was in the best interests of the corporation, and in criminal actions or proceedings, without reasonable ground for belief that such action was unlawful. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere shall not in itself create a presumption that any such director or officer did not act in good faith in the reasonable belief that such action was in the best interests of the corporation or that he had reasonable ground for belief that such action was unlawful.

History.—§1, ch. 28170, 1953; (8), (11) §§5, 6, (13) n. §7, ch. 29886, 1955; (14), (15) n. §1, ch. 63-286.
Note.—Formerly §§610.03, 610.04, 611.38, 612.07, 612.08.
cf.—§ § 692.01, 692.02, Conveyances by corporations.
§ 47.15 et seq., Service of process on corporations.

608.131 Stockholders' derivative actions; security for expenses.—In any action commenced or maintained by a stockholder of any domestic or foreign corporation to procure a judgment in its favor:

(1) It must be made to appear that the plaintiff is a stockholder of such corporation at the time of bringing the action and that he was a stockholder of such corporation at the time of the transaction of which he complains, or that his interest devolved upon him by operation of law.

(2) The complaint must set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board of directors of such corporation or the reasons for not having made such effort.

(3) No such action shall be discontinued, compromised or settled without the approval of the court having jurisdiction of the action. Such court in its discretion if it shall determine that the interests of the stockholders of such corporation may be substantially affected thereby, may direct that notice, by publication or otherwise, of such proposed discontinuance, compromise or settlement be given to such stockholders. Stockholders objecting to such settlement must, within a time allowed by the court, show cause why the settlement should not be accepted and approved by the court as fair and reasonable. If notice is so directed to be given the court may determine which one or more of the parties to the action shall bear the expense of giving same in such amount as the court shall determine and find to be reasonable in the circumstances and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

(4) If the plaintiff or plaintiffs hold less than five per cent of the outstanding shares or voting trust certificates of such corporation, then unless the stock or voting trust certificates held by such plaintiff or plaintiffs shall then have a fair value in excess of fifty thousand dollars, such corporation shall be entitled at any stage of the proceedings before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses including attorneys' fees which may be incurred by it in connection with such action and by the other parties defendant in connection therewith for which such corporation may become liable under §608.13 (14), to which security such corporation shall have recourse in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of such security may thereafter from time to time be increased or decreased in the discretion of such court upon showing that the security provided has or may become inadequate or excessive.

(5) If the action on behalf of the corporation is successful, in whole or in part, or if anything is received by the plaintiff or plaintiffs as the result of a judgment, compromise or settlement, the court may award the plaintiff or plaintiffs the reasonable expenses of maintaining the action, including reasonable attorneys' fees and direct him or them to account to the corporation for the remainder of the proceeds so received by him or them. This subsection shall not apply to any judgment rendered for the benefit of injured shareholders only and limited to a recovery of the loss or damage sustained by them.

History.—§1, ch. 63-304.

608.14 Capital stock; power to issue, etc.—

(1) Every corporation may issue the shares of stock authorized by its certificate of incorporation and none other. Such shares may consist of common stock of a par value stated in the certificate of incorporation, common stock of no par value, and preferred stock. Each may consist of two or more kinds, which may be divided into classes and classes into series, and each kind, class and series may have such distinguishing characteristics, including designations, preferences or restrictions as regards dividends, redemption, voting powers or

restrictions or qualifications of voting powers as shall be stated in the certificate of incorporation. Restrictions and qualifications of voting powers so imposed shall control in all cases where any vote or consent of stockholders is now or hereafter required by statute unless such statute shall expressly provide to the contrary.

(2) Shares of preferred or special stock of any class may be divided by number from time to time into and issued in designated series, and such shares of preferred or special stock of any class or series thereof shall provide for dividends at such rates, on such conditions and payable at such times and shall be subject to redemption rights at such price or prices and at such time or times as shall be stated and expressed with respect to such division by number and issuance in series, dividends and redemption rights either in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors or duly constituted executive committee of the corporation.

(3) If the corporation so elects, it may, prior to the issuance of any shares of a series pursuant to resolution or resolutions adopted by its board of directors or executive committee as above provided file in the office of the secretary of state a certificate which shall set forth a copy of said resolution or resolutions and recite the fact of the adoption thereof and shall be signed by the secretary or assistant secretary, sealed with the seal of the corporation and executed and acknowledged by the president or a vice-president. Upon such filing, said resolution or resolutions shall become a part of the certificate of incorporation of the corporation as though amended thereby and shall be effective to designate and establish said series and to fix and determine the relative rights and preferences thereof.

History.—Comp. §1, ch. 28170, 1953; the provisions of sub. § § (1) and (2) formerly contained in §§611.06, 612.09.

608.15 Consideration for issue of stock; nonassessable stock. — Every corporation may issue and dispose of its authorized no par value shares for such consideration as may be prescribed in the certificate of incorporation, or if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting or by the board of directors when acting under general or special authority granted by the stockholders or conferred by the certificate of incorporation. Authorized shares of par value stock may be issued only for a consideration having a value, in the judgment of the board of directors, at least equivalent to the full par value of the stock so to be issued. In the absence of fraud in the transaction the judgment of the directors as to the value of any such consideration shall be conclusive. Any and all shares issued for not less than the consideration so prescribed or fixed shall be fully paid and nonassessable.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly covered by § § 612.10, 612.11.

608.16 Issue of partly paid shares; payment; holders' liability.—

(1) The certificate of incorporation may expressly authorize the issue of the whole or of any part of the shares as partly paid, subject to calls thereon until the whole consideration therefor shall have been paid. The corporation may declare and pay dividends upon the basis of the amount actually paid on the respective shares. If upon the certificate issued to represent such stock the amount unpaid thereon shall be specified, the holder thereof shall not be subject to any liability to the corporation except for the payment of the amount shown by such certificate as unpaid.

(2) Subscriptions to the shares of a corporation shall be paid at such times and in such installments as may be provided in the contract of subscription or in the absence of such provisions in such contract, as the board of directors may by resolution require. Such remedies in case of default on any subscription as may be provided for in the contract of subscription may be enforced according to their tenor, but if no such remedy is provided for in such contract, then if default shall be made in the payment of any installment of such subscription and shall continue for thirty days, the corporation may sell at public auction a sufficient number of shares of such subscriber to pay the same, with incidental charges. If a receiver of the corporation has been appointed, all unpaid subscriptions shall be paid at such times and in such installments as the receiver or the court may direct, subject, however, to the provisions of the subscription contract.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly covered by §§611.07, 611.33, 612.12, 612.13.

608.17 Amount of capital.—The amount of capital of every corporation under part I of this chapter shall be the sum of the par value of all outstanding par value shares, plus the aggregate consideration received for all outstanding no par value shares, to which shall be added such additional amounts as the stockholders or the board of directors have, from time to time, transferred to capital.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.21.

608.18 Amendments; reduction of capital; distribution.—

(1) Any corporation having capital stock may amend its certificate of incorporation in any respect, provided that only such provisions shall be inserted by amendment as would be lawful and proper in an original certificate of incorporation made at the time of making such amendment. Every amendment shall be approved by the board of directors, proposed by them to the stockholders and approved at a stockholders' meeting by such proportion, not less than a majority, of the stock entitled to vote thereon as may be provided in the certificate of incorporation. Where the proposed amendment would decrease the amount payable as a preference, or otherwise adversely affect the rights of any kind, class or series

of stock, the holders of record of each such kind, class or series shall be entitled to vote separately on such amendment whether by terms of the certificate of incorporation entitled to vote or not and the separate affirmative vote of a majority of each such kind, class or series shall be included in the affirmative vote herein required.

(2) A copy of the proposed amendment with thereon a certificate of its approval by the stockholders sealed with the corporate seal, signed by the secretary or assistant secretary and executed and acknowledged by the president or a vice-president shall be prepared and filed with the secretary of state in the manner required for certificates of incorporation.

(3) The certificate of incorporation shall be amended and the amendment incorporated therein when the amendment has been filed with the secretary of state, approved by him and all fees and filing taxes have been paid.

(4) Without in any way limiting the authorization contained in the first sentence of subsection (1) of this section, the amendment may increase or reduce by any amount the authorized number of shares of any kind, class or series of stock, change the par value of shares of any class having par value, or change shares of a class having par value into the same or a different number of shares without par value, or change shares of a class without par value into the same or a different number of shares having par value, authorize the change of any kind, class or series into any other kind, class, or series, or authorize the issue of any kind, class or series of stock not previously authorized.

(5) No amendment shall reduce capital to an amount less than the sum of (a) the aggregate par value of all par value shares to remain outstanding, plus (b) the aggregate consideration received for all no par value shares to remain outstanding, after the reduction. In no case shall the capital be reduced below five hundred dollars.

(6) Every reduction in capital involving any distribution among stockholders shall specify the method of such distribution and said distribution shall be made in accordance with the provisions of the certificate of incorporation designating the rights, preferences and restrictions of the respective kinds, classes or series of stock. No such distribution shall be made which would reduce the assets of the corporation below the amount of its liabilities including capital as reduced.

(7) Unless specifically otherwise provided, (a) no amendment or reduction in capital shall operate to reduce the total authorized capital, and (b) whenever any shares of stock are redeemed or otherwise retired, other shares may be issued in lieu thereof in compliance with the requirements of §608.15.

(8) If all the directors and all the stockholders of the corporation sign a written statement manifesting their intention that a certain amendment of the certificate of incorporation therein set forth be made, then upon the filing of such written statement in the office of the secretary of state, the approval thereof by him, and the payment of all fees and filing taxes, the certificate of incorporation of the corporation shall be thereby amended in accordance with the proposed amendment set forth in said written statement, with the same effect as though the requirements set forth in subsections (1)-(3) of this section had been satisfied. The provisions of subsections (4)-(7) inclusive, of this section shall be applicable to amendments effected in accordance with this subsection.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly covered by §§611.24-611.26; sub. § (4) am. §8, ch. 29886, 1955; (8) N by §1, ch. 57-750.
cf.—§608.05 Filing fees and taxes.

608.19 Sale of assets and franchises.—

(1) Every corporation may, by action taken at any meeting of its board of directors, sell, lease, or exchange all of its property and assets, including its good will and its corporate franchises or any property or assets essential to its corporate business, upon such terms and conditions as its board of directors deem expedient, after authorization by affirmative vote given at a meeting or by the written consent, of stockholders of record holding at least a majority of the stock entitled to vote on such proposal. The certificate of incorporation may, however, require the vote or written consent of a greater proportion than a majority and the separate vote or consent of a majority or greater proportion of any kind, class or series of stock.

(2) Unless the certificate of incorporation shall provide otherwise, no vote or consent of stockholders shall be necessary for a transfer of assets by way of mortgage, in trust or in pledge to secure indebtedness of the corporation.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.35.

608.20 Consolidation and merger of domestic corporations.—

(1) Any two or more corporations existing under the laws of this state may consolidate into a new corporation or merge into any one of the constituent corporations, as shall be specified in the consolidation or merger agreement. The boards of directors of such corporations, or the holders of a majority of the voting stock of any such corporation present at a meeting however duly called or held, as desire to consolidate or merge may enter into an agreement signed by a majority of the members of the several boards of directors or, as the case may be, by the person or persons designated by such majority of the voting stock at such meeting, under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation, as well as the manner and basis of payment for the shares of each of the constituent corporations, whether with cash, bonds, notes or stock of the

proposed consolidated or merged corporation, with such other details and provisions as necessary or desirable. The agreement may state as the amount of capital with which the consolidated or continuing corporation will begin business any amount not less than the sum of the par value of all par value stock plus the aggregate value of consideration received for all no par value stock to be outstanding when the merger or consolidation is completed. In no case shall the amount of capital with which the consolidated or merged corporation will begin business be less than five hundred dollars.

(2) The agreement shall be submitted to a meeting of stockholders of record of each corporation. Notice of the time, place and purpose of the meeting shall be given to every stockholder of record, whether entitled to vote or not. Upon adoption of the agreement by the holders of such proportion as required by the certificate of incorporation, but not less than a majority, of the stock entitled to vote thereon, the secretary or assistant secretary of each corporation shall certify the fact of that approval on the agreement under the seal of the corporation. The agreement so adopted and certified shall, for each corporation, be signed by the president or vice-president and secretary or assistant secretary under its corporate seal, and acknowledged by the president or vice-president to be the act, deed and agreement of the corporation. The agreement so certified and acknowledged by each corporation shall be filed in the office of the secretary of state and, when approved by him and all fees and taxes required thereon by this chapter have been paid, the consolidation or merger shall be effective.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.36, 612.37.
cf.—§608.05 Filing fees and taxes.

608.21 Consolidation or merger of domestic and foreign corporations.—

(1) Any one or more corporations existing under the laws of this state, may consolidate or merge with one or more other corporations organized under the laws of any other state, territory, possession or jurisdiction of the United States or of the United States if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger. The constituent corporations may merge into a single corporation which may be any one of them, or they may consolidate to form a new corporation, which may be a corporation of the jurisdiction of incorporation of any one of the constituent corporations as shall be specified in the consolidation or merger agreement. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the basis of payment for the shares of each of the constituent corporations whether with cash, bonds, notes or shares of the consolidated or merged corporation and such other details and provisions as shall be agreed upon. The agreement shall also contain such other facts as shall be required to be set forth in articles of incorporation by the laws of the jurisdiction which is stated therein to be the domicile of the consolidated or merged corporation and which can be stated in the case of a consolidation or merger. The agreement shall be adopted, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and, in case of a Florida corporation, in the manner provided in §608.20. If the consolidated or merged corporation is to be a Florida corporation, the agreement so adopted, signed and acknowledged, shall be filed in the office of the secretary of state and, when approved by him and all fees and taxes required thereon by part I of this chapter have been paid, the consolidation or merger shall be effective.

(2) If the consolidated or merged corporation be a foreign corporation the agreement shall be filed in the office of the secretary of state and shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of the constituent corporations for all purposes of the laws of this state. Before such foreign corporation may transact any business in this state it shall comply with every applicable provision of chapter 613.

History.—§1, ch. 28170, 1953; (1) §1, ch. 63-284.
Note.—Formerly §§612.38, 612.44.
cf.—§608.05 Filing fees and taxes.

608.22 Consolidation or merger; status of corporations and stockholders.—

(1) Upon the effective date of the consolidation or merger, the separate existence of the constituent corporations or of all such constituent corporations except the one into which the other constituent corporations have been merged, as the case may be, shall cease, and the constituent corporations shall become a single corporation in accordance with the agreement, possessing all the rights, privileges, powers, franchises, whether or not by their terms assignable, and immunities, as well of a public as a private nature, and properties, real, personal and mixed belonging to all the constituent corporations, however acquired. All rights of creditors and all liens upon the property of either of the constituent corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the time of the consolidation or merger, and all debts, contracts, liabilities, obligations and duties of the respective constituent corporations shall thenceforth attach to the consolidated or merged corporation, and may be enforced against it to the extent as if they had been incurred or controlled by it.

(2) Each stockholder entitled to vote, in either of the constituent corporations at the time the consolidation or merger becomes effective, who did not vote against the consolidation or merger and object thereto in writing, and each stockholder, not entitled to vote, in each of the constituent corporations at the time the consolidation or merger becomes effective,

who did not object thereto in writing, shall cease to be a stockholder in such constituent corporation and, together with the stockholders voting in favor of the consolidation or merger, shall be entitled to receive in exchange for his stock, the consideration specified in the agreement of consolidation or merger.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.39.

608.23 Consolidation or merger; payment for stock of dissatisfied stockholders.—

(1) If any stockholder of any constituent Florida corporation entitled to vote on a consolidation or merger agreement shall vote against it and, at or prior to the taking of the vote, object thereto in writing, or if any stockholder of record in any constituent Florida corporation not entitled to vote thereon, shall at or prior to the taking of the vote object thereto in writing and if, in either case, such stockholder shall, within twenty days after the taking of such vote, demand in writing that the consolidated or merged corporation make payment of the fair cash value of his stock, the consolidated or merged corporation shall, within thirty days after said consolidation or merger agreement becomes effective, pay to him the fair cash value of the stock as of the day before such vote was taken. In case of disagreement as to the fair cash value, the stockholder within sixty days after the consolidation or merger agreement has become effective and upon reasonable notice to the consolidated or merged corporation, may appeal by petition to the circuit court of the county in which the principal office or resident agent of the consolidated or merged corporation is established, to appoint three appraisers to appraise the value of his stock. The award of the appraisers, or a majority of them if not opposed within ten days after it has been filed in court, and notice thereof served on the consolidated or merged corporation, shall be confirmed by the court, and when confirmed shall be final and conclusive. If the award of the appraisers be opposed, such opposition shall be tried summarily and judgment rendered thereon by the court.

(2) If the amount determined on such award is in excess of the amount the consolidated or merged corporation shall have offered to pay as the fair cash value of the stock, the court shall assess against the consolidated or merged corporation the costs of the proceedings, including a reasonable attorney's fee to the stockholder and a reasonable fee to the appraisers; otherwise such costs and fees to the appraisers shall be assessed one-half against the consolidated or merged corporation and the remainder against the stockholder. Any party shall have the right of appeal from the judgment according to existing laws, provided said appeal be taken within ten days after the signing of the judgment.

(3) Unless the consolidation or merger is abandoned, any stockholder on the making of such demand in writing as aforesaid, shall cease to be a stockholder in said constituent corporation and shall have no rights with respect to his stock except the right to receive payment therefor, and upon payment of the agreed fair cash value of the stock or of the value of the stock under final judgment, he shall transfer his stock to the consolidated or merged corporation. If the consolidated or merged corporation shall fail to pay the amount of the judgment within ten days after the same shall become final, it may be enforced as other judgments.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.40.

608.24 Liability of corporations and rights of others unimpaired by.—The liability of corporations, or the stockholders or officers thereof, or the rights or remedies of the cerditors thereof, or of persons transacting business with such corporation, shall not in any way be lessened or impaired by the consolidation or merger of two or more corporations under the provisions of part I of this chapter.

History.—Comp §1, ch. 28170, 1953; provisions contained herein formerly §612.42.

608.25 Capital of consolidated or merged corporations.—The capital of a consolidated or merged corporation shall be the amount stated in the consolidation or merger agreement as the amount of capital with which the consolidated or merged corporation will begin business until the corporation shall issue additional stock or, by action of its board of directors, transfer additional amounts to capital. The issue of any additional shares shall increase capital as provided in §608.17. Transfer of funds to capital shall increase capital by the amount so transferred.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.43.

608.26 Consolidation or merger; pending actions saved.—Any action or proceeding pending by or against either of the corporations consolidated or merged may be prosecuted to judgment, as if such consolidation or merger had not taken place, or the resultant corporation may be substituted in its place.

History.—Comp. §1, chapter 28170, 1953; provisions contained herein formerly §612.41.

608.261 Reorganization of bankrupt railroad company; amendment of charter, or articles or certificates of incorporation.—

(1) Notwithstanding the provisions of any other statutes of the state applicable to amendments of charters, articles of association or incorporation, or certificates of incorporation of railroad companies incorporated under the laws of Florida, where a plan of reorganization of any such railroad company pursuant to the act of congress of July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," as amended (hereinafter called "the national bankruptcy act"), has been confirmed by decree or order of a court of competent jurisdiction, the reorganization managers or committee designated in the plan of reorganization to

consummate the same, or such other person so authorized by the court or judge in such reorganization proceedings, shall have full power and authority to adopt such amendments of its charter, articles of association or incorporation, or certificate of incorporation as may be necessary and proper to put into effect and carry out such plan of reorganization and the decrees and orders of the court relative thereto without action by the directors or stockholders of any such railroad company; provided, however, that nothing herein contained shall preclude the stockholders and/or directors from exercising any rights that have been preserved by such order or decree confirming such plan of reorganization.

(2) After the adoption of such amendments of the charter, articles of association or incorporation, or certificate of incorporation, a certificate of amendment executed, acknowledged and sworn to by such reorganization managers or committee or such other person so authorized by the court or judge to adopt such amendments, shall be filed with the secretary of state. Such certificate of amendment shall show:

(a) The name of the corporation and, if it has been changed, the name under which it theretofore existed;

(b) The amendment or amendments adopted;

(c) The new capitalization of such corporation; and

(d) That such amendments and new capitalization were authorized by the plan of reorganization or in a decree or order of the court relative thereto, and that the plan has been confirmed under the national bankruptcy act, with the title and venue of the proceeding and the date when the decree or order confirming the plan was made.

(3) Any such reorganized railroad company shall not be precluded from thereafter further amending its charter, articles of association or incorporation, or certificate of incorporation in the manner otherwise provided by law.

(4) Upon the filing of such certificate of amendment of a charter, articles of association or incorporation, or certificate of incorporation pursuant to a plan of reorganization as provided in this section, there shall be paid to the secretary of state for the use of the state the filing fees and taxes applicable to amendments as provided by §608.05.

(5) The enactment of this law shall not be construed to embrace any purpose other than amending the existing corporate laws of this state, as herein provided.

History.—Comp. §§1-5, ch. 57-259.

608.27 Dissolution, voluntary.—

(1) (a) Whenever the board of directors of any corporation shall find it desirable that it be dissolved, they may adopt a resolution to that effect. If, at a meeting of stockholders, such proportion as required by the certificate of incorporation or the bylaws, but not less than a majority, of stock entitled to vote thereon shall vote in favor, the resolution shall be adopted. A copy of the resolution, with thereon the certificate of the president or vice president and the secretary or assistant secretary of its adoption by the stockholders, together with a list of names and addresses of the officers and directors, shall be filed in the office of the secretary of state.

(b) In addition, an affidavit from the corporation, executed by the president or vice president and attested by the secretary or assistant secretary, stating that all currently due property taxes, both tangible and intangible, and all sales and use taxes, where applicable, have been paid as of the date of the affidavit, shall be filed with the secretary of state at the same time. After satisfying himself that the foregoing requirements have been met, the secretary of state, shall cause to be published one time in a newspaper published in the county where the principal office of the corporation is located, a notice that such resolution has been filed. Upon the filing with the secretary of state by the manager or publisher of such newspaper of proof of publication of the notice and payment by the corporation of the cost of publication and the fee required by §608.05(5) (b) the corporation shall be dissolved.

(2) Whenever all stockholders of record having voting power on a proposal to dissolve shall consent in writing to a dissolution no meeting of stockholders shall be necessary.

History.—§1, ch. 28170, 1953; (1) §§1, 2, ch. 63-240.
Note.—Formerly §§611.31, 612.46.

608.28 Dissolution where opposing ownership interests are evenly divided.—When the total stock voting power is evenly divided into two independent ownerships or interests, and the number of directors is even and equally divided respecting the management of the corporation with one-half of the ownership favoring the course advocated by one-half of the directors, and the other half of the ownership favoring the course of the other half, or where the ownership is equally divided and the number of directors is uneven, but the two halves of the ownership are unable to agree on or elect successor directors and the old directors are holding over, the circuit court, sitting in chancery, may entertain a petition from any stockholder for involuntary dissolution of the corporation. If, after hearing thereon, the court finds that the division of ownership is equal and cannot be reconciled, he may appoint a receiver or trustee of the corporation, and enter an order that it be dissolved. The order shall be filed in the office of the secretary of state, who shall treat it as a resolution and certificate of dissolution as provided by §608.27. The fees and costs provided by §608.27, shall be paid by the receiver or trustee from corporate funds. Liquidation shall be by the procedure provided in §608.29.

History.—§1, ch. 28170, 1953; §9, ch. 29886, 1955.
cf.—§608.05 Filing fees and taxes.

608.29 Dissolved corporations; receivers appointed by the court; powers.—

(1) When any corporation organized under part I of this chapter shall be dissolved or cease to exist in any manner whatever, the circuit court, sitting in chancery, on application of any creditor or stockholder of such corporation, at any time, may either continue such directors as trustees, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purpose aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of such trustees or receivers may be continued as long as the circuit court shall find necessary for the purposes aforesaid.

(2) The circuit court shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

(3) Such trustees or receivers, after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the property and funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in such manner as provided by order or decree of the court for that purpose. They shall, if there be any balance remaining after the payment of such debts and necessary expenses or the making of adequate provision therefor distribute and pay the same to and among those or their legal representatives who shall be justly entitled thereto, as having been stockholders of the corporation.

(4) Trustees or receivers, where appointed, shall make final distribution of assets within such time and in such manner as the court may determine in the order of appointment or in subsequent proceedings.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§611.34, 612.50-612.53.

608.30 Dissolution; continuation after; trustees.—

(1) Every dissolved or expired corporation shall continue a body corporate for three years after dissolution or expiration for the purpose of satisfying its liabilities, selling and conveying its property and dividing the net remaining assets among the stockholders but for no other purpose.

(2) (a) The directors of the corporation at the time of dissolution or expiration shall be and constitute a board of trustees for the property owned by the dissolved or expired corporation. In the event of vacancies in the board of directors at the time of dissolution or expiration the remaining directors, as trustees, may fill them from among the stockholders. Subsequent vacancies may be filled by the surviving trustees in like manner. Acts of a majority of the trustees or of a majority of the surviving trustees shall be acts of the board of trustees.

(b) In the event there be no surviving trustees, or none such can be located, and the need arises, the circuit court, sitting in chancery, upon petition of any person having any claim against the corporation or any right, title, interest, claim, lien or demand in, to or upon real property in which the corporation holds of record any right, title, interest, claim, lien or demand in, to or upon, may, after finding as a fact that there are no surviving trustees or that none such can be located, appoint one or more trustees, who shall have power to do all things that trustees holding office under paragraph (a) hereof could do.

(3) (a) The trustees shall take charge of the estate and effects of the corporation. They shall act with reasonable diligence and dispatch to collect the debts due and property belonging to the corporation and to pay such debts and claims as may be established against it so far as assets coming into their hands permit. They shall have power to prosecute and defend, as trustees of the corporation, all suits in progress at the time of dissolution or expiration or thereafter arising as may be necessary for closing the affairs of the corporation and to sell and convey its property, real and personal.

(b) After paying or adequately providing for payment of the corporate debts, liabilities and obligations, they may divide the remaining assets ratably among the stockholders or, with the written consent of a majority of the voting stock, they may sell the remaining assets or a part of them to a corporation of this or any other state and take in payment stock or bonds or both and distribute them ratably among the stockholders. If any stockholder who did not consent to the sale shall demand in writing, within thirty days after notice of such sale, the fair cash value of his share of the assets sold, such fair cash value shall be determined as provided in §608.23, and the vendee corporation shall pay to him the value so determined within ten days after the determination becomes final.

(c) The trustees may do all acts necessary and proper to the final settlement of all the affairs of the corporation, including but not limited to the following: They may convey, assign, release, subordinate and satisfy any right, title, interest, claim, lien or demand in, to or upon real property standing of record in this state in the name of such dissolved corporation. It shall not be necessary for any stockholder to execute such deed, but execution thereof by a majority of the trustees or a majority of the surviving trustees shall be adequate. All deeds or other instruments so exe-

cuted in the past are hereby validated in all respects. The trustees so executing any such instrument may append thereto an affidavit stating in substance that they are duly qualified to act as such trustees, and that they constitute a majority of the trustees then existing. Such affidavit, as to purchasers without notice, shall be taken and held to be conclusive as to the facts therein stated. The trustees shall continue as trustees of the property of such dissolved corporation so long as it holds of record in this state any right, title, interest, claim, lien or demand in, to, or upon real property.

(4) If, at the end of three years after dissolution or expiration, any claim is not paid, agreed to be paid, reduced to judgment or litigation for its enforcement initiated, they may make final distribution of the remaining assets to the then stockholders of record according to the priorities between them. If at that time there be unpaid judgments or pending litigation of claims, they may, after reserving an amount sufficient to pay such judgments or claims with costs, distribute the remaining assets ratably among the then stockholders of record. Upon conclusion of such pending litigation and payment of such amounts as final judgments or decrees may require them to pay, they may distribute as hereinbefore stated any amounts remaining.

(5) Upon their making distribution after the three-year period or thereafter at the end of litigation, they shall be relieved and discharged of any further or personal obligation to distribute assets first to creditors and second to stockholders. Nothing in this section shall relieve the stockholders from ratable contribution, from any assets received in distribution, toward payment of any valid and enforceable claim made against them as distributees, or against the corporation, or relieve property coming to the hands of the trustees from any valid claim of lien or claim of right therein, nor prevent service of process upon the trustees as such to enforce any lien or determine any property right after distribution.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.18, 610.37, 611.32, 611.34, 612.47-612.49, 612.53; sub. §§(2), (3) am. §§10, 11, ch. 29886, 1955; (6) R. by §24, ch. 57-1.

608.31 Dissolution before payment of capital stock.—Before the payment of any part of the capital stock and before beginning the business for which the corporation was created, the incorporators named in any certificate of incorporation may dissolve the corporation by filing in the office of the secretary of state a certificate, verified by the oath or affirmation of a majority of the incorporators named in the certificate of incorporation, that no part of the capital has been paid and such business has not been begun, and paying the fee required by §608.05(5)(b).

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.55; §24, ch. 57-1.

608.32 Annual report of corporation; contents.—

(1) All corporations heretofore or hereafter incorporated in this state and all foreign corporations heretofore or hereafter authorized to do business in this state are required to file with the secretary of state on or before July 1 of each year a sworn report, on such form as the secretary of state shall prescribe, giving:

(a) The name of each officer and director and his post office address,

(b) The home office of the corporation,

(c) The name and address of the resident agent upon whom service of process may be made, with a statement in writing acknowledging acceptance of the appointment as such officer or agent for service of process by such person,

(d) The main line of business engaged in by the corporation,

(e) The date of the last meeting of its board of directors,

(f) Whether the corporation has been actively engaged in business during the previous twelve months or if its charter powers have been dormant and unused during that period,

(g) The number of the shares of the capital stock of such corporation with the par value thereof,

(h) The total amount of capital stock, and if a foreign corporation the amount of its capital stock allocated for use in the state,

(i) Such other information as may be needed to show whether the corporation is active or inactive, and

(j) Such other information as may be necessary for the secretary of state to have in carrying out the provisions of this section and §608.33.

(2) Provided, that railroad, pullman, telephone, telegraph, insurance, banking and trust companies, building and loan associations, cooperative associations, corporations not for profit and corporations paying the maximum capital stock tax, shall be required to furnish the information required under (a) through (f) of subsection (1) hereof only.

(3) All reports herein required shall be for the calendar year and shall be due to be filed on July 1st of each year and the tax payable under §608.33 shall be paid at that time.

History.—§1, ch. 28170, 1953; (1) §1, ch. 63-239.
Note.—Formerly §§610.07, 610.13, 610.14, 611.10.

608.33 Capital stock tax.—

(1) Every corporation, except railroad, pullman, telephone, telegraph, insurance, banking and trust companies, building and loan associations, cooperative marketing associations and corporations not for profit, doing business in this state shall pay to the state for the use of the state a capital stock tax according to the following schedule:

SCHEDULE FOR CAPITAL STOCK TAX

For all corporations with capital stock not exceeding $10,000.00	$20.00
For capital stock of over $10,000.00 and not over $25,000.00	50.00
For capital stock of over $25,000.00 and not over $50,000.00	100.00
For capital stock of over $50,000.00 and not over $100,000.00	150.00

For capital stock of over $100,000.00 and not over $200,000.00 ..... 200.00
For capital stock of over $200,000.00 and not over $500,000.00 ..... 400.00
For capital stock of over $500,000.00 and not over $1,000,000.00 ..... 1,000.00
For capital stock of over $1,000,000.00 and not over $2,000,000.00 ..... 1,500.00
For capital stock over $2,000,000.00 ..... 2,000.00

The capital stock above mentioned refers to the invested capital represented by shares of stock outstanding.

(2) In the case of any Florida corporation having been organized or any foreign corporation which has been authorized to do business in Florida, less than twelve months at the time the report is due and the capital stock tax is to be paid, the tax due that year shall be pro rated according to the number of months the corporation has been in existence or authorized to do business in this state.

(3) Nothing in this section or in §608.32 shall apply to any corporation that has been adjudged bankrupt or dissolved by order of court except that any such corporation shall file a statement setting forth its status in that respect, but shall not be required to pay the capital stock tax.

(4) In the event any of the shares of stock of any such corporation should be no par value, then for the purposes of this section, each share shall be presumed to have value of at least one hundred dollars per share, which presumption may be overcome by actual proof submitted to the secretary of state. The secretary of state shall make such investigation as he may consider necessary and increase or decrease the value of no par value stock as he may determine to be correct; and in so doing he may take into consideration all facts tending to show the fair market value of the stock, including its sale price, the amount of the surplus of the corporation and such other pertinent facts as he may deem advisable.

History.—§1, ch. 28170, 1953; (1) §1, ch. 63-487.
Note.—Formerly §§610.08, 610.10, 610.12, 610.15.

608.34 Duties of secretary of state. — The secretary of state shall prescribe the form and furnish the blanks upon request to make the annual reports called for in §608.32, examine the reports when received and if the information called for is given in such reports, he shall file the same as information and keep such reports as public records. He shall pay into the state treasury to be used for such purposes as the legislature may determine all moneys collected under the provisions of §608.33. He shall cause a notice of the requirements of § §608.32, 608.33, to be mailed to the last known address of every corporation doing business in the state which shall fail to file within thirty days after July 1st, the report required by §608.32 or pay the capital stock tax imposed by §608.33.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.09 and 610.10.
Section 610.10 was amended by §3, ch. 28248, 1953, as incorporated herein.
cf.—§215.32(1) General revenue fund.

608.35 Penalty for failure to file report and pay tax. — Any corporation failing to comply with the provisions of § § 608.32 and 608.33 for six months shall not be permitted to maintain or defend any action in any court of this state until such reports are filed and all taxes due under part I of this chapter be paid.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.11.

608.36 Dissolution of corporation or cancellation of permit for failure to make report and pay capital stock tax.—

(1) All corporations on file in the office of the secretary of state, subject to pay the capital stock tax as provided in §608.33 which shall fail for a period of three years to file the reports required by §608.32 or pay the capital stock tax shall be classed as inactive and subject, if domestic corporations, to dissolution or, in the case of foreign corporations, cancellation of their permits to do business in this state. The secretary of state shall make up a list of all corporations subject to dissolution or cancellation of permits for such reason, on the first day of January of each year and give notice by publication in a newspaper one time in the county in which the home office of each such domestic corporation is located and in a paper published in Tallahassee, in cases of foreign corporations, giving notice that a proclamation dissolving or cancelling the permits of such corporations will be issued three months from the date of publication.

(2) Any corporation which shall file its report and pay all back taxes due before the issuance of the proclamation shall have all its corporate rights restored and shall not be dissolved or have its permit canceled.

(3) Three months after the date of the publication of the notice required by this section, the secretary of state shall prepare a list of delinquent corporations named in the published notice, which have not in the meantime filed their reports and paid the taxes due, which list shall be certified to the governor who shall thereupon issue a proclamation and cause the same to be attested by the secretary of state under the great seal of the state, dissolving or cancelling the permits of such delinquent corporations. Thereupon the secretary of state may remove from his active files the certificates of incorporation of all corporations dissolved or which have had their permits cancelled as provided herein, and shall cause to have made copies thereof, by photographic process. This phrase being used in its most general sense and including miniature photographic microfilming or microphotographic processes or any other photographic, mechanical or other process heretofore or hereafter devised. After copies are made, the original certificates of incorporation of such dissolved corporations may be destroyed. These photographic copies shall be filed in a file labeled dissolved corporations, and the names of such dissolved corporations and those having permits cancelled shall be available for use by any new corporation being formed or foreign corporation qualifying in this state. The

secretary of state shall also cause a list of all corporations dissolved or which have had their permits cancelled under the provisions of this section to be prepared and filed with the clerk of the circuit court in each county. The clerk shall file the list without charge, but need not record it.

(4) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—§1, ch. 28170, 1953; §§1, 2, ch. 63-285.
Note.—Formerly §§610.16, 610.17.

608.37 Restoration of corporations dissolved by operation of law for failure to file reports and pay capital stock tax.—

(1) Any domestic corporation which has been dissolved or foreign corporation which has had its permit to do business within the state cancelled by operation of §608.36 for failure to pay the capital stock tax may have its corporate entity or its permit to do business restored by filing with the secretary of state the reports required by §608.32 and payment of the three years capital stock tax which was due at the time of dissolution or cancellation of permit. The receipt of the secretary of state shall be issued for such payments and in such cases shall state that the corporation has been fully restored or its permit to do business in the state fully revived and restored. Restoration shall be effective from the date of dissolution or cancellation of permit.

(2) (a) The owner or owners of a majority of the capital stock of a corporation dissolved for failure to file reports and pay capital stock tax, or their successors in interest in the dissolved corporation or its assets, may have the corporation revived and it corporate entity, franchise and privileges restored by filing an application therefor, signed by said owner or owners, in the office of the secretary of state, accompanied by the filing fees and charter tax required for a new corporation.

(b) Should the name of the dissolved corporation have been lawfully appropriated by another corporation the applicants shall be permitted to amend the application by adopting another name and thereafter the corporation shall continue under the name so adopted.

(c) Restored corporations shall be subject to the capital stock tax from the date of restoration.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.30.

608.38 Office and resident agent. — Every corporation shall maintain an office in this state with a resident agent thereat upon whom process may be served. The resident agent may be either an individual or a corporation. The corporation shall keep the secretary of state informed of the current city, town or village and street address of said office together with the name of the resident agent.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.59; §12, ch. 29886, 1955.
cf.—§§47.16-47.20, 47.22, 47.28, 47.33-47.37, 47.41, 47.42, 47.44, 47.45, 47.50, Process, service.

608.39 Books to be kept; inspected; penalties.—

(1) Every corporation shall keep at its office in this state, or in the office of its transfer agent wherever located, a book (or books where more than one kind, class or series of stock is outstanding) to be known as the stock book, containing the names, alphabetically arranged, with the address of every stockholder, showing the number of shares of each kind, class or series of stock held of record by him, and where the stock book is kept in the office of the transfer agent, the corporation shall keep at its office in this state copies of the stock lists prepared from said stock book and sent to it from time to time by said transfer agent. The stock book or stock lists shall show the current status; provided, if the transfer agent of the corporation be located elsewhere, a reasonable time shall be allowed for transit of mail. The stock book or stock lists shall be open for at least three business hours each business day for inspection by any judgment creditor of the corporation or any person who shall have been for at least six months immediately preceding his demand a record holder of not less than one per cent of the outstanding shares of such corporation, or by any officer, director, or any committee or person holding or authorized in writing by the holders of at least five per cent of all its outstanding shares. Persons so entitled to inspect stock books or stock lists may make extracts therefrom.

(2) If any officer or agent of any such corporation shall willfully neglect or refuse to make any proper entry in the stock book, or shall neglect or refuse to exhibit any stock book, or to allow it to be inspected and extracts taken therefrom as provided in this section, he and the corporation shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damage resulting to him therefrom.

(3) It shall be a defense to any action under this section that the person suing has used or purposes to use the information so obtained otherwise than to protect his interest in the corporation or has within two years sold or offered for sale any list of stockholders of such corporation or any other corporation, or has aided or abetted any person in procuring any stock list for any such purpose.

(4) Nothing in this section shall impair the power of the courts to compel the production for examination of the books of a corporation.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§611.09 and 612.60; sub. §(1) am. §13, ch. 29886, 1955.
Am. §24, ch. 57-1.

608.40 Officers; selection, terms, etc.—Every corporation shall have a president, who shall be a director, a secretary and a treasurer.

They shall be chosen by the directors and shall serve until their successors are chosen and qualify. All other officers, agents and factors shall be chosen, serve for such terms and have such duties as may be prescribed by the certificates of incorporation or the by-laws or determined by the board of directors. Any person may hold two or more offices, except that the president may not also be the secretary or assistant secretary. No person holding two or more offices shall sign any instrument in the capacity of more than one office.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§611.14 and 612.34; §14, ch. 29886, 1955.

608.41 Stock certificates; bonds and debentures.—

(1) (a) Every stockholder shall be entitled to have for each kind, class or series of stock held, a certificate certifying the number of shares thereof held of record by him. Certificates shall be signed by the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary, and sealed with the seal of the corporation. The seal may be facsimile, engraved or printed. Where such certificate is signed by (a) a transfer agent or an assistant transfer agent, other than the corporation itself, or by (b) a transfer clerk acting on behalf of the corporation and a registrar, the signature of any of those officers named herein may be facsimile. In case any officer who signed, or whose facsimile signature has been used on any certificate shall cease to be such officer for any reason before the certificate has been delivered by the corporation, such certificate may nevertheless be adopted by the corporation and issued and delivered as though the person who signed it or whose facsimile signature has been used thereon had not ceased to be such officer.

(b) It shall not be necessary to set forth in said certificate the provisions of the certificate of incorporation in original or amended form showing the class or classes of stock authorized to be issued by the corporation and the distinguishing characteristics thereof. If the corporation so elects, said provisions may be either (a) summarized on the face or back of the certificate or (b) incorporated by reference made on the face or back of the certificate where such reference states that a copy of said provisions, certified by an officer of the corporation, will be furnished by the corporation or its transfer agent, without cost, to and upon request of the certificate holder.

(2) Every bond or debenture issued by any corporation shall be evidenced by an appropriate instrument which shall be signed by the president or a vice-president and by the treasurer or an assistant treasurer, or by the secretary or an assistant secretary, and sealed with the seal of the corporation. The seal may be facsimile, engraved or printed. Where such bond or debenture is authenticated with the manual signature of an authorized officer of the corporate or other trustee designated by the indenture of trust or other agreement under which said security is issued, the signature of any of the corporation's officers named herein may be facsimile. In case any officer who signed, or whose facsimile signature has been used on any such bond or debenture, shall cease to be an officer of the corporation for any reason before the same has been delivered by the corporation, such bond or debenture may nevertheless be adopted by the corporation and issued and delivered as though the person who signed it or whose facsimile signature has been used thereon had not ceased to be such officer.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.17.

608.42 Stock personal property; transfer; preemptive right.—

(1) The stock of every corporation shall be personal property and shall be transferable on the books of the corporation in the manner and under such regulations as may be provided in the by-laws.Transfers of certificates of stock may be made between the parties as provided in and by chapter 614. No transfer of stock shall be valid against the corporation, its stockholders (other than the transferor) and its creditors for any purpose except to render the transferee liable for debts of the corporation to the extent provided in part I of this chapter, until it shall have been registered upon the corporation's books.

(2) Unless otherwise provided by the certificate of incorporation, every stockholder, upon the sale for cash of any new stock of the same kind, class or series as that which he already holds, shall have the right to purchase his pro rata share thereof (as nearly as may be done without issuance of fractional shares) at the price at which it is offered to others, which price, in the case of par value shares, may be in excess of par.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.20, 611.08, 612.18, 612.20; §15, ch. 29886, 1955.

608.43 Corporate voting trusts; methods of establishment.—

(1) Any person owning or holding stock in any corporation for profit, as an individual or as a trustee for another, may enter into a written agreement vesting one or more trustees with the authority to exercise the voting power of any or all of his stock as described in the agreement. There may be included in the agreement conditions, limitations and instructions as to the manner in which the vote shall be cast upon any proposition and upon general or any special policy. No trustee heretofore or hereafter so appointed for the purpose of conferring the right to vote such stock shall have the right to vote the same for the purpose of either increasing or reducing the capital stock of such corporation, unless said agreement shall expressly give to him such right. Any such agreements may provide for the method of appointment or election, or may designate successor trustees in event of death, resignation, or other vacancy in any trustee-

ship. The conditions or limitations contained in the agreement shall not bind the corporation nor affect any act thereof. Any act by a trustee contrary to such conditions, limitations or instructions, shall not affect the validity of any election, resolution, or actions of the stockholders or of the corporation. The remedy of the stockholder in such cases will be against the defaulting trustee. Ten years from date of the instrument will be the maximum period for which any agreement under the provisions of this section shall be effective.

(2) All such agreements shall be recorded in the minutes of the corporation or in a corporate book especially provided for the purpose. Prior to recording of the agreement, the stockholder concerned shall tender the stock certificate described therein to the secretary who shall note on each certificate:

"This certificate is subject to the provisions of a voting trust agreement dated _____, recorded in Minute Book _____, of the corporation.

_____
Secretary"

Such endorsement shall constitute sufficient notice of the existence of the agreement and any purchaser acquiring stock covered by the agreement shall be bound by the terms thereof. The secretary, upon production of satisfactory proof of the cancellation of the agreement or upon its expiration by its own terms, shall make an appropriate notation in the minutes or book mentioned herein and upon any stock certificate covered by the canceled or expired agreement indicating such cancellation or expiration, or, upon request, shall issue a substitute certificate bearing the same number as that surrendered and shall cancel the original, filing it in the records of the corporation.

(3) The trustees under the terms of the agreements entered into under the provisions of this section shall not acquire the legal title to the stock but shall be vested only with the legal right and title to the voting power which is incident to the ownership of the stock.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.38-610.40, 612.19.

608.44 Stockholders' liability.—Every holder of shares of stock not fully paid shall be personally liable to the creditors of the corporation for debts of the corporation to an amount equal to the amount unpaid on the shares held by him, but no further.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.14.

608.45 Pledgee or fiduciary holders; no personal liability.—No pledgee or other holder of shares in any corporation as collateral security shall be personally liable as a stockholder. No executor, administrator, guardian or trustee shall be personally liable as a stockholder unless he, without authorization, shall have voluntarily invested the funds entrusted to him in such shares.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.19, 612.15.

608.46 Married women as stockholders, etc. —Married women are competent to be incorporators, subscribers, members, stockholders, directors or officers of any corporation heretofore or hereafter organized or functioning under or pursuant to any existing or former law of Florida. The de jure corporate existence of any corporation heretofore organized or functioning under any existing or former law of Florida shall not be called into question or held invalid because any one or more of the incorporators, subscribers, members, stockholders, directors or officers thereof were married women, nor shall any act, deed or thing done, permitted or suffered by any such corporation or by any incorporator, subscriber, member, stockholder, director or officer thereof be invalid for any such cause.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.06.

608.47 Limitation of actions. — No action shall be brought against the stockholders for any debt of the corporation until judgment therefor is recovered against the corporation and an execution thereon has been returned unsatisfied in whole or in part. It shall not be necessary to secure judgment against a corporation in the hands of a receiver, or which shall have been adjudged bankrupt. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due. No action shall be brought against the stockholder after he shall cease to be the owner of the shares for any debt of the corporation, unless brought within two years from the time he ceased to be a stockholder.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.16.

608.48 Misnomer. — A misnomer of a corporation in any deed or instrument shall not vitiate the same if the corporation is therein sufficiently described to ascertain the intent of the parties.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.26.

608.49 Corporation may sue members.—All corporations may sue for, recover and receive from their respective members all arrears, or other debts, dues and other demands which may be owing to them, in like manner as they might sue for and recover them from any other person.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.25.

608.50 Estoppel; ultra vires.—No body of persons acting as a corporation shall be permitted to set up the want of legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with the corporation or sued for an injury to its property or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense. The de-

fense of ultra vires shall not be available to a corporation sued on a contract or other obligation.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.27; §16, ch. 29886, 1955.

608.51 Effect of failure to elect directors or officers.—Failure to elect directors or appoint officers on the designated day shall not affect the existence of the corporation. In such case, the incumbents shall hold over until their successors have qualified.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.02, 611.12, 612.33.

608.52 Dividends.—Dividends may be paid to stockholders from the net earnings or from the surplus of the assets over the liabilities including capital of a corporation, but not otherwise. When the directors shall so determine, dividends may be paid in stock.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.23.

608.53 Dividend by insolvent corporation.—If the directors shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for the debts of the corporation then existing to the extent of the dividends so declared. If, however, any director be absent at the time of voting the dividend, or shall at the time object thereto in writing, he shall not be so liable.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.23.

608.54 Unlawful withdrawals, divisions and decreases of capital.—The directors of a corporation shall not divide, withdraw or in any way pay to the stockholders or any of them any part of the capital of the corporation or decrease its capital except as provided by part I of this chapter. In case of any wilful or negligent violation of the provisions of this section, the directors under whose administration it occurred, except those who caused their dissent therefrom to be entered upon the minutes of the meeting of the directors at the time or who, not then being present, filed their written dissent therefrom with the corporation on learning of such action, shall be liable at any time within two years after each such violation, to the corporation, and in the event of its dissolution or insolvency, to its creditors, or any of them, to the full amount of the dividends paid or of any loss sustained by the corporation by reason of such withdrawal, divisions or decrease of capital. No action shall be brought hereunder by the creditors of a corporation until judgments for their claims are recovered against the corporation and executions thereon have been returned unsatisfied in whole or in part.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §§610.24, 612.57.

608.55 Prohibited transfers to officers or stockholders; transfers after or in contemplation of insolvency.—No corporation which shall have refused to pay any of its notes or other obligations when due, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation, shall be valid. Every person receiving by means of any such prohibited act or deed any property of a corporation shall be bound to account therefor to its creditors or stockholders. No holder of stock not fully paid in any corporation shall transfer it to any person in contemplation of the corporation's insolvency. Every transfer or assignment or other act done in violation of the foregoing provision of this section shall be void except in the hands of a purchaser for a valuable consideration without notice. The directors or officers of a corporation who shall violate or be concerned in violating any provision of this section shall be personally liable to the creditors and stockholders of the corporation of which they shall be directors or officers to the full extent of any loss such creditors and stockholders may respectively sustain by such violation.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.45.

608.56 Penalty for commencing business before minimum capital is paid in.—No corporation shall commence business until the amount of capital specified in its certificate of incorporation as the amount of capital with which it will commence business has been paid in. If any corporation shall violate this provision, its directors shall be personally liable for the debts of the corporation, but such liability shall not exceed in the aggregate the amount of capital specified in its certificate of incorporation as the amount of capital with which it will commence business.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.56.

608.57 Failure of directors to adopt by-laws.—When the directors of any corporation for the first year of its corporate existence are authorized to adopt by-laws, and they hold over and continue to be directors after the first year because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election of directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director in any capacity shall be fraudulent and void.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.32.

608.58 False reports and statements.—Any director, officer, agent or employee of any corporation who knowingly and with intent to defraud concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false shall be liable for all damages caused thereby.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §612.61.

608.59 When words or phrases indicating incorporation prohibited.—No person or group of persons, not incorporated under the laws of this state, nor any foreign corporation not authorized to do business in this state may operate a business for profit under any trade name or style which includes the words, "corporation", "company", "association" or "society", or any of them, unless said trade name or style also includes the words, "not incorporated", wherever publicly displayed on a sign board, in advertising, in printed matter or in any other manner. Violation of this section is a misdemeanor punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding six months.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §610.05.

608.60 Cemetery companies; additional provisions. — Corporations may be formed under part I of this chapter for the purpose of owning or operating cemeteries, alone or in connection with other purposes, provided, however:

(1) Application for authority to organize a cemetery company shall be filed with the comptroller of the state and said application shall be in such form and contain such information as the comptroller shall reasonably require, and the comptroller shall provide forms for such application which shall be accompanied by a fee of fifty dollars.

(2) Upon the filing of an application, the comptroller shall make an investigation of the character, reputation, financial standing and motives of the organizers; the need for a cemetery in the community to be located; business qualifications of the proposed officers and directors; the proposed capital structure and other aspects.

(3) Upon approval of application by the comptroller for authority to organize, the proposed cemetery company shall file with the comptroller (a) a copy of its articles of incorporation duly certified by the secretary of state (b) a statement in such form and with such supporting data and proof as he may require as to financial compliance. If the comptroller finds that the proposed cemetery company has in good faith complied with all lawful requirements, he shall within thirty days issue a certificate of authorization to transact a cemetery business.

(4) The comptroller shall collect from every cemetery company operating under the provisions of this section an annual license fee of twenty-five dollars for a period terminating on the last day of the current calendar year.

(5) (a) No cemetery company shall be permitted to be established without first obtaining the written consent of a majority of the board of county commissioners in the county wherein said cemetery company plans to locate its burial plots.

(b) This subsection shall not apply to any cemetery company established prior to June 15, 1959, so long as said cemetery is in actual operation and has conducted at least one burial. All established cemeteries not in actual operation as provided herein must submit their charter to the board of county commissioners wherein said cemeteries plan to locate their burial plots for review and approval.

(6) No cemetery company shall be permitted to establish, or operate if already established, a public cemetery for private gain or profit without providing for the future care and maintenance of such cemetery, for which a trust fund shall be established with a trust company operating under the provisions of chapter 660, or a state or national bank holding trust powers under the provisions of chapter 660, provided, that the cemetery company may appoint an individual or a committee of two or more prominent people and lot owners to act in an advisory capacity with the trustee in the investment of the trust fund, and provided further, that a cemetery company, with the consent of the comtproller, may change trustee of trust fund in event of dissatisfaction of service rendered by the trustee. And if any cemetery company heretofore established and operating under the general law governing corporations for profit has refused or otherwise failed to provide adequate future maintenance trust fund in accordance with existing regulations by the comptroller, the comptroller after reasonable notice shall proceed to enforce compliance under the powers vested in him under this section.

(7) When accepting care funds cemetery company shall deliver to the source from which received an instrument in writing which shall specifically state:

(a) The nature and extent of the care and maintenance to be furnished in detail whether or not set forth heretofore or hereafter in this section;

(b) Care and maintenance offered, promised or stipulated shall be provided to the extent of the entire income derived from trust investments, less reasonable costs of administering the trust.

(c) The following amounts must be set aside and deposited in trust for all rights sold (applicable to all sums received from deferred payment sales until the future maintenance fund amounts to a minimum of fifteen thousand dollars and to all sums received from completed sales irrespective of the amount of the future maintenance fund):

1. For graves, not less than ten per cent of the sale price.

2. For crypts, not less than ten per cent of the sale price.

3. For niches, not less than ten per cent of the sale price.

4. For special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker, or monument, the full amount of endowment received.

(d) The fund so set aside must be invested and reinvested by the trust only as provided in chapter 518 for fiduciary funds;

(e) Deposits required shall be made not later than sixty days after the close of the month in which payment was received.

(8) Within one hundred and five days after the end of the calendar year, and on form provided by the comptroller, the trustee(s) shall furnish financial report with respect to its care fund that clearly indicates the true conditions of such funds.

(9) The comptroller shall require each cemetery company to submit a report, on form provided by the comptroller, of its condition as of such date as he may fix at least once each calendar year, or as often as he may order, and such report shall be submitted within one hundred and five days after the end of the closing of the calendar or fiscal period, and may examine the condition of each cemetery company at such intervals as he may deem necessary, and if licensee refuses or neglects to file such report within the stipulated time, the comptroller shall collect a fee of twenty-five dollars and impose a penalty of $5.00 per day for each day of delinquency; provided, that upon application to the comptroller prior to the expiration of the one hundred and five day period, and for good cause shown, the comptroller may grant a reasonable extension of the one hundred and five day period.

(10) At such time as the comptroller finds it necessary to examine by audit the affairs of any cemetery company under subsection (8), the cemetery company shall pay an examination fee computed as follows:

With resources up to $150,000.00	$ 30.00
With resources up to $250,000.00	$ 37.50
With resources up to $400,000.00	$ 60.00
With resources up to $500,000.00	$ 75.00
With resources up to $750,000.00	$100.00
With resources up to $1,000,000.00	$125.00

and for additional million dollars, or major part thereof, thirty-five dollars per million dollars. Examination fees shall in all cases be paid by the cemetery company to the state comptroller.

(11) The comptroller shall have power to:

(a) Implement by regulations any provision of this section.

(b) Restrict or prohibit the sale or rental of space where the comptroller finds that circumstances make such restrictions or prohibition necessary in the public interest.

(c) Employ such persons as may be required to administer this chapter and fix their compensation.

(d) Formulate and promulgate reasonable rules and regulations governing the conduct of cemetery companies doing business in this state which shall have the force and effect of law and he shall have the power to enforce the same.

(e) Revoke the license of any licensee upon ten days notice and upon reasonable opportunity for the licensee to be heard, for failure to pay fees, make any or such reports required or abide by any other regulations promulgated by the comptroller.

(12) All associations or companies which have heretofore obtained charters under the general law governing corporations for profit, authorizing the operation of cemeteries, either alone or in connection with other purposes, are declared to be valid and legal corporations, for the purposes specified in their charters, including the operation of cemeteries.

History.—Comp. §1, ch. 28170, 1953; provisions contained herein formerly §611.39; §1, ch. 57-250; (5)n. and subsequent subsections renum. by §1, ch. 59-286; (11) r. by §1, ch. 61-516 and subsequent subsections renum.

608.61 Articles of incorporation to veterans' associations.—The secretary of the State of Florida shall not hereafter issue to any veteran association, not officially affiliated with one of the national congressionally recognized veteran organizations, known as the American Legion, the Veterans of Foreign Wars of the United States, the United Spanish War Veterans and the Disabled American Veterans of the World War, any articles of incorporation using in the name thereof any of the following words: "Legion," "Foreign," "Spanish," or "Disabled," unless and until after, he shall first have ascertained through the national headquarters of the congressionally recognized veteran organization, in whose name any such quoted word appears, that such proposed incorporation meets with its approval.

History.—§1, ch. 17475, 1935; CGL 1936 supp. 6508(3). Transferred from §610.29.

608.62 When use of word "club" prohibited.—It is hereby declared to be the public policy of this state to prevent further misrepresentations and abuses arising from the use of the word or term "club" as a name, designation or style for corporate or other forms of business ventures conducted for profit, so that such ventures may not, as a means of soliciting patronage, be misrepresented and foisted upon federal, state or municipal governments or the public under the guise of social, religious, educational, political, benevolent or similar associations or non-profit corporations, or to achieve tax benefits or other preferences and advantages intended only for bona fide organizations having merely social, religious, educational, political, benevolent and/or other similar non-profit purposes, and conducted solely by and in behalf of the members.

History.—§1, ch. 20840, 1941; transferred from §610.31.

608.63 Definition of term "club".—The word or term "club", when used or employed as a name or designation, shall be held only to mean and indicate a group or association of five or more

bona fide members organized and associated together, whether non-profit incorporated or not, for the mutual advantages to be derived solely from social, educational, religious, political, benevolent or similar purposes and activities, and conducted by and in behalf of the constituent members; and shall not be used or employed as a trade name or as a designation or style for business ventures or enterprises, or as a guise for commercial activities, operated for financial profit; provided, however, that this section shall not apply to racing, jockey or kennel clubs, licensed by and conducted under the control and supervision of the Florida state racing commission.

History.—§2. ch. 20840, 1941; transferred from §610.32.

608.64 When names including the word "club" prohibited. — From and after three months after the date when this law shall become effective, it shall be unlawful for any person, firm or corporation, directly or indirectly, to do business for profit under any trade name or designation or style which includes the word or term "club"; provided, however, that this shall not prevent any person from receiving due compensation from any bona fide club as herein defined for lawful services rendered to such club and its members in pursuit of its lawful club activities; and provided further, that membership privileges shall not be extended by any club as herein defined to the general public or to any persons in any manner whereby the intent and purpose of this law may be evaded or frustrated.

History.—§3, ch. 20840, 1941; transferred from §610.33.

608.65 Use of clubs for purpose of tax exemption prohibited.—It shall be unlawful for any person, firm or corporation to organize or operate as a club for purposes among which shall be included the objective of obtaining tax or license exemptions, preferences or advantages by virtue of its designation or style as a club, unless the same be expressly entitled thereto because of its actual non-profit club activities, as herein defined.

History.—§4, ch. 20840, 1941; transefrred from §610.3a.

608.66 Certain organizations excepted.—The provisions of §§608.62-608.67, inclusive, shall not be applicable or enforceable against those organizations and institutions which have used designation of the term "club" continuously for two years prior to June 1, 1941; and shall not be construed as prohibiting the use of the term "club" in the name of country clubs, baseball clubs and golf clubs in this state.

History.—§4-A, ch. 20840, 1941; §1, ch. 23977, 1947; transferred from §610.35.

608.67 Penalties.—Violation of any provision of §§608.61-608.66 is a misdemeanor and punishable by a fine of not more than $1,000.00 and imprisonment in the county jail for not more than six months or both such fine and imprisonment.

History.—§5, ch. 20840, 1941; transferred from §610.36. Am. §17, ch. 29886, 1955.

PART II

CLOSE CORPORATIONS

608.0100 Scope; definitions.—

(1) The provisions of this act shall extend to all close corporations, but shall be deemed permissive and not mandatory; provided, however, that this act shall have no application to any close corporation in existence on September 1, 1963, unless such previously existing close corporation shall elect to bring itself within the provisions of this act by written consent of the owners of a majority of the voting stock.

(2) As used herein, close corporation means a corporation for profit whose shares of stock are not generally traded in the markets maintained by securities dealers or brokers.

(3) Whenever applicable, the provisions of this act shall apply notwithstanding any provision of this act to the contrary.

(4) Wherever used herein, unless otherwise stated, stockholders shall mean stockholder if there be only one stockholder of a corporation.

History.—§1, ch. 63-379.

608.0101 Acquisition of all the shares of stock by limited number of persons.—

(1) The existence of a corporation, hereafter or heretofore formed under the laws of this state, shall in no respect be deemed impaired by the acquisition of all the shares of stock of such corporation by one person or by two persons, nor shall the corporation, by such acquisition, be deemed not to possess any managerial boards or bodies or any capacities, powers or authority which it would have possessed with three or more stockholders, nor shall the corporation, upon such acquisition, be deemed to have become dormant, inactive or incapable of acting as a corporation.

(2) The acquisition, heretofore or hereafter, of all of the shares of stock of a corporation by one person or by two persons is hereby declared to violate no policy or provision of the laws of this state.

History.—§2, ch. 63-379.

608.0102 Corporation management by stockholders.—The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors, provided that there be not less than three stockholders; and, if the articles of incorporation provide as aforesaid, the following provisions shall apply:

(1) Wherever the context requires, the stockholders of such close corporation shall be deemed directors of such corporation for purposes of applying the provisions of part I chapter 608.

(2) The stockholders of such close corporation shall be subject to the liabilities imposed by part I, chapter 608 for action taken by directors.

(3) Any action required or permitted by part I, chapter 608 to be taken by the directors of a corporation may be taken by action of the stockholders of such close corporation at a meeting of the stockholders or as provided in §608.0104.

History.—§3, ch. 63-379.

608.0103 Conduct of business without meeting by board of directors or executive committee.—If the business of a close corporation is managed by a board of directors, action taken by the directors or the members of an executive committee of the directors without a meeting shall nevertheless be board or committee action if written consent to the action in question is signed by all the directors or members of the committee, as the case may be, and filed with the minutes of the proceedings of the board or committee, whether done before or after the action so taken.

History.—§4, ch. 63-379.

608.0104 Conduct of business without meeting by stockholders.—Any action of the stockholders of a close corporation may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all the persons who would be entitled to vote upon such action at a meeting and filed with the secretary of the corporation as part of the corporate records. Such consent shall have the same force and effect as a unanimous vote of the stockholders, and may be stated as such in any certificate or document filed with the secretary of state under this chapter.

History.—§5, ch. 63-379.

608.0105 Written agreements as to conduct of certain affairs of corporation.—

(1) The stockholders of a close corporation may enter into a written agreement, embodied in the articles of incorporation or bylaws of the corporation, or in a side agreement in writing and signed by all the parties thereto, relating to any phase of the affairs of the corporation, including, but not limited to, the following:

(a) Management of the business of the corporation.

(b) Declaration and payment of dividends or division of profits.

(c) Who shall be officers or directors, or both, of the corporation.

(d) Restrictions on transfer of stock.

(e) Voting requirements, including the requirements of unanimous voting of stockholders or directors.

(f) Employment of stockholders by the corporation.

(g) Arbitration of issues as to which the stockholders are deadlocked in voting power or as to which the directors are deadlocked and the stockholders are unable to break the deadlock.

(2) No written agreement to which stockholders of a close corporation have actually assented, whether embodied in the charter or bylaws of the corporation or in any side agreement in writing and signed by all the parties thereto, and which relates to any phase of the affairs of the corporation, whether to the management of its business or division of its profits or otherwise, shall be invalid as between the parties thereto, on the ground that it is an attempt by the parties thereto to treat the corporation as if it were a partnership or to arrange their relationships in a manner that would be appropriate only between partners.

(3) If the business of a close corporation is managed by a board of directors, an agreement among all or less than all of the stockholders, whether solely among themselves or between one or more of them and a party who is not a stockholder, is not invalid, as among the parties thereto, on the ground that it so relates to the conduct of the affairs of the corporation as to interfere with the discretion of the board of directors, but the making of such an agreement shall impose upon the stockholders who are parties thereto the liability for managerial acts that is imposed by the laws of this state upon directors.

History.—§6, ch. 63-379.

608.0106 Director.—The stockholders of a close corporation entitled to elect a director of such corporation may at any time remove such director, with or without cause, by like action of the stockholders as required for the election of such director, absent a contrary provision by agreement or in the bylaws or articles of incorporation of the corporation.

History.—§7, ch. 63-379.

608.0107 Dissolution; appointment of receiver or trustee.—The circuit court, sitting in chancery, may entertain a petition of any stockholder for involuntary dissolution of any close corporation and, at the hearing, may appoint a receiver or trustee of the corporation and order it dissolved, pursuant to the procedure provided in §608.29, when it is made to appear:

(1) That the directors of the corporation are deadlocked in the management of the corporate affairs and the stockholders are unable to break the deadlock, or

(2) That the stockholders are deadlocked in voting power; and

(3) Arbitration or any other remedy provided in any written agreement of the stockholders upon deadlock of the directors or stockholders has failed.

History.—§8, ch. 63-379.

CHAPTER 609

COMMON LAW DECLARATIONS OF TRUST

609.01 Common law declaration of trust.—Two or more persons, whether residents of this state or not, may organize and associate themselves together for the purpose of transacting business in this state under what is commonly designated or known as a "declaration of trust;" provided, however, no such association shall ever be permitted or authorized to transact a banking or security business, of any kind, in this state.

History.—§1, ch. 9125, 1923; §1, ch. 11995, 1927; CGL 7091.

609.02 Filing a declaration of trust.—Every such organization organized for the purpose of transacting business in this state, or organized in this state for the purpose of transacting business elsewhere, which intends to sell or offer for sale any units, shares, contracts, notes, bonds, mortgages, oil or mineral leases or other security of such association shall, prior to transacting any such business, file in the office of the secretary of state of this state a true and correct copy of the "declaration of trust" under which the association proposes to conduct its business, which copy shall be sworn to, as being a true and correct copy, by the chairman of the board of trustees named in such declaration of trust. When such copy shall have been filed in the office of the secretary of state it shall constitute public notice as to the purposes and manner of the business to be engaged in by such association. The secretary of state, prior to the issuance of the certificate by him, shall collect from the said association a filing fee of one hundred fifty dollars, which fee shall be paid by him into the general fund of the state.

History.—§§1, 2, ch. 9125, 1923; §1, ch. 11995, 1927; CGL 7091, 7092.

609.03 Issuance of certificate to association.—Upon the filing of the copy of the "declaration of trust" and the payment of the filing fee, in compliance with §609.02, the secretary of state shall issue to the trustees named in the said "declaration of trust" a certificate showing that such "declaration of trust" has been duly filed in his office; whereupon, such association shall be authorized to transact business in this state; provided that all other applicable laws have been complied with.

History.—§2, ch. 9125, 1923; CGL 7092.

609.04 Unlawful to transact business prior to compliance.—No person may transact or conduct any business, within this state, under any "declaration of trust," or like association, without first complying with the provisions and requirements of this chapter, and no person organized to do business under any such "declaration of trust," may offer for sale, barter, or exchange any unit, share, contract, note, bond, mortgage, oil or mineral lease or other security of such organization or association, without first having complied with the provisions and requirements of this chapter.

History.—§1, ch. 9125, 1923; §1, ch. 11995, 1927; CGL 7091.

609.05 Qualification with securities commission.—Before any person may offer for sale, barter or sell any unit, share, contract, note, bond, mortgage, oil or mineral lease or other security of an association doing business under what is known as a "declaration of trust" in this state, such person shall procure from the Florida securities commission a permit to offer for sale and sell such securities, which permit shall be applied for and granted under the same conditions as like permits are applied for and granted to corporations.

History.—§3, ch. 9125, 1923; CGL 7093.

609.051 Shares, personal property.—Shares, however designated, in such trusts are declared for purposes of taxation, to be personal property, and not interest in land, notwithstanding the nature of the property of which the trust shall consist unless otherwise provided in the trust instrument.

History.—§3, ch. 63-488.

609.06 Penalties.—Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the state prison not exceeding two years.

History.—§4, ch. 9125, 1923; CGL 8130.
cf.—§775.06, Alternative punishment.

609.07 Issuance of certain units, shares, etc.—The declaration of trust may provide that the units, shares, certificates of beneficial ownership or interest, or other security issued, or to be issued, in accordance with the provisions thereof shall be fully paid and nonassessable. When the declaration of trust so provides, every holder of any such unit, share, certificate of beneficial ownership or interest, or other security issued by the trust, who has not paid in full the sum agreed to be paid for each unit, share, certificate of beneficial ownership or interest, or other security, shall be personally liable to the trust, or to its creditors, as the case may be, in an amount equal to the portion of said sum remaining unpaid. Such holders shall not otherwise be liable for any debt or obligation of the trust.

History.—§1, ch. 63-171.

CHAPTER 610

UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

610.011 Short title.—This act may be cited as the uniform act for simplification of fiduciary security transfers.

History.—§11, ch. 61-204.

610.021 Definitions.—In this act, unless the context otherwise requires:

(1) Assignment includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(2) Claim of beneficial interest includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(3) Corporation means a private or public corporation, association or trust issuing a security.

(4) Fiduciary means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(5) Person includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) Security includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) Transfer means a change on the books of a corporation in the registered ownership of a security.

(8) Transfer agent means a person employed or authorized by a corporation to transfer securities issued by the corporation.

History.—§1, ch. 61-204.

610.031 Registration in the name of a fiduciary.—A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

History.—§2, ch. 61-204.

610.041 Assignment by a fiduciary.—Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) May assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) May assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) Is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or to the assignment, even though the record or document is in its possession.

History.—§3, ch. 61-204.

610.051 Evidence of appointment or incumbency.—A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of an appointment or incumbency:

(1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

(2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

History.—§4, ch. 61-204.

610.061 Adverse claims.—

(1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communication directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order.

History.—§5, ch. 61-204.

610.071 Nonliability of corporation or transfer agent.—A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

History.—§6, ch. 61-204.

610.081 Nonliability of third persons.—

(1) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent.

History.—§7, ch. 61-204.

610.091 Territorial application.—

(1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the laws of the jurisdiction under whose laws the corporation is organized.

(2) This act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

History.—§8, ch. 61-204.

610.101 Tax obligations.—This act does not affect any obligations of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

History.—§9, ch. 61-204.

610.111 Uniformity of interpretation.—This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History.—§10, ch. 61-204.

CHAPTER 613

FOREIGN CORPORATIONS

613.01 Required to file charter and receive permit to transact business.—No foreign corporation shall transact business, or acquire, hold or dispose of property in this state until it shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, and shall have received from him a permit to transact business in this state; and any foreign corporation which shall violate the provisions of this section shall render itself, its officers and agents severally liable to the penalties and fines provided in §613.11, but no violation of this chapter shall affect the title to property thus acquired, held or disposed of in violation of the provisions hereof.

History.—§1, ch. 5717, 1907; §1, ch. 6876, 1915; RGS 4095; CGL 6026.
cf.—§617.11, Foreign nonprofit corporations.
§360.15 Companies incorporated in other states may construct or own lines in this state, foreign corporations procedure outlined.

613.02 Issuing permit to transact business in the state.—

(1) Upon the filing of such copy, the secretary of state shall, if the objects of the corporation are such as are not prohibited by the laws of the state, issue a permit allowing such corporation to transact business in this state, and such corporation shall thereupon be empowered to exercise all and be limited to the same rights, powers and privileges as like corporations organized under the laws of this state, but he shall not deliver such permit to the corporation until he shall have received from it, for the use of the state, a sum equal to that which the said corporation would have been required to pay as a charter fee upon that portion of its capital employed, or to be employed, in the state if it had been incorporated under the laws of this state. The fee of the secretary of state for issuing the permit shall be five dollars. In every case where application is made to the secretary of state for the issuance of a permit under this section, the secretary of state shall demand and receive from the applicant, for the use of the state, a fee calculated upon the basis of the total authorized capital stock of the corporation, as shown by its charter, unless the applicant shall make it appear by such affidavit and other satisfactory evidence as the secretary of state may require to be submitted to him that the amount of capital of such foreign corporation employed, or to be employed, in the state, is less than the total amount of authorized capital stock shown by the charter of such foreign corporation; in which case, the secretary of state shall determine, from the evidence submitted to him, what is the amount of capital employed in the state by said foreign corporation, and shall collect a sum in that event equal to that which the said corporation would have been required to pay as a charter fee if it had been incorporated under the laws of the state with an authorized capital equal to the amount of capital employed, or to be employed by such foreign corporation in the state. All determinations of fact made by the secretary of state in the administration of this law shall be prima facie evidence of the truth and validity of the finding of the secretary of state as to the amount of capital of such foreign corporation employed, or to be employed, in the state, upon which the charter fee provided for by this section is required to be computed and paid.

(2) This section is declaratory of existing law since the passage of legislation in this state authorizing foreign corporations to do business herein.

History.—§2, ch. 5717, 1907; RGS 4096; CGL 6027; §1, ch. 13640, 1929; am. §§1, 2, ch. 22653, 1945.
cf.—§608.05 Filing fees and taxes for corporations.

613.03 Charter amendments after permit issued; copy to be filed; increases in capital stock; filing fees and taxes; penalty.—

(1) (a) Every foreign corporation amending its charter or certificate or articles of incorporation after receiving a permit as provided in §613.02 shall, within sixty days after such amendment, file a duly authenticated copy thereof in the office of the secretary of state. The secretary of state shall issue to the corporation a certificate of the filing after receipt of the filing fees and taxes indicated below.

(b) If the amendment does not authorize an increase in the capital stock, the filing fee shall be ten dollars. If the amendment authorizes an increase in the capital stock, the fees and filing tax shall equal those required of a domestic corporation. The filing tax shall be paid upon the entire increase in capital stock unless the corporation shall make it appear to the secretary of state by satisfactory affidavits or such other legal and satisfactory evidence as he may require that the amount of the in-

crease in capital stock to be employed in Florida is less than the total increase. Upon being satisfied that such is true, the secretary of state shall compute and collect the filing tax on the basis of that part of the increase of capital stock which is employed or to be employed in Florida. Determinations of fact made by the secretary of state hereunder shall be prima facie evidence of their truth and validity as provided in §613.02.

(2) If any foreign corporation shall otherwise than by amendment increase the amount of capital employed or to be employed in Florida, it shall report such increase to the secretary of state not later than thirty days after the close of its fiscal year in which the increase occurred. The secretary of state shall collect from the corporation the same filing fees and taxes upon such increase in capital employed in Florida as if the increase had been made by amendment of the charter or certificate or articles of incorporation.

(3) (a) The secretary of state may inquire into and determine whether any foreign corporation has become liable for additional fees and filing taxes for increases of capital employed or to be employed in Florida.

(b) All foreign corporations shall pay the additional fee and filing taxes required after such determination by the secretary of state.

(4) The secretary of state may revoke the permit of any foreign corporation failing to file any certificate or pay any filing taxes required by this section.

History.—§3, ch. 5717, 1907; RGS 4097; CGL 6028; §2, ch. 13640, 1929; am. §1, ch. 28285, 1953.
cf.—§613.06 Corporations not affected.
§608.05 Filing fees and taxes for corporations.

613.04 Can not maintain action until provisions complied with.—The failure of any such foreign corporation to comply with the provisions of this chapter shall not affect the validity of any contract with such foreign corporation, but no action shall be maintained or recovery had in any of the courts of this state by any such corporation, or its successors or assigns, so long as such foreign corporation fails to comply with the provisions of this chapter.

History.—§4, ch. 5717, 1907; §2, ch. 6876, 1915; RGS 4098; CGL 6029.

613.05 Corporations affected by chapter.—This chapter shall be deemed to apply to foreign building and loan associations, foreign insurance companies, foreign surety companies, and all other foreign corporations which now are or hereafter may be required to obtain other certificates of authority to transact business in this state, and to impose an additional requirement upon them, as well as to all other foreign corporations except those which are excepted by its terms from the operation of this chapter.

History.—§5, ch. 5717, 1907; RGS 4099; CGL 6030.

613.06 Corporations that are not affected.—This chapter shall not apply to any foreign corporation whatsoever that was transacting business in this state on June 1, 1907, and which has continuously transacted business in this state since said date; provided, however, that any such foreign corporation hereafter increasing its capital stock shall comply with the provisions of §613.03 in relation thereto.

History.—§6, ch. 5717, 1907; RGS 4100; CGL 6031.

613.07 "Foreign corporation" defined.—A foreign corporation is defined to be a corporation incorporated by or under the laws of any other state or territory or of any other country, but nothing in this chapter shall apply to or include banking or trust companies incorporated under the laws of any other state, territory or other country.

History.—§7, ch. 5717, 1907; §3, ch. 6876, 1915; RGS 4101; CGL 6032.

613.08 Permit not to be issued when name of corporation similar to Florida corporation.—No permit under this chapter shall be issued to any foreign corporation to transact business or acquire, hold or dispose of property in this state under any corporate name which is or may be the same as the corporate name of any corporation organized or existing under the laws of the state, or so nearly similar thereto as to cause or tend to cause confusion.

History.—§1, ch. 5717, 1907; §1, ch. 6484, 1915; RGS 4102; CGL 6033.

613.09 Invalidity of certain deeds of trust upon property in this state removed; proviso.—The invalidity created by chapter 5717, laws of 1907, as to every deed of trust upon property in this state, and in which a foreign corporation was named as trustee, is removed as to such trustee; provided, such trustee has no interest in such deed of trust other than the protection of the holders of bonds or other negotiable paper secured by such deed of trust.

History.—§3, ch. 6875, 1915; RGS 4105; CGL 6036.

613.10 Invalidity as to conveyance of real property removed.—The invalidity created by chapter 5717, laws of 1907, as to every conveyance of real property in this state, and made to a foreign corporation, is, as to all grantees of such corporation who are innocent purchasers for value, removed.

History.—§5, ch. 6875, 1915; RGS 4107; CGL 6038.

613.11 Foreign corporations engaging in business without permit, etc.—Any foreign corporation which shall violate the provisions of this chapter, prescribing the terms and conditions upon which foreign corporations for profit may transact business or acquire, hold or dispose of property in this state, shall, upon conviction, be fined not more than one thousand dollars for the first offense, and not more than five thousand dollars for each subsequent offense, and any officer or agent of any foreign corporation who shall violate the provisions of this chapter shall, upon conviction, be punished by a fine of not more than two thousand dollars or by imprisonment not exceeding six months.

History.—§8, ch. 5717, 1907; RGS 5821; CGL 7449.
cf.—§775.06, Alternative punishment.

CHAPTER 614

UNIFORM STOCK TRANSFER LAW

614.01 Short title. — This chapter may be cited as the uniform stock transfer law.
History.—§1, ch. 21894, 1943.

614.02 Definitions.—In this chapter, unless the context or subject matter otherwise requires:

(1) "Certificate" means a certificate for shares in a domestic or foreign corporation.

(2) "Delivery" means voluntary transfer of possession from one person to another.

(3) "Person" includes a corporation or partnership or two or more persons having a joint or common interest.

(4) "Purchase" includes to take as mortgagee or as pledgee.

(5) "Purchaser" includes mortgagee and pledgee.

(6) "Shares" means a share or shares of stock in a domestic or foreign corporation.

(7) "State" includes state, territory, district and insular possession of the United States.

(8) "Transfer" means transfer of legal title.

(9) "Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

(10) "Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(11) A thing is done "in good faith" within the meaning of this law when it is in fact done honestly, whether it be done negligently or not.
History.—§2, ch. 21894, 1943.

614.03 Transfer of title to certificates and shares.—

(1) Title to a stock certificate and to the shares represented thereby can be transferred only:

(a) By delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or,

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate, or a power of attorney, to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby; such assignment or power of attorney may be either in blank or to a specified person; or,

(c) By delivery of the certificate with an assignment indorsed thereon or in a separate instrument signed by the trustee in bankruptcy, receiver, guardian, executor, administrator or other person duly authorized by law to transfer the certificate on behalf of the person appearing by the certificate to be the owner of the shares represented thereby.

(2) The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.
History.—§3, ch. 21894, 1943.

614.04 Powers of those lacking full legal capacity and of fiduciaries not enlarged.— Nothing in this law shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney.
History.—§4, ch. 21894, 1943.

614.05 Corporation not forbidden to treat registered holder as owner.—Nothing in this chapter shall be construed as forbidding a corporation:

(1) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or,

(2) To hold liable for calls and assessments a person registered on its books as the owner of shares.

History.—§5, ch. 21894, 1943.

614.06 Title derived from certificate extinguishes title derived from separate document.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

History.—§6, ch. 21894, 1943.

614.07 Who may deliver certificate.—The delivery of a certificate to transfer title in accordance with the provisions of §614.03, is effectual, except as provided in §614.09, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

History.—§7, ch. 21894, 1943.

614.08 Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.—The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in §614.09, though the indorser or transferor,

(1) was induced by fraud, duress or mistake, to make the indorsement or delivery, or,

(2) has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or,

(3) has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or,

(4) has received no consideration.

History.—§8, ch. 21894, 1943.

614.09 Recision of transfer.—

(1) If the indorsement or delivery of a certificate,

(a) was procured by fraud or duress, or,

(b) was made under such mistake as to make the indorsement or delivery inequitable; or,

(2) If the delivery of a certificate was made

(a) without authority from the owner, or,

(b) after the owner's death or legal incapacity;

(3) The possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

(a) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or,

(b) The injured person has elected to waive the injury, or,

(c) The injured person has been guilty of laches in endeavoring to enforce his rights;

(4) Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it.

History.—§9, ch. 21894, 1943; am. §7, ch. 22858, 1945.

614.10 Recision of transfer of certificate does not invalidate subsequent transfer by transferee in possession.—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

History.—§10, ch. 21894, 1943.

614.11 Delivery of unindorsed certificate imposes obligation to indorse.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

History.—§11, ch. 21894, 1943.

614.12 Ineffectual attempt to transfer; promise to transfer.—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

History.—§12, ch. 21894, 1943.

614.13 Warranties on sale of certificate.—

(1) A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants,

(a) that the certificate is genuine,

(b) that he has a legal right to transfer it, and,

(c) that he has no knowledge of any fact which would impair the validity of the certificate.

(2) In the case of an assignment of a claim secured by a certificate, the liability of the as-

signor upon such warranty shall not exceed the amount of the claim.

History.—§13, ch. 21894, 1943.

614.14 No warranty implied from accepting payment of debt.—A mortgagee, pledgee or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

History.—§14, ch. 21894, 1943.

614.15 Involuntary transfers.—Shares of stock may be attached or levied upon, under execution, as now provided by law, and any sale under attachment or execution, as now provided by law, shall be recognized by the corporation in which such shares were so sold upon production of a bill of sale duly executed by the officer making such sale and a new certificate shall be issued to the purchaser at such sale.

History.—§15, ch. 21894, 1943.

614.16 Creditor's remedies to reach certificate.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History.—§16, ch. 21894, 1943.

614.17 No lien or restriction unless indicated on certificate.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

History.—§17, ch. 21894, 1943.

614.18 Alteration of certificate does not divest title to shares.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

History.—§18, ch. 21894, 1943.

614.19 Lost or destroyed certificate.—

(1) When a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

(2) The issue of a new certificate under an order of the court as provided in this section shall relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

History.—§19, ch. 21894, 1943.

614.20 Rule for cases not provided for by this chapter.—In any case not provided for by this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

History.—§20, ch. 21894, 1943.

614.21 Interpretation to effectuate uniformity.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—§21, ch. 21894, 1943.

614.22 Definition of indorsement.—A certificate is indorsed when an assignment or a power of attorney to sell, assign or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

History.—§22, ch. 21894, 1943.

614.23 Definition of person appearing to be owner of certificate.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

History.—§23, ch. 21894, 1943.

614.24 Application of transfer law.—The provisions of the transfer law shall apply to certificates for shares whether issued before or after the taking effect of the transfer law, and to transfers made in this state whether of certificates for shares of domestic or foreign corporations, and also, so far as applicable, to voting trust certificates and stock purchase or subscription warrants which shall be transferable in the same manner and with the same effect as certificates for shares.

History.—§24, ch. 21894, 1943.

CHAPTER 615

STATE FAIRS OR EXPOSITIONS

615.01 Number of persons required to form corporation.—Three or more persons may associate themselves together to form and create a corporation under the laws of Florida to hold, conduct and operate state fairs or expositions, and to exercise other powers granted by this chapter upon making and filing a proposed charter in writing in the manner mentioned in this chapter.

History.—§1, ch. 7387, 1917; RGS 4481; CGL 6445.
cf.—Ch. 616, Public fairs and expositions.

615.02 Requisites of proposed charter.—The proposed charter of every corporation organized under this chapter shall set forth:

(1) The name of the corporation, which shall contain the word "company," "corporation," "incorporated" or "association."

(2) The name of the place in the state, where the principal office or place of business is to be located.

(3) The general nature of the business, objects and purposes proposed to be transacted or carried on.

(4) The total amount of the authorized capital stock of such corporation which, however, shall be not less than twenty-five thousand dollars in any case, and the number and par value of the shares into which the same is divided. No corporation organized under this chapter shall commence business until at least twenty-five thousand dollars of the capital stock shall be subscribed by the incorporators in the proposed charter and shall be paid into the treasury of said corporation in cash. The capital stock shall be divided into shares of not less than one dollar per share and the amount of the par value shall be fixed in the proposed charter. All payment for capital stock shall be in cash.

(5) The name and the residence of each of the incorporators and the amount of stock subscribed for by each, the total amount of which shall be not less than twenty-five thousand dollars.

(6) The term for which said corporation is to exist.

(7) The highest amount of indebtedness to which the corporation may at any time subject itself.

(8) The proposed charter may also contain any provision which the incorporators may insert therein for the regulation of the business and conduct of the affairs of the corporation and any provisions, creating, defining, limiting and regulating the powers of the corporation and of its directors and stockholders or any class of stockholders.

History.—§2, ch. 7387, 1917; RGS 4482; CGL 6446.

615.03 Signing and acknowledgment; approval of charter; letters patent; charter fees.—The proposed charter shall be signed by at least three subscribers to the capital stock and shall be acknowledged before an officer authorized to take acknowledgements of deeds; and thereupon said proposed charter shall be filed in the office of the secretary of state, who shall produce the same to the governor, who shall examine the same and if he shall find it to be in proper form and for the objects authorized by law, letters patent shall be issued by the governor and secretary of state incorporating said subscribers, their associates and successors into a body politic and corporate by deed and in law by the name chosen, for the purposes and upon the terms and provisions set forth in said charter. The secretary of state shall annex to the letters patent a certified copy of said charter, retaining the original on file, and before delivering the letters patent shall record them and said charter in a book kept for that purpose, and shall receive from the corporation, before delivery, in addition to the fees allowed by law, the same charter tax or fee as now provided by law in respect to the incorporation of corporations for profit under the laws of Florida.

History.—§3, ch. 7387, 1917; RGS 4483; CGL 6447.
cf.—§608.05 Filing fees and taxes.

615.04 Evidence of existence and contents of charter.—The letters patent or a certified

copy thereof given by the secretary of state under the great seal shall be evidence of the existence of such corporation in all actions and proceedings. The original charter with the certificate of the recording thereof in the office of the secretary of state endorsed thereon, or a copy from the record thereof certified by the secretary of state shall be evidence of the contents of said charter in all actions and proceedings.

History.—§4, ch. 7387, 1917; RGS 4484; CGL 6448.

615.05 Not to transact business until charter recorded and certain amount of capital stock subscribed and paid in.—No such corporation shall transact any business until it shall have had said letters patent or a certified copy thereof with a certified copy of said charter recorded in the office of the clerk of the circuit court for the county wherein the principal place of business is located, and shall file with the secretary of state and with the clerk of the circuit court duplicate affidavits by its treasurer that twenty-five thousand dollars of its capital stock has been duly subscribed and has been paid for in cash.

History.—§5, ch. 7387, 1917; RGS 4485; CGL 6449.

615.06 Management until directors elected; board of directors; executive committee.—Until the directors are elected, the signers of the charter shall have the direction of the affairs and organization of said corporation, and shall take such steps as are proper to obtain subscriptions to the corporate stock and complete the organization of the corporation. The business of every corporation organized under this chapter shall be managed by a board of not less than three directors, who shall be elected by the stockholders and shall hold office until their successors are respectively elected and qualified. The number of the directors shall be fixed by the charter, but may be changed, increased or diminished at any time by the stockholders, and there shall be no restriction on the number of directors, except that there shall never be less than three directors. The board of directors may by resolution designate three or more of their number to constitute an executive committee, who, to the extent provided in such resolution or by-laws of the company, shall have and exercise the powers of the board of directors in the conduct and management of the business and affairs of the corporation, and shall have the power to authorize the seal of the company to be affixed to all papers requiring it. The charter may provide that the directors may be divided into two or more classes, each class to hold office for such period as may be therein prescribed.

History.—§6, ch. 7387, 1917; RGS 4486; CGL 6450.

615.07 Other officers. — Every corporation organized under this chapter shall have a president, one or more vice-presidents, a secretary and a treasurer, who shall be chosen by the directors as and when the by-laws may direct. The by-laws of said corporation may provide for as many vice-presidents as may be desired. The corporation may have such other officers, agents or representatives as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the by-laws, or, in the absence of the by-laws, then by the board of directors. The failure to elect any officer of this corporation at the time prescribed by law or by the certificate of incorporation or by-laws shall not dissolve or affect the validity of the corporation. Any vacancy occurring in the office of any officer, by death, resignation, removal or otherwise, shall be filled as provided for in the by-laws, or, in the absence of such provision, by the directors. It shall not be necessary for the president, vice-president, secretary and treasurer or any of them to be members of the board of directors.

History.—§7, ch. 7387, 1917; RGS 4487; CGL 6451.

615.08 First meeting; notice; incorporators may waive notice.—The first meeting of the corporation shall be called by a notice signed by a majority of the subscribing incorporators, designating the time, place and purpose of the meeting. Such notice shall be published once a week for at least two weeks before such meeting in a newspaper published in the county where the corporation has its principal place of business, but said subscribing incorporators may waive such notice and in writing fix the time and place of such meeting without such publication.

History.—§8, ch. 7387, 1917; RGS 4488; CGL 6452.

615.09 Kind of stock; limitation on issuance of preferred stock; redemption; stockholders not personally liable.—Every corporation organized under this chapter may create two or more kinds of stock of such classes, with such designation, preferences or voting stated in the certificate of incorporation. The power to increase or decrease stock shall apply to all or any of such classes of stock. At no time shall the total amount of preferred stock exceed two-thirds of the actual paid-in capital. Such preferred stock may, if desired, be subject to redemption at not less than par at a time and price to be stated in such stock certificate. In no event shall the holders of any stock of any such corporation organized under this chapter, of whatever character or class, be personally liable for any of the debts of such corporation. All stock of every kind of any corporation organized under this chapter shall be issued for cash only.

History.—§9, ch. 7387, 1917; RGS 4489; CGL 6453.

615.10 Power to operate livestock, agricultural or other fairs.—Every corporation organized under this chapter shall have the power, in addition to the provisions contained in the charter thereof for the regulation of the business and conduct of the affairs of said corporation and creating, limiting, defining and regulating the powers of said cor-

porations, to hold, conduct and operate state, livestock, agricultural, horticultural or other fairs or expositions at any or all times, or from time to time, and for that purpose to buy, lease, acquire and occupy lands, and to erect buildings and improvements of all kinds thereon, and to develop the same, and to sell, mortgage, lease or convey such property or any part thereof in its discretion from time to time; and to charge and receive compensation for admission to such fairs or expositions, and the sale or renting of space for exhibition or other privileges, and to conduct and hold public meetings, to supervise and conduct lectures and demonstration work in connection with or for the improvement of agriculture, horticulture and stock raising and all kinds of farming and matters connected therewith; to hold exhibits of agricultural and horticultural products, livestock, chickens and domestic animals and to give certificates or diplomas of excellence, and generally to do, perform and carry out all matters, acts and businesses usual or proper in connection with state or county fairs or expositions; but this enumeration of particular powers shall not be in derogation of or limit any special provision of the charter of such corporation inserted for the regulation of its business and the conduct of its affairs, or creating, defining, limiting and regulating the powers of the corporation, its directors, stockholders or any class of stockholders.

History.—§10, ch. 7387, 1917; RGS 4490; CGL 6454.

615.11 Not authorized to permit gambling, etc.; forfeiture of charter; annulment proceedings.—Nothing in this chapter shall be held or construed to authorize or permit any corporation organized hereunder to carry on, conduct, supervise, permit or suffer any gambling or game of chance, lottery, betting or other act in violation of the criminal laws of the state; and any corporation organized under this chapter which shall violate any of said laws or which shall knowingly permit the same to be done shall be subject to forfeiture of its charter; and if any citizen shall complain to the attorney general that any corporation organized under this chapter was organized for or is being used as a cover to evade any of the laws of Florida against crime and shall submit prima facie evidence to sustain such charge, the attorney general shall institute and in due course prosecute to final judgment such proceedings as may be necessary to annul the charter and letters patent of such corporation, and writs of injunction or other extraordinary process shall be issued by courts of chancery on the application of the attorney general on complaint pending any such annulment proceeding and in aid thereof, and all such cases shall be given precedence over all civil cases pending in such courts and shall be heard and disposed of with as little delay as practicable.

History.—§11, ch. 7387, 1917; RGS 4491; CGL 6455.
Am. §2, ch. 29737, 1955.

615.12 Annual audit of accounts by comptroller.—Once each year a complete audit of the books and accounts of every corporation organized under this chapter shall be made by or under the direction of the comptroller of the state at an expense to said corporation not to exceed one hundred dollars for such examination. The comptroller may make such additional audits of the books and accounts of said corporation from time to time as he may deem proper upon the application of any creditor or stockholder of any such corporation, accompanied by a cash deposit of not less than one hundred dollars but no such examination shall be made upon the application of a creditor or stockholder unless in the judgment of the comptroller the same shall promote the best interests of the corporation, its creditors and stockholders. The results of all such audits shall be kept on file in the office of the comptroller and one copy certified by him shall be forwarded to the secretary of said corporation, who shall at the request of any stockholder or creditor exhibit the same for inspection. The comptroller shall furnish a certified copy of any such audit to any stockholder or creditor applying therefor upon the payment of the same fees as prescribed by law for certified copies made by clerks of the circuit courts.

History.—§12, ch. 7387, 1917; RGS 4492; CGL 6456.
cf.—§28.24 Compensation of clerk of circuit court.
§696.05 Photographic recording by clerk of circuit court.

615.13 Right to amend act reserved by state.—The right to amend, alter, modify or repeal this chapter is reserved by the state, and any corporation organized under this chapter may avail itself of any amendment of this chapter.

History.—§13, ch. 7387, 1917; RGS 4493; CGL 6457.

615.14 Liability of stockholders.—The stockholders of any corporation organized under this chapter shall be liable only to an extent equal in amount for so much as remains unpaid upon their subscription to the capital stock, and no further and not otherwise and no stockholder of any such corporation shall be liable to any such corporation or to any subscriber of the proposed charter thereof for the payment of any debts, obligations or liabilities of any such corporation, except only to the extent of the amount remaining unpaid upon his subscription.

History.—§14, ch. 7387, 1917; RGS 4494; CGL 6458.

615.15 Increase and reduction of capital stock.—Any corporation organized under this chapter may increase its capital stock to any amount by holding an election of the stockholders at its place of business after having published notice of the time, place and object of the meeting once a week for two successive weeks prior thereto in a newspaper published in the county, and having served or mailed the usual notice for stockholders' meeting, and if at such meeting two-thirds of all the stockholders shall vote to increase the capital stock, the president, within thirty days thereafter shall make return to the secretary of state,

under oath, of the amount of such increase and the terms under which such additional stock is issued, and from the time said return is made and filed the increase of stock shall be authorized and when issued shall become a part of the capital of said corporation. Any corporation may reduce its capital stock or the number or par value of the shares thereof within the limits allowed by law by a two-thirds vote of its stockholders in the same manner as is provided herein for the increase of capital stock, provided that the state comptroller endorse his certificate upon the affidavit that in his judgment the ability of the corporation to meet its outstanding indebtedness and liabilities will not be impaired thereby.

History.—§15, ch. 7387, 1917; RGS 4495; CGL 6459.

615.16 Amendment of charter. — Any corporation organized under this chapter desiring to amend or alter its charter shall adopt the proposed amendment or alteration by a vote of two-thirds of all of its stock at a meeting called or notified as provided for meetings for the increase of capital stock. If the proposed amendment be so adopted, the corporation shall prepare a certificate under its common seal verified by the president or a vice-president, of the proposed alteration or amendment adopted as aforesaid, which certificate shall be filed in the office of the secretary of state, who shall produce the same to the governor, who shall examine the same, and if he finds it to be in proper form and in accordance with law, he shall approve the same; and thereupon letters patent shall be issued reciting the alteration or amendment in question, and said letters patent shall then be recorded in the office of the secretary of state and in the office of the clerk of the circuit court where the original charter was recorded, and from the date of recording in the secretary of state's office, said alteration or amendment shall be taken and considered as a part of said charter.

History.—§16, ch. 7387, 1917; RGS 4496; CGL 6460.

615.17 Change of name.—Any corporation desiring to change its name shall so resolve at any general meeting of its stockholders, and upon filing a certificate of the resolution, under its common seal, in the office of the secretary of state, letters patent shall issue reciting the change of name, which letters patent shall be recorded as provided for amendment of the charter. No two corporations shall bear the same corporate name.

History.—§17, ch. 7387, 1917; RGS 4497; CGL 6461.

615.18 Provisions of general corporation laws applicable.—Provisions of chapter 608, relating to corporations for profit, so far as not in conflict or inconsistent with the terms of this chapter, shall apply to corporations formed or organized under this chapter as fully and to the same extent as if the provisions of such statutes were set forth and repeated therein, and every corporation formed under this chapter shall have all of the rights, powers and privileges, in addition to those conferred by this chapter, granted and prescribed by the laws of the state to and for corporations for profit; provided, however, that in case of any conflict between the express provisions of this chapter and said statutes this chapter shall control; and provided, further, that nothing herein contained or in said statutes above referred to shall limit the power of any corporation formed under this chapter to have as many directors and vice-presidents or other officers as may be prescribed by its charter.

History.—§18, ch. 7387, 1917; RGS 4498; CGL 6462.

CHAPTER 616

PUBLIC FAIRS AND EXPOSITIONS

616.001 Definitions.—

(1) Community fair means a fair serving an area of less than an entire county and which exhibits are in accordance with §616.17 where premiums or awards are given to exhibitors thereof. Agricultural products shall be produced in the community it represents. The majority of its board of directors shall reside, be employed, or operate a business in the community it represents.

(2) County fair is a fair serving an entire county and which exhibits are in accordance with §616.17 and premiums or awards are given to exhibitors thereof. Agricultural products shall be typical of that produced in the county it represents in meeting minimum exhibit requirements. The majority of its board of directors shall reside, be employed, or operate a business in the county it represents.

(3) District fair is a fair serving at least five counties and which exhibits are in accordance with §616.17 and shall pay not less than a minimum of seven thousand five hundred dollars in cash premiums or awards to exhibitors thereof. Agricultural products shall be typical of that produced in the county it represents. Livestock may originate from outside the district, but must be registered in exhibitor's name thirty days prior to opening day of fair. Each county shall be encouraged to have proportionate exhibits, typical of its respective natural resources. Each county shall have exhibits in some phase of basic resources in agriculture and industry.

(4) State fair is a fair serving the entire state and which no less than twenty per cent of the counties are represented in agricultural and industrial exhibits, and fifty per cent of its counties having individual exhibitors, youth or adult. Exhibits shall be in accordance with §616.17 and cash premiums or awards totaling no less than fifty thousand dollars shall be given to exhibitors thereof. Agricultural and industrial products and livestock shall be typical of that produced in the county it represents.

(5) Regional fair or interstate fair is a fair of several states of which one is Florida and which exhibits are in accordance with §616.17. Agricultural products shall be typical of that produced in the area it represents.

(6) Specialized fair is a fair exhibiting and emphasizing livestock or poultry show, fruit or vegetable festival, and shall meet the minimum exhibit requirements as defined in §616.17. Specialized fairs may qualify under definitions, subsections (1)-(3), or (4).

(7) Entry is one item entered for competition or show. It may or may not constitute an exhibit, depending upon the regulations as stated in the premium book.

(8) Exhibit is one or more entries entered for exhibition and constituting a unit. An exhibit may consist of one or more entries, dependent upon the regulations as stated in the premium book.

(9) Exhibitor is an individual, group of individuals, or business having an entry or entries in a show or fair.

History.—§8, ch. 63-247.

616.01 Number of persons required; requisites of proposed charter.—Twenty-five or more persons who are residents and qualified electors of the county wherein the fair is to be located, wishing to form an association not for profit, for the purpose of conducting and operating public fairs or expositions for the benefit and development of the educational, agricultural, horticultural, livestock and other resources of the state or any county or counties of Florida

may become incorporated in the following manner:

They shall present to the judge of the circuit court for the county in which the principal office of said association is to be located a proposed charter signed by the intended incorporators, which shall set forth:

(1) The name of the association and the place where the principal office is to be located. The name of said association shall include the word "Inc."

(2) The general nature of its objects and powers, including a provision that the association is incorporated for the sole purpose of conducting and operating public fairs or expositions for the benefit and development of the educational, agricultural, horticultural, livestock and other resources of the state or any county or counties of the state.

(3) The qualifications and terms of members and the manner of their admission and expulsion. Provision may be made in the charter for ex officio membership, and memberships may be for terms of years.

(4) The time for which it is to exist.

(5) The names and residences of the subscribers.

(6) By what officers its affairs are to be managed, and the time at which they will be elected or appointed.

(7) The names of the officers who are to manage its affairs until the first election or appointment under the charter.

(8) By whom its by-laws are to be made, altered or rescinded.

(9) The highest amount of indebtedness or liability to which it may at any time subject itself.

History.—§1, ch. 7388, 1917; RGS 4517; CGL 6516.
Am. intro. para., (2) by §1, ch. 57-796; re-enacted without change by §1, ch. 59-166.

616.02 Acknowledgment of charter. — The proposed charter shall be acknowledged by at least three of the subscribers, each a man of good character and reputation, before an officer authorized to make acknowledgement of deeds, which subscribers shall also make and subscribe an oath, to be attached to the proposed charter, that the sole object of the association is public service, that there has been provided for the purposes of the association property, money and other available assets in value exceeding five thousand dollars, and that it is intended in good faith to carry out the purposes and objects therein set forth.

History.—§1, ch. 7388, 1917; RGS 4518; CGL 6517.

616.03 Notice of application; approval and record of charter.—Notice of intention to apply to the circuit judge for any such charter, stating the time when the application will be made, shall be published in a newspaper in the county where the principal office of said association shall be located once each week for four consecutive weeks, setting forth briefly the charter and objects of the association to be formed. The proposed charter shall be submitted to and approved by the board of county commissioners of the county in which the principal office of said association is to be located. Upon approval of said board of county commissioners, the proposed charter with proof of such approval and proof of publication shall be produced to the circuit judge at the time named in the notice and, if no cause be shown to the contrary and if he finds it to be in proper form and so sworn to and for an object authorized by this chapter, he shall approve the same and render a decree incorporating said subscribers under said charter and for the objects and purposes and with the powers therein specified. Said charter and said decree of incorporation shall then be recorded in the office of the clerk of the circuit court in the county where the principal office of the said corporation or association shall be located, and thenceforth the subscribers and their associates shall be incorporated by the name given in said charter and with the objects and powers set forth therein. The proposed charter, during the time of publication, shall be on file in the office of the clerk of the circuit court and in the office of the department of agriculture.

History.—§1, ch. 7388, 1917; §1, ch. 17806, 1937; RGS 4519; CGL 6518; §1, ch. 63-247.

616.04 Evidence of existence and contents of charter. — A certified copy of said charter and decree of incorporation shall be evidence of the contents of said charter in all actions and proceedings, and shall be conclusive evidence of the existence of the incorporated association in all actions and proceedings where the question of its existence is only collaterally involved, and prima facie evidence in all other actions and proceedings.

History.—§2, ch. 7388, 1917; RGS 4520; CGL 6519.

616.05 Amendment of charter.—Any such association desiring to propose an amendment of its charter may do so by resolution as provided in its by-laws, which proposed amendment, upon publication of notice, placement on file in the office of the clerk of the circuit court and in the office of the department of agriculture, decree of said circuit judge approving and allowing said amendment, and being recorded in the clerk's office, shall become and be taken as a part of the original charter.

History.—§3, ch. 7388, 1917; RGS 4521; CGL 6520; §2, ch. 63-247.

616.051 Dissolving a charter.—Any association desiring to dissolve its charter may do so by resolution as provided in its by-laws. Upon publication of notice and proof that all indebtedness has been paid and no claims are outstanding against the corporation, the circuit judge may, by decree, dissolve the corporation and order such public funds remaining to be distributed as recommended by the board of directors.

History.—Comp. §1, ch. 29914, 1955.

616.06 Amount of indebtedness authorized. — Any association formed and incorporated under this chapter may subject itself to indebtedness or liability in an aggregate sum

not greater than the limit stated in said charter or any amendment thereto, without regard to the value of its property. But any association organized under this chapter may also subject itself to specific bonded or mortgage indebtedness, in addition to and without regard to its general powers or limit as to indebtedness or liability.

History.—§4, ch. 7388, 1917; RGS 4522; CGL 6521.

616.07 Members not personally liable; property of association held in trust; exempt from taxation.—No member or officer of any association organized under this chapter shall be personally liable for any of the debts of such association; and no money or property of any such association shall be distributed as profits or dividends among its members or officers, but all money and property of such association shall, except for the payment of its just debts and liabilities, be and remain perpetually public property, administered by the association as trustee, to be used exclusively for the legitimate purpose of the association, and shall be, so long as so used, exempt from all forms of taxation.

Any public funds or property remaining in a corporation organized under this chapter when a corporation is dissolved shall be distributed by resolution of the board of directors, upon order of the circuit judge to any county or any city within the county, and may provide in the distribution resolution the public project on which the funds shall be used or the use to which the property shall be put, provided, however, that where property has been contributed by a city or county, the property shall be reconveyed to the city or county making the contribution of said property.

History.—§5, ch. 7388, 1917; RGS 4523; CGL 6522. Am. §2, ch. 29914, 1955; §1, ch. 57-745.

616.08 Additional powers of association.—Every association organized under this chapter shall have the power to hold, conduct and operate fairs and expositions as defined herein annually and for such purpose to buy, lease, acquire and occupy lands, erect buildings and improvements of all kinds thereon and to develop the same; to sell, mortgage, lease, or convey such property or any part thereof, in its discretion, from time to time; to charge and receive compensation for admission to such fairs and expositions, and the sale or renting of space for exhibitions, or other privileges; to conduct and hold public meetings; to supervise and conduct lectures and all kinds of demonstration work in connection with or for the improvement of agriculture, horticulture and stock raising and poultry raising and all kinds of farming and matters connected therewith; to hold exhibits of agriculture and horticultural products, livestock, chickens and other domestic animals; to give certificates or diplomas of excellence; and generally to do, perform and carry out all matters, acts and business usual or proper in connection with fairs and expositions as defined herein; but this enumeration of particular powers shall not be in derogation of or limit any special provisions of the charter of such association inserted for the regulation of its business, and the conduct of its affairs of creating, defining, limiting and regulating the powers of the association, its officers or members; provided, the treasurer or similar officer of said association shall be required to give a good and sufficient bond with a surety company duly authorized under the laws of the state, payable to said association and in an amount equal to the value of the total amount of money and other property in his possession or custody, in addition to the value of any money and property of such association that may reasonably be expected to come into his possession or custody.

History.—§6, ch. 7388, 1917; RGS 4524; CGL 6523; §2, ch. 17806, 1937; §3, ch. 63-247.

616.09 Not authorized to carry on gambling, etc.; forfeiture of charter for violations; annulment proceedings.—Nothing in this chapter shall be held or construed to authorize or permit any association organized hereunder to carry on, conduct, supervise, permit or suffer any gambling or game of chance, lottery, betting or other act in violation of the criminal laws of the state; provided that nothing in this chapter shall permit horse or dog racing or any other pari-mutuel wagering, for money or upon which money is placed, and any association organized under this chapter which shall violate any of said laws or which shall knowingly permit the same to be done shall be subject to forfeiture of its charter; and if any citizen shall complain to the attorney general that any association organized under this chapter was organized for or is being used as a cover to evade any of the laws of Florida against crime, and shall submit prima facie evidence to sustain such charge, the attorney general shall institute, and in due time prosecute to final judgment such proceedings as may be necessary to annul the charter and incorporation of such association, and writs of injunction or other extraordinary process shall be issued by courts of competent jurisdiction on the application of the attorney general on complaint pending any such annulment proceeding and in aid thereof, and all such cases shall be given precedence over all civil cases pending in such courts, and shall be heard and disposed of with as little delay as practicable.

History.—§7, ch. 7388, 1917; RGS 4525; CGL 6524; §2, ch. 29737, 1955; §4, ch. 63-247.

616.091 Operation of shows.—

(1) Trade standards for the operation of shows and amusement devices in connection with public fairs and expositions are as follows:

(a) Walk through shows where donations are accepted are prohibited.

(b) Wildlife shows may be permitted only when admission is charged and plainly posted at entrance.

(c) The approval of all other shows will be left to the discretion of fair management.

(d) The counter of the ticket or change booth patronized by children shall not be more than four feet above the ground.

(e) Athletic shows are allowed with rings not less than sixteen feet square. Mat platform shall not be less than forty inches from ground. The appearance of the tent and equipment must meet the approval of the inspector and fair management.

(f) In order to provide adequate protection to fair patrons, all motor dome shows or any other similar shows, where equipment is used as a ballyhoo or for any other purpose, there shall be a barrier, guard rail, or chain of sufficient strength or height to prevent any equipment out of control from leaving the platform.

(g) The operator of a game at any fair as defined in this act, before and during operation, must have and keep in a conspicuous place, a sign stating the cost of a play and an explanation of how the game is played. Lettering on signs shall be plain and not less than two inches in height. Signs or placards shall be of permanent material so they can be used from one fair to the next. Game shall be closed until compliance with the regulation is provided.

(h) Prices shall be left to the discretion of fair management, however, capital prize must be given. No operator shall be permitted to display merchandise of any type which is not one of the prizes possible to be won. Each prize shall be so marked that any player may know in advance what is necessary for him to do to win any one of the prizes displayed. No flash display will be permitted.

(i) Operators of games must work inside of the concessions at all times except in those concessions where the operator has secured permission from management to work on the outside, not over four feet from the barrier and only in front of his own game.

(j) False advertising by banner, word-of-mouth or otherwise is prohibited.

(k) Inspectors approved by the agricultural and livestock fair committee are to report in writing to the fair management and the agricultural and livestock fair committee if flagrant violation of this law is observed.

(l) Since the Florida law forbids lotteries, gambling, raffles, and other games of chance at community, county, district and state fairs, and since enforcement is the responsibility of local boards and authorities, the inspectors will have fulfilled their responsibility by informing the local fair association and the agricultural and livestock fair committee in writing whenever they observe such illegal pursuits.

(m) The operator of a milk bottle ball game must operate at all times with the number of milk bottles on sign. No bottle may weigh over three pounds. All bottles shall be free from defects and each set shall be uniform in size. The base on which the bottles shall set shall be not less than eighteen inches from the ground. The front barrier shall not be higher than the base on which the bottles set. The base shall be at least six feet from the front barrier. A rim not to exceed one half inch will be permitted if operating the game "all over." No obstruction whatsoever will be permitted around the base on which the bottles set if operating the game "all off."

(n) Huckla buck kegs, milk can or similar games, must be set on a frame and kept level at all times. Each operator must operate the number of kegs indicated on the sign throughout the season without change. Rubber and plastic balls are prohibited. The width of the opening of the kegs in huckla buck, milk can or similar games, shall be such that there shall be not less than three fourths inch from the center position of the ball.

(o) Roll-a-game.—The board shall be level laterally and unwarped with no obstruction to make the ball jump. All slots or holes shall be colored or well numbered to show wins. All slots or holes must be in an even row at the back of board—not staggered. Ball shall be solid and round at all times.

(p) Break balloon ball games.—Balloons shall be stationary on targets. Rubber, plastic or cork balls are prohibited.

(q) Break the record games.—Records shall be placed in a stationary grooved rack at least twenty feet from front barrier. The operator of this game must provide a protective covering on three sides and top to protect the public. A canvas back drop shall be used. Unbreakable records shall not be used.

(r) Clown pop-em-in or bungaloo board.—This game must have at least one half inch clearance over size of the ball and the target must not be over ten feet distance.

(s) Automatic bowling alleys shall be allowed.

(t) Cat racks shall have but one rail which shall be in front only. The rail shall not extend over one inch above shelves where cats are placed. The width of the shelves on which cats are placed shall not exceed the length of cat plus three inches; fur trim not included in length of cat. The distance of the separations between the shelf boards where cats set shall not exceed one inch; no more than three separations per shelf shall be permitted. Shelves shall be level at all times. The canvas back drop must be at least the length of cats plus three inches back from the rear edge of shelf. Weight of cats shall not exceed two pounds.

(u) African dip or similar games.—When men or women are used on target seat they shall not use foul or insulting language and shall be properly dressed. Rubber, plastic or cork balls are prohibited.

(v) Break balloon dart game.—The target board playing area must be at least seventy-five per cent full of target balloons inflated at all times. Blunt pointed darts are prohibited.

(w) Ring bottle game.—The table or stand supporting the bottles shall be a height that the top of bottles to be rung will not exceed four feet in height from ground level. No obstruction shall be placed between or around the bottles at any time. The clearance of the ring shall be such that there will be not less than one fourth inch clearance measured from inside of ring to neck of bottle. Ring bottle games shall be operated level at all times. The

use of grease or wax on rings, platforms, or bottles is prohibited.

(x) Cane rack.—Cane racks shall be ninety per cent filled with canes at all times. Canes shall be so arranged that each and every cane can be rung. The clearance of the ring shall be such that there will be not less than three eighths inch clearance measured from the inside of ring to head of cane.

(y) Fishing pole or bottle set-up game.—The platform on which bottles are placed must be not less than twelve inches square. Bottles must be placed in center of platform. The platform shall be level at all times. Rings shall not have more than three eighths inch clearance. The use of grease or wax on rings, platforms or bottles is prohibited.

(z) Hoop-la games shall have three eighths inch clearance on flat solid blocks uncovered, and no prizes may project over blocks. Blocks must be placed on table with sufficient clearance to permit any hoop to surround block unobstructed. Blocks are unnecessary under cigarettes. All prizes displayed on block entitle player to win all prizes on block. Hoops must be round and uniform in size. The platform shall not be more than twenty-four inches from the ground.

(aa) Ring wooden duck game or any other game using rings, the clearance of the ring shall be not less than three eighths inch.

(bb) Guess your weight or age operators shall guess weight and age by observation only. Scale dials must have clear figures and illuminated at all times so they can be read by the public.

(cc) Hi strikers shall be in good condition at all times. The slides or wires shall be straight and free of any obstruction or controls. Slide board must be plumb at all times. All mallets must be in good condition. There shall be a fence of sufficient strength and not less than thirty-six inches high around striker to protect the public.

(dd) Pitch game.—Stand on which prizes are placed shall be ninety per cent filled at all times. Each and every prize shall have a large enough opening and be so arranged that they can be won. When a target is used for choice it must be so stated by sign how choice prize is won.

(ee) Long range, cork, bazooka galleries.—The guns shall be attached to counter in a manner to protect the public. Lead gallery shall use nonspatter bullets only. Galleries must have good side and back wall protection at all times.

(ff) Cork shooting gallery.—Must use guns in good mechanical condition. No chipped or crooked corks may be used. Shelves where targets are placed are not to exceed four inches in width and no obstruction shall interfere with prize falling off said shelf. No targets shall be used which cork guns cannot shoot off shelf.

(gg) Archery.—The operator of this game must provide a protective covering on three sides and top to protect fair patrons from stray arrows.

(hh) Ring the pin game.—Operators of this game must arrange pins so that they remain stationary and perpendicular at all times. Pins shall be so arranged that it is possible to ring each and every pin. The top row of pins must not be higher than four feet above the ground.

(ii) Football game.—Operators of this game, where a hole in the canvas is used as a target, must provide regulation footballs to be thrown and the clearance in the target shall be at least one inch measured from the largest part of the football.

(jj) The operator of any ball game must provide balls which are round, firm, smooth and not broken or frayed. All games operated at any fair as defined in this chapter must be maintained in good condition and be under the supervision of a competent operator at all times the game is in operation.

(kk) All concessionaires are prohibited from exhibiting at any fair as defined in §616.001, any game or device which has been ruled out by this statute.

(2) Safety standards for the operation of amusement devices and temporary structures at public fairs and expositions are as follows:

(a) *Purpose, intent and general requirement.*—The purpose of this rule is to guard against personal injuries in the assembly, disassembly and use of amusement devices and temporary structures at carnivals, fairs, and amusement parks, to persons employed at or attending same. Such devices and structures shall be designed, constructed, assembled, or disassembled, maintained and operated as to prevent such injuries.

(b) *Application.*—These provisions apply throughout the state to amusement devices and temporary structures at public fairs and expositions.

(c) *Definitions.*—Manager is a person having possession, custody or managerial control of an amusement device or temporary structure, whether as owner, lessee, agent or otherwise.

(d) *Equipment tests.*—Each ride shall be subject to inspection prior to operation so as to test the full operation of all control devices, speed-limiting devices, brakes and other equipment provided for safety.

(e) *Identification and rating plates.*—Every amusement device shall be identified by a trade or descriptive name and an identification number, and there shall be firmly attached thereto in a readily visible location, a metal plate upon which there is legibly impressed the name and number of the device, its model number if any, and the name and address of the manufacturer. Upon the same or another metal plate there shall be the maximum safe number of passengers, and the maximum safe speed.

(f) *Assembly and disassembly.*—Quality of assembly work. Parts shall be properly aligned, and shall not be bent, distorted, cut or otherwise injured to force a fit. Parts requiring lubrication shall be lubricated in course of assembly. Fastening and locking devices shall be installed where required for dependable operation.

(g) *Persons in work area.*—A sufficient number of persons to do the work properly shall be engaged for the assembly or disassembly. Persons not so engaged shall be prevented from entering the area in which the work may create a hazard.

(h) *Daily inspection and test.*—Rides must be tested every day on location.

(i) *Overloading and overspeeding.*—An amusement device shall not be overcrowded, or loaded in excess of its safe carrying capacity; nor shall it be operated at an unsafe speed or at any speed beyond that recommended by the manufacturer.

(j) *Imminent danger.*—If the commissioner finds that an amusement device or a temporary structure presents an imminent danger, he may attach a notice warning all persons against the use thereof. Such notice shall not be removed until the device is made safe, and then only by a representative of the commissioner and in the meantime the device shall not be used.

(k) *Design and construction requirements.*—Before being used by the public, amusement devices shall be so placed or secured with blocking, cribbing, outriggers, guys or other means as to be stable under all operating conditions.

(l) *Public protection.*—An amusement device shall not be used or operated while any person is so located as to be endangered by it. Areas in which persons may be endangered shall be fenced, barricaded or otherwise effectively guarded against contact.

(m) *Guarding of machinery.*—Machinery used in or with an amusement device shall be enclosed, barricaded or otherwise effectively guarded against contact.

(n) *Speed-limiting devices required.*—An amusement device powered so as to be capable of exceeding its maximum safe operating speed shall be provided with a maximum speed-limiting device.

(o) *Passenger-carrying devices.*—The interior and exterior parts of all passenger-carrying amusement devices with which a passenger may come in contact shall be smooth and rounded, free from sharp, rough or splintered edges and corners, with no protecting studs, bolts, screws or other projections which might cause injury. Interior parts upon or against which a passenger may be forcibly thrown by the action of the ride shall be adequately padded.

(p) *Electrical safety requirements.*—

1. High voltage lines.—The outlets of electrical power lines carrying more than 120 volts shall be clearly marked to show their voltage.

2. Outdoor apparatus and wiring.—Electrical apparatus and wiring located outdoors shall be of such quality and so constructed or protected that exposure to weather will not interfere with its normal operation.

3. Exposed conductors.—Bare wires and other uninsulated current-carrying parts shall be guarded against inadvertent contact by means of proper location or by a fence or other barrier.

4. Abrasion protection.—Wiring laid on surface traversed by vehicular or pedestrian traffic shall be adequately protected against wear and abrasion.

(q) *Fire prevention and protection.*—

1. Fire resistance of fabrics.—Fabrics constituting part of an amusement device or a temporary structure shall be fire-resistant.

2. Flammable waste.—Flammable waste such as oily rags and other flammable materials shall be placed in covered metal containers which shall be kept in easily accessible locations. Such containers shall not be kept at or near exits.

(r) *Cleanliness.*—A suitable number of metal containers for refuse shall be provided in and around all amusement devices and temporary structures. Excessive accumulations of trash or refuse shall be promptly removed. All parts of amusement devices and temporary structures used by passengers or customers shall be maintained in a clean condition.

History.—§6, ch. 63-247.

616.101 Annual audit of accounts.—Once each year an audit of the accounts of every association organized under this chapter, based on sound accounting practices and procedures, shall be made by a qualified accountant licensed by the state. The results of all such audits shall be kept in the official records of each corporation, available to all directors of each corporation, and a certified copy of proper section of audit shall be filed in the office of the department of agriculture on request to certify expenditure of state premium or building funds, or where there is evidence of flagrant violation of state laws.

History.—§7, ch. 63-247.

616.11 Authorized to contract with city or county for use of land; admission fees to fair; counties and cities authorized to make contributions. — Any association incorporated under this chapter may enter into any contract, lease or agreement with any city or county in the state for the donation to, or the use and occupation by such association of any land owned, leased or held by any such county or city during such time and on such terms as such county or city may authorize, with the right on the part of such association to charge and receive an admission fee to such fair or exposition or any part thereof; and the board of county commissioners of any county within which such fair or exhibition is held and the mayor and city council of any city within such county may make contributions of money or property to such associations to assist in carrying out the purposes of such associations as defined by this chapter, and boards of county commissioners of the various counties of the state, may expend in their discretion such sums of money as they deem for the best interests of their counties and in aiding the development of the agricultural, horticultural and livestock resources of their counties and in giving publicity to the advantages, facili-

ties and agricultural, horticultural and livestock possibilities and production of their counties by providing for, aiding and assisting the exhibition and demonstration of such resources at and in connection with such fairs and expositions including the offering and paying of premiums for such exhibitions of resources of their respective counties.

History.—§9, ch. 7388, 1917; RGS 4527; CGL 6526.

616.12 Licenses upon certain shows, distribution of fees and exempting certain traveling shows from license tax.—Every person who may operate under any terms whatsoever, including lease arrangement, traveling shows, exhibitions, or amusement enterprises, carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements including concessions operating in tents, enclosures or other temporary structures whether covered or uncovered, within the grounds of, and in connection with any fair held by a fair association incorporated under the provisions of this chapter, shall pay the license taxes now or hereafter provided by law; provided, however, in event such association shall fully qualify with all other provisions of this act including securing the required fair permit from the commissioner of agriculture, then such traveling shows, exhibitions, or amusement enterprises, carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements including concessions operating in tents, enclosures or other temporary structures whether covered or uncovered, within the grounds of, and in connection with any fair held by a fair association incorporated under the provisions of this chapter, shall not be required to pay any such license tax except as provided in §205.322, but shall operate under a tax exemption certificate which such fair association shall have first secured from the commissioner of agriculture the necessary permit required under §616.15 and otherwise fully comply with all other provisions of §616.15. The commissioner of agriculture shall prescribe the proper forms, rules and regulations for carrying out the purpose and intent as expressed herein including the necessary tax exemption certificate to be completed by the tax collector showing that such traveling shows, exhibitions, or amusement enterprises, carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements including concessions in tents, enclosures or other temporary structures whether covered or uncovered, within the grounds of and in connection with any fair held by a fair association incorporated under the provisions of this chapter, had met in full all requirements of this act and accordingly are fully exempt.

History.—§1, ch. 17759, 1937; CGL 1940 Supp. 6526(1); §2, ch. 57-796; §2, ch. 59-166; §5, ch. 63-247.
cf.—§§205.21, 205.32, 205.60, 205.61, Occupational license tax.
cf.—§517.05(10) Certain exemptions.

616.121 Making false application.—Any person who shall make or cause to be made any false statement in an application for permit to hold a fair or exposition or in an application for distribution of amount paid for license taxes under provisions of this chapter, with fraudulent intent of obtaining such permit or amount, and shall by such false statement obtain such permit or any part of such amount for himself or for any firm or corporation in which such person has a financial interest, or for whom he is acting, shall, upon conviction, be punished by imprisonment in the state penitentiary not exceeding 1 year, or by a fine not exceeding $1000.00.

History.—§3, ch. 57-796; re-enacted without change by §3, ch. 59-166.

616.13 Licenses upon shows within one mile of fair.—Every person, engaged in the business of traveling shows, exhibitions or amusement enterprises including carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements operating in tents or temporary structures whether covered or uncovered, within one mile of any such fair or exposition being operated by an association incorporated under the provisions of this chapter when not operating in connection with such fair or exposition, shall pay a license tax of one thousand dollars per day.

History.—§3, ch. 17759, 1937; CGL 1940 Supp. 6526(2); §4, ch. 59-166.

616.14 Number of annual fairs; penalty.—Any association incorporated under the provisions of this chapter that conducts more than one fair or exposition during any one calendar year shall be subject to revocation of its charter by the court granting such charter.

History.—§2, ch. 17759, 1937; CGL 1940 Supp. 6526(3); §5, ch. 59-166.

616.15 Permit from commissioner of agriculture required.—No public fair or exposition shall be conducted by an association incorporated under the provisions of this chapter without a permit issued by the commissioner of agriculture. Such permit shall be issued in the following manner:

The association shall present to the state department of agriculture a written request for the permit, signed by an officer of the association, at least three months prior to holding the fair or exposition; this request shall be accompanied by a fee in an amount to be determined by the commissioner not to exceed fifty dollars nor less than twenty-five dollars to cover the costs necessary to processing such permit and making any required investigation. The fees collected hereunder shall be deposited in the general inspection trust fund of the state treasury in a special account to be known as the agricultural and livestock fair account. The commissioner of agriculture may issue such permit upon the recommendation and approval of the agricultural and livestock fair committee provided the request shall set forth:

(1) The opening and closing dates of the proposed fair or exposition.

(2) The name and address of the owner of the central amusement attraction to operate during the fair or exposition.

(3) An affidavit properly executed by the president or other chief executive officer of the applicant association certifying as to the existence of a binding contract entered into by such association or exposition and the owner of the central amusement attraction covering the period for which the permit from the commissioner of agriculture is requested, provided, further, such contract or contracts between such parties shall be available for inspection by duly authorized agents of either the commissioner of agriculture or the agricultural and livestock fair committee in administering this act.

(4) A statement that the main purpose of the association is to conduct and operate the proposed fair or exposition for the benefit and development of the educational, agricultural, horticultural, livestock and other resources of the state. The statement shall be in writing, subscribed and acknowledged by an officer of the association before an officer authorized to take acknowledgements.

(5) A premium list of the current fair to be conducted or a copy of the previous year premium list showing all premiums and awards to be offered to exhibitors in various departments of the fair such as: art exhibition, beef cattle, county exhibits, dairy cattle, horticulture, swine, women's department, 4-H club activities, future farmers of America activities, future homemakers of America activities, poultry and egg exhibits and community exhibits, the foregoing being a list of the usual exhibitors of a fair and shall not be construed as limiting said premium list to these departments; provided that such list may be submitted separately at any time not later than sixty days prior to the holding of the fair or exposition, and the commissioner of agriculture shall issue the permit as hereinbefore provided for within ten days thereafter if the applicant properly qualified.

(6) The department of agriculture shall administer and enforce the provisions of this act. It, through the commissioner, is authorized to make and publish such rules and regulations not inconsistent with this act as to the form and contents of the application for the permit and any reports that it may deem necessary in enforcing its provisions.

(7) Notwithstanding any fair association meeting the requirements set forth in subsections (1) to (5), inclusive, the commissioner of agriculture may order a full investigation to determine whether or not said fair association meets in full the purpose set forth in §616.01, and accordingly may withhold a permit from, deny a permit to or withdraw a permit once issued to such association. The determination by the commissioner shall be final.

History.—§4, ch. 57-796; §6, ch. 59-166; 2nd intro. para. a. by §2, ch. 61-119.

616.17 Minimum exhibits.—

(1) No public fair or exposition conducted by an association incorporated under the provisions of this chapter shall be approved by the agricultural and livestock fair committee for a tax exemption certificate to be issued by the commissioner unless such fair or exposition shall display the following minimum exhibits, but this shall not be construed as a limitation on the number of exhibits which such fair or exposition may have:

(a) Three exhibits from 4-H clubs or future farmers of America chapters which are officially approved by such clubs or chapters.

(b) Three exhibits of community, individual, or county farm displays.

(c) Three exhibits of field crops in at least three different crops.

(d) Three exhibits of horticultural products.

(e) Three culinary exhibits such as canned fruits, canned vegetables, canned pickles or juices, jams, jellies, etc., cakes, bread, candies or eggs.

(f) Three exhibits of household arts such as homemade spreads, towels, luncheon sets, rugs, clothing, or baby apparel.

(g) Three exhibits of fruit or vegetable crops in at least three different crops.

(h) Three exhibits of arts, crafts, photography, antiques or of scout handiwork.

(i) Three exhibits from home demonstration, home economics, educational, religious or civic groups.

(j) Three exhibits of livestock such as dairy cows, beef cattle, hogs, sheep, poultry, horses or mules.

(2) The provisions of subsection (1) shall not apply to specialized livestock shows or fruit or vegetable festivals. The minimum exhibits required of such shows or festivals shall be as follows:

(a) Each specialized livestock show shall consist of at least fifty head of animals or three hundred head of poultry.

(b) Each specialized fruit, vegetable, or crop festival or exposition shall consist of at least fifty entries in the specialty, which shall occupy at least one thousand square feet of display area.

History.—§8, ch. 59-166.

616.19 Florida state fair, Tampa; designation of other fairs.—

(1) The winter exposition held in Tampa, by the Florida state fair and Gasparilla association, inc., is hereby designated as the Florida state fair.

(2) Any agricultural and livestock fair heretofore or hereafter created pursuant to chapters 603 or 616, shall be designated by the name stated in the permit required or stated by such fair association and shall be recognized by the state with equal dignity and as fully as the Florida state fair designated in subsection (1).

History.—§§1, 2, ch. 61-513.

616.21 Agricultural and livestock exhibit buildings; conditions for expenditures; agricultural and livestock fair committee created; powers and duties.—

(1) No part of the money in §282.011(8) appropriated shall be expended except upon approval and with the recommendation of the agricultural and livestock fair committee. It is further provided that no part of such appropriation shall be expended for the construction of a building unless and until a good fee simple title to the land on which such building is to be constructed is vested in the county, city or fair association for which such building is to be constructed.

(2) There is created the agricultural and livestock fair committee which shall be composed of five members as follows: The state commissioner of agriculture, as chairman; the chief of state markets of the department of agriculture; the director of the Florida agricultural extension service; the president of the Florida federation of fairs and livestock shows; and the executive vice-president of the Florida farm bureau federation. No official action shall be taken by such committee unless three of its members are in agreement on the particular proposal, recommendation or motion.

(3) It is hereby made the duty and responsibility of the agricultural and livestock fair committee to either approve or disapprove within a reasonable length of time:

(a) Expenditures of moneys appropriated for the construction of agricultural and livestock exhibit buildings in the state by §282.011(8);

(b) Issuance of permits to conduct fairs or expositions for the benefit and development of the educational, agricultural, horticultural, livestock and other resources, of the state as provided in §616.15.

(4) The agricultural and livestock fair committee may employ an executive secretary upon the approval of the commissioner of agriculture. The annual salary of said executive secretary shall be fixed by the commissioner, which salary, together with the said secretary's traveling expenses on official business shall be payable monthly from the agricultural and livestock fair account created by §616.15.

History.—§2, ch. 29832, 1955; §1, ch. 59-367; (4) §2, ch. 61-119; §2, ch. 63-393.
Note.—Tr. from §603.21.

616.22 Same; matching funds.—In the construction of buildings as authorized by §282.011(8) the money to be expended therefor from said appropriation shall be matched by the county, city or fair association for which such buildings are to be constructed on the basis of fifty per cent from the county, city or fair association to fifty per cent from said appropriation, and the contribution from the county, city or fair association for such construction shall be provided and made available before such construction is begun. In no event shall an amount greater than twenty-five thousand dollars be expended from said appropriation for the construction of exhibit buildings for any one county, city or fair association, from funds hereby appropriated for such purpose, provided however, that after July 1, 1964, any amount not greater than twenty-five thousand dollars may be expended from the appropriation for the construction of exhibit buildings for any one county, city or fair association from the unexpended balance of this appropriation regardless of the amount previously expended under any other legislative appropriation for that one county, city or fair association.

History.—§3, ch. 29832, 1955; §2, ch. 59-367; §3, ch. 63-393.
Note.—Tr. from §603.22.

616.23 Use of buildings.—The buildings authorized by §§616.21-616.23 may be used by the county, city or fair association for which same are built as agricultural or livestock exhibition buildings for fair purposes in the promotion of agriculture and livestock industry and as office space for agricultural agents; provided that no more than twenty per cent of such buildings shall be used for such office space.

History.—§4, ch. 29832, 1955; §3, ch. 59-367; §4, ch. 63-393.
Note.—Tr. from §603.23.

CHAPTER 617

CORPORATIONS NOT FOR PROFIT

PART I CORPORATIONS NOT FOR PROFIT, GENERALLY

PART II SCHOLARSHIP PLANS

PART I

CORPORATIONS NOT FOR PROFIT, GENERALLY

617.01 Corporations which may be incorporated hereunder.—

(1) Corporations may be organized and incorporated under this chapter for any one or more lawful purposes not for pecuniary profit; provided, however, that corporations not for profit which may be incorporated under any other law of this state governing particular types of corporations may not be incorporated hereunder.

(2) As used in this chapter "corporation not for profit" means a corporation no part of the income of which is distributable to its members, directors or officers.

History.—§2259 RS 1892; §1, ch. 4231, 1893; GS 2830; RGS 4499; §1, ch. 10095, 1925; CGL 6495; ch. 19108, 1939; §1, ch. 59-427.

617.011 Shares of stock and dividends prohibited.—No corporation incorporated hereunder shall have or issue shares of stock. No dividend shall be paid, and no part of the income of the corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors and officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by the court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

History.—§2, ch. 59-427.

617.012 Reincorporation.—

(1) Any corporation which has a charter approved by a circuit judge, under this chapter and the laws from which derived, or a charter granted by the legislature of this state, on or prior to September 1, 1959, the effective date of chapter 59-427, acts of 1959, may reincorporate hereunder by filing with the secretary of state a copy of its charter and all amendments thereto, certified by the clerk of the circuit court of the county wherein recorded, as to charters and amendments granted by circuit judges, and by the secretary of state, as to legislative charters, together with a certificate containing the provisions required in original articles of incorporation by §617.013, and accepting the provisions of this chapter as amended.

(2) Said certificate shall be executed by its president and attested by its secretary under the corporate seal, if any, and it shall show that its issuance was duly authorized by a meeting of its members regularly called, or if its members have no voting rights, by meeting of its board of directors, managers or trustees regularly called. Upon the filing thereof and payment of the filing fees specified in §617.015, for filing articles of incorporation, the

corporation shall be deemed to be incorporated hereunder and the certificate shall constitute its articles of incorporation hereunder.

(3) The corporation shall then be entitled to and be possessed of all the privileges, franchises and powers as if originally incorporated under this chapter as amended; and all the properties, rights and privileges theretofore belonging to the corporation, which were acquired by gift, grant, conveyance, assignment or otherwise shall be and they are hereby ratified, approved, confirmed and assured to the corporation with like effect and to all intents and purposes as if they had been originally acquired through incorporation under this chapter as amended; provided, however, that any corporation thus reincorporating hereunder shall be subject to all the contracts, duties and obligations theretofore resting upon the corporation or to which the corporation shall then be in any way liable.

History.—§3, ch. 59-427; §1, ch. 63-405.

617.013 Manner of incorporation.—

(1) Corporations may be organized hereunder by any three or more persons who shall make, subscribe, acknowledge and file articles of incorporation in the office of the secretary of state, and shall obtain approval thereof by the secretary of state.

(2) The articles of incorporation shall contain:

(a) The name of the proposed corporation, which shall include the word "incorporated" or "inc." The name shall be such as will distinguish the corporation from any other domestic corporation, or any foreign corporation admitted to conduct its affairs in this state; provided, however, that all corporations heretofore organized under this chapter may reincorporate under §617.012, with their same corporate names notwithstanding duplication of names.

(b) The purpose or purposes for which the corporation is organized.

(c) The qualification of members and the manner of their admission.

(d) The term for which it is to exist, which may be perpetual.

(e) The names and residences of the subscribers.

(f) By what officers the affairs of the corporation are to managed, and the times at which they will be elected or appointed.

(g) The names of the officers who are to serve until the first election or appointment under the articles of incorporation.

(h) The number of persons constituting the first board of directors, managers, or trustees, which shall not be less than three, and the names and addresses of the persons who are to serve as directors, managers, or trustees until the first election thereof.

(i) By whom the by-laws of the corporation are to be made, altered or rescinded.

(j) By whom and in what manner amendments to the articles of incorporation may be proposed and adopted.

(k) Any provision which the incorporators may choose to insert for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, managers or trustees, and the members, including, but not limited to, provisions establishing classes of membership and limiting voting rights to one or more of such classes.

(3) The articles of incorporation shall be in writing, subscribed by not less than three natural persons competent to contract and acknowledged by all of the subscribers before an officer authorized to take acknowledgments, and filed in the office of the secretary of state for approval. A duplicate copy so subscribed and acknowledged may also be filed.

History.—§4, ch. 59-427.

617.014 Approval of articles; beginning of corporate existence.—When the articles of incorporation have been filed in the office of the secretary of state and approved by him and the filing fee herein specified has been paid, the subscribers thereof and their associates and successors shall constitute a corporation. The approval of the articles of incorporation by the secretary of state shall be indicated by his endorsement thereof with the date and time of approval on the original. The original shall be filed in the records of his office. If a duplicate is received with the original, it shall, on receipt of the fee required for certified copies, be so endorsed, certified and returned to the person from whom it is received.

History.—§5, ch. 59-427.

617.015 Filing fees.—

(1) Upon filing any articles of incorporation, amendment thereof or other paper relating to the incorporation, merger, consolidation or dissolution of any corporation not for profit in the office of the secretary of state, the following fees shall be paid to him for the use of the state:

(a) A filing fee of eight dollars for the filing and approval of articles of incorporation.

(b) A fee of three dollars in each case for furnishing certified copies of articles of incorporation or other documents concerning a corporation not for profit.

(c) A fee of ten dollars in each case for filing papers relating to dissolution, amendment of articles of incorporation, or a merger or consolidation agreement.

History.—§6, ch. 59-427.

617.02 Amendment of charter or articles of incorporation.—Any corporation reincorporated hereunder may amend its articles of incorporation as provided in the articles. Any corporation heretofore incorporated hereunder which has not reincorporated under §617.012, may amend its charter by resolution as provided in the by-laws. In any case, the charter or articles of incorporation shall be amended and the amendment incorporated therein only when the amendment has been filed with the secretary of state, approved by him, and all filing

fees have been paid. The secretary of state shall not approve or file any amendment to the charter of a corporation heretofore incorporated hereunder which has not reincorporated pursuant to §617.012, unless such corporation has previously filed certified copies of its charter and all amendments thereto with the secretary of state together with an affidavit executed by its president stating that such documents constitute copies of the charter of the corporation and all amendments thereto. Such certified copies and accompanying affidavit shall be received and filed by the secretary of state when they are submitted to him and the filing fees specified in §617.015, are paid.

History.—§2261 RS 1892; GS 2832; RGS 4501; CGL 6497; §7, ch. 59-427.

617.021 Corporate powers.—

(1) Every corporation not for profit organized hereunder, unless otherwise provided in its articles of incorporation or by law, shall have power to:

(a) Have succession by its corporate name for the period set forth in its articles of incorporation.

(b) Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

(c) Adopt and use a common corporate seal and alter the same; provided, however, that such seal shall always contain the words "corporation not for profit."

(d) Elect or appoint such officers and agents as its affairs shall require and allow them reasonable compensation.

(e) Adopt, change, amend and repeal by-laws, not inconsistent with law or its articles of incorporation, for the administration of the affairs of the corporation and the exercise of its corporate powers.

(f) Increase, by a vote of its members cast as the by-laws may direct, the number of its directors, managers or trustees so that the number shall not be less than three but may be any number in excess thereof.

(g) Make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises or income.

(h) Conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or any foreign country.

(i) Purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(j) Acquire, enjoy, utilize and dispose of patents, copyrights and trademarks and any licenses and other rights or interests thereunder or therein.

(k) Sell, convey, mortgage, pledge, lease, exchange, transfer or otherwise dispose of all or any part of its property and assets.

(l) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with, shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, municipality, or of any instrumentality thereof.

(m) Lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(n) Make donations for the public welfare or for religious, charitable, scientific, educational or other similar purposes.

(o) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History.—§8, ch. 59-427.

617.022 Estoppel; ultra vires.—

(1) No body of persons acting as a corporation hereunder shall be permitted the want of legal organization as a defense to an action against it as a corporation, nor shall any person sued on a contract or sued for an injury to its property or a wrong done to its interests, be permitted to set up a want of such organization in his defense.

(2) No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In any action by a member or a director against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation, but in any such action the plaintiff shall sustain the burden of proof that he has not at any time prior thereto assented to the act or transfer in question and that in bringing the action he is not acting in collusion with officials of the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if deemed equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as loss or damage sustained.

(b) In an action by the corporation or by its receiver, trustee or other legal representative, or by its members in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) In an action by the attorney general, under the provisions of §617.09 or §617.11(4).

History.—§9, ch. 59-427.

617.023 Office and resident agent.—Every corporation organized hereunder shall maintain an office in this state with a resident agent thereat upon whom process may be served. The resident agent may be either an individual or a corporation. The corporation shall keep the secretary of state informed of the current city, town or village and street address of said office together with the name of the resident agent.

History.—§10, ch. 59-427.

617.03 Evidence of incorporation.—A copy of the articles of incorporation of any corporation organized under this chapter with thereon the certificate of the secretary of state that they are copied from his records, or the original charter of a corporation heretofore incorporated and not reincorporated hereunder with the certificate of the recording thereof in the clerk's office endorsed thereon, or a copy of the record thereof certified by the clerk, shall be prima facie evidence of the contents and effect of such documents, and shall be conclusive evidence of the existence of the corporation in all actions and proceedings where the question of its existence is only collaterally involved, and prima facie evidence in all other actions and proceedings.

History.—§2260 RS 1892; GS 2831; RGS 4500; CGL 6496; §11, ch. 59-427.

617.05 Dissolution.—

(1) Any corporation organized hereunder wishing to dissolve may present a petition therefor to the circuit court of the county in which the principal office of the corporation is located. The circuit judge shall direct notice thereof to be published for such time as he may deem to be expedient, and after the expiration of such time he may decree a dissolution and may make all necessary orders and decrees for the winding up of the affairs of such corporation, taking care that the claims of creditors be satisfied as far as may be out of the assets of the corporation. Upon filing a certified copy of the decree of dissolution in the office of the secretary of state and the payment of all filing fees, the corporation shall be dissolved; provided, that in the case of corporations heretofore incorporated hereunder and not reincorporated, the decree of dissolution shall also be recorded in the office of clerk of the circuit court which approved the charter of the corporation.

(2) When any corporation organized hereunder is defunct, the circuit court of the county in which the last known principal office of the corporation is located or the circuit court which approved the charter of the corporation may decree a dissolution of such corporation upon the sworn petition of any person. Notice thereof shall be served by the petitioner by mail to the last known officers and agents of such corporation, specifying the date and time when the petition shall be presented to the circuit judge. In addition, the circuit judge shall direct notice to be published for such time as he shall deem to be expedient. Upon the presentation of proof of such service and publication of notice, which may be by affidavit, if the circuit judge shall find from the evidence presented that the corporation is defunct, he may decree a dissolution and make all necessary orders and decrees for the winding up of the affairs of such corporation, taking care that the claims of creditors be satisfied as far as may be out of the assets of the corporation. The circuit judge may in his discretion direct that the costs of the proceeding be satisfied out of the assets of the corporation after the claims of creditors, if any, are satisfied. Upon filing a certified copy of the decree of dissolution in the office of the secretary of state and the payment of all filing fees, the corporation shall be dissolved; provided, that in the case of corporations heretofore incorporated hereunder, the decree of dissolution shall also be recorded in the office of the clerk of the circuit court which approved the charter of the corporation.

History.—§2262 RS 1892; GS 2836; RGS 4506; CGL 6502; §13, ch. 59-427.

617.051 Merger.—

(1) Any two or more domestic corporations organized hereunder may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(d) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History.—§14, ch. 59-427.

617.052 Consolidation.—

(1) Any two or more domestic corporations organized hereunder may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the

new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(d) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History.—§15, ch. 59-427.

617.053 Approval of merger or consolidation.—

(1) A plan of merger or consolidation shall be adopted in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors, managers, or trustees of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in the bylaws for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(b) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors, managers, or trustees of such corporation upon receiving the vote of a majority of the members of the board.

(2) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History.—§16, ch. 59-427.

617.054 Articles of merger or consolidation.—

(1) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

(a) The plan of merger or the plan of consolidation.

(b) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(c) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors, managers, or trustees at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the members of the board.

(2) The original and a duplicate copy of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) Endorse his approval on the original with the date and time of approval.

(b) File the original in the records of his office.

(c) Issue a certificate of merger or a certificate of consolidation to which he shall affix the duplicate copy.

(3) The certificate of merger or certificate of consolidation, together with the duplicate copy of the articles of merger or articles of consolidation affixed thereto by the secretary of state shall be returned to the person from whom the articles were received.

History.—§17, ch. 59-427.

617.055 Effective date of merger or consolidation.—Upon the issuance of the certificate of merger, or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

History.—§18, ch. 59-427.

617.056 Effect of merger or consolidation.—When such merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and

all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

History.—§19, ch. 59-427.

617.09 Proceedings to revoke articles of incorporation, etc.—In the event any member or citizen shall complain to the attorney general that any corporation organized under this chapter was organized or is being used as a cover to evade any of the laws against crime, or for purposes inconsistent with those stated in its articles of incorporation or charter, and shall submit prima facie evidence to sustain such charge, together with sufficient money to cover court costs and expenses, the attorney general forthwith shall institute and in due course prosecute to final judgment such legal or equitable proceedings as may be considered advisable either to revoke the articles of incorporation or charter or prevent its improper use.

History.—§5, ch. 4898, 1901; GS 2839; RGS 4509; CGL 6505; §23, ch. 59-427.

617.10 By-laws.—Any corporation organized under this chapter may, in its by-laws:

(1) Delegate to its board of directors, managers, or trustees, full discretionary power of admitting or expelling members;

(2) Prescribe that an incorporator or member shall not have any vested right, interest or privilege of, in or to the assets, functions, affairs or franchises of the corporation, or any right, interest or privilege which may be transferable or inheritable, or which shall continue if his membership ceases, or while he is not in good standing; provided, that before his membership shall cease against his consent he shall be given an opportunity to be heard, unless he is absent from the county where the corporation is located; and,

(3) Delegate to its board of directors, managers, or trustees, the power of fixing regular or special dues and assessing fines in such sums as may be fixed or the limits or occasions determined, by said by-laws. The amount of dues so fixed shall become, on and after notice, an indebtedness to the corporation collectible by due course of law. The failure to pay any dues or fines assessed shall render the member liable to expulsion.

History.—§§1-4, ch. 4898, 1901; GS 2837, 2838; RGS 4507, 4508; CGL 6503, 6504; §24, ch. 59-427.

617.11 Foreign nonprofit corporations; qualifications.—

(1) Any corporation not for profit duly incorporated under the laws of any other state or territory and which desires to carry on, in the state, the objects and purposes of its incorporation, may file in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, together with a charter fee of twenty-five dollars and a filing fee of five dollars.

(2) Upon the filing of such copy of its charter or articles of incorporation, and the payment of the fee aforesaid, and the objects of the corporation are such as are not prohibited by or contrary to the laws of this state, the secretary of state shall issue a permit to such corporation to carry on in the state the objects and purposes of its incorporation.

(3) Any foreign corporation not for profit failing to obtain such permit, and its successors and assigns, shall not be permitted to bring or maintain any suit or other proceeding before any court or administrative body of this state; but failure to obtain such permit shall not affect the validity of any contract with or conveyance by such foreign corporation.

(4) In the event any member or citizen shall complain to the attorney general that any foreign corporation permitted under this chapter to carry on in this state, the objects and purposes of its incorporation, or doing business in this state was organized or is being used in this state as a cover to evade any of the laws against crime, or for purposes inconsistent with those stated in its articles of incorporation or charter, and shall submit prima facie evidence to sustain such charge, together with sufficient money to cover court costs and expenses, the attorney general forthwith shall institute and in due course prosecute to final judgment such legal or equitable proceedings as may be considered advisable either to revoke the permit, to prevent its improper use, or to prevent such foreign corporation from exercising its corporate powers within this state.

History.—§§1-3, ch. 11909, 1927; CGL 6506-6508; (3)a., (4)n. by §25, ch. 59-427.

cf.—Ch. 613, Foreign corporations.

617.12 Extinct churches and religious societies; property.—Property, both real and personal, belonging to or held in trust for any church or any religious society belonging to any religious denomination in this state that has or shall become extinct, shall vest in and become the property of that denomination of which the said church or religious society is a member; provided, that nothing herein contained shall affect the title to any property that is now held by any of the denominational associations or organizations of the state; and provided further, that this section shall not affect the reversionary interest of any person in such property or any valid lien thereon.

History.—§1, ch. 16291, 1933; CGL 1936 Supp. 6508(1). Re-enacted by §26, ch. 59-427.

617.13 Extinct churches and religious societies; dissolution.—Any church or religious society in this state which has ceased or failed to maintain religious worship or service, or to use its property for religious worship or services according to the tenets, usages and customs of a church of the denomination of which it is a member in this state for the space of two consecutive years immediately prior thereto, or whose membership has so diminished in numbers or in financial strength as to render it impossible for such church or society to maintain religious worship or services, or to protect its property from exposure to waste and dilapidation for a period of two years, shall be deemed and taken to be extinct; and upon the facts being duly established to the satisfaction of the circuit court in and for the county in which such church or society has been theretofore situated, an order of such court may be made dissolving said church or religious society and the property of such church or society, or the property which may be held in trust for such church or society, may in said order be transferred to and the title and possession thereof vested in the denomination of which said church or society shall have been a member. A copy of the decree of dissolution shall be filed in the office of the secretary of state.

History.—§2, ch. 16291, 1933; CGL 1936 Supp. 6508(2). §27, ch. 59-427.

617.14 Incorporation of labor unions or bodies.—Any group or combination of groups of working men or wage earners, bearing the name labor, organized labor, federation of labor, brotherhood of labor, union labor, union labor committee, trade union, trades union, union labor council, building trades council, building trades union, allied trades union, central labor body, central labor union, federated trades council, local union, state union, national union, international union, district labor council, district labor union, American federation of labor, Florida federation of labor, or the component parts thereof, or the significant words therein, whether the same be used in juxtaposition or with interspace, may be incorporated under this chapter, provided, however:

(1) In addition to the requirements of §617.013, the articles of incorporation shall set forth the necessity for the incorporation, and shall be subscribed to by not less than five persons, and shall be acknowledged by all of the subscribers, who shall also make and subscribe to an oath, to be endorsed on the articles of incorporation, that it is intended in good faith to carry out the purposes and objects therein set forth. The articles of incorporation shall be filed in the office of the clerk of the circuit court of the proper county, and the approval of the judge of the circuit court shall be obtained.

(2) The subscribers of the articles of incorporation shall give notice of their intention to obtain approval thereof by the circuit judge. Such notice shall state the name of the judge, the date the articles of incorporation will be presented, the general nature of the articles of incorporation and the necessity therefor. Notice shall be published in a newspaper of general circulation in said county at least once, or posted at the courthouse door in counties having no newspapers, at least ten days prior to the date the articles of incorporation will be presented to the judge.

(3) When presented to the judge, the articles of incorporation shall be accompanied by a petition, signed and sworn to by the subscribers, stating fully the aims and purposes of such organization and the necessity therefor.

(4) Upon the filing of the articles of incorporation and the petition, and the giving of such notice, the circuit judge to whom such petition may be addressed shall upon the date stated in such notice, take testimony and inquire into the admissions and purposes of such organization and the necessity therefor, and upon such hearing, if the circuit judge shall be satisfied that the allegations set forth in the petition and articles of incorporation have been substantiated, and shall find that such organization will not be harmful to the community in which it proposes to operate, or to the state, and that it is intended in good faith to carry out the purposes and objects set forth therein, and that there is a necessity therefor, the judge shall approve the articles of incorporation and endorse his approval thereon. Upon the filing of the articles of incorporation with its endorsements thereupon in the office of the secretary of state and payment of the filing fees specified in §617.015, the subscribers and their associates and successors shall be a corporation by the name given.

(5) Any person shall have the right to intervene by filing an answer to the said petition stating his reasons, if any, and be heard thereon, why the circuit judge shall not approve the articles of incorporation.

(6) The existence, amendment of the articles of incorporation, and dissolution of any such corporation shall be in accordance with this chapter.

History.—§§1-8, ch. 19271, 1939; CGL 1940 Supp. 6526(4)-6526(11); §28, ch. 59-427.
cf.—Ch. 448, General labor regulations.

617.15 Sponge packing and marketing corporations.—Persons engaged in the business of buying, selling, packing and marketing commercial sponges may incorporate under the provisions of this chapter, to aid in facilitating the orderly cooperative buying, selling, packing and marketing of commercial sponges, and no such association shall be deemed to be a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall any marketing contract or agreement by the corporation and its members, or the exercise of any power granted by this chapter be considered illegal or in restraint of trade.

History.—§§1-5, ch. 17805, 1937; CGL 1940 Supp. 6508(4)-6508(8); §29, ch. 59-427.

617.16 Corporations for profit; when may become corporations not for profit.—Any corporation for profit now or hereafter incorporated under any of the laws of the state, engaged solely in carrying out the purposes and objects for which corporations not for profit are authorized under the laws of Florida to carry out, is hereby authorized and empowered to change its corporate nature from a corporation for profit to that of a corporation not for profit as defined in chapter 617, by filing a petition in the circuit court of the county wherein its principal place of business is located in the name of the corporation signed by an officer of the corporation and under its corporate seal setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed; provided, that any profit corporation, which has transferred, or is in the process of transferring its functions and assets to a nonprofit corporation by proceedings under chapter 617, shall, upon the recital of the facts, circumstances and intentions surrounding such transfer proceedings in a petition filed in accordance with §617.17, and the subsequent approval thereof by the circuit judge to whom presented, be deemed to have acted under this chapter and such nonprofit corporation shall succeed to the rights, liabilities and assets of its corporate predecessor as fully and completely as if the original petition had been filed under the provisions of this chapter.

History.—§1, ch. 22657, 1945; §1, ch. 57-90; re-enacted by §30, ch. 59-427.

617.17 Same; petition and contents.—Said petition shall be accompanied by the written consent of all the stockholders authorizing the change in the corporate nature and directing an authorized officer to file such petition before the court, together with proposed articles of incorporation signed by the president and secretary of the petitioning corporation which shall set forth the provisions required in original articles of incorporation by §617.013, and in addition shall contain a provision agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities.

History.—§2, ch. 22657, 1945; §31, ch. 59-427.

617.18 Same; authority of circuit judge.—If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, he shall approve the articles of incorporation and endorse his approval thereon; such approval shall provide that all of the property of the petitioning corporation shall become the property of the successor corporation not for profit, subject to all indebtedness and liabilities of the petitioning corporation. The articles of incorporation with such endorsements thereupon shall be sent to the secretary of state, who shall, upon receipt thereof and upon payment of all taxes due the state by the petitioning corporation, if any, issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of the filing fees specified in §617.015, the secretary of state shall file the articles of incorporation, and from thenceforth the petitioning corporation shall become a corporation not for profit under the name adopted in the articles of incorporation and subject to all the rights, powers, immunities, duties and liabilities of corporations not for profit under the laws of Florida, and its rights, powers, immunities, duties and liabilities as a corporation for profit shall cease and determine.

History.—§3, ch. 22657, 1945; §32, ch. 59-427.

617.19 Same; application of other laws.—All the provisions of this chapter relating to corporations not for profit organized hereunder, except insofar as they are inconsistent herewith, shall be applicable to any corporation whose character has been changed hereunder and shall henceforth govern such corporation.

History.—§4, ch. 22657, 1945; §33, ch. 59-427.

617.21 Corporations not for profit; when authorized to act as trustee.—Any corporation not for profit, organized under this chapter, is authorized to act as trustee of property whenever the corporation has either a beneficial, contingent or remainder interest in said property, and any such corporation may likewise accept and hold the legal title to property, the beneficial interest of which is owned by any other eleemosynary institution or nonprofit corporation, or fraternal, benevolent, charitable or religious society or association.

History.—§1, ch. 25346, 1949; re-enacted by §34, ch. 59-427.

617.22 Solicitation for charitable purposes; permit required.—No nonprofit corporation, organization or association shall solicit funds or anything of value for charitable purposes in any county in this state unless a permit shall have been secured from the clerk of circuit court where such solicitation is made; provided, this requirement shall not apply to any nationally recognized organization or association except those who retain locally fifty per cent or better of funds solicited, or any church organization, or any child welfare agency duly licensed by and subject to the rules and regu-

lations of the state department of public welfare of this state, pursuant to §409.05, provided such child welfare agency files an annual report with the secretary of state showing total receipts and disbursements.

History.—§1, ch. 29992, 1955; §1, ch. 57-772; re-enacted by §35, ch. 59-427.

617.23 Application for and issuance of permit.—

(1) Any nonprofit corporation, organization or association desiring to solicit funds or anything of value for charitable purposes in any county in this state shall make application for permit to the clerk of circuit court. The application for permit shall bear the name and address of the applicant, its board of directors, managers, or trustees, its president and secretary, the place and type of proposed solicitation and the proposed use of the receipts from said solicitation.

(2) If the applicant is found to be responsible, the clerk of circuit court shall issue without charge a written permit which shall set forth the name and address of the holder, the purpose of the solicitation and the names of the persons responsible for its conduct. All permits required under §617.22 shall be renewable on January 1 of each year.

History.—§§2, 3, ch. 29992, 1955; §36, ch. 59-427.

617.24 Certified financial statement.—On or before January 1 of each year every holder of a permit issued under §§617.22 and 617.23 shall file with the clerk of circuit court an annual certified statement which shall set forth its total receipts from solicitation, and an itemized list of all salaries or wages paid and other expenses paid by it.

History.—§4, ch. 29992, 1955; §37, ch. 59-427.

617.25 Violations of §§617.22-617.24; penalty.—Any corporation, organization or association soliciting funds without permit or not filing statements required by §§617.22-617.24 is guilty of a misdemeanor and shall be punished by a fine not to exceed $500.00. The officers of any corporation, organization or association who permit, authorize, or conduct solicitation of funds without such permit or without filing such statements are guilty of a misdemeanor and shall be punished by a fine not to exceed $500.00 or imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment.

History.—§5, ch. 29992, 1955; §38, ch. 59-427.

617.26 Required registration of voluntary health organizations soliciting funds; fees, financial statements; penalties.—

(1) Every nonprofit corporation, organization or association which is engaged in soliciting funds in two or more counties in the state and which is designed for the primary purpose of soliciting funds for research in medical and health fields or for the care, cure, release or rehabilitation of persons afflicted with any disease or physical abnormality, or the conducting of research, regardless of whether the program of such organization is conducted on a local or a national basis, shall be defined as a voluntary health organization for the purposes of this section; provided, however, that this section shall not apply to any organization whose sole function is the operation of a hospital in this state, licensed under the provisions of chapter 395, and shall not apply to any established fraternal order, veterans' organization, church or local hospital organization in their solicitation of funds for any hospital licensed under the provisions of chapter 395.

(2) No voluntary health organization shall solicit funds, or anything of value, in this state unless a certificate of registration has been first secured from the secretary of state on a form prescribed by the secretary of state. Such registration shall state the name and address of the applicant; its board of directors; its officers; the place and type of proposed solicitation; and the proposed use of receipts from same, and such other pertinent information as may by the secretary of state be required.

(3) If the applicant is found to have submitted all the information required pursuant to subsection (2), the secretary of state shall issue a certificate of registration on a form prescribed by him which shall include at least the name and address of the voluntary health organization and the purpose of the solicitation.

(4) Each applicant for registration shall pay to the secretary of state for the filing of its application and for the issuance of the certificate of registration provided for by this section, the same fee for making a certificate with seal, as provided by §15.09.

(5) All registrants under this section shall file with the secretary of state, on or before January 1 of each year, an annual certified financial statement which shall set forth the total receipts of the registrant and an itemized list of all expenses, including salaries and wages, and such other information as the secretary of state may require. Should a voluntary health organization fail to file such statement the secretary of state shall forthwith revoke such organization's certificate of registration.

(6) Any voluntary health organization violating any provision of this section shall be guilty of a misdemeanor and shall be punished as provided by §775.07.

History.—§§1-6, ch. 59-482.

PART II

SCHOLARSHIP PLANS

617.50 Definitions.—As used herein, the following terms shall have the meaning defined unless the context clearly requires otherwise:

(1) Commissioner—The state comptroller as commissioner of banking.

(2) Plan—Any educational cooperative plan or scholarship plan subject to the provisions of this act.

(3) Corporation—A corporation not for profit authorized to administer a plan in the state.

(4) Scholarship—Educational benefits payable pursuant to a plan which shall not be deemed to be distribution of income to a member of a corporation.

(5) Member—Any person who is accepted as a member by the plan and who may later become eligible for a scholarship as provided in the charter and by-laws of the plan.

(6) Trustee of member—The person or persons including corporations, partnerships or other entities, who on behalf of a minor executes an application for membership in the plan.

(7) Recipient of scholarship—Any member who has been granted a scholarship by the plan.

(8) Fiscal year—The period between January 1 and December 31 of each year.

History.—§1, ch. 61-496.

617.51 Scholarship plans subject to act.—No person, firm, corporation, or corporation for profit shall solicit or collect contributions for the operation and administration of any plan except as specifically authorized hereunder. Any educational cooperative plan or scholarship plan the principal features of which shall consist of (a) participation by a specific person based on contributions made on behalf of such person, and (b) qualification for participation in whole or in part based upon amount and duration of such contribution, shall be deemed a plan subject to the provisions of part II of this chapter.

History.—§2, ch. 61-496.

617.52 Regulation of operation and administration of plans by commissioner.—

(1) The commissioner is authorized to regulate the operation and administration of any plan or plans, as herein provided, and to adopt and promulgate such reasonable regulations as shall be necessary to the exercise of the powers herein vested in him. In the adoption of such regulations the commissioner shall give paramount consideration to the safeguarding of funds and the protection of scholarship recipients.

(2) No plan shall be approved by the commissioner which does not comply with regulations relating to the following:

(a) Rights to withdrawal of principal investment;

(b) Enrollment fees and dues not exceeding an amount reasonably necessary to administer the plan; and in no event shall the enrollment fee plus the first year's dues exceed the amount of twenty-five dollars payable in a lump sum, or payable five dollars per month for five months at the option of the member or trustee of member and thereafter dues of five dollars per year for the duration of the membership of the member or trustee of member.

(c) Incorporation and qualification with the secretary of state by a corporation;

(d) Security of funds for scholarships;

(e) Qualifications of institutions in which scholarships may be granted;

(f) Maximum duration of scholarship;

(g) Scholastic achievement as qualification for commencement or continuation of scholarship not exceeding average passing grade in institution;

(h) Amount of contributions and duration necessary to participation in benefits of plan;

(i) Good moral character of management personnel;

(j) Voting rights of members or trustees of members.

History.—§3, ch. 61-496; (2)(b) §1, ch. 63-329.

617.53 Solicitation of funds; advertisement of plan.—It shall be unlawful for any person, firm, corporation, or corporation for profit to solicit funds for the operation of any plan except as herein provided; or to advertise any plan prior to the approval of such advertisement by the commissioner to prevent material misrepresentation of law or fact with regard to any such plan.

History.—§4, ch. 61-496.

617.54 Formation of corporation not for

profit for operation of plan.—Any seven or more persons may, pursuant to the provisions of chapter 617, part I, form a corporation not for profit for the purpose of establishing, maintaining and operating a plan or plans subject to regulation hereunder. Every such corporation so organized and licensed hereunder shall be deemed to be a charitable and benevolent institution.

History.—§5, ch 61-496.

617.55 Certificate of authority; requirements.—

(1) No corporation shall commence or continue operation in Florida, or advertise any plan, subject to regulation hereunder, prior to the issuance to it of a certificate of authority by the commissioner. Every person, firm, corporation, or corporation for profit engaged in any such activity on the effective date of part II of this chapter shall within sixty days of the effective date commence proceedings to comply herewith and make application to the commissioner hereunder. Provided, further, that the time of making application with the commissioner shall be extended to a date not more than thirty days from the adoption and promulgation of such regulations if said regulations shall be adopted and promulgated more than sixty days from the effective date hereof. Applications for certificate of authority hereunder shall be made on forms prescribed by the commissioner and shall contain such information as he shall deem necessary to determine compliance with this law and regulations adopted pursuant thereto.

(2) Applications shall be accompanied by such supplemental data as the commissioner may require, including, but not limited to the following:

(a) Charter certified by the secretary of state, together with all amendments thereto as of the date of such certification.

(b) By-laws of the corporation.

(c) Proposed plan or plans for payment of scholarships.

(d) Copies of membership certificates, applications and other documents to be used in connection with the operation and administration of the plan.

(e) Financial statement of the corporation.

(f) Names and addresses of officers and directors of corporation.

All such data shall be submitted with oath, to be prescribed by the commissioner, taken and subscribed by two officers of the corporation, that the facts are true and that documents submitted are truly representative and in use or to be put in use. Proposed changes in the charter, by-laws or forms used, including contracts with educational institutions, shall be submitted to the commissioner for his approval at least ten days before such change or use.

(3) The commissioner shall issue a certificate of authority to each qualified applicant if the commissioner finds that:

(a) The applicant has been organized bona fide for the purpose of establishing, maintaining and operating a nonprofit plan in accordance with regulations promulgated by the commissioner; and

(b) The plan is fair and reasonable and actuarially capable of providing all or a substantial portion of the educational scholarship needs of members in accordance with representations contained in the plan; and

(c) The operation of the plan complies with §617.56 and regulations of the commissioner respecting the security of scholarship funds; and

(d) The applicant has paid a filing fee of $10.00, which fee shall be deposited in the general revenue fund unallocated.

History.—§6, ch. 61-496.

617.56 Deposit of scholarship funds in trust fund.—All scholarship funds shall be deposited in a special fund or trust fund established for the purpose of depositing therein all funds, contributions, donations, pledged earnings, interest, income and dividends, except enrollment fees and dues as set forth in §617.52(2)(b), to be used exclusively and solely for scholarships and educational benefits for members found eligible for scholarships, pursuant to the terms, conditions, purposes and uses set out in the plan, and that the deposits or payments into said special fund or trust fund and disbursements out of said fund shall not be subject to levy, attachment or garnishment on account of any debts or liabilities of the corporation or of any member, trustee of member or recipient, and that the special fund is to be deposited in and managed by an insured bank, having trust powers, as trustee. Said trustee shall be selected or appointed by the corporation and approved by the commissioner. The commissioner is authorized to adopt regulations respecting such security by the depository as shall be necessary to the protection of such funds and to assure their availability for the purposes set forth in the plan or plans under which said moneys are received.

History.—§7, ch. 61-496.

617.57 Operating capital.—Operating capital of the corporation shall not be deemed trust funds. Operating capital shall consist of enrollment fees and annual dues of members. Advancements to the corporation for working capital shall be deemed operating capital repayable from such fees and dues only.

History.—§8, ch. 61-496.

617.58 Annual financial statement.—Each corporation shall annually on or before February 1 after the end of the fiscal year, as herein defined, file with the commissioner a statement showing the financial condition of the corporation as of the last day of such fiscal year in such form and containing such information as the commissioner may require. Such report shall be verified by a certified public accountant or be submitted under oath subscribed by two officers of the corporation.

History.—§9, ch. 61-496.

617.59 Examination of books and records.—The commissioner shall have the power of visitation and examination into the affairs of each such corporation. All of the books and records of the corporation shall be available to the commissioner for examination by him or by any bank examiner authorized by the commissioner. The commissioner, and any deputy or bank examiner, shall have the power to summon and examine under oath any person in relation to the affairs, transactions and conditions of any corporation and to require the production of books, records, papers and other documents relating to any of the activities of the corporation. Each such corporation shall pay for such examinations the fees prescribed by chapter 658, for examination of state banks as set forth in §658.08; provided that for the purposes of this act "resources" shall be defined as the total of both operating funds and trust funds in such corporation and provided further that the minimum fee for such examination shall be $100.00.

History.—§10, ch. 61-496.

617.60 Dissolution or liquidation.—The dissolution or liquidation of any corporation shall be under the supervision of the commissioner and pursuant to regulations promulgated by him for the protection of members and trustees of members. The commissioner shall have the same powers in connection therewith granted him under the laws respecting the dissolution and liquidation of state banks.

History.—§11, ch. 61-496.

617.61 Revocation of certificate of authority.—The commissioner shall have the power to revoke the certificate of authority or bring proceedings for the dissolution or liquidation of any such corporation, pursuant to regulations promulgated by him relating to notice, hearing and opportunity for review, whenever the commissioner finds that:

(1) The corporation is being operated for profit; or

(2) The affairs of the corporation are being fraudulently conducted; or

(3) The corporation is guilty of a violation of any of the provisions of this chapter; or

(4) The certificate of authority was obtained by fraud; or

(5) The corporation is guilty of false or misleading advertising; or

(6) Trust funds have been or are being used for purposes other than scholarships; or

(7) There has been a material variance between any plan or plans as filed with the commissioner and the actual administration thereof to the detriment of any member, trustee of member or class thereof; or

(8) The corporation has wilfully failed to file reports required by the commissioner pursuant to this law; or

(9) The corporation has refused or prevented examination of its books and records by the commissioner.

(10) The corporation was engaged in such activity on the effective date of part II of this chapter and did not, within sixty days after such date, apply for a certificate as provided in §617.55(1).

History.—§12, ch. 61-496.

617.62 Exemption from occupational license tax.—Every corporation holding a certificate of authority under the provisions hereof and its officers, agents and solicitors shall be exempt from the payment of any occupational license taxes levied by virtue of any of its activities or those of its officers, agents or solicitors authorized hereunder.

History.—§13, ch. 61-496.

617.63 Corporate powers.—Each corporation shall have all the powers provided by law for corporations not for profit not inconsistent herewith, but the exercise of such powers shall be subject to the approval of the commissioner where in the opinion of the commissioner any such exercise of powers may impair or interfere with the ability of the corporation properly to execute, administer or operate any of the plans approved by the commissioner.

History.—§14, ch. 61-496.

617.64 Board of directors.—The charter of each corporation shall provide for a board of directors of not less than seven persons. At the time of application to the commissioner there shall be four vacancies on said board. Within ten days of the granting of a certificate of authority the commissioner shall notify the following organizations of the application and the right of each to place a member on the board of directors, who shall not be required to be members or otherwise affiliated with the corporation:

The Florida congress of parents and teachers
Florida education association
Florida bankers association
Florida savings and loan league

If any of the foregoing shall within sixty days of such notice fail or refuse to designate a member to serve on the board of directors of any corporation, the remaining members of the board may fill the vacancy in the manner provided in the charter or by-laws. Each such organization shall be notified by the corporation not less than thirty days prior to the meeting at which directors are elected annually of its rights hereunder, which shall be continuing. Failure or refusal of any such organizations to designate one of its members to serve on the board of directors, within thirty days from the date of such annual meeting, shall create a vacancy on such board of directors, to be filled as in the charter or by-laws provided.

History.—§15, ch. 61-496.

617.65 Penalty for violations.—

(1) Any person, firm or corporation who shall violate any of the provisions of part II of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not

more than one year, or by a fine not exceeding $1,000.00, or by both such fine and imprisonment, in the discretion of the court.

(2) The wilful making of any false and material statement on any report to or required by the commissioner shall constitute perjury and punishable as such.

History.—§16, ch. 61-496.

617.66 Exemptions from provisions of chapter 617, part II.—The provisions of part II of this chapter shall not apply to any nonprofit educational corporation or association which makes provision for scholarships as incidental to its principal functions and activities only; nor shall the provisions hereof apply to the offering of scholarships under any plan subject to supervision of the insurance commissioner of the state, nor shall the provisions of part II of this chapter apply to any corporation organized under the provisions of part I of this chapter, prior to December 1, 1958.

History.—§17, ch. 61-496.

617.67 Participation by banks and other financial institutions.—All banks and trust companies, industrial savings banks, building and loan associations and savings and loan associations are hereby authorized to participate in scholarship plans operating under the provisions of part II of this chapter.

History.—§2, ch. 63-329.

CHAPTER 618

AGRICULTURAL COOPERATIVE MARKETING ASSOCIATIONS

618.01 Definitions. — In construing this chapter, where the context permits, the word, phrase or term:

(1) "Agricultural products" shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee and any farm products;

(2) "Member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

(3) "Association" means any corporation organized as a cooperative association, for the mutual benefit of its members either as producers of agricultural products or as nonprofit cooperative organizations of producers of agricultural products, or both, and in which the return on the stock or membership capital is limited to an amount not to exceed eight per cent per annum, and in which during any fiscal year thereof the value of business done with nonmembers shall not exceed the business done with members during the same period.

(4) Associations organized hereunder shall be deemed "nonprofit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.

History.—§2, ch. 9300, 1923; CGL 6467; §2, ch. 14675, 1931.

618.02 Who may organize association. — Three or more persons engaged in the production of any agricultural products, or three or more associations, may form a nonprofit cooperative association under the provisions of this chapter.

History.—§3, ch. 9300, 1923; CGL 6468; §3, ch. 14675, 1931.
cf.—§517.05(10) Certain exemptions.

618.03 Preliminary investigation. — Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the state marketing commissioner, who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History.—§5, ch. 9300, 1923; CGL 6470; §5, ch. 14675, 1931.

618.04 Articles of incorporation; fees. — Each association organized under this chapter shall prepare and file articles of incorporation setting forth:

(1) The name of the association, which may or may not include the word cooperative or any abbreviation thereof;

(2) The purpose for which it is formed;

(3) The place where its principal office within the state will be located;

(4) Whether the association is to have perpetual existence and, if not, the term of its existence.

(5) The names and addresses (not less than three), of those who are to serve as directors for the first term or until the election of their successors;

(6) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; if unequal, the general rules applicable to all members by which the property rights and interest, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members, who shall be entitled to share in the property of the association with the old members, in accordance with such general rules. This provision or paragraph of the articles of incorporation shall not be altered, amended or repealed, except by the written consent or vote of three-fourths of the members;

(7) If organized with capital stock, the amount of such stock and the number of shares into which the capital stock is to be divided, whether all or part of the same shall have a par value, and if so, the par value thereof, whether all or part of the same shall have no par value, and if there is to be more than one

class of stock created, a description of the different classes, the number of shares in each class, and the relative rights, interests and preferences each class shall represent;

(8) In addition to the foregoing, the articles of incorporation of any association incorporated hereunder may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock or any provisions relative to the way or manner in which it shall operate or with respect to its members, officers or directors and any other provisions relating to its affairs.

The articles shall be subscribed by the incorporators and acknowledged by one of them, if individuals, or by the president or any vice-president of one of them, if corporations, before an officer authorized by law to take and certify acknowledgments of deeds and conveyances, and shall be filed in the office of the secretary of state accompanied by a fee of ten dollars which shall be the only fee required therefor; and thereupon the association shall be and constitute a body corporate under the provisions of this chapter, and a copy of said articles of incorporation certified by the secretary of state shall be received in all the courts of this state and other places, as prima facie evidence of the facts contained therein and of the due incorporation of such association.

History.—§8, ch. 9300, 1923; CGL 6473; §8, ch. 14675, 1931; §2, ch. 16879, 1935; sub. §(4) am. §1, ch. 29813, 1955.

618.05 Amendment of articles of incorporation.—The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for the purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of a quorum of the members attending a meeting of which notice of the proposed amendment shall have been given. Thereupon the association shall make under its corporate seal and the hands of its president or vice-president and secretary or assistant secretary, a certificate accordingly, and the president or vice-president shall duly execute and acknowledge such certificate before an officer authorized by law to take and certify acknowledgments of deeds, and such certificate so executed and acknowledged shall be filed in the office of the secretary of state; and upon so filing the same, the articles of incorporation of such association shall be deemed to be amended accordingly; provided, however, a fee of only five dollars shall be required therefor by the secretary of state.

History.—§9, ch. 9300, 1923; CGL 6474; §9, ch. 14675, 1931; §3, ch. 16879, 1935.
cf.—§608.18 Amendment of articles of incorporation.

618.06 Purposes of incorporation.—An association may be organized under this chapter for the purpose of engaging in any cooperative activity in connection with the producing, marketing or selling of agricultural products; or with the growing, harvesting, preserving, drying, processing, canning, packing, grading, storing, warehousing, handling, shipping, or utilizing such products; or the manufacturing or marketing of the by-products thereof; or in connection with any of the activities mentioned herein, the manufacturing, selling or supplying of machinery, equipment or supplies; or in the financing of any of the above enumerated activities; or in performing or furnishing business or educational services, on a cooperative basis for those engaged in agriculture as bona fide producers of agricultural products or in any one or more of the activities specified herein.

History.—§4, ch. 9300, 1923; CGL 6469; §4, ch. 14675, 1931.

618.07 Powers of corporations.—Except as the same may be limited in its articles of incorporation, each association organized under this chapter shall have the following powers:

(1) To engage in any activity in connection with the producing, marketing, selling, preserving, growing, harvesting, drying, processing, manufacturing, canning, packing, grading, warehousing, storing, handling or utilizing of agricultural products or in the manufacturing or marketing of the by-products thereof; or in any activities in connection with the manufacturing, purchasing, hiring or using supplies, machinery or equipment; or in the financing of any of the above enumerated activities, or in performing business or educational services, on a cooperative basis, for those engaged in agriculture as bona fide producers of agricultural products; or in any one or more of the activities specified herein;

(2) To borrow money from any source without limitation as to amount of corporate indebtedness or liability, with authority to give any kind or form of obligation or security therefor;

(3) To act as the agent or representative of any person in any of the above mentioned activities;

(4) To make loans or advances to members and to their members, to nonmember patrons, and to nonmember patrons of members, with authority to accept therefor any kind, form or type of obligation with or without security; to purchase, endorse, discount, sell or guarantee the payment of any note, draft, bill of exchange, indenture, bill of sale, mortgage or other obligation, the proceeds of which have been advanced or used in the first instance for any of the purposes provided for herein; to discount for or purchase from any association organized under the laws of any state, with or without its endorsement, any note, draft, bill of exchange, indenture, bill of sale, mortgage or other obligation the proceeds of which are advanced or used in the first instance for carrying on any cooperative activity authorized in this chapter and with authority to dispose of same with or without endorsement. An association organized under this chapter and exercising any of the powers pro-

vided in this paragraph shall not engage in the business of banking;

(5) To purchase or otherwise acquire, to hold, own and exercise all rights of ownership in, and to sell, transfer, pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of shares, of capital stock, bonds or other obligations of any corporation or association, engaged in any directly or indirectly related activity, or in the producing, picking, hauling, packing, shipping, handling, warehousing, financing, canning, preserving, processing, manufacturing, utilizing, marketing, or selling of any of the products handled by the association, or any by-products thereof;

(6) To establish reserves and to invest the funds thereof in bonds, or in such other property as may be provided in the by-laws;

(7) To buy, hold and exercise all privileges of ownership over such real or personal property, as may be necessary or convenient for the conduct and operation of any of the business of the association or incidental thereto;

(8) To sell, convey and transfer all of the assets of the association; provided, such sale shall be consented to by not less than two-thirds of its members or by the holders of not less than two-thirds of its common stock, which consent shall be given either in writing, or by vote at a special meeting of its members or stockholders called for that purpose;

(9) To establish, secure, own and develop patents, trademarks and copyrights;

(10) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the objects herein enumerated, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly; and in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers and privileges granted by the laws of this state to corporations for profit, except such as are inconsistent with the express provisions of this chapter; and to do any such thing anywhere;

(11) No association organized under this chapter, during any fiscal year thereof, shall deal in or handle products, machinery, equipment, supplies or perform services for and on behalf of nonmembers to an amount greater in value than such as are dealt in, handled, or performed by it for and on behalf of members during the same period.

History.—§6, ch. 9300, 1923; CGL 6471; §6, ch. 14675, 1931; §1, ch. 16879, 1935.
cf.—§517.05(10), Exempt securities.

618.08 Corporations may mortgage farm supplies, etc.—A mortgage, executed by a cooperative association, may cover its stock of farm supplies, changing in specifics, which stock mortgagor is permitted to retain in its possession and sell in the usual course of business. The lien of such mortgage shall be lost on all farm supplies sold up to the time of foreclosure, and shall attach to the farm supplies acquired to replenish the stock. No such mortgage shall be invalid as to creditors of the mortgagor because the mortgagor is permitted to retain possession and sell such mortgaged property in the usual course of business; provided, the mortgagor replenishes such property from the proceeds of sale or applies such proceeds in payment of the mortgage debt. In all other respects the laws relating to chattel mortgages shall be applicable to such mortgages. The provisions of this section shall not be construed as, in any wise, affecting the bulk sales law.

History.—§§1, 2, ch. 1711, 1935; CGL 1936 Supp. 6471(1).

618.09 By-laws.—Each association incorporated under this chapter shall adopt for its government and management, a code of by-laws not inconsistent with the powers granted by this chapter. A majority vote of a quorum of the members or stockholders attending a meeting, of which notice of the proposed by-laws shall have been given, is sufficient to adopt or amend the by-laws. Each association, under its by-laws, may provide for any or all of the following matters:

(1) The time, place, and manner of calling and conducting its meetings, which meetings and meetings of its directors, may be held either within or without the state.

(2) The number of stockholders or members constituting a quorum.

(3) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form and effects of such votes.

(4) The number of directors constituting a quorum.

(5) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.

(6) Penalties for violations of the by-laws.

(7) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.

(8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the form of marketing contract between the association and its members or stockholders, which marketing contract shall be binding upon every member or stockholder, unless otherwise agreed upon in writing.

(9) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment

and transfer of the interest of members and of the shares of common stock; the condition upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; the mode, manner, and effect of the expulsion of a member; whether a member upon withdrawal, death or expulsion shall have any interest in the property of the association, if organized without capital stock; the manner of determining the value of the property interest or the shares of common stock of retiring or expelled members, which interest or stock may be conclusively appraised by the board of directors of the association and purchased by the association at such value within one year after the date of such retirement or expulsion.

History.—§10, ch. 9300, 1923; CGL 6475; §10, ch. 14675, 1931; §4, ch. 16879, 1935; am. §7, ch. 22858, 1945.

618.10 Membership of corporation.—

(1) Under the terms and conditions prescribed in the by-laws adopted by it, an association may admit as members, or issue common stock only to persons engaged in the production of agricultural products and to associations as defined in this chapter.

(2) An association organized hereunder may become a member or stockholder of any other association or corporation.

History.—§7, ch. 9300, 1923; CGL 6472; §7, ch. 14675, 1931; §7, ch. 22858, 1945.

618.11 How meetings called.—In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all special meetings, together with a statement of the purpose thereof, shall be mailed to each member at least ten days prior to the meeting; provided, however, that the by-laws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

History.—§11, ch. 9300, 1923; CGL 6476; §11, ch. 14675, 1931.

618.12 Directors; election.—

(1) The affairs of the association shall be managed by a board of not less than three directors, to be elected by the members or stockholders, with such qualifications as may be provided for in the articles of incorporation or the by-laws. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be nominated according to such district, either directly or by district delegates elected by the members in that district. In such case the by-laws shall specify the number of directors to be nominated by each district, the manner and method of reapportioning the directors and of re-districting the territory covered by the association. The by-laws may provide that primary elections shall be held in each district to nominate the directors apportioned to such districts and the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered final as to the association. The by-laws may provide that one or more directors may be nominated by the commissioner of agriculture or by the other directors nominated by the members or their delegates. Such directors shall represent primarily the interest of the general public in such associations. Such directors shall not number more than one-third of the entire number of directors.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in the service and for the service of the members of its executive committee. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from terms generally current in that district.

(3) The by-laws may provide for an executive committee to be elected by the board of directors from within or without the membership of the board and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

(4) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for the nomination of directors by districts. In such case the board of directors shall call a special meeting of the members or stockholders in the respective district to nominate a person qualified to fill the vacancy.

History.—§12, ch. 9300, 1923; CGL 6477; §12, ch. 14675, 1931.

618.13 Officers; election. — The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary, a treasurer, and such other officers as may be provided for in the by-laws, none of whom need be directors or members of the association. The office of secretary and treasurer may be combined into one office designated as secretary-treasurer, or both functions and titles may be united in one person. The treasurer may be a bank or any depository, and as such, shall not be considered as an officer, but as a function of the board of directors, and in such case the secretary shall perform the usual accounting duties of the treasurer excepting that the funds shall be deposited only as and where authorized by the board of directors.

History.—§13, ch. 9300, 1923; CGL 6478; §13, ch. 14675, 1931.

618.14 Removal of officers and directors.—Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person bringing the charges against him shall have the same opportunity.

In case the by-laws provide for election of directors by districts with primary elections in each district then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

History.—§15, ch. 9300, 1923; CGL 6480; §15, ch. 14675, 1931.

618.15 Capital stock and membership, etc.—When a member of an association organized without capital stock has paid his membership fee in full he shall receive a certificate of membership. An association may issue its shares of stock having no par value from time to time for such consideration as may be fixed by the board of directors. No association shall issue stock until it has been fully paid for. Promissory notes may be accepted by the association as full or partial payment for such stock. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the right of any stockholder to vote unless such notes are past due.

No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to capital stock, including any unpaid balance on any promissory notes given in payment thereof.

No stockholder of an association organized under this chapter, except an association organized under this chapter or an association as defined in this chapter, shall own more than one-third of the outstanding common stock of the association; and an association in its by-laws may limit the amount of common stock which one member may own to an amount less than one-third of the outstanding common stock. The association shall limit its dividends on stock both common and preferred, to any amount not greater than eight per cent per annum on the par value thereof, or if such capital stock is without par value, then upon the actual cash value of the consideration received by the association therefor. The association by the vote of its directors, may establish and accumulate reserves out of earnings, including a permanent surplus fund as an addition to capital. Net income in excess of additions to reserves and surpluses so established shall be distributed to the members of the association on the basis of patronage. Any distribution of reserves and surpluses at any time shall be made to members at the time such distribution is ordered on the basis of patronage.

Any receipts or dividends from subsidiary corporations or from stock or other securities owned by the association shall be included in the ordinary receipts of the association.

No member in any association without capital stock shall be entitled to more than one vote; but the by-laws may provide that such members or the holders of common stock in an association with capital stock, may vote upon any or all questions on a patronage basis.

Preferred stock may be sold to any person, member or nonmember, and may be redeemable or retireable by the association on such terms and conditions as may be provided for in the articles of incorporation, and printed on the stock certificates. The by-laws, except as otherwise provided for in this chapter, shall prohibit the transfer of the common stock of the association to persons not engaged in the production of agricultural products and such restrictions shall be printed upon every certificate of stock subject thereto.

History.—§14, ch. 9300, 1923; CGL 6479; §14, ch. 14675, 1931.

618.16 Referendum upon certain motions.—Upon demand of one-third of the entire board of directors made immediately and so recorded at the same meeting at which the original motion was passed any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; provided, however, that a special meeting may be called for the purpose.

History.—§16, ch. 9300, 1923; CGL 6481; §16, ch. 14675, 1931.

618.17 Marketing contracts.—The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any agencies designated by the association. The contracts may provide that the association may sell or resell the products of its members with or without taking title thereto; and pay to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest or dividends on stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any; and other proper reserves; and any other proper deductions.

History.—§17, ch. 9300, 1923; CGL 6482(1); §18, ch. 1931.

618.18 Remedies for breach of marketing contract.—

(1) The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder of the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state.

(2) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History.—§17, ch. 9300, 1923; CGL 6482(1); §1, ch. 14675, 1931; CGL 1936 Supp. 6482(1); am. §7, ch. 22858, 1945.

618.19 Contracts and agreements with other like associations.—Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts, and arrangements with any other cooperative corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective businesses.

History.—§22, ch. 9300, 1923; CGL 6487; §22, ch. 14675, 1931.

618.20 Purchase of interest in like corporations.—An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other association or corporation, with or without capital stock, and engaged in planting, growing, producing, preserving, drying, processing, canning, packing, storing, warehousing, handling, shipping, utilizing, manufacturing, or selling of agricultural products, or by-products thereof; or in performing business or educational services; or in the financing of any of the above enumerated activities.

If such corporations are warehousing corporations, they may issue legal warehouse receipts to the associations against the commodities delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed, or licensed and bonded under the laws of this or any other state or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control wholly or in part, by the association.

History.—§21, ch. 9300, 1923; CGL 6486; §21, ch. 14675, 1931.

618.21 Corporations not in restraint of trade.—No association as defined in this chapter while engaged in any of the activities specified in §618.20 shall be deemed to be a conspiracy, or a combination in unlawful restraint of trade, or an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contracts and agreements between the association and its members or any agreements authorized in this chapter, be considered illegal as such, or in unlawful restraint of trade, or part of a conspiracy or combination to accomplish an improper or illegal purpose.

History.—§24, ch. 9300, 1923; CGL 6489; §24, ch. 14675, 1931.
cf.—§542.01, Excluded from definition of "trust."

618.22 Adoption of provisions of this chapter by prior corporations.—Any corporation or association, organized under previously existing statutes, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the corporation or association has, by a majority vote of its stockholders or members, decided to accept the benefits and be bound by the provisions of this chapter and has authorized all changes accordingly. Articles of incorporation shall be filed as required in §618.04, except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History.—§23, ch. 9300, 1923; CGL 6488; §23, ch. 14675, 1931.
cf.—§608.05 Filing fees and taxes.

618.221 Conversion into a corporation for profit.—Any association incorporated under or that has adopted the provisions of this chapter, may, by a majority vote of its stockholders or members be brought under the provisions of chapter 608, as a corporation for profit by surrendering all right to carry on its business under this chapter, and the privileges and immunities incident thereto. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the association has, by a majority vote of its stockholders or members, decided to surrender all rights, powers and privileges as a nonprofit cooperative

marketing association under this chapter and to do business under and be bound by the provisions of said chapter 608, as a corporation for profit and has authorized all changes accordingly. Articles of incorporation shall be filed as required in and by §608.03, except that they shall be signed by the members of the then board of directors. The filing fees and taxes shall be as provided in §608.05. Such articles of incorporation shall adequately protect and preserve the relative rights of the stockholders or members of the association so converting into a corporation for profit: provided that no rights or obligations due any stockholder or member of such association or any other person, firm or corporation which has not been waived or satisfied shall be impaired by such conversion into a corporation for profit as herein authorized.

History.—Comp. §2, ch. 29813, 1955.

618.23 Quo warranto to test validity of corporation. — The right of an association claiming to be organized and incorporated and carrying on its business under this chapter to do and to continue its business, may be inquired into by quo warranto at the suit of the attorney general, but not otherwise.

History.—§26, ch. 14675, 1931; CGL 1936 Supp. 6489(2).

618.24 Application of general corporation laws.—The provisions of the laws of this state with respect to corporations for profit and all powers and rights thereunder shall apply to associations organized under this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter.

History.—§26, ch. 9300, 1923; CGL 6491; §29, ch. 14675, 1931.

618.25 Dissolution.—Any association incorporated under or adopting the provisions of this chapter may be dissolved and its affairs wound up voluntarily by a petition signed by two-thirds of the members or by the holders of two-thirds of the common stock, either in person or by their agent, which petition shall be presented to the circuit judge, who shall direct notice thereof to be published for such time as he may judge expedient. After the expiration of the time of such notice, the circuit judge may decree a dissolution and make all necessary orders and decrees for the winding up of its affairs, including the application of its assets toward the satisfaction of the claims of creditors so far as may be and the distribution of any moneys then remaining among its members in proportion to their respective property interests.

Any such association shall continue to be a body corporate for a term of two years after the date of the decree or dissolution for the purpose of prosecuting and defending suits and settling its affairs, and the president and directors at the time of its dissolution, and the survivors of them, or such other person as may be appointed by the circuit judge, shall be trustees of such association for that purpose during said term with full power in its name to settle its affairs, collect all sums due it, sell and convey its property, pay its debt as far as may be, and distribute any moneys or property then remaining among those entitled thereto.

History.—§27, ch. 14675, 1931; CGL 1936 Supp. 6489(3).

618.26 Conditions under which foreign similar corporation may do business in this state. —Any cooperative association with or without capital stock as defined in this chapter heretofore or hereafter organized under the laws of another state shall be allowed to carry on any proper activities, operations and functions in this state upon the filing with the secretary of state of a certified copy of its articles of incorporation and the payment of a filing fee of ten dollars in lieu of all franchise or license or corporation taxes as required of associations organized under this chapter, and all contracts which could be made by any association organized under this chapter, made by or with such associations shall be legal and valid and enforceable in this state with all of the remedies set forth in this chapter.

History.—§25, ch. 14675, 1931; CGL 1936 Supp. 6489(1).
cf.—Ch. 613, Foreign corporations.

618.27 Use of term "cooperative." — No person doing business in this state, shall be entitled to use the word "cooperative" as part of its corporate or other business name or title unless it has complied with the provisions of this chapter.

Any person now organized and existing or doing business in this state, and embodying the word "cooperative" as part of its corporate or other business name or title, and which is not organized in compliance with the provisions of this chapter, shall eliminate the word "cooperative" from its said corporate or other business name or title.

History.—§20, ch. 9300, 1923; CGL 6485; §20, ch. 14675, 1931; am. §7, ch. 22858, 1945.

618.28 This chapter not to affect certain laws.—The provisions of this chapter shall not be construed to affect, limit or in anywise interfere with the rights, powers or privileges of any corporation or association which exists or which may be hereafter organized under chapter 619 and laws prior thereto.

History.—§29, ch. 9300, 1923; CGL 6494; §30, ch. 14675, 1931; §6, ch. 16879, 1935.

CHAPTER 619

NONPROFIT COOPERATIVE ASSOCIATIONS

619.01 Nonprofit cooperative associations; powers.—Three or more persons engaged in the production, preserving, drying, packing, canning, bottling, shipping, or marketing of agricultural, viticultural, or horticultural products, or all or any of them, or in the manufacture or preparation of any confection, extracts, oils, juices, or by-products, or any or all of them, or three or more persons engaged in the production and marketing of sponges, may form a nonprofit cooperative association under the provisions of this chapter to carry on said business; and such associations shall have and may exercise powers authorized by this chapter, and powers, necessarily incidental thereto and all other powers granted to private corporations by the laws of this state, except such powers as are inconsistent with those granted by this chapter.

History.—§1, ch. 5958, 1909; RGS 4510; §1, ch. 9144, 1923; §1, ch. 10097, 1925; CGL 6509; §1, ch. 14544, 1929.

619.02 Associations not in restraint of trade.—No association organized under this chapter shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition to fix prices arbitrarily, nor shall the marketing contracts, or any agreements authorized in this chapter be considered illegal or in restraint of trade.

History.—§1, ch. 5958, 1909; RGS 4510; §1, ch. 9144, 1923; §1, ch. 10097, 1925; CGL 6509; §1, ch. 14544, 1929.
cf.—§542.01, Excluded from definition of "trust."

619.03 Not to have capital stock; not for profit; membership; membership not assignable; directors may consent to assignment.—Such associations shall not have a capital stock, and its business shall not be carried on for profit. Any person, or any number of persons, in addition to the original incorporators, may become members of such association, upon such terms and conditions as to membership and subject to such rules and regulations as to their, and each of their, contract and other rights and liabilities between it and the member, as the said association shall provide in its by-laws. The association shall issue a certificate of membership to each member but the said membership, or the said certificate thereof, shall not be assigned by a member to any other person, nor shall the assigns thereof be entitled to membership in the association or to any property rights or interest therein. Nor shall a purchaser at execution sale, or any other person who may succeed, by operation of law or otherwise, to the property interests of a member, be entitled to membership or become a member of the association by virtue of such transfer. The board of directors may, however, by motion duly adopted by it, consent to such assignment or transfer and to the acceptance of the assignee or transferee as a member of the association, but the association may, by its by-laws, provide for or against the transfer of membership and for or against the assignment of membership certificates, and also the terms and conditions upon which any such transfer or assignment shall be allowed.

History.—§2, ch. 5958, 1909; RGS 4511; CGL 6510.

619.04 Articles of incorporation.—Each association formed under this chapter must prepare and file articles of incorporation in the same manner and under the same regulations as now required under chapter 608, and therein shall set forth:

(1) The name of the association.

(2) The purpose for which it is formed.

(3) The place where its principal business will be transacted.

(4) The term for which it is to exist, not exceeding fifty years.

(5) The number of directors thereof, which must not be less than three and which may be any number in excess thereof, and the names and residences of those selected for the first year and until their successors shall have been elected and shall have accepted office.

(6) Whether the voting power and the property rights and interest of each member shall be equal, or unequal, and if unequal these articles shall set forth a general rule applicable to all members by which the voting power and the property rights and interests, respectively, of each member may and shall be determined and fixed, but the association shall have power to admit new members, who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule. This provision of the articles of incorporation shall not be altered, amended or repealed except by the unanimous written consent or the vote of all the members.

(7) Said articles must be subscribed by the original members and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds of conveyance, and shall be filed in accordance with the provisions of law, and when so filed the said articles of incorporation or certified copies thereof shall be received in

all the courts of this state and other places as prima facie evidence of the facts contained therein.

History.—§3. ch. 5958. 1909; RGS 4512; CGL 6511.

619.05 Amendment of articles of incorporation.—Any nonprofit cooperative association heretofore or hereafter organized may amend its charter by a two-thirds vote of all its members at any regular meeting, or at a special meeting called for that purpose.

If the proposed alteration or amendment shall be so adopted, the corporation shall prepare a certificate, under its common seal, of the proposed alteration or amendment as adopted by said corporation, which certificate accompanied by said proposed amendment or alteration, shall be signed by the president or vice-president of said corporation and attested by its secretary, and file the same in the office of the secretary of state; which certificate accompanied by said proposed amendment or alteration, shall be produced to the governor, who shall examine the same, and if it is found to be in proper form, and that the proposed alteration or amendment has been properly adopted, is lawful and not injurious to the community, and is in accord with the purpose of the charter, the governor shall approve the same, and thereupon letters patent shall issue, reciting the alteration or amendment; and the said letters patent shall then be recorded by the secretary of state in his office, and from the date of the record thereof in the office of the secretary of state, said alteration or amendment shall be treated and considered as a part of the charter of said corporation.

History.—§1, ch. 17132, 1935; CGL 1936 Supp. 6515(1). §17, ch. 61-530.

619.06 By-laws. — Each association incorporated under this chapter must, within thirty days after its incorporation, adopt a code of by-laws for its government and management not inconsistent with the provisions of this law. A majority vote of the members or the written assent of members representing a majority of the votes, is necessary to adopt such by-laws. The provisions of the general laws of this state not inconsistent with the provisions of this chapter shall apply to the by-laws of the corporations provided for in this chapter. Each association may also, by its by-laws adopted as aforesaid, provide for the following matters:

(1) The manner of removal of any one or more of its directors and for filling any and all vacancies in the board of directors.

(2) The number of directors and the number of members or votes thereof constituting a quorum.

(3) The conditions upon which, and the time when, membership of any member in the association shall cease; the mode, manner and effect of expulsion of a member, subject to the right of the expelled member to have the board of directors (equitably) appraise his property interests in the association and to affix the amount thereof in money, and to have the money paid to him within sixty days after such expulsion.

(4) The amount of membership fee, if any, and the amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association, and also the compensation, if any, to be paid by each member for any services rendered by the association to him, and the time of payment and the manner of collecting the same, and for forfeiture of the interest of the member in the association for nonpayment of the same.

(5) The number and qualification of members of the association and the conditions precedent to membership, and the method, time and manner of permitting members to withdraw, and providing for the assignment and transfer of the interest of the member, and the manner of determining the value of such interest, and providing for the purchase of such interest by the association upon the death, withdrawal or expulsion of a member or upon the forfeiture of his membership, at the option of the association.

(6) Permitting members to vote by their proxies and determining the conditions, manner, form and effect thereof.

History.—§4, ch. 5958, 1909; RGS 4513; CGL 6512.

619.07 Special powers; marketing contracts; voluntary dissolution.—Each association incorporated under this chapter shall have the powers granted by the provisions of this law and other laws of Florida relating to private corporations, and shall also have the following powers:

(1) To appoint such agents and officers as its business may require, and such appointed agents may be either persons or corporations; to admit persons to membership in the association, and to expel any member pursuant to the provisions of its by-laws; to forfeit the membership of any member for violation of any agreement between him and the association, or for his violation of its by-laws.

(2) To purchase or otherwise acquire, hold, own, sell and otherwise dispose of any and every kind of real and personal property necessary to carry on its business, and to acquire by purchase or otherwise the interest of any member in the property of the association.

(3) Upon the written assent or by a vote of members representing two-thirds of the total votes of all members to cooperate with any other cooperative corporation or corporations for the cooperative and more economical carrying on of their respective business, by consolidation; upon resolution adopted by board of directors, to enter into all necessary and proper contracts and agreements, and to make all necessary and proper stipulations and arrangements with any other cooperative corporation or corporations, for the cooperative and more economical carrying on of its business, or any part thereof; or any two or more cooperative corporations organized under this title, upon resolutions adopted by their respective boards of directors, may for the purpose of more economically carrying on their respec-

tive business, by agreement between them, unite in employing and using, or several associations may separately employ and use, the same methods, means and agencies for carrying on and conducting their respective businesses.

(4) To organize, form, operate, own, control, have interest in, own stock of, or be a member of any other corporation, with or without capital stock, and engaged in preserving, drying, processing, canning, picking, hauling, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling any of the agricultural or horticultural products handled by the association, or the by-products thereof.

(5) To make and execute marketing contracts requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural or horticultural products exclusively to or through the association or any facilities to be created by the association. The contracts may provide that the association may sell or resell the products of its members with or without taking title thereto, and pay over to its members the sale or resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on bonds, not exceeding eight per cent per annum and reserves for retiring the bonds, if any, and other proper reserves.

(6) Either the by-laws or the marketing contracts, or both the said by-laws and marketing contracts may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association and any such provisions shall be valid and enforceable in the courts of this state.

(7) In the event of any breach or threatened breach of a marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and a preliminary injunction against the member.

(8) Any association formed or consolidated under this chapter may be dissolved and its affairs wound up voluntarily by the written request of members representing two-thirds of the total votes, in the manner and with the effect now provided by law, except that the moneys remaining after liquidation shall be divided among the members in proportion to their property interest therein.

History.—§5, ch. 5958, 1909; RGS 4514; §2, ch. 10097, 1925; CGL 6513.

619.08 May own stock in certain corporations.—Any agricultural or horticultural nonprofit, cooperative association, heretofore, or hereafter, organized under the laws of the state, may own or hold stock in any corporation organized under the laws of the state, if such corporation is organized, or conducts, or operates, its business, solely for the benefit or advancement of the interests of persons engaged in agricultural or horticultural pursuits in this state.

History.—§1, ch. 7383, 1917; RGS 4515; CGL 6514.

619.09 Quo warranto to test validity of incorporation.—The right of an association claiming to be organized and incorporated and carrying on its business under this chapter to do and to continue its business, may be inquired into by quo warranto at the suit of the attorney general, but not otherwise.

History.—§8, ch. 5958, 1909; RGS 4516; CGL 6515.

CHAPTER 620

LIMITED PARTNERSHIPS

PART I UNIFORM LIMITED PARTNERSHIP LAW

PART II FOREIGN LIMITED PARTNERSHIPS

PART I

UNIFORM LIMITED PARTNERSHIP LAW

620.01 Limited partnership defined.—A limited partnership is a partnership formed by two or more persons under the provisions of §620.02, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

History.—§1, ch. 21887, 1943.

620.011 Definition of terms.—In this act, the word "person" includes individuals, partnerships, corporations and other associations, and persons owning property and doing business as husband and wife.

History.—§1, ch. 61-155.

620.02 Formation.—

(1) Two or more persons desiring to form a limited partnership shall:

(a) Sign and swear to a certificate, which shall state:

1. The name of the partnership,
2. The character of the business,
3. The location of the principal place of business,
4. The name and place of residence of each member; general and limited partners being respectively designated,
5. The term for which the partnership is to exist,
6. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,
7. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,
8. The time, if agreed upon, when the contribution of each limited partner is to be returned,
9. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,
10. The right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution,
11. The right, if given, of the partners to admit additional limited partners,
12. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,
13. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner, and
14. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(b) File for record the certificate in the office of the secretary of state, a certified copy of which is to be recorded with the clerk of the circuit court in the county where the principal place of business is located, in a book to be provided therefor by the said clerk of said court. The fees of the secretary of state under this chapter shall be as follows:

1. For certified copies, the same as is provided by law for the secretary of state for certificates and copying;

2. For receiving, filing and indexing certificates, statements, affidavits, decrees or any other papers provided for by this chapter, a filing fee in each case to be paid at the time of the first filing and on the first day of January annually thereafter an amount based upon the amount of invested capital according to the following schedule: Two dollars per thousand dollars of invested capital; provided, however, that no filing fee shall be less than ten dollars nor more than five hundred dollars. Upon the payment of such filing fee on the first filing and on each annual payment thereafter the secretary of state shall issue his certificate of authority to do business to said limited partnership and it shall be unlawful for such limited partnership to transact business as such until such filing fee has been paid; provided, further, that the annual filing fee payable on January 1st next following the date of the original filing the amount of the filing fee shall be prorated for that portion of the year the limited partnership has existed between the original filing date and the next ensuing January 1st. Such certificate of authority to be issued by the secretary of state shall be prima facie evidence of the right of such limited partnership to do business under the terms and provisions of this chapter and shall be considered as the payment to the state for the rights, privileges, protection and benefits conveyed by the provisions of this chapter, and no such limited partnership shall do business in this state without first having obtained the certificate of authority of the secretary of state for the ensuing year.

3. For filing and indexing any papers required by this chapter to be filed by the secretary of state, one cent a line.

4. The clerk of the circuit court shall receive as compensation for the recording of any papers required hereby, fees as provided in §28.24.

History.—§2, ch. 21887, 1943.
cf.—§620.25 Requirement for amendment and cancellation of certificate.
§15.09 Secretary of state's certification fee.

620.03 Business which may be carried on.—A limited partnership may carry on any business which a partnership without limited partners may carry on.

History.—§3, ch. 21887, 1943.

620.04 Character of limited partners' contribution.—The contributions of a limited partner may be cash or other property, but not services.

History.—§4, ch. 21887, 1943.

620.05 Name of limited partnership; use of partner's surname; exceptions.—

(1) The name of every limited partnership shall contain the word (Limited) or its abbreviation (Ltd.) with a conspicuous sign exhibiting this name at every place of business.

(2) The surname of a limited partner shall not appear in the partnership name unless:

(a) There is sufficient designation attached to his surname to indicate that he is a limited partner, or,

(b) It is also the surname of a general partner, or,

(c) Prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.

(3) A limited partner, whose name appears in a partnership name, contrary to the provision of subsection (2), is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

History.—§5, ch. 21887, 1943.

620.06 Liability for false statements in certificate.—If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

(1) At the time he signed the certificate, or,

(2) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in §620.25(3).

History.—§6, ch. 21887, 1943.
cf.—§620.19 Assignment of interest.

620.07 Limited partner not liable to creditors.—A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business or violates §620.05.

History.—§7, ch. 21887, 1943.

620.08 Admission of additional limited partners.—After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of §620.25.

History.—§8, ch. 21887, 1943.

620.09 Rights, powers and liabilities of general partner.—A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners a general partner or all of the general partners have no authority to:

(1) Do any act in contravention of the certificate,

(2) Do any act which would make it impossible to carry on the ordinary business of the partnership,

(3) Confess a judgment against the partnership,

(4) Possess partnership property or assign their rights in specific partnership property for other than a partnership purpose,

(5) Admit a person as a general partner,

(6) Admit a person as a limited partner, unless the right so to do is given in the certificate,

(7) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

History.—§9, ch. 21887, 1943.

620.10 Rights of limited partner.—

(1) A limited partner shall have the same rights as a general partner to:

(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them;

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable: and,

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in §§620.15 and 620.16.

History.—§10, ch. 21887, 1943.

620.11 Status of person erroneously believing himself limited partner.—A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided, that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income.

History.—§11, ch. 21887, 1943.

620.12 One person both general and limited partner.—

(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except, that in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

History.—§12, ch. 21887, 1943.

620.13 Loan and other business transactions with limited partner.—

(1) A limited partner also may loan money to and transact other business with the partnership, and unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim:

(a) Receive or hold as collateral security any partnership property, or,

(b) Receive from a general partner or the partnership any payment, conveyance or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security, or a payment, conveyance or release in violation of the provisions of subsection (1) is a fraud on the creditors of the partnership.

History.—§13, ch. 21887, 1943.

620.14 Relation of limited partners inter se.—Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

History.—§14, ch. 21887, 1943.

620.15 Compensation of limited partner.—A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership, except liabilities to limited partners on account of their contributions and to general partners.

History.—§15, ch. 21887, 1943.
cf.—§620.10, Rights of limited partner.

620.16 Withdrawal or reduction of limited partner's contribution.—

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of subsection (2), and,

(c) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of subsection (1), a limited partner may rightfully demand the return of his contribution:

(a) On the dissolution of a partnership, or,

(b) When the date specified in the certificate for its return has arrived, or,

(c) After he has given six months' notice in writing to all other members, if no time is

specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when:

(a) He rightfully but unsuccessfully demands the return of his contribution, or,

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by subsection (1) (a) and the limited partner would otherwise be entitled to the return of his contribution.

History.—§16, ch. 21887, 1943.
cf.—§620.10, Rights of limited partner.

620.17 Liability of limited partner to partnership.—

(1) A limited partner is liable to the partnership:

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made; and,

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership:

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and,

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

History.—§17, ch. 21887, 1943.

620.18 Nature of limited partner's interest in partnership.—A limited partner's interest in the partnership is personal property.

History.—§18, ch. 21887, 1943.

620.19 Assignment of limited partner's interest.—

(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with §620.25.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under §§620.06 and 620.17.

History.—§19, ch. 21887, 1943.

620.20 Effect of retirement, death or insanity of general partner.—The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

(1) Under a right so to do stated in the certificate, or,

(2) With the consent of all members.

History.—§20, ch. 21887, 1943.
cf.—§620.24, When certificate cancelled or amended.
§§47.16-47.20, 47.22, 47.28, 47.33-47.37, 47.41, 47.22, 47.44, 47.45, 47.50, Process, service.

620.21 Death of limited partner.—

(1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

History.—§21, ch. 21887, 1943.

620.22 Rights of creditors of limited partner.—

(1) On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver, and make all other orders,

directions and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by subsection (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption.

History.—§22, ch. 21887, 1943.

620.23 Distribution of assets.—

(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners,

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions,

(c) Those to limited partners in respect to the capital of their contributions,

(d) Those to general partners other than for capital and profits,

(e) Those to general partners in respect to profits,

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

History.—§23, ch. 21887, 1943.

620.24 When certificate canceled or amended.—

(1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when:

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) A person is substituted as a limited partner,

(c) An additional limited partner is admitted,

(d) A person is admitted as a general partner,

(e) A general partner retires, dies or becomes insane, and the business is continued under §620.20,

(f) There is a change in the character of the business of the partnership,

(g) There is a false or erroneous statement in the certificate,

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or,

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

History.—§24, ch. 21887, 1943.

620.25 Requirements for amendment and cancellation of certificate.—

(1) The writing to amend a certificate shall:

(a) Conform to the requirements of §620.02 (1) (a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and,

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in subsections (1) and (2) as a person who must execute the writing refuses to do so, may petition the circuit court in the county where the principal place of business of the limited partnership is located to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the secretary of state to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled when there is filed for record in the office of the secretary of state where the certificate is recorded:

(a) A writing in accordance with the provisions of subsection (1) or (2), or,

(b) A certified copy of the order of court in accordance with the provsions of subsection (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter.

History.—§25, ch. 21887, 1943.
cf.—§§620.06, 620.08, 620.19, Assignment of interest.

620.26 Parties to actions.—A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

History.—§26, ch. 21887, 1943.

620.27 Short title.—This chapter may be cited as the uniform limited partnership law.

History.—§27, ch. 21887, 1943.

620.28 Rules of construction.—

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This chapter shall not be so construed as to impair the obligations of any contract existing on May 31, 1943, nor to affect any action on proceedings begun or right accrued before May 31, 1943.

History.—§28, ch. 21887, 1943.

620.29 Rules for cases not provided for in this chapter.—In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern.

History.—§29, ch. 21887, 1943.

620.30 Service of process on limited partnerships.—When any original process is sued out against a limited partnership, the service of said process on any general partner in the limited partnership shall be as valid as if served on each individual member thereof; and the plaintiff may, after service upon any one member as aforesaid, proceed to judgment and execution against the limited partnership and the general partners individually. Service of process as provided by §47.16, shall apply to limited partnerships organized under this chapter.

History.—§30, ch. 21887, 1943.

620.31 Duty of secretary of state.—The secretary of state each year shall compile a list of the names of all limited partnerships who secured certificates of authority during the previous year and who failed for six months to secure a new certificate of authority or a renewal of their certificate of authority, and the secretary of state shall publish such list in a newspaper one time in the county in which the home office of such limited partnership is located and such notice shall state that such partnership did not renew its certificate of authority to do business under this chapter. It is declared to be the policy of this chapter that the rights, privileges and benefits granted to limited partnerships by this chapter are on an annual basis or from year to year and are granted only after such limited partnership has met the requirements hereof regarding securing certificate of authority or renewal thereof.

History.—§31, ch. 21887, 1943; §24, ch. 57-1.

620.32 Secretary of state to prescribe forms.—The secretary of state shall prescribe the forms and furnish the blanks upon request to make the annual reports called for in this chapter. It shall be the duty of the secretary of state to examine the reports when received and if the information called for in this chapter is given in such reports he shall file the same as information and keep such reports as public records. He shall pay into the state treasury, to the credit of the general revenue fund, all moneys collected under the provisions of this chapter. Such amounts for printing forms, postage, files, clerical and other expenses found to be actually necessary in carrying out the provisions of this chapter shall be included in the biennial appropriations act.

History.—Comp. §32, ch. 21887, 1943.
Am. §139, ch. 26869, 1951.

PART II

FOREIGN LIMITED PARTNERSHIPS

620.40 Foreign limited partnerships; definition.—For the purpose of part II of this chapter a foreign limited partnership is defined to be a partnership formed by two or more persons under the laws of any other state or territory or of any other country having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

History.—§1, ch. 59-395.

620.41 Permit required.—

(1) No foreign limited partnership shall transact business or acquire, hold or dispose of property in this state until it shall have filed in the office of the secretary of state a duly authenticated copy of its certificate and shall have received from him a permit to transact business in this state.

(2) Any foreign limited partnership which shall violate the provisions of part II of this chapter shall render itself and its partners, both limited and general, severally liable to the penalties and fines prescribed by part II of this chapter.

History.—§2, ch. 59-395.

620.42 Contents of certificate.—

(1) The certificate required by §620.41 shall reflect the following:

(a) The name of the partnership; provided said name shall comply with the provisions of §620.05, part I of this chapter;

(b) The character of the business;

(c) The location of the principal place of business;

(d) The name and place of residence of each member; general and limited partners being respectively designated;

(e) The term for which the partnership is to exist;

(f) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

(g) The additional contributions, if any agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;

(h) The time, if agreed upon, when the contribution of each limited partner is to be returned;

(i) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution;

(j) The right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution;

(k) The right, if given, of the partners to admit additional limited partners;

(l) The right, if given, of one or more of the limited partners to priority over other limited partners, as to compensation by way of income, and the nature of such priority;

(m) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner;

(n) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution, and

(2) An affidavit shall accompany the authenticated copy of the partnership certificate naming the principal place of business in Florida and shall also contain such information required by paragraphs (a)-(n) of subsection (1), not set out in said partnership certificate.

History.—§3, ch. 59-395.

620.43 Issuance of permit.—Upon the filing of such copy the secretary of state shall, if the objects of the limited partnership are such as are not prohibited by the laws of the state, issue a permit allowing such foreign limited partnership to transact business in this state and such partnership shall thereupon be empowered to exercise all and be limited to the same rights, powers and privileges as like partnerships organized under the laws of this state.

History.—§4, ch. 59-395.

620.44 Fees payable to secretary of state.—The fees of the secretary of state under part II of this chapter shall be as follows: For receiving, filing and indexing certificates, statements, affidavits, decrees or any other papers provided for by this chapter, a filing fee in each case to be paid at the time of the first filing and on January 1 annually thereafter an amount based upon the amount of capital employed or to be employed in the state according to the following schedule: Two dollars per thousand dollars of invested capital; provided, however, that no filing fee shall be less than ten dollars nor more than five hundred dollars. Upon the payment of such filing fee, on the first filing, and on each annual payment thereafter, the secretary of state shall issue his permit of authority to do business to said limited partnership and it shall be unlawful for such limited partnership to transact business as such until such filing fee has been paid; provided, further, that the annual filing fee payable on January 1 next following the date of the original filing the amount of the filing fee shall be prorated for that portion of the year the limited partnership has existed between the original filing date and the next ensuing January 1. Such permit of authority to be issued by the secretary of state shall be prima facie evidence of the right of such limited partnership to do business under the terms and provisions of this chapter and shall be considered as the payment to the state for the rights, privileges, protection and benefits conveyed by the provisions of part II of this chapter, and no such limited partnership shall do business in this state without first having obtained the permit of authority of the secretary of state for the ensuing year.

History.—§5, ch. 59-395.

620.45 Filing of amendments to certificate.—Every foreign limited partnership amending its certificate after receiving a permit as provided in §620.43, shall within sixty days after such amendment, file a duly authenticated copy thereof in the office of the secretary of state. The secretary of state shall issue to the partnership a certificate of the filing after receipt of a filing fee of ten dollars.

History.—§6, ch. 59-395.

620.46 Revocation of permit.—The secretary of state may revoke a permit of any foreign limited partnership failing to file any report or pay any tax required by part II of this chapter.

History.—§6, ch. 59-395.

620.47 Validity of contracts of partnership unaffected by noncompliance.—The failure of any foreign limited partnership to comply with the provisions of part II of this chapter, shall not affect the validity of any contract with such foreign limited partnership, but no action shall be maintained or recovery had in any of the courts of this state by any such partnership or its successors or assigns so long as such foreign limited partnership fails to comply with the provisions of part II of this chapter.

History.—§7, ch. 59-395.

620.48 Penalty for violations.—The members of any foreign limited partnership, whether general or special partners, who shall violate the provisions of this chapter prescribing the terms and conditions upon which foreign limited partnerships for profit may transact business or acquire, hold or dispose of property in this state shall be held liable for the debts of the limited partnership as general partners.

History.—§8, ch. 59-395.

620.49 Service of process.—Service of process may be had on any general partner found in Florida and shall be valid as if served on each individual member of the partnership. In the event no general partner can be found in Florida, service of process may be effected by service upon the secretary of state as agent of said limited partnership as provided for in §47.16.

History.—§9, ch. 59-395.

CHAPTER 621

PROFESSIONAL SERVICE CORPORATION ACT

621.01 Legislative intent.—It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.

History.—§1, ch. 61-64.

621.02 Short title.—This act may be cited as the professional service corporation act.

History.—§2, ch. 61-64.

621.03 Definitions.—As used in this act the following words shall have the meaning indicated:

(1) The term professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this act and by reason of law could not be performed by a corporation. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, veterinarians, attorneys at law and life insurance agents.

(2) The term professional corporation means a corporation which is organized under this act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

History.—§3, ch. 61-64.

621.04 Exemptions.—This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation and perform personal services to the public by the means of a corporation, and this act shall not apply to any corporations organized by such individual or group of individuals prior to the passage of this act; provided, however, any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

History.—§4, ch. 61-64.

621.05 Corporation organization.—An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of chapter 608 for the sole and specific purpose of rendering the same and specific professional service.

History.—§5, ch. 61-64.

621.06 Rendition of professional services, limitation.—No corporation organized and incorporated under this act may render professional services except through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this state; provided, however, this provision shall not be interpreted to include in the term "employee" as used herein clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

History.—§6, ch. 61-64.

621.07 Liability of officers, shareholders, corporation, etc.—Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent or employee of a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers,

shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services.
History.—§7, ch. 61-64.

621.08 Limitation on corporation's business transactions; investment of funds.—No corporation organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.
History.—§8, ch. 61-64.

621.09 Limitation on issuance and transfer of stock.—No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock.
History.—§9, ch. 61-64.

621.10 Disqualification of shareholder, officer, etc.; forfeiture of charter.—If any officer, shareholder, agent or employee of a corporation organized under this act who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, or is elected to a public office or accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation.
History.—§10, ch. 61-64.

621.11 Alienation of shares, restrictions.—No shareholder of a corporation organized under this act may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation, and such sale or transfer may be made only after the same shall have been approved, at a stockholders' meeting specially called for such purpose, by such proportion, not less than a majority, of the outstanding stock as may be provided in the certificate of incorporation or in the bylaws. At such shareholders' meeting the shares of stock held by the shareholder proposing to sell or transfer his shares may not be voted or counted for any purpose. The articles of incorporation may provide specifically for additional restraints on the alienation of shares and may require the redemption or purchase of such shares by the corporation at prices and in a manner specifically set forth in such articles or the articles may specifically authorize the corporation's board of directors or its shareholders to adopt bylaws restraining the alienation of shares and providing for the purchase or redemption by the corporation of its shares; provided, however, such provisions dealing with the purchase or redemption by the corporation of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation.
History.—§11, ch. 61-64.

621.12 Identification with shareholders.—The corporate name of a corporation organized under this act shall contain the last names of some or all of the shareholders and shall also contain the word "chartered" or "professional association" or the abbreviation "P.A." The use of the words "company," "corporation" or "incorporated" or any other word, abbreviation, affix or prefix indicating that it is a corporation in the corporate name of a corporation organized under this act, other than the words "chartered" or "professional association," or the abbreviation "P.A.," is specifically prohibited. It shall be permissible, however, for the corporation to render professional services and to exercise its authorized powers under a name which is identical to its corporate name except that the words "chartered" or "professional association" or the abbreviation "P.A." is omitted, provided that the corporation has first registered the name to be so used in the manner required for the registration of fictitious names.
History.—§12, ch. 61-64.

621.13 Applicability of chapter 608.—Chapter 608 is applicable to a corporation organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 608, and in such event the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act. A professional corporation organized under this act shall consolidate or merge only with another domestic professional corporation organized under this act to render the same specific professional service and a merger or consolidation with any foreign corporation is prohibited.
History.—§13, ch. 61-64.

621.14 Construction of law.—The provisions of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to incorporations, sales of securities or regulating the several professions enumerated in this act except in so far as such laws conflict with the provisions of this act.
History.—§15, ch. 61-64.

CHAPTER 622
FOREIGN UNINCORPORATED ASSOCIATIONS

622.01 Chapter permissive. — Qualification in compliance with this chapter is not and shall not be mandatory, and is and shall be optional, as a permissive alternative to compliance with any other law or laws with respect to the trade, business or fictitious name or style, and the recording, registration or publication thereof, under which business may be transacted by an unincorporated association, company or group of persons; but no foreign association, as defined hereinafter, shall enjoy or exercise the powers conferred by this chapter unless it shall have qualified in compliance herewith.

History.—§1, ch. 23897, 1947.

622.02 Definitions.—

(1) FOREIGN ASSOCIATION.—The term "Foreign association" as used in this chapter shall mean and include any unincorporated joint stock association for profit, created and existing under the laws of any state other than this state, or of the District of Columbia, or of any territory or possession of the United States, engaged in any business or businesses other than the banking, trust or insurance business, and having written articles of association, capital stock divided into shares, and a name including the word "company" or "association" or "society"; but shall not mean nor include any unincorporated association, company or group of persons engaged in the banking, trust or insurance business.

(2) ASSOCIATION.—The term "association" as used in this chapter shall mean and include any foreign association that shall have qualified, in the manner permitted by this chapter, to transact business and acquire, hold and dispose of property and sue and be sued in this state.

History.—§2, ch. 23897, 1947.

622.03 Qualification.—Any foreign association may qualify to transact business and acquire, hold and dispose of property and sue and be sued in this state, by complying with all requirements of law, including but not limited to the paying of all fees, taxes and other charges, now or hereafter prescribed for qualification by foreign corporations for profit to transact business in this state, and all laws heretofore or hereafter enacted prescribing requirements to be observed by foreign corporations for profit in so qualifying shall apply to and govern and control such qualification by foreign associations, except that in lieu of filing an authenticated copy of any charter, or certificate of incorporation, or articles of incorporation, the foreign association shall file a duly authenticated copy of its written articles of association.

History.—§3, ch. 23897, 1947.
cf.—§608.05 Filing fees and taxes for corporations.
§613.02 Issuing business permits to foreign corporations.
§613.03 Charter amendments for foreign corporations.

622.04 Process. — Every association shall comply with all requirements of law, including but not limited to the paying of all fees and charges, now or hereafter prescribed for the designation and maintenance of an office for the service of process, the appointment of a resident agent upon whom process may be served, and the acceptance of such appointment, by foreign corporations for profit qualified to transact business in this state, and all laws heretofore or hereafter enacted with respect to such offices and agents shall apply to and govern and control all associations.

History.—§4, ch. 23897, 1947.
Am. §11, ch. 25035, 1949.
cf.—§§47.34-47.44 Service of process-corporations.

622.05 Annual reports.—Every association shall comply with all requirements of law, including but not limited to the paying of all fees, taxes and other charges, now or hereafter prescribed for the filing of annual reports by foreign corporations for profit qualified to transact business in this state, except railroad, pullman, telephone, telegraph and insurance companies, and all laws heretofore or hereafter enacted with respect to such reports shall apply to and govern and control all associations.

History.—§5, ch. 23897, 1947.

622.06 Name.—Every association may transact business in this state in its name, without including as a part thereof, or displaying or publishing in connection or conjunction therewith, the words "not incorporated," or any similar words, and without making any other showing or display of the fact that it is unincorporated, and without recording, registering or publishing its name as a trade, business or fictitious name. Any other law or laws heretofore or hereafter enacted with respect to an unincorporated association, company or group of persons doing business under any trade, business or fictitious name or style including the word "company" or "association" or "society," or with respect to the recording, registration or publication of any trade, business or fictitious name or style, shall not apply to nor govern nor control an association, and every association is and shall be exempted from the provisions and requirements thereof.

History.—§6, ch. 23897, 1947.

622.07 Powers.—Every association shall have power and authority to transact business and acquire, hold and dispose of property and sue and be sued in this state; provided that such association shall file with the secretary of state a sworn statement setting forth the name under which such association is authorized to transact business and acquire, hold and dispose of property, and the style by which it is prescribed that such association shall sue and be sued, under the law or laws under which it shall have been created and shall be existing.

History.—§7, ch. 23897, 1947.

CHAPTER 623

PRIVATE SCHOOL CORPORATION LAW

623.01 Short title.—This law may be cited as "the private school corporation law of 1959," and shall be assigned an individual chapter number.

History.—§1, ch. 59-113.

623.02 Private school corporation; charter.—Any twenty-five or more adult persons, who are legal residents of Florida and of the county in which any corporation may be formed hereunder, may form a private school corporation, under the provisions of this act and such private school shall be incorporated in the following manner:

There shall be presented to one of the judges of the circuit court for the county in which such corporation will operate, a proposed charter subscribed by the intended incorporators, which shall set forth:

(1) The name of the corporation which name shall include the words "private school."

(2) A designation of the geographic area in which such corporation will operate its school or schools.

(3) The object and purpose of the corporation.

(4) The qualifications of the members and the manner of their designation.

(5) The term for which the corporation will exist, which term may be perpetual.

(6) The names and addresses of the charter members.

(7) The names of the officers who shall manage the affairs of the corporation until the first election of officers.

(8) The procedure by which the by-laws of the corporation shall be made, altered or rescinded.

History.—§2, ch. 59-113.

623.03 Charter; submission to and approval by circuit court; recordation.—The proposed charter shall be acknowledged by one of the subscribing incorporators before an officer authorized to take acknowledgements of deeds, which said subscribing incorporator shall also take and subscribe to an oath, to be endorsed on the proposed charter, that it is intended in good faith to carry out the purposes and objectives set forth therein and as provided in this act.

The circuit judge to whom the proposed charter is presented, finding the same to be in proper form and for the objective and purpose authorized by this act, and in accordance with the provisions and limitations of this act shall approve the charter and endorse his approval thereon. The charter shall then be recorded in the office of the clerk of such circuit court and from thenceforth the subscribers and their associates and successors shall be a nonprofit eleemosynary corporation by the name given.

History.—§3, ch. 59-113.

623.04 Charter; amendment.—The charter of any corporation incorporated under this act may be amended as follows:

When the members of the corporation at a regular or special meeting held in accordance with its by-laws shall approve a resolution providing an amendment to the charter, a copy of such resolution certified by the president and secretary shall be presented to the judge of the circuit court of the county and if he finds the amendment to be proper in form and substance he shall endorse his approval thereon and it shall be recorded by the clerk of the circuit court and the amendment shall be effective from the date of record.

History.—§4, ch. 59-113.

623.05 Evidence in court proceedings.—The original charter, with the clerk's certificate of recording thereon, or a duly certified copy thereof, shall be evidence of the contents of the charter in all actions and proceedings, and shall be conclusive evidence of the existence of such corporation in all actions and proceedings where the question of its existence is only collaterally involved and prima facie evidence in all other actions and proceedings.

History.—§5, ch. 59-113.

623.06 Dissolution of corporation. — Any such corporation may be dissolved upon its petition to the circuit judge who shall order notice thereof to be published for such period of time as he may deem expedient and upon proof of such publication he may decree dissolution and make all necessary orders and decrees for the settlement of the affairs of such corporation, taking care that the claims of creditors be satisfied to the extent of the assets of the corporation.

History.—§6, ch. 59-113.

623.07 Consolidation or merger of corporations.—

(1) Any two or more corporations existing under the provisions of this act and operating within the same county may consolidate into a new corporation or merge into any one of the constituent corporations, as shall be speci-

fied in the consolidation or merger agreement. The board of directors of such corporation or a majority of the members of such corporation at a meeting however duly called or held, as desire to consolidate or merge may enter into an agreement signed by a majority of the members of the several boards of directors or as the case may be, by a majority of such corporation members at such meeting prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in the charter with such other details and provisions as are necessary or desirable.

(2) The agreement shall be submitted to a meeting of the members of record of each corporation. Notice of the time, place and purpose of the meeting shall be given to every member of such corporations. Upon adoption of the agreement by the majority of the corporate members of each corporation the secretary of each corporation shall certify the fact of that approval on said agreement. The agreement so adopted and certified shall for each corporation be signed and acknowledged by the president or vice-president. The agreement so certified and acknowledged by each corporation shall be filed with the clerk of the circuit court in the county where such corporations exist and when approved by a circuit judge of such county the consolidation or merger shall be effective.

History.—§7, ch. 59-113.

623.08 Operation of separate schools in same county.—A corporation incorporated under the provisions of this act to operate in an entire county, or major area thereof may operate separate schools in such area and in such locations as it may deem necessary or advisable and under such rules and regulations as specified in the by-laws.

History.—§8, ch. 59-113.

623.09 Taxation exemption.—The property of any private school corporation incorporated under the provisions of this act shall be exempt from taxation in accordance with §192.06 (3), and as otherwise provided by law.

History.—§9, ch. 59-113.

623.10 Powers and duties.—Any corporation existing under the provisions of this act, unless otherwise limited by its charter or by-laws shall have the following powers:

(1) To purchase, own, lease, hold, sell, convey, assign, transfer, mortgage, pledge or otherwise dispose of real and personal property tangible and intangible.

(2) To borrow money and contract debts whenever necessary for the transaction of its business or for the exercise of its corporate powers, rights and privileges, or for any other lawful purpose; to issue bonds, promissory notes, bills of exchange, debentures and other obligations and evidences of indebtedness, payable at a specified time, or payable upon the happening of a specified event, whether secured by mortgages, pledge or otherwise, or unsecured for money borrowed or in payment of property purchased or acquired, or for any other lawful object.

(3) To accept gifts from members and nonmembers and other legitimate sources.

(4) To do all things necessary and proper for the accomplishment of the objectives and purposes of the corporation as enumerated in its charter, its by-laws, or any amendment thereof, or necessary or incidental to the attainment of the objectives and purposes of the corporation.

(5) To sue and be sued.

History.—§10, ch. 59-113.

623.11 Corporation membership.—The membership of a corporation existing under the provisions of this act shall be composed of persons who have been approved for membership, as provided by the charter and by-laws of the corporation.

History.—§11, ch. 59-113.

623.12 Board of directors.—The control of of such corporation shall be vested in a board of directors of not less than five nor more than eleven (to be specified by the charter) elected for the ensuing year by a majority vote of the members present at the annual meeting of the membership. The board of directors, from and by its membership and by majority vote thereof at the first regular meeting following the annual meeting of the membership shall elect the following officers whose duties in addition to those prescribed by the by-laws shall be as follows:

(1) A president who shall be the chief executive officer of the corporation and who shall preside at all meetings of the members and of the board of directors and shall perform such other duties as may be prescribed by the by-laws or directed by the board of directors.

(2) A vice-president who in the absence or inability of the president to perform his duties shall act as president for the duration of such absence or inability and who shall perform such other duties as may be prescribed by the by-laws or directed by the board of directors.

(3) A secretary-treasurer who shall keep the minutes of all meetings of the corporation, shall receive and keep all corporate funds and securities; shall keep all accounts and records of the corporation; examine, audit, adjust and settle all accounts of the corporation and perform such other duties as may be prescribed by the by-laws or directed by the board of directors.

Only the secretary-treasurer, when authorized by the board of directors, shall receive any monetary reward for his services, except actual and reasonable expenses while performing services for the corporation.

History.—§12, ch. 59-113.

623.13 Administration, supervision and operation by private persons or entities.—Any corporation organized and existing under this act shall be administered, supervised, operated, financed and controlled exclusively by private persons and private entities and their funds. All persons while acting in any public official capacity are hereby specifically prohibited from engaging in any manner in such administration, supervision, operation, financing and control of the affairs of such corporation.

History.—§13, ch. 59-113.

623.14 Construction.—The provisions of this act shall be deemed to be accumulative and supplemental to any other powers and authority for the creation of corporations not for profit as set out in chapter 617.

History.—§15, ch. 59-113.

TITLE XXXV

INSURANCE

CHAPTER 624

INSURANCE CODE; ADMINISTRATION AND GENERAL PROVISIONS

PART I SCOPE OF CODE

PART II THE INSURANCE COMMISSIONER

PART III AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

PART IV FEES, TAXES AND FUNDS

PART V KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

PART I

SCOPE OF CODE

624.01 Short title.—Chapters 624 through 632 constitute the Florida insurance code.

History.—§1, ch. 59-205.

624.02 Insurance defined.—"Insurance" is a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.

History.—§2, ch. 59-205.
Note.—Similar provisions found in former §630.10.

624.03 Insurer defined.—"Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

History.—§3, ch. 59-205.
Note.—Similar provisions found in former §§625.01, 627.72, 628.12, 628.13, 628.14, 629.01, 630.01, 630.10, 635.173, 636.23, 645.01.

624.04 Person defined.—"Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, solicitor, service representative, adjuster, and every legal entity.

History.—§4, ch. 59-205.
Note.—Similar provisions found in former §§628.12, 628.13, 628.14, 630.01, 635.173, 643.02.

624.05 Commissioner, department defined.—
(1) "Commissioner" means the state treasurer as ex officio insurance commissioner of this state.
(2) "Department" means the insurance department of this state, unless context otherwise requires.

History.—§5, ch. 59-205.
Note.—Similar provisions found in former §§625.01, 626.01, 627.72, 627.73, 629.01, 634.01, 636.23, 643.02, 644.01, 645.01, 646.02.

624.06 Domestic, foreign, alien insurer defined.—
(1) A "domestic" insurer is one formed under the laws of this state.
(2) A "foreign" insurer is one formed under the laws of any jurisdiction other than this state.
(3) An "alien" insurer is one formed under the laws of any country other than the United States, its states, district, territories, and commonwealths.
(4) Except where distinguished by context, "foreign" insurers includes also "alien" insurers.

History.—§6, ch. 59-205.

624.07 Domicile defined.—Except as provided in §631.011, the "domicile" of an insurer means:
(1) As to Canadian insurers, Canada and the province under the laws of which the insurer was formed.

(2) As to other alien insurers authorized to transact insurance in one or more states, as provided in §624.0228(6).

(3) As to alien insurers not authorized to transact insurance in one or more states, the country under the laws of which the insurer was formed.

(4) As to all other insurers, the state under the laws of which the insurer was formed.

History.—§7, ch. 59-205.

624.08 State defined.—When used in context signifying a jurisdiction other than the state of Florida, "state" means any state, district, territory, or commonwealth of the United States and the Panama canal zone.

History.—§8, ch. 59-205.

624.09 Authorized, unauthorized insurer defined.—

(1) An "authorized" insurer is one duly authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(2) An "unauthorized" insurer is one not so authorized.

History.—§9, ch. 59-205.

624.10 Transacting insurance.—"Transact" with respect to insurance includes any of the following, in addition to other applicable provisions of this code:

(1) Solicitation or inducement.

(2) Preliminary negotiations.

(3) Effectuation of a contract of insurance.

(4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

History.—§10, ch. 59-205.

624.11 Compliance required.—No person shall transact insurance in Florida, or relative to a subject of insurance resident, located or to be performed in Florida, without complying with the applicable provisions of this code.

History.—§11, ch. 59-205.
Note.—Similar provisions found in former §§205.44, 625.17, 626.04, 631.01, 631.03, 631.16, 636.35, 638.16, 642.02.

624.12 Application of code as to particular types of insurers.—No provision of this code shall apply with respect to fraternal benefit societies (as identified in chapter 632), except as stated in chapter 632 (fraternal benefit societies).

History.—§12, ch. 59-205.
Note.—Similar provisions found in former §§626.22, 629.23.

624.13 Particular provisions prevail.—Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

History.—§13, ch. 59-205.

624.14 Captions not to affect meaning.—The scope and meaning of any provision shall not be limited or otherwise affected by the caption or heading of any chapter, part, section, subsection or paragraph.

History.—§14, ch. 59-205.

624.15 General penalty.—Each wilful violation of this code as to which a greater penalty is not provided by another provision of this code or by other applicable laws of this state shall be a misdemeanor, and may in addition to any prescribed applicable denial, suspension, or revocation of certificate of authority, license, or permit be punishable upon conviction by a fine of not more than $1000 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment in the discretion of the court. Each instance of such violation shall be considered a separate offense.

History.—§15, ch. 59-205.
Note.—Similar provisions found in former §§625.011, 625.05, 625.07, 625.15, 625.17, 625.21, 626.21, 627.96, 627.0103, 628.15, 634.16, 635.06, 635.23, 636.44, 637.64, 638.16, 644.16.

624.16 Existing certificates of authority.—

(1) Every certificate of authority of an insurer which was in force immediately prior to the effective date of this code and existing under any law herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code.

(2) Upon first renewal under this code any such certificate of authority shall be replaced by a certificate of authority in form as provided by this code, and shall thereafter be subject to continuation, suspension, revocation or termination as though originally issued under this code.

History.—§808, ch. 59-205.

624.17 Existing licenses, permits.—

(1) Every license and permit in force immediately prior to the effective date of this code and existing under any law herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code.

(2) The respective such licenses or permits, upon first renewal (where renewability is applicable) under this code, shall be replaced by a license or permit in form as provided by this code, and shall thereafter be subject to continuation, renewal, suspension, revocation, or termination as though originally issued under this code, except as provided in §624.18.

History.—§809, ch. 59-205.

624.18 Transitory license period; life, disability insurance agents.—Any other provision of this code to the contrary notwithstanding, upon first renewal under this code of any license as life insurance agent or disability insurance agent which was in force immediately prior to the effective date of this code, the first renewal license shall be issued for a license period of six months only, expiring as at midnight on the March 31 next following the date of such renewal; and the fee and taxes chargeable and payable for the issuance of such renewal license for such six-month period shall be one-half of the respective amounts otherwise

payable therefor as for a full license year under §624.0300.

History.—§810, ch. 59-205.

624.19 Existing forms and filings.—Every form of insurance document and every rate or other filing lawfully in use immediately prior to the effective date of this code may continue to be so used or be effective until the commissioner otherwise prescribes pursuant to this code; except, that before expiration of one year from and after such effective date neither this code nor the commissioner shall prohibit the use of any such document, rate, or filing because of any power, prohibition, or requirement contained in this code which did not exist under laws in force immediately prior to such effective date.

History.—§811, ch. 59-205.
Note.—Similar provisions found in former §§629.08, 629.09.

624.20 Saving clause.—This code shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time it takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this code had not been passed.

History.—§813, ch. 59-205.

PART II

THE INSURANCE COMMISSIONER

624.0100 Insurance commissioner designated.—The state treasurer is ex officio the insurance commissioner of this state.

History.—§16, ch. 59-205.

624.0101 Offices.—The commissioner shall establish and maintain offices at the state capitol in Tallahassee, and in such other places throughout the state as he may from time to time designate.

History.—§17, ch. 59-205.
Note.—Similar provisions found in former §627.73.

624.0102 Seal; certified copies as evidence.—

(1) The commissioner shall have an official seal, as heretofore adopted by him, by which his proceedings are authenticated.

(2) All certificates executed by the commissioner, other than licenses of agents, solicitors, adjusters, or similar licenses or permits, shall bear his seal.

(3) Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the commissioner, or any record of the commissioner or copy of any document on file in his office when authenticated under hand of the commissioner by the seal shall be accepted by all the courts of this state as prima facie evidence of the contents thereof.

History.—§18, ch. 59-205.
Note.—Similar provisions found in former §627.73.

624.0103 Deputies and assistants.—The commissioner may appoint, employ, prescribe the duties of, and discharge such assistants, deputies, counsel, actuaries, examiners, and other employees as he deems necessary to the performance of his duties under this code. Actuaries and examiners employed by the commissioner need not meet the residence requirements of §112.02. The commissioner shall fix the compensation of all such personnel in such amount as other state employees receive for similar services.

History.—§19, ch. 59-205.
Note.—Similar provisions found in former §§626.01, 627.73, 629.14.

624.0104 Prohibited interests, rewards.—

(1) The commissioner or any deputy, examiner, counsel, actuary, assistant or employee of the commissioner shall not be financially interested, directly or indirectly, in any insurer or insurance agency authorized to transact insurance in this state, or in any insurance transaction except as a policyholder or claimant under a policy; except that as to such matters wherein a conflict of interests does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, accountants, or other professional personnel, who are independently

practicing their professions even though similarly employed or retained by insurers or others.

(2) The commissioner or any deputy, examiner, counsel, actuary, assistant or employee of the commissioner, shall not be given nor receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law, for any service rendered or to be rendered as such commissioner, deputy, examiner, counsel, actuary, assistant or employee or in connection therewith.

(3) This section shall not be deemed to prohibit an insurer from making, in regular course of business, a loan to the commissioner, or any deputy, assistant, examiner, actuary, counsel, or other employee of the commissioner if such loan is adequately secured by a mortgage upon real estate or other collateral and qualifies as an eligible investment of the insurer under part II of chapter 625; or from acquiring or holding, in regular course of business, such a loan or investment originally made by others.

History.—§20, ch. 59-205.
Note.—Similar provisions found in former §629.14.

624.0105 Delegation of powers.—

(1) The commissioner may delegate to his assistant, deputy, counsel, actuary, examiner or employee, the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial, discretionary or of whatever character, vested by this code in the commissioner.

(2) The commissioner is responsible for the official acts of any such person so acting in his name and by his authority.

History.—§21, ch. 59-205.
Note.—Similar provisions found in former §§626.01, 626.19, 629.24.

624.0106 General powers, duties.—

(1) The commissioner shall enforce the provisions of this code, and shall execute the duties imposed upon him by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(3) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations or investigations shall be borne by the state.

(4) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History.—§22, ch. 59-205.
Note.—Similar provisions found in former §§626.20, 627.73, 627.0106.

624.0107 Rules and regulations.—

(1) The commissioner may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of this code as referred to therein. No such rule or regulation shall extend, modify, or conflict with any law of this state or the reasonable implications thereof.

(2) Any such rule or regulation affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by §624.0124. If reasonably possible the commissioner shall set forth the proposed rule or regulation or amendment in or with the notice of hearing.

(3) No such rule or regulation as to which a hearing is required under subsection (2) shall be effective until after it has been on file as a public record in the commissioner's office and in the office of the secretary of state for at least ten days.

(4) Upon request and payment of the reasonable cost thereof if required and fixed by the commissioner, the commissioner shall furnish a copy of any such rule or regulation to any person so requesting.

(5) In addition to any other penalty provided, wilful violation of any such rule or regulation shall subject the violator to such suspension or revocation of certificate of authority or license as may be applicable under this code as for violation of the provision as to which such rule or regulation relates.

History.—§23, ch. 59-205.
Note.—Similar provisions found in former §§626.17, 627.73, 629.21, 630.08, 631.16, 634.27, 642.031, 645.14, 645.15.

624.0108 Orders; notices.—

(1) Orders and notices of the commissioner shall be effective only when in writing signed by him or by his authority.

(2) Every such order shall state its effective date, and shall concisely state:

(a) Its intent or purpose.

(b) The grounds on which based.

(c) The provisions of this code pursuant to which action is taken or proposed to be taken; but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

(3) Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his residence or principal place of business as last of record in the commissioner's office.

(4) Any interested person shall be entitled to receive copies of any and all notices issued by the commissioner under this code, upon filing written request therefor with the commissioner, specifying therein the classes of notices desired to be received, and upon paying the reasonable cost of furnishing such notices as fixed by the commissioner. The receipt of

any such notice pursuant to this provision shall not be deemed to constitute the recipient a party to any matter, action, or hearing to which the notice relates.

History.—§24, ch. 59-205.

624.0109 Enforcement.—The commissioner may institute such suits or other legal proceedings as may be required for enforcement of any provision of this code. If it appears to the commissioner that any person has violated any provision of this code for which criminal prosecution is provided and would be in order, he shall give the information relative thereto to the state's attorney, county solicitor, or prosecuting attorney having jurisdiction of any such violation. The state's attorney, county solicitor, or prosecuting attorney shall promptly institute such action or proceedings against such person as the information may require or justify.

History.—§25, ch. 59-205.
Note.—Similar provisions found in former §§625.17, 626.08,

624.0110 Records; reproductions; destruction.—

(1) The commissioner shall preserve in permanent form records of his proceedings, hearings, investigations, and examinations, and shall file such records in his office.

(2) The records of the commissioner and insurance filings in his office shall be open to public inspection, except as otherwise provided by this code.

(3) The commissioner may photograph, microphotograph or reproduce on film, whereby each page will be reproduced in exact conformity with the original, all financial records, financial statements of domestic insurers, reports of business transacted in this state by foreign insurers, reports of examination of domestic insurers, and such other records and documents on file in his office as he may in his discretion select.

(4) To facilitate efficient use of floor space and filing equipment in his offices the commissioner may destroy records and documents as follows:

(a) General closed correspondence files over three years old;

(b) Agent, solicitor, adjuster and similar license files over two years old, except that the commissioner shall preserve by reproduction or otherwise a copy of the original records upon the basis of which each such licensee qualified for his initial license, and of any disciplinary proceeding affecting the licensee;

(c) Insurer certificate of authority files over two years old, except that the commissioner shall preserve by reproduction or otherwise a copy of the initial certificate of authority of each insurer;

(d) All documents and records which have been photographed or otherwise reproduced as provided in subsection (3), and such reproductions have been filed, and after audit of the commissioner's office has been completed for the period embracing the dates of such documents and records; and

(e) All other records, documents, and files not expressly provided for in paragraphs (a) through (d) of this subsection.

History.—§26, ch. 59-205.
Note.—Similar provisions found in former §§626.26, 627.72.

624.0111 Reproductions and certified copies of records as evidence.—

(1) Photographs or microphotographs in the form of film or prints of documents and records made under §624.0110(3) shall have the same force and effect as the originals thereof, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be as admissible in evidence as the originals.

(2) Upon request of any person and payment of the applicable fee, the commissioner shall give a certified copy of any record in his office which is then subject to public inspection.

(3) Copies of original records or documents in his office certified by the commissioner shall be received in evidence in all courts as if they were originals.

History.—§27, ch. 59-205.
Note.—Similar provisions found in former §626.26.

624.0112 Publications.—

(1) The commissioner shall annually not later than in the month of September have printed and make available to persons requesting a copy thereof, a list of all insurers authorized to transact insurance in this state during the preceding calendar year, showing in tabular form the assets and liabilities of such insurers and other data and information deemed essential by the commissioner and based upon the financial statements of the insurers as filed with him.

(2) The commissioner may prepare and have printed and published in pamphlet or book form the following:

(a) A list annually of all persons licensed as insurance agents in this state;

(b) As needed, questions and answers for use of persons making application to be examined for licensing as agents or solicitors for property, casualty, surety, disability and miscellaneous insurers;

(c) As needed, questions and answers for use of persons making application to be examined for licensing as agents for life and disability insurers;

(d) As needed, questions and answers for use of persons making application to be examined for licensing as adjusters; and

(e) Biennially after each regular session of the Florida legislature, a compilation of the laws of Florida relating to insurance. Any such publication may be printed, revised, or reprinted upon the basis of the original low bid.

(3) The commissioner shall sell the publications mentioned in subsection (2) to purchasers at a price fixed by him at not less than the cost of printing and binding such publications, plus packaging and postage costs for mailing; except that the commissioner may deliver copies of

such publications free of cost to state agencies and officers, insurance supervisory authorities of other states and jurisdictions, institutions of higher learning located in Florida, the library of congress, insurance officers of naval, military and air force bases located in Florida, and to persons serving as advisors to the department in preparation of the publications.

History.—§28, ch. 59-205.
Note.—Similar provisions found in former §§626.09, 626.29.

624.0113 Publications; publications trust fund.—The commissioner shall deposit all moneys received from the sale of publications under §624.0112 in the publications trust fund heretofore established by the comptroller under law for the purpose of paying costs for the preparation, printing and delivery to the commissioner of the publications mentioned in §624.0112(2), packaging and mailing costs and banking, accounting, and incidental expenses connected with the sale and delivery of such publications by the commissioner. All moneys so deposited and all funds hereafter transferred to the publications trust fund are appropriated for the uses and purposes above mentioned. If at the beginning of any fiscal biennium the amount in the publications trust fund exceeds thirty-eight thousand dollars the excess shall be transferred to the general revenue fund of this state.

History.—§29, ch. 59-205; §2, ch. 61-119.
Note.—Similar provisions found in former §626.30.

624.0114 Commissioner's annual report.—As early as reasonably possible the commissioner shall annually prepare a report to the legislature and the governor showing, with respect to the preceding calendar year:

(1) Names of the authorized insurers transacting insurance in this state, with abstracts of their financial statements including such summary of their financial condition as he deems proper;

(2) Names of insurers whose business was closed during the year, the cause thereof, and amounts of assets and liabilities as ascertainable;

(3) Names of insurers against which delinquency or similar proceedings were instituted, and a concise statement of the circumstances and results of each such proceeding;

(4) The receipts and estimated expenses of the commissioner's office for the year;

(5) The commissioner's recommendations as to amendments or supplementation of laws affecting insurance, and as to matters affecting the department; and

(6) Such other pertinent information and matters as the commissioner deems to be in the public interest.

History.—§30, ch. 59-205.
Note.—Similar provisions found in former §§626.09, 626.19.

624.0115 Examination of insurers.—

(1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as he deems advisable, and of the attorney in fact of a reciprocal insurer as to its transactions affecting the insurer. He shall so examine each domestic insurer not less frequently than every three years. Examination of an alien insurer shall be limited to its insurance transactions and affairs in the United States, except as otherwise required by the commissioner.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.

(3) In lieu of making his own examination, the commissioner may in his discretion, accept a full report of the last recent examination of a foreign insurer, certified to by the insurance supervisory official of another state.

(4) The commissioner's examination of any domestic title insurer which is also lawfully engaged in the trust business under a charter heretofore granted, shall be limited to the title insurance department; and the commissioner shall accept, in lieu of his own examination thereof, the report of examination of the trust department as made by the state banking department.

History.—§31, ch. 59-205.
Note.—Similar provisions found in former §§626.01, 628.08, 631.02, 648.11, 648.14.

624.0116 Examination of agents, adjusters and others.—If he has reason to believe that any such person has violated or is violating any provision of this code, or upon written complaint signed by any interested person indicating that any such violation may exist, the commissioner shall conduct such examination as he deems necessary of the accounts, records, documents and transactions pertaining to or affecting the insurance affairs of any:

(1) General agent, surplus line agent, adjuster, or other person.

(2) Insurance agent or solicitor, subject to the requirements of §626.601.

(3) Person having a contract or power of attorney under which he enjoys in fact the exclusive or dominant right to manage or control an insurer.

(4) Person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or insurance holding corporation, or corporation to finance a domestic insurer or the production of its business.

History.—§32, ch. 59-205.

624.0117 Conduct of examination; access to records; correction of accounts; appraisals.—

(1) The examination may be conducted by the commissioner or his accredited examiners at the offices wherever located of the person being examined and at such other places as may be required for determination of matters under examination. In the case of alien insurers the examination may be so conducted in the insurer's offices and places in the United States, except as otherwise required by the commissioner.

(2) Every person being examined, its officers, attorneys, employees, agents and repre-

sentatives shall make freely available to the commissioner or his examiners the accounts, records, documents, files, information, assets and matters in his possession or control relating to the subject of the examination.

(3) If the commissioner finds any accounts or records to be inadequate, or inadequately kept or posted, he may employ experts to reconstruct, re-write, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the commissioner has given him notice and a reasonable opportunity to do so.

(4) If the commissioner deems it necessary to value any asset involved in such an examination of an insurer he may make written request of the insurer to designate one or more competent appraisers acceptable to the commissioner, and who shall promptly make an appraisal of the asset and furnish a copy thereof to the commissioner. If the insurer fails to designate such an appraiser or appraisers within twenty days after the commissioner's request, the commissioner may designate the appraiser or appraisers. The reasonable expense of any such appraisal shall be a part of the expense of examination, to be borne by the insurer.

(5) Neither the commissioner nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices of such person except with the written consent of such person given in advance of such removal, or pursuant to an order of court duly obtained.

(6) Any individual who wilfully obstructs the commissioner or his examiner in the examinations authorized by part II of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished as provided in §624.15.

History.—§33, ch. 59-205.
Note.—Similar provisions found in former §§626.01, 631.02.

624.0118 Examination reports.—

(1) The commissioner or his examiner shall make a full and true written report of each examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The commissioner shall furnish a copy of the report to the person examined not less than thirty days prior to filing the report in his office. If such person so requests in writing within such thirty-day period, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications have been made therein as the commissioner deems proper.

(2) The report when so filed shall be admissible in evidence in any action or proceeding brought by the commissioner against the person examined, or against its officers, employees, or agents. The commissioner or his examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the department.

(3) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems reasonably necessary to protect the person examined from unwarranted injury or to be in the public interest.

(4) After the examination report has been filed, as hereinabove provided, the commissioner may publish the results of any such examination in one or more newspapers published in this state whenever he deems it to be in the public interest.

History.—§34, ch. 59-205.
Note.—Similar provisions found in former §§626.01, 644.01.

624.0119 Examination expense.—

(1) Each insurer so examined shall pay to the commissioner the actual travel expenses, reasonable living expense allowance and compensation of the examiner or other person making the examination at the rates adopted and approved by the national association of insurance commissioners and approved by the commissioner. Such travel expense and living expense allowance shall be limited to those expenses necessarily incurred on account of the examination and shall be paid by the examined insurer together with compensation upon presentation by the commissioner to such insurer of a detailed account of such charges and expenses after a detailed statement has been filed by the examiner and approved by the commissioner.

(2) There is hereby created and established in the state treasury a fund to be designated "insurer examination revolving trust fund" and the commissioner is authorized to transfer ten thousand dollars into such fund and from time to time to make further deposits to the credit of such fund from moneys appropriated for the operation of his office. All moneys collected from insurers for examinations shall be deposited into such fund.

(3) Notwithstanding the provisions of §112.061, the commissioner is authorized to pay to the examiner or the person making the examination out of the "insurer examination revolving trust fund" the actual travel expenses, reasonable living expense allowance and compensation in accordance with the statement filed with the commissioner by the examiner or other person as provided in subsection (1) upon approval by the commissioner.

(4) When not examining an insurer the traveling expenses, per diem and compensation for the examiners and other persons employed to make examinations, if approved, shall be paid out of moneys budgeted for such purpose as regular employees, reimbursements for such traveling expenses and per diem to be at rates no more than as provided in §112.061.

(5) No person shall pay and no examiner

or other person making an examination shall accept any additional emolument on account of any examination.

(6) The commissioner is authorized to pay to regular insurance examiners, not a resident of Leon county, Florida, per diem for periods not exceeding thirty days for each such examiner while at the office of the insurance commissioner in Tallahassee, Florida, for the purpose of auditing insurer's annual statements, such expenses to be paid out of moneys budgeted for such purpose, as regular employees at rates provided in §112.061.

History.—§35, ch. 59-205; §1, ch. 61-208; (6) n. §1, ch. 63-125.
Note.—Similar provisions found in former §§626.01, 628.08, 631.02.

624.0120 Witnesses and evidence.—

(1) As to the subject of any examination, investigation, or hearing being conducted by him the commissioner or any assistant, deputy, or examiner appointed by him may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents or other evidence which he deems relevant to the inquiry.

(2) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the circuit court of Leon county or of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the commissioner's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(3) Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

(4) Any person wilfully testifying falsely under oath as to any matter material to any such examination, investigation or hearing, shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

History.—§36, ch. 59-205.
Note.—Similar provisions found in former §§625.07, 626.01, 626.20, 626.28, 629.21, 631.02, 643.06.

624.0121 Testimony compelled; immunity from prosecution.—

(1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the commissioner or his examiner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the commissioner and the attorney general, nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to this code.

(2) Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

History.—§37, ch. 59-205.
Note.—Similar provisions found in former §§625.06, 635.08, 643.13.

624.0122 Same; penalty for refusal to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any insurer or other person when subpoenaed and requested by the commissioner to so testify as provided in §624.0120 (witnesses and evidence) shall, in addition to the penalty provided in §624.0120, be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided under §624.15.

History.—§38, ch. 59-205.
Note.—Similar provisions found in former §§625.07, 626.21.

624.0123 Hearings.—

(1) The commissioner may hold hearings for any purpose within the scope of this code deemed by him to be necessary.

(2) The commissioner shall hold a hearing if required by any provision of this code.

(3) Any person aggrieved by any act, threatened act, or failure of the commissioner to act, or by any report, rule, regulation or order of the commissioner (other than an order for the holding of a hearing, or an order on hearing or pursuant thereto), may demand a hearing. The demand shall be in writing and shall summarize the information and grounds to be relied upon as a basis for the relief to be sought at the hearing. Failure to grant the demand within thirty days from the filing of the demand with the commissioner shall con-

stitute a denial of the relief sought, and shall be the equivalent of an order on hearing for the purpose of a petition for rehearing, or reargument, under §624.0127, and for the purpose of an appeal under §624.0128.

(4) Pending any such hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

(5) This section does not apply as to part I of chapter 627 (rates and rating organizations).

History.—§39, ch. 59-205.

624.0124 Same; notice.—

(1) Except where a different period of notice is provided by other provisions of this code relative to particular matters, not less than twenty days in advance the commissioner shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

(2) If any such hearing is to be held for consideration of rules and regulations of the commissioner, or for consideration of other matters, which under subsection (1) would otherwise require separate notices to more than fifty persons, in lieu of the notice so required under such subsection the commissioner may give notice of the hearing by publication thereof, in four or more newspapers of general circulation in this state, at least once each week during the four weeks immediately preceding the week in which the hearing is to be held. The published notice shall state the time and place of the hearing and shall specify the matters to be considered thereat. The commissioner shall also furnish a copy of any such published notice to one or more insurance trade publications of general circulation in the United States.

(3) All such notices, other than published notices, shall be given by delivery to the person to be so notified or by mailing it by registered or certified mail addressed to such person at his address last of record with the commissioner.

(4) This section does not apply as to part I of chapter 627 (rates and rating organizations).

History.—§40, ch. 59-205.

624.0125 Same; conduct.—

(1) A hearing may be held in the commissioner's offices at Tallahassee, or at such other place in this state deemed by the commissioner to be more convenient to parties and witnesses. If the hearing is relative to denial, suspension, or revocation of license as agent, solicitor, surplus line agent, adjuster, or other insurance representative, if so requested by such person the commissioner shall hold the hearing at a place not less convenient to such person and witnesses than the commissioner's office located nearest the place of residence or place of business of the person in this state.

(2) The commissioner or an assistant, deputy, or examiner designated by him, shall preside at the hearing and shall sit in the capacity of a quasi-judicial officer.

(3) All hearings shall be public.

(4) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence and to examine and cross-examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf. Testimony may be taken orally or by deposition, and any party shall have such right of introducing evidence by deposition as may obtain in the circuit courts of this state.

(5) Upon good cause shown the commissioner shall permit to become a party to the hearing by intervention, if timely, only such persons who were not original parties thereto and whose interests are to be directly and immediately affected by the commissioner's order made upon the hearing.

(6) Formal rules of pleading or of evidence need not be observed at the hearing, except that the right of any person to invoke such rules and the rule of exclusion of witnesses is preserved.

(7) Unless waived in writing by the other parties to the hearing, the commissioner shall cause a full stenographic record of the proceedings at the hearing to be made by a competent reporter and at the cost of the state. If transcribed, a copy of such stenographic record shall be made a part of the commissioner's record of the hearing. A transcription shall be made if requested by any party in order that such party may have a copy thereof. A copy of the transcribed stenographic record shall be furnished to any party to the hearing requesting the same, and at such reasonable charge therefor as the commissioner may fix. If no stenographic record is made or transcribed the commissioner shall prepare an adequate record of the evidence and of the proceedings. The state's portion of the cost of the stenographic record and transcription thereof shall be paid out of the enforcement fund provided for in §624.0321. Any sums received from parties for copies of the stenographic record shall be covered by the commissioner into the state treasury to the credit of such enforcement fund.

(8) This section does not apply as to part I of chapter 627 (rates and rating organizations).

History.—§41, ch. 59-205.

Note.—Similar provisions found in former §§627.94, 643.06, 645.15.

624.0126 Same; order.—

(1) Within thirty days after termination of a hearing and completion of the transcript, if any, or of any rehearing thereof or reargument thereon, or within such other period as may be specified in this code as to particular proceedings, the commissioner shall make his order on hearing, covering matters involved in the

hearing and in any rehearing or reargument, and shall give a copy of the order to all the parties to the hearing.

(2) The order shall contain specific findings of fact by the commissioner in relation to the matter before him, such findings to be based upon a preponderance of the evidence. Any party may file with the commissioner proposed findings of fact, to be accepted or rejected by the commissioner.

(3) The commissioner's order may affirm, modify, or rescind action theretofore taken or may constitute the taking of new action within the scope of the notice of hearing.

(4) This section does not apply as to part I of chapter 627 (rates and rating organizations).

History.—§42, ch. 59-205.

624.0127 Rehearing or reargument.—Upon written request setting forth the reasons therefor of a party to a hearing filed with the commissioner within thirty days after any order made pursuant to a hearing has been mailed to the persons entitled to receive the same, the commissioner shall, within thirty days after receipt of such request, grant a rehearing or reargument of any or all of the matters involved in the hearing. The filing of a request for rehearing or reargument shall automatically stay the running of the time for taking an appeal pursuant to §624.0128, but the denial of this request shall not operate to start anew the running of the time for taking an appeal. This section does not apply as to part I of chapter 627 (rates and rating organizations).

History.—§43, ch. 59-205.

624.0128 Appeals from the commissioner.—(1) All findings of fact, final rulings, orders, or decisions of the commissioner shall be subject to review by appeal to the district court of appeal, first district. Such an appeal shall be commenced within sixty days after the rendition of such ruling, order, or decision, and in compliance with the rules of procedure as prescribed by the supreme court of Florida for appeals.

(2) The district court of appeal shall affirm, reverse, or modify the commissioner's ruling, order, or decision appealed from. To the extent so affirmed, the court shall thereupon issue its own order commanding obedience to the commissioner's ruling, order, or decision; or, the court may remand the ruling, order, or decision to the commissioner for action in accordance with its order.

(3) This section does not apply as to part I of chapter 627 (rates and rating organizations).

History.—§44, ch. 59-205.

Note.—Similar provisions found in former §§626.021, 627.95, 629.22, 634.14, 635.172, 635.175, 636.39, 637.26, 637.58, 642.02, 643.08, 643.09, 644.14, 645.12.

PART III

AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

624.0200 Certificate of authority required.—(1) No person shall act as an insurer and no insurer or its agents, attorneys, subscribers, or representatives, shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority

issued to the insurer by the commissioner, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall from offices or by personnel or facilities located in this state solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority issued to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this state.

(3) This state hereby preempts the field of regulating insurers and their agents and representatives, and no county, city, municipality, district, school district, or political subdivision shall require of any insurer, agent, or representative regulated under this code any authorization, permit, or registration of any kind for conducting transactions lawful under the authority granted by the state under this code.

History.—§45, ch. 59-205; (3) n. by §1, ch. 61-75.
Note.—Similar provisions found in former §§205.44, 625.42, 626.02, 631.03, 631.16, 636.35, 638.16, 642.02, 648.01, 648.07.

624.0201 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to the following:

(1) Investigation, settlement, or litigation of claims under its policies lawfully written in this state, or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in this state.

(2) Transactions involving a policy, subsequent to issuance thereof, covering only subjects of insurance not resident, located, or expressly to be performed in this state at time of issuance, and lawfully solicited, written, or delivered outside this state.

(3) Transactions pursuant to surplus lines coverages lawfully written under part VI of chapter 626.

(4) Reinsurance, when transacted as authorized under §624.0409.

(5) The continuation and servicing of life insurance or disability insurance policies or annuity contracts remaining in force as to residents of this state where the insurer has withdrawn from the state and is not transacting new insurance therein.

History.—§46, ch. 59-205.
Note.—Similar provision found in former §625.12.

624.0202 Authorization for investment purposes only.—A foreign insurer may transact business in this state without certificate of authority, for the purpose and to the extent only of investing its funds in Florida real estate or in securities secured thereby, by complying with the laws of this state relating to foreign business corporations in general. Such an insurer shall not be subject to any other provisions of this code.

History.—§47, ch. 59-205.

624.0203 General eligibility of insurers for certificate of authority.—To qualify for and hold authority to transact insurance in this state an insurer must be otherwise in compliance with this code and with its charter powers, and must be an incorporated stock insurer, or an incorporated mutual insurer, or a reciprocal insurer, of the same general type as may be formed as a domestic insurer under this code; except that:

(1) No insurer shall be authorized to transact insurance in this state which does not maintain reserves as required by part I of chapter 625 (assets and liabilities) applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States; or which transacts insurance in the United States on the assessment premium plan, stipulated premium plan, co-operative plan, or any similar plan.

(2) No foreign insurer shall be authorized to transact insurance in this state unless it is otherwise qualified therefor under this code and has operated satisfactorily for at least three years in its state or country of domicile or is the wholly owned subsidiary of an insurer which is an authorized insurer in this state, or is the successor in interest through merger or consolidation of an authorized insurer.

(3) The commissioner shall not grant or continue authority to transact insurance in this state as to any insurer the management of which is found by him to be incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or which he has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation of assets, or of accounts, or of reinsurance, or by bad faith.

(4) No insurer the voting control or ownership of which is held in whole or substantial part by any government or governmental agency, or which is operated for or by any such government or agency, shall be authorized to transact insurance in this state. Membership in a mutual insurer, or subscribership in a reciprocal insurer, or ownership of stock of an insurer by the alien property custodian or similar official of the United States, or supervision of an insurer by public insurance supervisory authority shall not be deemed to be an ownership, control, or operation of the insurer for the purposes of this subsection.

(5) No authorized insurer shall act as a fronting company for any unauthorized insurer. A "fronting company" is an authorized insurer which by reinsurance or otherwise generally transfers to one or more unauthorized insurers substantially the entire risk of loss under substantially all of the insurance written by it in this state. This provision shall not apply as to any policies which are in force on the effective date of this code.

(6) No insurer shall be authorized to transact insurance in this state which during the

three years immediately preceding its application for a certificate of authority has violated any of the insurance laws of this state and after being informed of such violation has failed to correct the same; except, that if all other requirements are met the commissioner may nevertheless issue a certificate of authority to such an insurer upon the filing by the insurer of a sworn statement of all such insurance so written in violation of law, and upon payment to the commissioner of a sum of money as additional filing fee equivalent to all premium taxes and other state taxes and fees as would have been payable by the insurer if such insurance had been lawfully written by an authorized insurer under the laws of this state. This fee when collected shall be deposited to the credit of the miscellaneous service fund provided for under §624.0324.

(7) Nothing in this code shall be deemed to prohibit the granting and continuance of a certificate of authority to a domestic title insurer organized as a business trust, if the declaration of trust of such insurer was filed in the office of the secretary of state prior to January 1, 1959, and if the insurer otherwise meets the applicable requirements of this code. Such an insurer may hereinafter in this code be referred to as a "business trust insurer."

History.—§48, ch. 59-205.
Note.—Similar provisions found in former §§625.42, 626.05, 631.16, 635.22.

624.0204 Name of insurer.—

(1) No insurer shall be formed or authorized to transact insurance in this state under a name which is the same as that of any other authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion, or which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name the insurer or proposed insurer shall submit its name or proposed name to the commissioner for his approval consistent with this provision, and such approval shall be endorsed upon any proposed charter or application for authority which may be submitted to any officer authorized to grant such proposed charter or authority.

(2) Before approving or disapproving the name or proposed name of an insurer the commissioner shall notify all other authorized insurers whose name might be adversely affected, allowing them thirty days after the date of the notice within which to file their objections with him. If a name is so objected to, the commissioner shall disapprove the name unless he is of the opinion that the objections are not well-founded.

(3) No charter or authority shall be granted to any person by any court, office, department, or officer authorized to grant authority or permission to organize or act as an insurer unless the application therefor or proposed charter bears the endorsed approval of the name by the commissioner.

(4) No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding five years if life insurance policies originally issued by such other insurer are still outstanding in this state.

History.—§49, ch. 59-205.
Note.—Similar provisions found in former §§626.021, 628.03, 632.05.

624.0205 Combinations of insuring powers, one insurer.—An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in part V of chapter 624 except:

(1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance other than disability; except, that the commissioner shall, if the insurer is otherwise qualified therefor, continue to so authorize any life insurer which, immediately prior to the effective date of this code, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(2) A reciprocal insurer shall not transact life insurance.

(3) Except as to domestic mutual title insurers, or domestic business trust title insurers as referred to in §624.0203(7), so authorized prior to the effective date of this code, a title insurer shall be a stock insurer.

History.—§50, ch. 59-205.
Note.—Similar provisions found in former §§628.01, 628.02.

624.0206 Capital funds required; new insurers.—

(1) To qualify for authority to transact any one kind of insurance (as defined in part V of chapter 624) or combination of kinds of insurance as shown below, an insurer applying for its original certificate of authority in this state or continuing such original certificate of authority, shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or unimpaired surplus (if a foreign mutual or foreign reciprocal insurer) or a net trust fund (if a business trust insurer) in amount not less than as applicable under the schedule below, and shall possess when first so authorized such additional surplus as is required under §624.0207.

Kind or kinds of insurance	Minimum capital, surplus or net trust fund required to be maintained
Life	$200,000.00
Disability	200,000.00
Life and disability	200,000.00
Property	200,000.00
Casualty	200,000.00
Surety	250,000.00
Marine	200,000.00
Title	100,000.00
Multiple lines (Any two or more: Property, marine, casualty, surety; and all kinds of insurance other than life)	400,000.00

(2) Capital, surplus and net trust fund re-

quirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(3) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers are governed by chapter 628 of this code and domestic reciprocal insurers are governed by chapter 629.

History.—§51, ch. 59-205; (1), §1, ch. 63-29.
Note.—Similar provisions found in former §§625.02, 625.05, 625.16, 626.04, 626.05, 628.03, 628.06, 648.08.

624.0207 Special surplus requirements; new insurers.—

(1) In addition to the minimum paid-in capital stock (stock insurers) or minimum surplus (mutual and reciprocal insurers) required by §624.0206, an insurer hereafter applying for an initial certificate of authority in this state shall possess when first authorized in this state, surplus or additional surplus equal to the larger of four hundred thousand dollars (stock, mutual and reciprocal insurers) or fifty per cent of its paid-in capital stock (stock insurers).

(2) If within three years after date of its initial certificate of authority to transact insurance in this state such an insurer requests authority to transact an additional kind or kinds of insurance, it shall not be so authorized unless it then possesses surplus or additional surplus in such an amount as would be required under this section as for an original certificate of authority covering all the kinds of insurance the insurer then proposes to transact.

(3) After issuance of its initial certificate of authority the insurer shall maintain a surplus required under this section of not less than one hundred thousand dollars, except that a title insurer must at all times have the surplus as to policyholders as provided for in §624.0208 (3).

History.—§52, ch. 59-205; §2, ch. 63-29.
Note.—Similar provisions found in former §§625.02, 625.05, 625.16, 626.04, 626.05, 628.06.

624.0208 Capital and surplus funds required; old insurers.—

(1) All stock, mutual, reciprocal, and business trust insurers, which had in full force and effect a certificate of authority to transact insurance in this state on January 1, 1963, and which do not meet the capital, surplus or net trust fund requirements of §624.0206 shall increase to the additional required capital on or before December 31, 1968.

(2) All stock, mutual, reciprocal, and business trust insurers, which had in full force and effect a certificate of authority to transact insurance in this state on January 1, 1963, and which do not meet the special surplus requirements of §624.0207 shall increase to and maintain the minimun required surplus of one hundred thousand dollars as provided in §624.0207 (3) at the rate of thirty-three and one-third per cent on or before December 31, 1964, and the remaining sixty-six and two-thirds per cent on or before December 31, 1966.

(3) A title insurer must at all times have and maintain surplus as to policyholders in the amount of not less than three hundred thousand dollars; and if the insurer is a stock insurer not less than one hundred thousand dollars of such surplus as to policyholders must be represented by paid-in capital stock.

(4) Except, that any such insurer which after the effective date of this code requests authority to transact any kind or kinds of insurance in addition to those it was authorized to transact prior thereto shall possess and maintain unimpaired the same amount of paid-in capital stock (if a stock insurer) or surplus (if a mutual or reciprocal insurer) or net trust fund (if a business trust insurer) as would be required of a new insurer under §624.0206 for authority to transact all the kinds of insurance the insurer then proposes to transact.

(5) Surety insurers having unimpaired paid-in capital stock (if a stock insurer) or unimpaired surplus (if a mutual or reciprocal insurer) of less than two hundred fifty thousand dollars are not acceptable as surety upon the bonds of the city, county and state officers, under §627.0903.

History.—§53, ch. 59-205; §3, ch. 63-29.
Note.—Similar provisions found in former §§625.02, 625.16, 626.04, 626.05, 628.06.

624.0209 Permissible insuring combinations without additional capital funds.—

(1) A life insurer may also grant annuities without additional capital or additional surplus.

(2) A casualty insurer may be authorized to transact also disability insurance without additional capital or additional surplus.

(3) A property insurer may without additional capital or additional surplus include such amount and kind of insurance against legal liability for injury, damage, or loss to the person or property of others, and for medical, hospital, and surgical expense related to such injury, as the commissioner deems to be reasonably incidental to insurance of real property against fire and other perils under policies covering residential properties involving not more than four families, with or without incidental office, professional, private school or studio occupancy by an insured, whether or not the premium or rate charged for certain perils so covered is specified in the policy. Any provision of §624.0408 (limit of risk) to the contrary notwithstanding, no insurer authorized as to property insurance only shall, pursuant to this subsection, retain risk as to any one subject of insurance as to hazards other than property insurance hazards, in an amount exceeding five per cent of its surplus to policyholders.

History.—§54, ch. 59-205.

624.0210 Deposit requirement, domestic and foreign insurers.—

(1) The commissioner shall not issue or permit to exist a certificate of authority as to any domestic insurer, unless it has deposited and maintains deposited in trust for the protection of the insurer's policyholders or its policy-

holders and creditors with the commissioner securities eligible for such deposit under §625.0202, having at all times a value of not less than as follows:

(a) To transact property insurance, fifty thousand dollars.

(b) To transact casualty insurance, fifty thousand dollars.

(c) To transact title insurance, one hundred thousand dollars.

(d) To transact surety insurance, seventy-five thousand dollars.

(2) As to foreign insurers the commissioner shall not issue or permit to exist a certificate of authority unless such insurer has deposited and maintains deposited in trust with the commissioner securities eligible for such deposit under §625.0202 having at all times a value of not less than as follows:

(a) To transact property insurance, fifty thousand dollars.

(b) To transact casualty insurance, fifty thousand dollars.

(c) To transact title insurance, seventy-five thousand dollars.

(d) To transact surety insurance, seventy-five thousand dollars.

Provided that if a foreign insurer writes more than one kind of insurance in this state listed from (a) through (d) of this subsection, it shall not be required to deposit more than seventy-five thousand dollars. Such deposits shall be for the protection of the insurer's policyholders or its policyholders and creditors.

Provided further that if a foreign insurer has a surplus to policyholders of not less than one million dollars of which not less than five hundred thousand dollars is unassigned surplus, according to the latest annual statement, such foreign insurer shall not be required to make such deposit.

(3) In addition to the deposits otherwise required pursuant to this section, the commissioner may, after notice and hearing, require any insurer transacting property, casualty, surety, or title insurance, for good cause shown, to deposit and maintain deposited in trust for the protection of the insurer's policyholders or its policyholders and creditors for such time as he deems necessary, securities eligible for such deposit under §625.0202 having a value at all times of not less than the amount which the commissioner shall determine is necessary, which amount shall be not less than seventy-five thousand dollars, nor more than two hundred fifty thousand dollars, depending on the insurer's obligations in this state.

(4) All such deposits in this state are subject to the applicable provisions of part III of chapter 625 (administration of deposits).

History.—§55, ch. 59-205; (3) §1, ch. 61-166; §1, ch. 63-19.
Note.—Similar provisions found in former §§631.06, 632.07, 648.02, 648.17.

624.0211 Deposit of alien insurers.—

(1) An alien insurer shall not have authority to transact insurance in this state unless it has and maintains within the United States as trust deposits with public officials having supervision over insurers, or with trustees, public depositaries, or trust institutions approved by the commissioner, assets available for discharge of its United States insurance obligations, which assets shall be in amount not less than the outstanding reserves and other liabilities of the insurer arising out of its insurance transactions in the United States together with the greater of the following sums:

(a) The largest amount of paid-in capital stock required by §624.0206 of a domestic stock insurer transacting like kinds of insurance, or

(b) Three hundred thousand dollars.

(2) The amount so held on deposit under subsection (1) (a) or (b) is, for the purposes of this code, deemed to be the paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual insurer) of the insurer required to be maintained.

(3) Any such deposit made in this state shall be held for the protection of the insurer's policyholders or policyholders and creditors in the United States and shall be subject to the applicable provisions of part III of chapter 625 (administration of deposits) and chapter 630 (alien insurers).

History.—§56, ch. 59-205.
Note.—Similar provisions found in former §631.16.

624.0212 Application for certificate of authority.—

(1) To apply for a certificate of authority an insurer shall file its application therefor with the commissioner, upon a form furnished by him, showing its name, location of its home office or (if an alien insurer) principal office in the United States, kinds of insurance to be transacted, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents as applicable:

(a) Two copies of its corporate charter, articles of incorporation, declaration of trust or other charter documents, with all amendments thereto, certified by the public official with whom the originals are on file in the state or country of domicile.

(b) If a mutual insurer, a copy of its bylaws, as amended, certified by its secretary or other officer having custody thereof.

(c) If a foreign reciprocal insurer, a copy of the power of attorney of its attorney in fact and of its subscribers' agreement, if any, certified by the attorney in fact; and if a domestic reciprocal insurer, the declaration provided for in §629.081.

(d) A copy of its financial statement as of December 31 next preceding on the form approved for current use by the national association of insurance commissioners or its successor, sworn to by at least two executive officers of the insurer, or certified by the public official having supervision of insurance in the insurer's state of domicile or of entry into the United States.

(e) A supplemental financial statement in condensed form, if requested by the commis-

sioner, covering the period from the first of the year to the end of the calendar quarter next preceding the date of its application for the certificate of authority, sworn to by at least two of its executive officers.

(f) If a foreign insurer, a copy of report of most recent examination of the insurer prior to date of application for certificate of authority, certified by the public official having supervision of insurance in its state of domicile or of entry into the United States.

(g) If a foreign insurer, a certificate of compliance from the public official having supervision of insurance in its state or country of domicile showing that it is duly organized and authorized to transact insurance therein, and the kinds of insurance it is so authorized to transact.

(h) If a foreign insurer, certificate of the public official having custody of any deposit maintained by the insurer in another state in lieu of a deposit or part thereof required in this state under §§624.0210 or 624.0211, showing the amount of such deposit and the assets or securities of which comprised.

(i) Appointment of the commissioner pursuant to §624.0221 as its attorney to receive service of legal process, accompanied by a copy (certified by its corporate secretary or other officer having custody of its records) of the resolution of its board of directors or similar directive body authorizing such appointment.

(j) If a life insurer:

1. Certificate of valuation;

2. Copies of policy forms, standard riders and standard endorsements, and application forms proposed to be issued in this state, and duplicate listings of such forms.

(k) If a disability insurer, copies of policy forms proposed to be issued in this state, with duplicate listings thereof, together with rate book and a copy of each application form.

(l) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

(2) The application shall be accompanied by the applicable fees and license tax as specified in §624.0300 (filing, license and miscellaneous fees).

History.—§57, ch. 59-205.
Note.—Similar provisions found in former §§205.43, 626.02, 626.03, 628.04, 628.10, 648.01.

624.0213 Issuance or refusal of authority.—(1) If upon completion of the application for a certificate of authority the commissioner finds that the insurer has met the requirements for and is entitled thereto under this code, he shall issue to the insurer a proper certificate of authority; if he does not so find, the commissioner shall issue his order refusing such certificate. The commissioner shall act upon an application for a certificate of authority within a reasonable period after its completion. The fee for filing application for a certificate of authority shall not be subject to refund.

(2) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in this state. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in part V of chapter 624.

History.—§58, ch. 59-205.
Note.—Similar provisions found in former §§626.05, 626.07, 631.01.

624.0214 Ownership of certificate of authority; return.—Although issued to the insurer the certificate of authority is at all times the property of this state. Upon any expiration, suspension, or termination thereof the insurer shall promptly deliver the certificate of authority to the commissioner.

History.—§59, ch. 59-205.

624.0215 Continuance, expiration, reinstatement and amendment of certificate of authority.—

(1) Certificates of authority issued or renewed under this code shall continue in force as long as the insurer is entitled thereto under this code and until suspended, revoked, or terminated at the request of the insurer; subject, however, to continuance of the certificate by the insurer each year by:

(a) Payment prior to June 1 of the annual license tax provided for in §624.0300 (3).

(b) Due filing by the insurer of its annual statement for the calendar year preceding as required under §624.0223;

(c) Payment by the insurer of applicable taxes with respect to the preceding calendar year as required under this code; and

(d) Filing of the affidavit as to transaction of business through resident agents as required by §624.0226.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the May 31 next following such failure of the insurer so to continue it in force. The commissioner shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.

(3) The commissioner may, in his discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and upon payment by the insurer of the fee for reinstatement, in the amount provided in §624.0300 (1) (b). Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter or insuring powers.

History.—§60, ch. 59-205; (1) (a), §1, ch. 63-149.
Note.—Similar provisions found in former §§205.43, 626.07, 628.11.

624.0216 Mandatory revocation, suspension of certificate of authority.—

(1) The commissioner shall suspend or revoke an insurer's certificate of authority:

(a) If such action is required by any provision of this code; or

(b) If the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(c) If the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(2) In cases of insolvency or impairment of required capital or surplus, or suspension or revocation by another state as referred to in paragraph (c) of subsection (1), the commissioner may suspend or revoke the insurer's certificate of authority without advance notice or hearing thereon.

History.—§61, ch. 59-205.

Note.—Similar provisions found in former §§626.08, 627.10, 628.11, 631.03, 635.06, 648.12.

624.0217 Suspension, revocation of certificate of authority for violations and special grounds.—

(1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if he finds that the insurer has violated any lawful order of the commissioner, or any provision of this code other than those for which suspension or revocation is mandatory.

(2) The commissioner shall suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) Is in unsound condition, or in such condition, or using such methods and practices in the conduct of its business, as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

(c) Has failed to pay any final judgment rendered against it in this state within sixty days after the judgment became final.

(d) With such frequency as to indicate its general business practice in this state, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insureds or claimants to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in this state without having a certificate of authority therefor, except as permitted as to surplus line insurers under part VI of chapter 626.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

History.—§62, ch. 59-205.

Note.—Similar provisions found in former §§625.05, 625.11, 625.21, 626.08, 627.10, 628.11, 631.02, 631.03, 635.06, 635.172, 635.20, 635.23, 638.16, 642.02, 648.12.

624.0218 Procedure to suspend or revoke certificate of authority.—

(1) Except where hearing is expressly not required under §624.0216 or §624.0217, no order of the commissioner suspending or revoking an insurer's certificate of authority shall be effective unless made after a hearing of which notice and order directing the insurer to show cause thereat why its certificate of authority should not be so suspended or revoked was mailed to the insurer by registered or certified mail addressed to its home office or principal place of business in the United States not less than thirty days in advance.

(2) The notice shall contain, in addition to a statement of the time and place of the hearing and the order to show cause, a concise statement of the particulars of the grounds for such proposed suspension or revocation in such detail as reasonably to inform the insurer thereof.

(3) Except, that the insurer may in writing filed with the commissioner within the thirty day period waive the hearing, and in which case the commissioner may forthwith issue his order of suspension or revocation of the certificate of authority.

History.—§63, ch. 59-205.

Note.—Similar provisions found in former §§626.08, 627.10, 627.0101, 628.11, 636.35, 638.16.

624.0219 Order, notice of suspension or revocation of certificate of authority; effect; publication.—

(1) Suspension or revocation of an insurer's certificate of authority shall be by the commissioner's order mailed to the insurer by registered or certified mail. The commissioner shall promptly also give notice of such suspension or revocation to the insurer's agents in this state of record in the commissioner's office. The insurer shall not solicit or write any new coverages in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

(2) In his discretion the commissioner may cause notice of any such suspension or revocation to be published in one or more newspapers of general circulation published in this state.

History.—§64, ch. 59-205.

Note.—Similar provisions found in former §§205.44, 625.11, 625.12, 626.08, 635.172, 638.16, 642.02.

624.0220 Duration of suspension; insurer's obligations during suspension period; reinstatement.—

(1) Suspension of an insurer's certificate of authority shall be for such period, not to exceed one year, as is fixed by the commissioner in the order of suspension, unless the commissioner shortens or rescinds such suspension or the order upon which the suspension is modified, rescinded or reversed.

(2) During the period of suspension the insurer shall file its annual statement, pay license fees and taxes as required under this code as if the certificate had continued in full force.

(3) Upon expiration of the suspension period (if within such period the certificate of authority has not otherwise terminated) the insurer's certificate of authority shall automatically reinstate unless the commissioner finds that the causes of the suspension have not been removed, or that the insurer is otherwise not in compliance with the requirements of this code, and of which the commissioner shall give the insurer notice not less than thirty days in advance of the expiration of the suspension period. If not so automatically reinstated the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon failure of the insurer to continue the certificate during the suspension period whichever event first occurs.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate. The commissioner shall promptly notify the insurer and its agents in this state of record in his office, of such reinstatement.

History.—§65, ch. 59-205.
Note.—Similar provisions found in former §§635.172, 636.35, 642.02.

624.0221 Service of process; appointment of commissioner as process agent.—

(1) Each insurer applying for authority to transact insurance in this state, whether domestic, foreign or alien, shall file with the commissioner its appointment of the commissioner and his successors in office, on a form as furnished by the commissioner, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(2) At the time of such appointment of the commissioner as its process agent the insurer shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change the designation at any time by a new filing.

(3) Service of process upon the commissioner as the insurer's attorney pursuant to such an appointment shall be the sole method of service of process upon an authorized domestic, foreign or alien insurer in this state.

History.—§66, ch. 59-205.
Note.—Similar provisions found in former §§626.03, 628.04.

624.0222 Serving process.—

(1) Service of process upon the commissioner as process agent of the insurer (under §624.0221) shall be made by serving copies in triplicate of the process upon the commissioner or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service the commissioner shall file one copy in his office, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the insurer to receive the same, as provided under §624.0221 (2).

(2) Where process is served upon the commissioner as an insurer's process agent, the insurer shall not be required to answer or plead except within twenty days after the date upon which the commissioner mailed a copy of the process served upon him as required by subsection (1).

(3) Process served upon the commissioner and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the insurer.

History.—§67, ch. 59-205.
Note.—Similar provisions found in former §628.04.

624.0223 Annual statement and other information.—

(1) Each authorized insurer shall annually on or before March 1, or within such extension of time therefor as the commissioner, for good cause, may have granted, file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding. The statement shall be in such general form and context as approved or adopted for current use by the national association of insurance commissioners or its successor organization, for use as to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement shall be verified by the oath of two executive officers of the insurer; or if a reciprocal insurer, by the oath of the attorney in fact or its like officers if a corporation.

(2) The statement of an alien insurer shall be verified by the insurer's United States manager or other officer duly authorized. It shall be a separate statement, to be known as its general statement, of its transactions, assets, and affairs within the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to the insurer's affairs elsewhere, the insurer shall file

such statement with the commissioner as soon as reasonably possible.

(3) Each insurer having a deposit as required under §624.0210 (deposit requirement, domestic and foreign insurers) shall file with the commissioner annually with its annual statement a certificate to the effect that the assets so deposited have a market value equal to or in excess of the amount of deposit so required.

(4) At time of filing, the insurer shall pay the fee for filing its annual statement in the amount specified in §624.0300 (filing, license, and miscellaneous fees).

(5) The commissioner may refuse to continue, or may suspend or revoke, the certificate of authority of an insurer failing to file its annual statement and accompanying certificates when due.

(6) In addition to information called for and furnished in connection with its annual statement, an insurer shall furnish to the commissioner as soon as reasonably possible such information as to its transactions or affairs as the commissioner may from time to time request in writing.

History.—§68, ch. 59-205.
Note.—Similar provisions found in former §§626.02, 626.07, 626.23, 628.07, 631.06, 631.16, 632.18, 648.02.

624.0224 Resident agent and countersignature required, property, casualty, surety insurances.—

(1) Except as stated in §624.0225, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, a local producing agent who is a resident of this state, regularly commissioned and licensed currently as an agent of the insurer under this code. If two or more authorized insurers issue a single policy of insurance against legal liability for loss or damage to person or property caused by the nuclear energy hazard, or a single policy insuring against loss or damage to property by radioactive contamination, whether or not also insuring against one or more other perils proper to insure against in this state, such policy if otherwise lawful may be countersigned on behalf of all of the insurers by a licensed resident agent of any insurer appearing thereon. Such agent shall receive on each policy or contract the full and usual commission allowed and paid by the insurer to its agents on business written or transacted by them for the insurer.

(2) If any subject of insurance referred to in subsection (1) is insured under a policy, or contract, or certificate of renewal or continuation thereof, issued in another state and covering also property and risks outside this state, a certificate evidencing such insurance as to subjects located, resident, or to be performed in this state, shall be issued by or through and shall be countersigned by the insurer's commissioned and licensed local producing agent resident in this state in the same manner and subject to the same conditions as is provided in subsection (1) as to policies and contracts; except that the compensation to be paid to the agent may relate only to the Florida portion of the insurance risks represented by such policy or contract.

(3) An agent shall not sign or countersign in blank any policy to be issued outside of his office, or countersign in blank any countersignature endorsement therefor, or certificate issued thereunder; nor shall an agent give power of attorney to or otherwise authorize any other person to countersign any such document in his name unless the person so authorized is directly employed by the agent and by no other person, and is so employed in the office of the agent.

(4) This section shall not be deemed to prohibit mutual and reciprocal insurers from using salaried local resident licensed agents for the production and servicing of business in this state and the issuance and countersignature by such agents of insurance policies or contracts, where required under subsection (1), and without payment of commission therefor.

History.—§69, ch. 59-205.
Note.—Similar provisions found in former §§627.87, 627.90, 627.99, 627.0109.

624.0225 Exceptions to resident agent and countersignature law.—Section 624.0224 shall not apply to:

(1) Contracts of reinsurance.

(2) Policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business.

History.—§70, ch. 59-205.
Note.—Similar provisions found in former §627.0109.

624.0226 Compliance with resident agent law; renewal of certificate of authority.—Continuation of a certificate of authority of an insurer to transact property, marine, casualty or surety insurance in this state shall be permitted only if the insurer is otherwise entitled thereto and after the secretary and manager of the insurer has made oath that, to the best of his knowledge and belief, no policy or contract of insurance covering property or risk located in this state, and to which §624.0224 is applicable, has been issued, written or placed during the preceding calendar year, except by resident producing agents of such insurer in Florida duly commissioned, and licensed, and that local agents have received the full, entire and usual commission due and allowed its agents; and that none of its agents or representatives in this state had divided or offered to divide, unlawfully, his commission or other profits with other persons.

History.—§71, ch. 59-205.
Note.—Similar provisions found in former §§627.99, 627.0107.

624.0227 Licensed agent law, life and disability insurances.—

(1) No life insurer shall deliver or issue

for delivery in this state any policy of life insurance, master group life insurance contract, master credit life policy or agreement, annuity contract or contract or policy of disability insurance, unless the application for such policy or contract is taken by, and the delivery of such policy or contract is made through, an insurance agent of the insurer duly licensed under the law of Florida, who shall receive the usual commission due to an agent from such insurer.

(2) Each such insurer shall maintain a licensed insurance agent at all times for the purpose of and through whom policies or contracts issued or delivered in this state, shall be serviced.

(3) This section shall not apply to policies of insurance or annuity contracts on nonresidents which are applied for outside of and delivered in the state.

History.—§72, ch. 59-205.
Note.—Similar provisions found in former §634.27.

624.0228 Retaliatory provision, insurers.—

(1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Florida insurers or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Florida.

(2) Any tax, license or other obligation imposed by any city, county, or other political subdivision or agency of a state, jurisdiction or foreign country on Florida insurers or their agents or representatives shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of subsection (1).

(3) In the application of subsection (1) of this section any foreign insurer which maintains a regional home office in this state as defined in §624.0312 shall be permitted as credits and deductions from the aggregate of penalties, fees, charges and taxes imposed pursuant to this section, the same amount of credits and deductions which would otherwise be permitted such insurer under such §624.0312.

(4) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property, nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance, except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(5) This section shall not apply as to an insurer of any other state doing business in Florida if fifteen per cent or more of the capital stock of such insurer is owned by a corporation organized under the Florida laws and domiciled in Florida.

(6) For the purposes of this section the domicile of an alien insurer, other than an insurer formed under the laws of Canada or a province thereof, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within six months after the effective date of this code, whichever date is the later, and may be any of the following states:

(a) That in which the insurer was first authorized to transact insurance;

(b) That in which is located the insurer's principal place of business in the United States;

(c) That in which is held the larger deposit of trusteed assets of the insurer for the protection of its policy holders and creditors in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which is located its head office.

(7) The excess amount of all fees, licenses and taxes collected by the commissioner under this section over the amount of similar fees, licenses and taxes provided for in part IV of chapter 624, together with all fines, penalties or other monetary obligations collected under this section and §§626.711 and 626.0116 exclusive of such fees, licenses and taxes, shall be deposited by the commissioner to the credit of the miscellaneous service fund provided for in §624.0324 of this code.

History.—§73, ch. 59-205.
Note.—Similar provisions found in former §626.061.

624.0229 Withdrawal of insurer or discontinuance of writing certain classes of insurance.—

(1) Any insurer desiring to surrender its certificate of authority, withdraw from this state, or discontinue the writing of certain classes of insurance in this state, shall give forty-five days notice in writing to the insurance commissioner setting forth its reasons for such action.

(2) This section shall not apply to life insurance.

History.—§2, ch. 63-149.

PART IV

FEES, TAXES AND FUNDS

624.0300 Filing, license and miscellaneous fees.—The state treasurer as ex officio insurance commissioner shall collect in advance, and persons so served shall pay to him in advance, fees, licenses, and miscellaneous charges as follows:

(1) Certificate of authority of insurer.

(a) Filing application for original certificate of authority, including all documents required to be filed therewith, filing fee ____ $ 25.00

(b) Reinstatement fee ____ 50.00

(2) Charter documents of insurer.

(a) For filing articles of incorporation or other charter documents, other than at time of application for original certificate of authority, filing fee ____ 10.00

(b) For filing amendment to articles of incorporation or charter, other than at time of application for original certificate of authority, filing fee ____ 5.00

(c) For filing bylaws, where required, or amendments thereof, filing fee ____ 5.00

(3) Annual license tax of insurer, each domestic, foreign and alien insurer ____ 200.00

(4) Annual statement of insurer, filing (except where filed as part of application for original certificate of authority), filing fee 10.00

(5) Insurance representatives, property, marine, casualty and surety insurance.

(a) Agents.

1. Agent's original license, each insurer:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

2. Annual continuation or renewal of license, each insurer:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(b) Solicitors.

1. Solicitor's original license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

2. Annual continuation of license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(c) Nonresident agents.

Original issuance of license, license fee ____ $ 25.00

Annual renewal or continuation of license, license fee ____ $ 25.00

(d) Service representatives.

Original permit, appointment fee $ 5.00

Annual renewal or continuation of permit, appointment fee ____ $ 5.00

(6) Life insurance agents.

(a) Agent's license, each insurer:

1. Original license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

2. Annual renewal or continuation of license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(b) Nonresident agent license:

Original issuance of license, license fee, each insurer ____ $ 10.00

Annual renewal or continuation of license, each insurer, license fee ____ $ 10.00

(7) Disability insurance agents.

(a) Agent's license, each insurer:

1. Original license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

2. Annual renewal or continuation of license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(b) Nonresident agent license:

Original issuance of license, license fee, each insurer ____ $ 10.00

Annual renewal or continuation of license, each insurer, license fee $ 10.00

(8) All limited licenses as agent, as provided for in §626.321, or for license as limited surety agent as defined in §903.37, each agent and each insurer represented:

(a) Original license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(b) Annual renewal or continuation of license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(9) Fraternal benefit society agents. Agent's license, each agent and each insurer:

(a) Original license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(b) Annual renewal or continuation of license:

Appointment fee	$ 1.00	
State license tax	6.00	
County license tax	3.00	
Total		$ 10.00

(10) VENDING MACHINES, as authorized under §626.531:

Original license, each machine, permit fee ____ $ 25.00

Annual renewal or continuation of license, each machine, permit fee ____ $ 25.00

(11) Surplus line agent.

Original license, license fee ____ $ 50.00

Annual renewal or continuation of license, license fee ____ $ 50.00

(12) ADJUSTERS' LICENSES AND PERMITS.

(a) Adjuster's license:

Original issuance of license, license fee ____ $ 10.00

Annual renewal or continuation of license, license fee ____ $ 10.00

(b) Nonresident adjuster's license:

Original issuance of license, license fee ____ $ 10.00

Annual renewal or continuation of license, license fee ____ $ 10.00

(c) Emergency adjuster's permit, appointment fee ____ $ 5.00

(d) Claim investigator's permit, appointment fee ____ $ 10.00

(e) Fee to cover cost of credit report, where such report must be secured by commissioner ____ $ 10.00

(13) Examination for license as agent, solicitor or adjuster:

Filing application for examination, each examination:

For license as life insurance agent, filing fee ____ $ 5.00

For license as fraternal benefit society agent, filing fee ____ $ 5.00

For any other license, filing fee ____ $ 10.00

(14) Temporary license as agent or adjuster, where expressly provided for, rate of fee for each month of the period for which the license is originally issued, and for which the license is renewed or extended ____ $ 1.00

(15) Reissuance, reinstatement, modification or duplicate copy of any insurance representative license or permit ____ $ 2.00

*(16) Changing of address only of licensee holding any insurance representative license or permit ____ $ 1.00

(17) Additional license continuation fees as prescribed in §§626.371, 626.381, 626.391, 626.401, 626.411, and 626.421.

(18) Filing application for permit to form insurer as referred to in chapter 628, filing fee ____ $ 25.00

(19) Annual license fee of rating organization, each domestic or foreign organization ____ $ 10.00

(20) Miscellaneous services:

(a) For copies of documents or records on file with the commissioner, per page ____ $ .50

(b) For each certificate of the commissioner under his seal, authenticating any document or other instrument (other than licenses, permits, or certificates of authority) ____ $ 1.00

(c) For preparing lists of agents, solicitors, adjusters and other insurance representatives,

and for other miscellaneous services, such reasonable charge as may be fixed by the commissioner.

History.—§74, ch. 59-205; (16) n. §1, ch. 63-491.
*Note.—§624.0300(16) effective January 1, 1965.

Note.—Similar provisions found in former §§205.43, 205.45, 626.23, 627.72, 627.81, 627.85, 628.10, 629.04, 630.04, 632.18, 634.05, 634.24, 636.30, 636.42, 644.05, 645.10.

624.0301 Reduced license tax for partial year.—If any certificate of authority, license or appointment for which a "license tax" is provided and designated as such a "license tax" is required after expiration of the first six months of the applicable certificate of authority or license year, the amount of "license tax" payable therefor or in connection therewith shall be half of the license tax designated as such and otherwise payable under §§624.0300 or 624.0303(3). No other "fee," "permit," "registration," or other charge not designated in §§624.0300 or 624.0303(3) as a "license tax" is affected by this section.

History.—§75, ch. 59-205.
Note.—Similar provisions found in former §644.05.

624.0302 Liability for state, county license tax.—

(1) Each authorized insurer that uses insurance agents in this state shall be liable for and shall pay the state and county license taxes required therefor under §§624.0300 or 624.0303.

(2) Each insurance agent in this state that uses solicitors shall be liable for and shall pay the state and county license taxes required therefor under §624.0300.

History.—§76, ch. 59-205.
Note.—Similar provisions found in former §§ 205.45, 631.09.

624.0303 County license tax; determination; additional offices; nonresident agents.—

(1) The county license tax provided for under §624.0300 as to an agent shall be paid by each insurer for each agent only for the county where the agent resides, or if such agent's place of business is located in a county other than that of his residence, then for the county wherein is located such place of business. If an agent maintains an office or place of business in more than one county, the license tax shall be paid for him by each such insurer for each county wherein the agent represents such insurer and has a place of business. When under this subsection an insurer is required to pay county license tax for an agent for a county or counties other than the agent's county of residence, the insurer shall in the list provided for in §626.501 designate the county or counties for which the license taxes are paid.

(2) The county license tax provided for under §624.0300 as to a solicitor shall be paid only for the county wherein is located the office or place of business of the agent by whom the solicitor is employed and out of which he works as his permanent place of business. When under this subsection an agent is required to pay a county license tax for a solicitor for a county other than the solicitor's county of residence, the agent shall, in the list provided for in §626.501 designate the county for which the license tax is paid.

(3) A county license tax of three dollars per year shall be paid by each insurer for each county in this state in which an agent who resides outside of this state represents and engages in person in the activities of an agent for the insurer. This provision shall not be deemed to authorize any activities by an agent which are otherwise prohibited under this code.

History.—§77, ch. 59-205.
Note.—Similar provisions found in former §205.45.

624.0304 County license tax; deposit and remittance.—

(1) The commissioner as state treasurer shall deposit in the agents and solicitors county license tax trust fund, all funds accepted as county license tax under part IV of this chapter. He shall keep a separate account for all moneys so collected for each county, and after deducting three per cent therefrom shall remit the balance to the counties. Two-thirds of such three per cent so deducted shall be deposited into the general revenue fund of the state, and the remaining one-third of such three per cent shall be deposited into the insurance commissioner's miscellaneous service trust fund provided for in §624.0324.

(2) The payment and collection of county license tax under this chapter shall be in lieu of collection thereof by the respective county tax collectors.

(3) The comptroller shall annually, as of January 1 following the date of collection, and thereafter at such other times as the state treasurer may elect, draw his warrants on the state treasury payable to the respective counties entitled to receive the same, for the full net amount of such license taxes to each county. The warrants shall be countersigned by the governor.

History.—§78, ch. 59-205; (1) a. by §2, ch. 61-119.
Note.—Similar provisions found in former §205.45.

624.0305 Municipal license tax.—Municipal corporations may require a license tax of insurance agents and solicitors not to exceed fifty per cent of the state license tax specified as to such agents and solicitors under part IV of this chapter, and unless otherwise authorized by law. Such a tax may be required only by a municipal corporation within the boundaries of which is located the agent's business office, or if no such office is required under this code, by the municipal corporation of the agent's place of residence.

History.—§79, ch. 59-205.
Note.—Similar provisions found in former §205.45.

624.0306 Insurer's license tax; when payable.—

(1) The insurer's license tax provided for in §624.0300 (3) shall be paid, by an insurer newly applying for certificate of authority to transact insurance in this state, prior to and contingent upon the issuance of its original certificate of authority. If the certificate of authority is not issued, the license tax payment shall be refunded to the insurer. The license tax so paid by a newly authorized insurer shall cover the period expiring on the June 1 next following the

date of its original certificate of authority.

(2) Each authorized insurer shall pay the license tax annually on or before June 1.

(3) The license tax is subject to reduction for a partial initial certificate of authority year as provided in §624.0301.

History.—§80, ch. 59-205; §3, ch. 63-149.

624.0307 Premium tax; rate and computation.—

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under §624.0308, pay to the state treasurer a tax on insurance premiums or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as hereinafter set forth in this section to wit:

(a) An amount equal to two per cent of the gross amount of such receipts on account of life and disability insurance policies covering persons resident in this state and on account of all other types of policies and contracts (except annuity policies or contracts taxable under paragraph (b) hereof) covering property, subjects or risks located, resident or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments, but without deductions for reinsurance ceded to other insurers, and without deductions for moneys paid upon surrender of policies or certificates for cash surrender value, and without deductions for discounts or refunds for direct or prompt payment of premiums or assessments, and without deductions on account of dividends of any nature or amount paid and credited or allowed to holders of insurance policies, certificates, or surety, indemnity, or reciprocal or interinsurance contracts or agreements; and

(b) An amount equal to one per cent of the gross receipts on annuity policies or contracts paid by holders thereof in this state.

(2) Payment by the insurer of the license taxes and premium receipts taxes provided for in part IV of this chapter is a condition precedent to doing business within this state.

History.—§81, ch. 59-205.
Note.—Similar provisions found in former §§205.43, 626.24.

624.0308 Tax on wet marine and transportation insurance.—

(1) On or before March 1 of each year each foreign and alien insurer shall file with the commissioner, on forms as prescribed in §624.0309, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in §624.0406(2), written in this state during the calendar year next preceding and shall at the same time pay to the state treasurer a tax of three quarters of one per cent of such gross underwriting profit.

(2) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts.

History.—§82, ch. 59-205.
Note.—Similar provisions found in former §626.24.

624.0309 Tax statement; overpayments.—

(1) Tax return as to taxes mentioned in §§624.0307 and 624.0308 shall be made by insurers annually on or before March 1 on forms to be prescribed by the commissioner, and shall be sworn to by one or more of the executive officers or attorney (if a reciprocal insurer) of the insurer making the returns.

(2) If any insurer makes an overpayment on account of taxes due under §§624.0307 and 624.0308, a refund of the overpayment of taxes may be made from the insurance commissioner's clearing account as provided under §624.0320.

History.—§83, ch. 59-205.
Note.—Similar provisions found in former §§205.43, 626.24.

624.0310 Domestic insurers exempt.—Insurers organized and existing under the laws of this state, and which insurers maintain their home offices in this state, shall not be required to pay the tax on insurance and annuity premiums, assessments or considerations as imposed under §§624.0307 and 624.0308, except as provided in §624.0311.

History.—§84, ch. 59-205.
Note.—Similar provisions found in former §§205.431, 628.13.

624.0311 Tax liability of certain domestic insurers.—A domestic insurer succeeding to the business and assets of a United States branch of an alien insurer, as provided in chapter 630, is hereby determined to be susceptible to a distinct and separate classification for premium and other license tax purposes. As to its business so acquired, such a domestic insurer shall be liable for the payment of the tax on insurance and annuity premiums, assessments, fees, deposits and considerations as imposed by §§624.0307 and 624.0308, as such laws now exist or are hereafter modified.

History.—§85, ch. 59-205.
Note.—Similar provisions found in former §625.46.

624.0312 Regional home offices of foreign insurers; credits on premium tax liability.—

(1) A foreign insurer formed by or under the laws of any other state or foreign country, which is subject to the taxes imposed by §§624.0307 and 624.0308, and which owns and substantially occupies any building in this state as a regional home office, as hereinafter defined, shall be entitled to the following credits and deductions against such tax:

(a) An amount equal to fifty per cent of the amount of the tax as determined under said sections; and

(b) An amount equal to the full amount

of all ad valorem taxes paid by such a foreign insurer during the year next preceding the filing of the return required by §624.0309:

1. Upon any building and the land on which it stands in this state owned and substantially occupied by such foreign insurer in the said tax year as a regional home office, together with any adjacent land as may be required for the convenient use and occupation thereof, and

2. Upon any property used in connection with the operation and maintenance of such regional home office; provided, however, that in no event shall such credits and deductions reduce the amount of tax payable to less than twenty per cent of the amount of the tax as determined under §§624.0307 and 624.0308; and, provided further, that as to a foreign insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by §§624.0307 and 624.0308, as intended and contemplated by the above provisions of this subsection, shall be construed to mean the net amount of said tax remaining after there has been credited thereon such gross premium receipts tax as may be payable by such insurer in pursuance of the imposition of such tax by any incorporated cities or towns in the state for firemen's relief and pension funds and policemen's retirement funds maintained in such cities or towns, as provided in and by relevant provisions of Florida statutes.

(2) A regional home office, for the purposes of this section, shall mean an office performing, for an area covering three or more states, the selling, underwriting, issuing and servicing of insurance, including the following functions relating thereto: Actuarial, medical (where required), law, approval or rejection of applications for insurance and issuance of policies thereon, approval of payment of all types of claims, maintenance of records to provide policyholder information and service, advertising and publications, public relations, supervision and training of sales and service forces.

(3) Such a foreign insurer shall, on or before March 1 of each year, on forms to be prescribed by the commissioner, furnish proof which shall satisfy the commissioner that such foreign insurer owned and substantially occupied during the preceding calendar year a regional home office, as contemplated by subsection (2) of this section. Upon receipt of such proof, the commissioner shall issue to the state treasurer a certificate that the foreign insurer owned and substantially occupied during the preceding calendar year a building in this state as such a regional home office, with the location thereof, and is entitled to the credits and deductions provided for in subsection (1) of this section with respect to the taxes imposed by §§624.0307 and 624.0308 which accrued during such calendar year and which are payable on or before the following March 1. Provided, that with respect only to the calendar year in which a foreign insurer shall first establish such a regional home office in this state, if the proof filed with the commissioner on or before March 1 of the succeeding year, as above provided in this subsection, shall evidence to the satisfaction of the commissioner that said foreign insurer established such a regional home office in this state on or prior to August 1 of such calendar year and substantially occupied and maintained same during the remainder of such calendar year, then the foreign insurer shall be entitled to the rights, credits and deductions provided in this section as fully as though it had owned and substantially occupied said regional home office during the entire period of such calendar year; and in such event the certificate to be issued by the commissioner to the state treasurer, as above provided in this subsection, shall be so worded as to accomplish the intent and purpose of this proviso.

(4) Where two or more such foreign insurers, each of which is subject to the taxes imposed by §§624.0307 and 624.0308, are under common ownership or management and control, and which insurers jointly own with equal interest and in the aggregate substantially occupy any building in Florida as a regional home office, as such a regional home office is otherwise described and defined in subsections (1) and (2) of this section, and each of which insurers otherwise meets the full requirements of the provisions of subsections (1), (2) and (3), shall be granted the rights, benefits and privileges and charged with the duties as set forth in, and included within the provisions of, said subsections (1), (2) and (3) as fully as though each of said insurers substantially owns and occupies such a building in Florida as its said regional home office. In relation to such insurers, the certificate required to be executed and delivered by the commissioner to the state treasurer as required by subsection (3) shall be conformed to meet the requirements of this subsection. "Common ownership or management and control" in relation to any such two or more foreign corporations shall be construed to mean actual common control of such corporations consequent upon stock ownership or agreements and as a result of the ultimate control of such corporations being vested in one corporate board of directors, or as a result of the persons who are members of the controlling faction of the board of directors of one of such corporations being members of the controlling faction for the board or boards of directors of such other corporation or corporations.

History.—§86, ch. 59-205.
Note.—Similar provisions found in former §205.432.

624.0313 State fire marshal regulatory assessment; levy and amount.—

(1) In addition to any other license or excise tax now or hereafter imposed, and such taxes as may be imposed under other statutes, there is hereby assessed and imposed upon every domestic, foreign and alien insurer authorized to engage in this state in the business of issuing policies of fire insurance, a regulatory assessment in an amount equal to three-

eighths of one per cent of the gross amount of premiums collected by each such insurer on policies of fire insurance issued by it and insuring property in this state. The assessment shall be payable annually on or before March 1 to the state treasurer by the insurer on such premiums collected by it during the preceding calendar year.

(2) As used in this section, "fire insurance" means the insurance of structures or other property at fixed locations against loss or damage to such structures or other described properties from the risks of fire and lightning; and the terms "policies" and "premiums" respectively mean and include those policies or other contracts or agreements effecting and evidencing insurance, and premiums and other considerations for such policies, of the same character as described in and contemplated by the provisions of §§624.0307 and 624.0308. The amount of such premiums upon which the regulatory assessment shall be computed by each such insurer shall be the amount thereof remaining after deducting therefrom those items described in and permitted by §624.0307(1) relating to the premium receipts tax thereby imposed.

History.—§87, ch. 59-205.
Note.—Similar provisions found in former §205.433.

624.0314 Same; deposit and use of funds.—

(1) The regulatory assessment imposed under §624.0313 shall be deposited by the state treasurer, when received and audited, into the fund heretofore created and known and designated as the "state fire marshal trust fund."

(2) The moneys so received and deposited in the fund are hereby appropriated for use by the state treasurer, as ex officio insurance commissioner and, as such, state fire marshal (hereinafter referred to as "state fire marshal"), to defray the expenses of the state fire marshal in the discharge of his administrative and regulatory powers and duties as prescribed by law, including the maintaining of offices and necessary supplies therefor, essential equipment and other materials, salaries and expenses of required personnel, and all other legitimate expenses relating to the discharge of the administrative and regulatory powers and duties imposed in and charged to him under such laws.

(3) If at the end of any fiscal biennium a balance of funds remains in the state fire marshal trust fund, such balance shall not revert to the general fund of the state, but shall be retained in the state fire marshal trust fund to be used for the purposes for which the same is appropriated as set forth above.

History.—§88, ch. 59-205; (1), (3) a. by §2, ch. 61-119.
Note.—Similar provisions found in former §205.433.

624.0315 Same; reduction of assessment.—

(1) The state fire marshal shall ascertain on or before December 1 of each year whether the amounts estimated to be received from the regulatory assessment imposed under §624.0313 for that calendar year, payable on or before the following March 1, as herein prescribed, together with such amounts as may then be in the state fire marshal trust fund, result in an accumulation in the fund in excess of the just requirements for which the assessment is imposed as set forth in §624.0314; and if he determines that the imposition of the full amount of the assessment would result in such excess, he may reduce the percentage amount of the assessment for that calendar year to such percentage as may be necessary to meet the just requirements for which the assessment is imposed.

(2) When a determination is made so reducing the amount of the assessment, the state fire marshal shall make and issue his order setting forth such determination and fixing the amount of assessment for that calendar year, payable on or before March 1 of the following year, and shall mail a copy of such order to each insurer who, according to the records of the commissioner, is subject to the assessment.

History.—§89, ch. 59-205; (1) a. by §2, ch. 61-119.
Note.—Similar provisions found in former §205.433.

624.0316 Same; tax return, overpayment.—

(1) Tax returns with respect to the regulatory assessment prescribed by §624.0313 shall be made by each insurer liable for payment of such tax on forms to be prescribed by the commissioner and sworn to by one or more of the executive officers or other persons charged under the law with the management of the insurer.

(2) In the event an insurer makes an overpayment on account of the assessment, a refund of the overpayment may be made to the remittor from the insurance commissioner's clearing account as provided under §624.0320.

History.—§90, ch. 59-205.
Note.—Similar provisions found in former §205.433.

624.0317 Nonpayment of premium tax or fire marshal assessment; penalty.—If any insurer fails to pay to the state treasurer on or before March 1 in each and every year any premium taxes required of it under §§624.0307 or 624.0308, or any state fire marshal regulatory assessment required of it under §§624.0313 or 624.0315, the commissioner may revoke its certificate of authority.

History.—§91, ch. 59-205.
Note.—Similar provisions found in former §§205.433, 205.44.

624.0318 Preemption by state.—

(1) This state hereby preempts the field of imposing excise, privilege, franchise, income, license, permit, registration and similar taxes and fees, measured by premiums, income, or volume of transactions, upon insurers and their agents and other representatives, and no county, city, municipality, district, school district, or other political subdivision or agency in this state shall impose, levy, charge or require the same, subject however to the provisions of subsection (2).

(2) This section shall not be construed to limit or modify the power of any incorporated

city or town to levy the taxes authorized by §§175.05 and 185.08.

History.—§92, ch. 59-205; §2, ch. 61-75.

624.0319 Deposit of certain tax receipts; refund of improper payments.—

(1) The commissioner as state treasurer, pursuant to §624.0320, shall promptly deposit in the state treasury to the credit of the general fund all "state license tax" portions of agents and solicitors licenses collected under §§624.0300 and 624.0301, and all premium taxes collected pursuant to §§624.0307, 624.0308, 624.0311 and 624.0312.

(2) All moneys received by the commissioner not in accordance with the provisions of this code or not in the exact amount as specified by the applicable provisions of this code, except premium taxes which must be audited, shall be returned to the remittor before a receipt is issued therefor. All such moneys shall be so returned by letter of transmittal, and the records of the department shall show the date and reason for such return.

History.—§93, ch. 59-205.
Note.—Similar provisions found in former §634.05.

624.0320 Insurance commissioner's clearing account.—

(1) There is created a clearing account designated "insurance commissioner's clearing account," under the custody of the state treasurer, into which account the commissioner shall promptly deposit all acceptable moneys received by him, and for the return to the remittor of any moneys received in error or overpayment under the provisions of this code.

(2) After proper audit and clearance the moneys shall immediately be deposited in the state treasury by means of an abstract of deposit issued by the commissioner or his authorized representative, and credited to the appropriate fund.

(3) Return of moneys to the remittor shall be made by treasury check signed by the state treasurer or his authorized representative upon receipt of a voucher issued by the commissioner or his authorized representative.

(4) Abstracts of deposits and return remittance vouchers shall be issued at least once each calendar week or at any other time the commissioner may elect.

(5) Deposits so made in the state treasury shall be credited to funds as follows:

(a) General revenue fund:
1. All state license taxes.
2. Authorized insurers premium taxes.

(b) Agencies fund:
1. License receipt trust fund.
2. Miscellaneous service trust fund.
3. Valuation service trust fund.
4. State fire marshal trust fund.
5. Publications trust fund.
6. Enforcement trust fund.
7. Insurer examination revolving trust fund.

(c) Trust fund:
1. Agents and solicitors county license tax trust fund.
2. Municipal firemen's pension trust fund.
3. Municipal police officers retirement trust fund.

Additional funds under paragraphs (a), (b), and (c), may be created by the commissioner and state comptroller as needed.

(6) The commissioner shall follow the procedure in this section for the handling of moneys received within the scope of this code, any other laws of this state notwithstanding.

History.—§94, ch. 59-205; (5) (b), (c) a. by §2, ch. 61-119; (5) (b) a. by §2, ch. 61-208.
Note.—Similar provisions found in former §205.43.
cf.—§634.221, Automobile warranty administration trust fund.

624.0321 Enforcement trust fund.—

(1) There is continued in the state treasury that fund heretofore created and designated "insurance commissioner's enforcement trust fund" into which all fines, monetary penalties, and costs imposed upon persons by the commissioner as authorized by law for violation of the laws of this state shall be deposited, and any sums received for copies of the stenographic record of hearings, and from which payment for costs of investigations, including salaries, travel expenses, supplies and equipment, and the expenses of hearings may be made.

(2) The commissioner is authorized from time to time also to make deposits to the credit of this fund from moneys appropriated for the operation of his office. Whenever the balance in the fund exceeds twenty-five thousand dollars, the funds appropriated for the operation of the commissioner's office shall be reimbursed to the extent of the amount so paid therefrom into the enforcement trust fund. If after making such reimbursement the amount remaining in the enforcement trust fund still exceeds twenty-five thousand dollars, the amount of such excess shall be paid into the general revenue fund of the state.

History.—§95, ch. 59-205; §2, ch. 61-119.
Note.—Similar provisions found in former §§626.28, 626.31.

624.0322 Valuation services trust fund.— There is created in the state treasury a fund designated "insurance commissioner's valuation services trust fund" to which shall be credited all payments received by the commissioner on account of actuarial and other services in the valuation or computation of the reserves of life insurers pursuant to §625.121(2) (standard valuation law). Such fund shall be used for or toward payment of the costs of providing such services.

History.—§96, ch. 59-205; §2, ch. 61-119.

624.0323 License receipts trust fund.—

(1) There is created in the state treasury a continuing fund designated "insurance commissioner's license receipts trust fund" to which shall be credited all payments received on account of items provided for under respective provisions of §624.0300, as follows:

(a) Subsection (5) (c) (nonresident agents);

(b) Subsection (6) (b) (nonresident agents);

(c) Subsection (7) (b) (nonresident agents);
(d) Subsection (10) (vending machines);
(e) Subsection (11) (surplus lines agent);
(f) Subsection (12) (a) (adjusters);
(g) Subsection (12) (b) (nonresident adjusters);
(h) Subsection (14) (temporary license), and
(i) Subsection (18) (rating organizations).

(2) Such continuing fund shall be used by the commissioner to assist in defraying the cost of operation of his office.

History.—§97, ch. 59-205; (1) a. by §2, ch. 61-119.

624.0324 Miscellaneous service trust fund.—

(1) There is created in the state treasury a continuing fund designated "insurance commissioner's miscellaneous service trust fund" to which shall be credited all payments received on account of special "license continuation fees" or "permit continuation fees" provided for in part I of chapter 626 (licensing procedure law) and of items provided for under respective provisions of §624.0300, as follows:
(a) Subsection (1) (a) (filing application for original certificate of authority);
(b) Subsection (1) (b) (reinstatement fee);
(c) Subsection (2) (charter documents of insurer);
(d) Subsection (4) (annual statement of insurer);
(e) The "appointment fee" portion of any license or permit provided for under the following:
1. Subsection (5), (insurance representatives, property, marine, casualty and surety) exclusive of paragraph (d) (service representatives);
2. Subsection (6) (life insurance agents);
3. Subsection (7) (disability insurance agents);
4. Subsection (8) (limited licenses);
5. Subsection (9) (fraternal benefit society agents);
6. Subsection (12) (c) (emergency adjuster permit);
7. Subsection (12) (d) (claims investigator permit); and
(f) Subsection (12) (e) (fee to cover cost of credit report);
(g) Subsection (13) (examination for license);
(h) Subsection (15) (reissuance, reinstatement, modification, etc. of license or permit);
(i) Subsection (17) (filing application for permit to form insurer); and
(j) Subsection (19) (miscellaneous services);

(2) This continuing fund shall likewise be credited with all sums received under the following sections:
(a) Section 624.0107 (4) (copies of rules and regulations);
(b) Section 624.0108 (4) (copies of notices);
(c) Section 624.0203 (6) (additional filing fee, previously unauthorized insurers);
(d) Section 624.0228, as provided in subsection (7) thereof;
(e) Section 626.711 (retaliatory provision, agents) as provided in subsection (1) thereof;
(f) Section 626.0529 (surplus lines tax); and
(g) Section 626.0535 (taxes and interest on independently procured coverages).

(3) Such continuing fund shall be used by the commissioner to assist in defraying the cost of operation of his office.

History.—§98, ch. 59-205; (1) a. by §2, ch. 61-119.
Note.—Similar provisions found in former §§205.45, 632.18, 634.05, 644.05.

PART V

KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

624.0400 Definitions not mutually exclusive.—It is intended that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in part V of this chapter, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage is likewise reasonably includable.

History.—§99, ch. 59-205.

624.0401 Life insurance, life insurer defined.—

(1) Life insurance is insurance of human lives. The transaction of life insurance includes also the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. Life insurance does not include workmen's compensation coverages.

(2) Every insurer, including sick and funeral benefit associations, engaged in the business of issuing life insurance or annuity contracts, including contracts of combined life, health and accident insurance, the reserve funds of which for the fulfillment of such contracts comprises more than fifty per cent of its total reserve funds, or such other reserves as may be required under any law or regulation

of the United States, now or hereafter in force, is a "life insurer" or "life insurance company."

History.—§100, ch. 59-205.

Note.—Similar provisions found in former §625.01.

624.0402 Disability insurance defined.—Disability insurance is insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Disability insurance does not include workmen's compensation coverages.

History.—§101, ch. 59-205.

Note.—Similar provisions found in former §§642.04, 644.01.

624.0403 Property insurance defined.—Property insurance is insurance on real or personal property of every kind and of every interest therein, whether on land, water or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. Property insurance does not include title insurance, as defined in §624.0407.

History.—§102, ch. 59-205.

Note.—Similar provisions found in former §632.08.

624.0404 Casualty insurance defined.—

(1) Casualty insurance includes:

(a) *Vehicle insurance.*—Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal; and as to land vehicles, insurance providing for medical, hospital, surgical, and disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, if such insurance is issued as a part of a liability insurance contract.

(b) *Liability insurance.*—Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; with provision for medical, hospital and surgical benefits to the injured persons, irrespective of legal liability of the insured, when issued as a part of a liability insurance contract.

(c) *Workmen's compensation and employer's liability.*—Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees.

(d) *Burglary and theft.*—Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause.

(e) *Personal property floater.*—Insurance upon personal effects against loss or damage from any cause under a personal property floater.

(f) *Glass.*—Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings.

(g) *Boiler and machinery.*—Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured; together with provision for medical, hospital and surgical benefits to the injured persons, irrespective of legal liability of insured, when issued as an incidental coverage which is part of a liability insurance contract.

(h) *Leakage and fire extinguishing equipment.*—Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hose, pumps, and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against such loss or damage to such sprinklers, hose, pumps, and other fire extinguishing equipment or apparatus.

(i) *Credit.*—Insurance against loss or damage resulting from failure of debtors to pay their obligations to the creditor, except insurance against loss or damage resulting from death or disability of the debtor.

(j) *Malpractice.*—Insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, arising out of the death, injury, or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service.

(k) *Livestock.*—Insurance against loss or damage to livestock, and services of a veterinary for such animals.

(l) *Elevator.*—Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspections of and issue certificates of inspection upon, elevators; together with provision for medical, hospital and surgical benefits to the injured persons, irrespective of legal liability of the insured, when issued as an incidental coverage which is part of a liability insurance contract.

(m) *Entertainments.*—Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition

against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals.

(n) *Failure of certain institutions to record documents.* — Insurance indemnifying banks, bankers, trust companies, and credit unions against loss from failure or omission to record as public records chattel mortgages and liens of every kind upon personal property, given, held, delivered, or possessed as security or collateral for loans, advances, debts, or obligations of all kinds, provided that such insurance shall not indemnify intentional omission to comply with §319.15 relating to the recording of liens upon motor vehicles, nor to the intentional omission to record mortgages upon real property.

(o) *Failure to file certain personal property instruments.*—With respect to persons and institutions other than those referred to in paragraph (n) above, insurance against loss resulting from failure to file or record written instruments affecting the title of or creating a lien upon personal property.

(p) *Miscellaneous.*—When first approved by the commissioner as not being contrary to law or public policy nor covered by any other kind of insurance as defined in the code, insurance against liability for any other kind of loss or damage to person or property, properly a subject of insurance and not within any other kind of insurance as defined in this code.

(2) Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, as part of other insurance as stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary and theft), (g), (boiler and machinery), or (l) (elevator) of subsection (1) shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life or disability insurances.

History.—§103, ch. 59-205.
Note.—Similar provisions found in former §§630.01, 632.08, 642.09.

624.0405 Surety insurance defined.—Surety insurance includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against check alteration and forgery, and against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furniture, furnishings, fixtures, equipment, safes, and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

History.—§104, ch. 59-205.
Note.—Similar provisions found in former §630.01.

624.0406 Marine, wet marine and transportation insurance defined.—

(1) "Marine insurance" includes:

(a) Insurance against any kinds of loss or damage to:

1. Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

2. Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles), and

3. Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

4. Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks.

(b) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft

or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(2) For the purposes of this code, "wet marine and transportation" insurance is that part of "marine" insurance which includes only:

(a) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

(b) Insurance of marine builders' risks, marine war risks and contracts of marine protection and indemnity insurance;

(c) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and

(d) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or tranportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto.

History.—§105, ch. 59-205.
Note.—Similar provisions found in former §629.02.

624.0407 Title insurance defined.—Title insurance is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.

History.—§106, ch. 59-205.

624.0408 Limit of risk.—

(1) No insurer shall retain any risk on any one subject of insurance, either as the direct insurer or the reinsurer, whether located or to be performed in this state or elsewhere, in an amount exceeding ten per cent of its surplus to policyholders, except as provided in subsection (5) of this section.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of such other hazard insured against.

(3) Reinsurance ceded as authorized by §624.0409 shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of the amount assumed by any established incorporated co-surety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, other than insurers domiciled in Canada, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

(5) As to fire insurance covering risks adequately protected by automatic sprinklers or risks principally of noncombustible construction and occupancy, the insurer may retain risk as to any one such subject of insurance in an amount not exceeding twenty-five per cent of the sum of its unearned premium reserve applicable to property insurance policies, and its surplus to policyholders.

(6) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the commissioner, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(7) This section shall not apply to life insurance, disability insurance, annuity contracts, title insurance, insurance of wet marine and transportation insurance risks, workmen's compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

(8) Limits of risk as to newly formed domestic mutual insurers is provided in §628.161.

History.—§107, ch. 59-205.
Note.—Similar provisions found in former §§628.05, 631.17.

624.0409 Reinsurance.—

(1) An insurer may accept reinsurance only of such risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) An insurer may reinsure all or any part of any particular risk with an insurer authorized to transact insurance in this state or approved or accepted by the commissioner for the purpose of such reinsurance. The commissioner shall not so approve any proposed reinsurance which he finds would be contrary to the proper interests of the policyholders or stockholders of a ceding domestic insurer, or which is in violation of §624.0203(5) ("fronting company").

This subsection shall not apply as to retrocessions of insurance by an assuming insurer which handles a substantial volume of reinsurance, unless such retrocessions are found by the commissioner, after hearing, to be for the purpose of evasion of other requirements or prohibitions of this code.

(3) No credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(4) Upon request of the commissioner, a ceding insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(5) No authorized insurer shall knowingly accept as assuming reinsurer any risk covering a subject of insurance resident, located or to be performed in Florida and written direct by any insurer not then authorized to transact such insurance in this state, other than as to surplus line insurance lawfully written under part VI of chapter 626.

(6) This section does not apply to title insurance or to wet marine and transportation insurance.

History.—§108, ch. 59-205.

Note.—Similar provisions found in former §§626.10, 627.0107, 631.11, 631.17, 632.08.

CHAPTER 625

INSURANCE CODE; ACCOUNTING, INVESTMENTS AND DEPOSITS

PART I ASSETS AND LIABILITIES

PART II INVESTMENTS

PART III ADMINISTRATION OF DEPOSITS

PART I

ASSETS AND LIABILITIES

625.012 Assets defined.—In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

(2) Investments, securities, properties and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of eighteen months be allowed as an asset.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(g) The unaccrued portion of taxes paid prior to the due date on real property.

(3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

(5) Premiums in the course of collection, other than for life insurance, not more than three months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which such premiums apply.

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under §624.0409.

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him.

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall

be amortized in full over a period not to exceed ten calendar years.

(12) All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the national association of insurance commissioners or its successor organization for the kinds of insurance to be reported upon therein.

(13) Other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

History.—§109, ch. 59-205.

625.021 Assets as deductions from liabilities.—Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner, or otherwise in his discretion.

History.—§110, ch. 59-205.

625.031 Assets not allowed.—In addition to assets impliedly excluded by the provisions of §625.012, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Good will, trade names and other like intangible assets.

(2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents and other persons on personal security only.

(3) Stock of such insurer, owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit.

(4) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies (other than data processing and accounting systems authorized under §625.012 (11), except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in under §625.0129 and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to part II of this chapter, or which is acquired through foreclosure of chattel mortgages acquired pursuant to §625.0128, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code.

History.—§111, ch. 59-205.

625.041 Liabilities, in general.—In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any.

(2) The amount, estimated consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

(3) With reference to life and disability insurance and annuity contracts:

(a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto.

(b) Reserves for disability benefits, for both active and disabled lives.

(c) Reserves for accidental death benefits.

(d) Any additional reserves which may be required by the commissioner consistent with practice formulated or approved by the national association of insurance commissioners or its successor organization, on account of such insurance.

(4) With reference to insurance other than specified in subsection (3) of this section, and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with part I of this chapter.

(5) Taxes, expenses and other obligations due or accrued at the date of the statement.

History.—§112, ch. 59-205.
Note.—Similar provisions found in former §§626.11, 626.111, 628.06, 635.30.

625.051 Unearned premium reserve.—

(1) As to insurance against loss or damage to property (except as provided in §625.061), and as to all general casualty insurance and surety insurance, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent insurers as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for which policy was written	Reserve for unearned premium
1 year or less	1/2
2 years	1st year 3/4
	2nd year 1/4
3 years	1st year 5/6
	2nd year 1/2
	3rd year 1/6

4 years	1st year 7/8
	2nd year 5/8
	3rd year 3/8
	4th year 1/8
5 years	1st year 9/10
	2nd year 7/10
	3rd year 1/2
	4th year 3/10
	5th year 1/10
Over 5 years	pro rata

(3) In lieu of computation according to the foregoing table, the insurer at its option may compute all of such reserves on a monthly or more frequent pro rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the public insurance supervisory official of the state of domicile.

(5) This section does not apply to title insurance.

History.—§113, ch. 59-205.
Note.—Similar provisions found in former §§626.11, 628.06, 632.15.

625.061 Unearned premium reserve for marine and transportation insurance.—As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the commissioner may require the insurer to carry a reserve equal to one hundred per cent of premiums on trip risks written during the month ended as of the date of statement.

History.—§114, ch. 59-205.

625.071 Special reserve for bail and judicial bonds.—In lieu of the unearned premium reserve required on surety bonds under §625.051, the commissioner may require any surety insurer or limited surety insurer to set up and maintain a reserve on all bail bonds or other single premium bonds without definite expiration date, furnished in judicial proceedings, equal to twenty-five per cent of the total consideration charged for such bonds as are outstanding as of the date of any current financial statement of the insurer.

History.—§115, ch. 59-205.
Note.—Similar provisions found in former §626.111.

625.081 Reserve for disability insurance.—For all disability insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies.

History.—§116, ch. 59-205.

625.091 Loss reserves, liability insurance and workmen's compensation.—Where called for by the form of annual statement required of the insurer, the reserve for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable, shall be computed as follows:

(1) For all liability suits being defended under policies written more than:

(a) Ten years prior to the date as of which the statement is made, fifteen hundred dollars for each suit.

(b) Five or more and less than ten years prior to the date as of which the statement is made, one thousand dollars for each suit.

(c) Three or more and less than five years prior to the date as of which the statement is made, eight hundred fifty dollars for each suit.

(2) For all liability policies written during the three years immediately preceding the date as of which the statement is made, the reserve shall be sixty per cent of the earned liability premiums of each of such three years less all losses and expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall for the first of such three years be not less than seven hundred fifty dollars for each outstanding liability suit on such year's policies.

(3) For all workmen's compensation claims under policies written more than three years prior to the date as of which the statement is made, the reserve shall be the present value at four per cent interest of the determined and the estimated future payments.

(4) For all workmen's compensation claims under policies written in the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five per cent of the earned compensation premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years. But in any event in the case of the first year of any such three-year period, such reserve shall be not less than the present value at four per cent interest of the determined and the estimated unpaid compensation claims under policies written during such year.

History.—§117, ch. 59-205.

625.101 Increase of inadequate loss reserves.—If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such additional amount as is needed to make them adequate. This section does not apply as to life insurance.

History.—§118, ch. 59-205.

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses as required under §625.041, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(1) Ten per cent of the total amount of risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(2) During each of the twenty years next following the year in which the title insurance contract was issued, the reserve applicable to the contract may be reduced by five per cent of the original amount of such reserve.

(3) Except, that if the title insurer is a business trust, in lieu of the reserves required under subsections (1) and (2) of this section, the insurer shall maintain at all times a reserve of not less than thirty cents per one thousand dollars of the face amount of all title guarantees and policies issued during the last preceding ten years.

(4) And except, that if the title insurer is a trust company incorporated under the laws of Florida, the reserves required under subsections (1) and (2) of this section shall be reduced by the amount required by the Florida banking code to be transferred to surplus by such company.

History.—§119, ch. 59-205.

625.121 Standard valuation law; life insurance.—

(1) This section shall be known as the standard valuation law.

(2) ANNUAL VALUATION.—The commissioner shall annually value, or cause to be valued, the reserve liabilities hereinafter called reserves for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods net level premium method or others used in the calculation of such reserves. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States. In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. He may accept in his discretion the insurer's calculation of such reserves. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, he may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided, and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. Where any such valuation is made by the commissioner, he may use the actuary of the department or employ an actuary for the purpose, and the reasonable compensation of the actuary, at a rate approved by the commissioner, and reimbursement of traveling expenses pursuant to §624.0119 upon demand by the commissioner supported by an itemized statement of such compensation and expenses, shall be paid by the insurer. When a domestic insurer furnishes the commissioner with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for the purpose by the commissioner, the valuation shall be verified by the actuary of the department without cost to the insurer.

(3) The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of §627.0225 (standard nonforfeiture law) shall be any basis satisfactory to the commissioner. Any basis satisfactory to the commissioner on the effective date of this code shall be deemed to meet such minimum standards.

(4) The minimum standard for the valuation of all such policies and contracts issued on or after the operative date of §627.0225 (standard nonforfeiture law) shall be the commissioner's reserve valuation method defined in subsection (5) of this section, three and one-half per cent interest and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioners' 1958 standard ordinary mortality table; except, that for any category of such policies issued on female risks modified net premiums and present values, referred to in subsection (5) of this section, may be calculated according to an age not more than three years younger than the actual age of the insured.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 standard industrial mortality table.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either such tables or, at the option of the insurer, the class three disability table (1926); and for poli-

cies issued prior to January 1, 1961, the class three disability table (1926). Any such table for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 accidental death benefits table; for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the sub-standard basis and other special benefits, such tables as may be approved by the commissioner as being sufficient with relation to the benefits provided by such policies.

(5) COMMISSIONERS' RESERVE VALUATION METHOD.—

(a) Reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of 1. over 2. as follows:

1. A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

2. A net one-year term premium for such benefits provided for in the first policy year.

(b) Reserves according to the commissioners' reserve valuation method for:

1. Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,

2. Annuity and pure endowment contracts,

3. Disability and accidental death benefits in all policies and contracts, and

4. All other benefits, except life insurance and endowment benefits in life insurance policies,

shall be calculated by a method consistent with the principles of subsection (5) (a) of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(6) MINIMUM AGGREGATE RESERVES.—In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of §627.0225, be less than the aggregate reserves calculated in accordance with the method set forth in subsection (5) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(7) OPTIONAL RESERVE BASIS.—

(a) Reserves for all policies and contracts issued prior to the operative date of §627.0225 may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(b) For any category of policies, contracts or benefits specified in subsection (4) of this section, issued on or after the operative date of §627.0225 (the standard nonforfeiture law), reserves may be calculated, at the option of the insurer, according to any standard or standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein, provided, however, that reserves for participating life insurance policies issued on or after the operative date of §627.0225 (the standard nonforfeiture law) may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half of one per cent, the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner approves.

(8) LOWER VALUATIONS.—An insurer which at any time had adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(9) DEFICIENCY RESERVE.—If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

(10) This section does not apply as to those credit life insurance policies for which reserves are computed and maintained as required under §625.131.

History.—§120, ch. 59-205; (4) a., and (g) n. by §1, (5) (b) a. §2, ch. 61-106; (2) §17, ch. 63-400.
Note.—Similar provisions found in former §§626.11, 635.10, 635.19.

625.131 Credit life and disability policies, special reserve bases.—

(1) The minimum reserve for single premium credit disability insurance, monthly premium credit life insurance and monthly premium credit disability insurance shall be the unearned gross premium.

(2) As to single premium credit life insurance policies, the insurer shall establish and maintain reserves which are not less than the value, at the valuation date, of the risk for the unexpired portion of the period for which the premium has been paid as computed on the basis of the commissioners' 1941 standard ordinary mortality table and three per cent interest. At the commissioner's discretion, the insurer may make a reasonable assumption as to the ages at which net premiums are to be determined. In lieu of the foregoing basis, reserves based upon unearned gross premiums may be used at the option of the insurer.

History.—§121, ch. 59-205.
Note.—Similar provisions found in former §§646.03, 646.04.

625.141 Valuation of bonds.—

(1) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

(2) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section, but no such method or valuation shall be inconsistent with any applicable valuation or method used by insurers in general, or any such method then currently formulated or approved by the national association of insurance commissioners or its successor organization.

History.—§122, ch. 59-205.
Note.—Similar provisions found in former §635.09.

625.151 Valuation of other securities.—

(1) Securities, other than those referred to in §625.141, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of valuation as he may approve.

(3) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under part II of chapter 625 for investment of the funds of the insurer direct.

(4) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the national association of insurance commissioners or its successor organization.

History.—§123, ch. 59-205.

625.161 Valuation of property.—

(1) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal and accrued interest of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than three years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.

(3) Personal property acquired pursuant to chattel mortgages made in accordance with §625.0128 shall not be valued at an amount greater than the unpaid balance of principal and accrued interest on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with such

acquisition, or the fair value of such property, whichever amount is the lesser.

History.—§124, ch. 59-205.

625.171 Valuation of purchase money mortgages.—Purchase money mortgages on real property referred to in §625.161(1) shall be valued in an amount not exceeding the acquisition cost to the insurer of real property covered thereby or ninety per cent of the fair value of such real property, whichever is less.

History.—§125, ch. 59-205.

PART II

INVESTMENTS

625.0100 Scope of part II.—Except as to §625.0139, part II of this chapter shall apply to domestic insurers only.

History.—§126, ch. 59-205.

625.0101 Eligible investments.—

(1) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in part II of this chapter.

(2) Any particular investment held by an insurer on the effective date of this code, and which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately prior to such effective date, shall be deemed to be an eligible investment.

(3) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (2) of this section.

(4) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of December 31 next preceding date of acquisition of the investment by the insurer, or as shown by a current financial statement of the insurer.

History.—§127, ch. 59-205.

Note.—Similar provisions found in former §§632.14, 635.27, 635.32, 635.33.

625.0102 General qualifications.—

(1) No security or investment (other than real and personal property acquired under §625.0132 or §625.0134) shall be eligible for acquisition unless it is interest bearing or interest accruing or dividend or income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(2) No security or investment shall be eligible for purchase at a price above its market value.

(3) No provision of part II of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under part II of this chapter shall be disposed of pursuant to §625.0136 if real property or pursuant to §625.0137 if personal property or securities.

History.—§128, ch. 59-205.

625.0103 Authorization of investment.—An insurer shall not make any investment or loan (other than policy loans or annuity contract loans of a life insurer) unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan. The minutes of any such committee shall be recorded and regu-

lar reports of such committee shall be submitted to the board of directors.
History.—§129, ch. 59-205.

625.0104 Diversification.—

(1) Every domestic insurer must have and keep to the extent of an amount equal to its entire reserve, as required under part I of chapter 625, and entire capital (if a stock insurer) or surplus (if a mutual or reciprocal insurer), equal to the minimum surplus required to be maintained by the insurer under this code invested in coin or currency of the United States, on hand or on deposit in any national or state bank or trust company, and in investments as authorized under part II of this chapter, including investments under §625.0132 (1) (a), other than the investments authorized under any of the following sections:

(a) Section 625.0130 (special consent investments);

(b) Section 625.0132 (real estate, in general, except as to subsection (1) (a));

(c) Section 625.0133 (real estate for leasing);

(d) Section 625.0134 (real estate for employee facilities).

(2) Except, that particular categories of investments eligible under subsection (1) of this section, are subject to the following limitations (except as to investments acquired pursuant to §625.0130 (special consent investments)):

(a) No life insurer may invest more than ten per cent of its admitted assets in stocks authorized under §625.0123 (corporate stocks);

(b) No life insurer may invest more than three per cent of its admitted assets in the stock or shares, authorized under §625.0123 (corporate stocks), of any one corporation;

(c) To such other limitations, if any, as may be expressly provided for in the section under which the investment is authorized.
History.—§130, ch. 59-205.
Note.—Similar provisions found in former §§625.16, 626.04, 632.07, 635.27.

625.0105 Cash and deposits.—An insurer may have funds in coin or currency of the United States, on hand or on deposit in any solvent national or state bank or trust company.
History.—§131, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0106 United States government obligations.—An insurer may invest in bonds, notes, warrants and other evidences of indebtedness which are direct obligations of the government of the United States or for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest.
History.—§132, ch. 59-205.
Note.—Similar provisions found in former §§626.25, 635.27.

625.0107 Loans guaranteed by the United States.—An insurer may invest in loans insured or guaranteed as to principal and interest by the government of the United States, or by any agency or instrumentality of the government of the United States, to the extent of such insurance or guaranty.
History.—§133, ch. 59-205.

625.0108 State and Canadian public obligations.—An insurer may invest in bonds, notes, warrants and other securities not in default which are the direct obligations of any state of the United States or of the District of Columbia, or of the government of Canada or any province thereof, or for which the full faith and credit of such state, district, government or province has been pledged for the payment of principal and interest.
History.—§134, ch. 59-205.
Note.—Similar provisions found in former §§626.25, 635.27.

625.0109 County, municipal and district obligations.—An insurer may invest in bonds, notes, warrants and other securities not in default of any county, district, incorporated city, or school district in any state of the United States, or the District of Columbia, or in any province of Canada, which are the direct obligations of such county, district, city, or school district and for payment of the principal and interest of which the county, district, city, or school district has lawful authority to levy taxes or make assessments.
History.—§135, ch. 59-205.
Note.—Similar provisions found in former §§626.25, 635.27.

625.0110 Public improvement bonds. — An insurer may invest in bonds, notes, certificates of indebtedness, warrants, or other evidence of indebtedness, which are payable from revenues or earnings specifically pledged therefor of any public toll bridge, structure or improvement owned by any state, incorporated city, or legally constituted public corporation or commission, all within the United States, for the payment of the principal and interest of which a lawful sinking fund has been established and is being maintained, and if no default on the part of the issuer in payment of principal or interest has occurred on any of its bonds, notes, warrants or other securities, within five years prior to the date of investment therein.
History.—§136, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0111 Public utility obligations.—An insurer may invest in the bonds, notes, certificates of indebtedness, warrants or other evidence of indebtedness which are valid obligations issued, assumed or guaranteed by the United States or any state thereof or by any county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit thereof, if by statute or other legal requirements such obligations are payable as to both principal and interest from revenues or earnings from the whole or any part of any utility supplying water, gas, sewage disposal facility or electricity or any other public service, including but not limited to toll roads and toll bridges.
History.—§137, ch. 59-205.
Note.—Similar provisions found in former §626.25.

625.0112 Securities of certain federal agencies.—An insurer may invest in bonds, debentures or other securities of the following agencies of the government of the United States,

whether or not such obligations are guaranteed by such government:

(1) Commodity credit corporation.

(2) Federal national mortgage association, and stock thereof when acquired in connection with sale of mortgage loans to such association.

(3) Federal land banks, issued under provisions of the act of congress entitled the "federal farm loan act" and approved July 17, 1916, and any acts amendatory or supplementary to that act.

(4) Any federal home loan bank, issued under provisions of the act of congress entitled "federal home loan bank act" and approved July 22, 1932.

(5) The home owners' loan corporation, created by the act of congress entitled "home owners' loan act of 1933," and approved June 13, 1933.

(6) Federal intermediate credit banks, created by the act of congress entitled "agricultural credits act of March 4, 1923."

(7) Central bank for cooperatives and regional banks for cooperatives organized under the farm credit act of 1933, or by any of such banks.

(8) Any other similar agency of the government of the United States and of similar financial quality.

History.—§138, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0113 Public housing obligations. — An insurer may invest in the bonds, debentures or other securities of public housing authorities, issued under the provisions of the act of congress entitled the "housing act of 1949" and approved July, 1949; the municipal housing commission act or the "rural housing commission act," and any additional amendments, or issued by any public housing authority or agency in the United States, if such bonds, debentures, or other securities are secured by a pledge of annual contributions to be paid by the United States or any agency thereof.

History.—§139, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0114 Obligations of state board of education.—An insurer may invest in bonds or motor vehicle anticipation certificates issued by the state board of education of Florida under authority of §18, Art. XII of the constitution of the state.

History.—§140, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0115 International bank. — An insurer may invest in obligations issued, assumed or guaranteed by the international bank for reconstruction and development.

History.—§141, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0116 Corporate bonds and debentures. —An insurer may invest in bonds, notes, or other interest bearing or interest accruing obligations of any solvent corporation organized under the laws of the United States or of Canada, or under the laws of any state, District of Columbia, territory or possession of the United States or of any province of Canada.

History.—§142, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0117 Religious institution obligations.— An insurer may invest in secured or unsecured obligations of duly constituted churches and of church holding companies.

History.—§143, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0118 Equipment trust certificates.—An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, and the right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such transportation equipment.

History.—§144, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0119 Building and loan, savings and loan.—To the extent that such an investment or account is insured by the federal savings and loan insurance corporation, an insurer may invest in share or saving accounts of savings and loan associations or building and loan associations.

History.—§145, ch. 59-205.
Note.—Similar provisions found in former §§626.25, 635.27.

625.0120 Policy loans.—A life insurer may lend to its policyholder upon pledge of the policy as collateral security, any sum not exceeding the cash loan value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

History.—§146, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0121 Collateral loans.—An insurer may invest in loans with a maturity not in excess of five years from the date thereof which are secured by pledge of securities eligible for investment under this chapter, or by the pledge or assignment of life insurance policies issued by other insurers authorized to transact insurance in this state. On the date made, no such loan shall exceed in amount eighty per cent of the market value of the collateral pledged, except that loans upon pledge of United States government bonds and loans upon the pledge or assignment of life insurance policies shall not exceed ninety-five per cent of the market value of the bonds or the cash surrender value of the policies pledged.

History.—§147, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0122 Ship loans.—An insurer may invest in:

(1) Bonds, notes or other evidences of in-

debtedness which are secured by mortgages on barges, tugboats, ships or other shipping vessels if payment of such indebtedness or part thereof is insured by the secretary of commerce under the terms of the federal ship mortgage insurance act, as amended.

(2) Bonds, notes or other evidences of indebtedness which are secured by mortgages on barges, tugboats, ships or other shipping vessels which are under lease or charter party to a solvent institution whose fixed interest obligations, if any, would be eligible investments under §625.0116 (corporate obligations), and if such lease or charter party is assigned as additional security for such bonds, notes or other evidences of indebtedness.

History.—§148, ch. 59-205.

625.0123 Corporate stocks.—An insurer may invest in dividend-paying stocks, common or preferred, of any corporation created or existing under the laws of the United States or of any state.

History.—§149, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0124 Stocks of subsidiaries.—With the commissioner's consent an insurer may invest in the stock of its substantially wholly-owned subsidiary insurer corporation. All of the insurer's investments under this section, together with its investments in other insurance stocks under §625.0123, shall not at any time exceed the amount of the investing insurer's surplus in excess of its surplus required to be maintained, if a life insurer, or its surplus to policyholders if other than a life insurer.

History.—§150, ch. 59-205.

625.0125 Foreign investments.—An insurer authorized to transact insurance in a foreign country may have funds invested in such securities as may be required for such authority and for the transaction of such business. Canadian securities eligible for investment under other provisions of part II of this chapter are not subject to this section.

History.—§151, ch. 59-205.
Note.—Similar provisions found in former §635.27.

625.0126 Mortgage loans.—

(1) An insurer may invest any of its funds in bonds, notes or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada, or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than forty years (inclusive of the term or terms which may be provided by enforceable options of renewal) in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon such real property, and there must not be any condition or right of re-entry or forfeiture not insured against, under which, in the case of real property other than leaseholds, such lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments or other similar charges not yet delinquent. This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under §625.0125 (foreign investments).

(2) "Improved real estate" means all farm lands used for tillage, crop or pasture, timberlands, and all real estate on which permanent improvements, and improvements under construction or in process of construction, suitable for residence, institutional, commercial or industrial use are situated.

(3) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(a) Seventy-five per cent of the value of the real property or leasehold securing the same in the case of mortgages on dwellings primarily intended for occupancy by not more than two families or sixty-six and two thirds per cent of such value in the case of other real estate mortgages; or

(b) The amount of any insurance or guaranty of such loan by the United States or by any agency or instrumentality thereof; or

(c) The percentage of value limit to amount of the loan as applicable under paragraph (a) of this subsection, plus the amount by which the excess of such loan over such percentage of value limit is insured or guaranteed by the United States or by any agency or instrumentality thereof.

Except, that in the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.

History.—§152, ch. 59-205.
Note.—Similar provisions found in former §§625.16, 626.04, 635.27.

625.0127 Same; renewal or extension.—Nothing in §625.0126 or in part II of this chapter shall be deemed to prohibit an insurer from renewing or extending a loan for the original or a lesser amount where a shrinkage in value of the real estate securing the loan would cause its value to be less than the amount otherwise required in relation to the amount of the loan.

History.—§153, ch. 59-205.

625.0128 Chattel mortgages.—

(1) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to §625.-0126, an insurer may lend or invest an amount not exceeding twenty per cent of the amount loaned on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than five years, and

representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) For the purposes of this section, the term "durable equipment" shall include only mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses and hotels, room furniture and furnishings.

(3) Prior to the acquisition of a chattel mortgage hereunder, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(4) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under part II of this chapter.

History.—§154, ch. 59-205.

625.0129 Special investments by title insurer.—

(1) In addition to other investments eligible under part II of this chapter, a title insurer may invest and have invested an amount not exceeding fifty per cent of its paid-in capital stock in its abstract plant and equipment, loans secured by mortgages on abstract plants and equipment, and, with the commissioner's consent, in stocks of abstract companies. If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be pro rated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance; but the capital so assigned to title insurance shall in no event be less than one hundred thousand dollars.

(2) Subsection (1) of this section, shall not apply to a business trust insurer. Such an insurer may invest and have invested not exceeding fifty per cent of its net trust fund in excess of the reserve provided for under §625.111 in abstract plants, stock in abstract companies or corporations controlled by the business trust and created for developing and servicing abstract plants.

(3) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under §625.111.

History.—§155, ch. 59-205.

625.0130 Special consent investments.—After satisfying requirements of part II of this chapter any funds of any domestic insurer in excess of its reserves and capital (if a stock insurer) or surplus required to be maintained (if a mutual or reciprocal insurer) may be invested without limitation in any investments otherwise authorized by this code, and, in addition, in such other investments as may be approved by the commissioner.

History.—§156, ch. 59-205.
Note.—Similar provisions found in former §§635.27, 635.31.

625.0131 Prohibited investments and investment underwriting.—

(1) In addition to investments excluded pursuant to other provisions of this code, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:

(a) Issued shares of its own capital stock, except for the purpose of mutualization under §628.431, or in connection with a plan approved by the commissioner for purchase of such shares by the insurer's officers, employees or agents. No such stock shall, however, constitute an asset of the insurer in any determination of its financial condition.

(b) Except with the consent of the commissioner, securities issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under §625.0124 shall not be subject to this provision.

(c) Any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the insurer, except as to policy loans authorized under §625.0120.

(2) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

History.—§157, ch. 59-205.
Note.—Similar provisions found in former §635.29.

625.0132 Real estate, in general.—

(1) An insurer shall not directly or indirectly acquire or hold real estate except as authorized in this section and in §§625.0133 through 625.0135. An insurer may acquire and hold:

(a) Such land and buildings thereon used or acquired for use as its principal home office and branch offices for the convenient transaction of its own business.

(b) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees or debts previously owing to the insurer, in the course of its business.

(c) Real property acquired in part payment of the consideration on the sale of other real property owned by it, if such transaction effects a net reduction in the insurer's investment in real estate.

(d) Real property acquired by gift or devise, or through merger, consolidation, or bulk reinsurance of another insurer under this code.

(e) Additional real property and equipment incident to real property, if necessary or convenient for the enhancement of the marketability or sale value of real property previ-

ously acquired or held by it under paragraphs (b) through (d), of this subsection, but subject to the prior written approval of the commissioner.

(2) The amount invested by an insurer in home office and branch office property under subsection (1) (a), shall not exceed ten per cent of the insurer's admitted assets, but the commissioner may grant permission to the insurer to invest in real property for such purpose in such increased amount as he may deem proper upon a hearing held by him thereon.

History.—§158, ch. 59-205.
Note.—Similar provisions found in former §635.28.

625.0133 Real estate for leasing.—

(1) An insurer may acquire and hold real property for the purpose of leasing the same to any person, firm or corporation, or real property already leased, under the following conditions:

(a) That there has already been erected on the property a building or other improvements satisfactory to the purchaser, or

(b) That the lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor, or

(c) That the lessor under the terms and conditions of a lease for a period of not less than twenty-five years from date of lease executed and entered into simultaneously with the purchase of the property agrees to erect a building or other improvements on the property;

(d) That the improvements shall remain on the property during the period of the lease, and in cases where the improvements are put upon the property at the cost of the lessee title to the improvements at the termination of the lease shall vest, free of liens, in the owner of the real estate;

(e) That during the term of the lease the tenant shall keep and maintain the improvements in good repair.

(2) Real property acquired pursuant to this section shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of subsection (1); nor shall real estate acquired pursuant to this section be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by equal decrements sufficient to write off at least seventy-five per cent of the investment at the normal termination of the lease or at the end of thirty years should the term of the lease be for a longer period.

(3) The total investments of any insurer under this section shall not exceed four per cent of its assets, nor more than fifty per cent of its capital and surplus, whichever is less.

History.—§159, ch. 59-205.
Note.—Similar provisions found in former §635.28.

625.0134 Real estate for employee facilities. —Subject to prior approval of the commissioner, an insurer may acquire and hold real property for recreation, hospitalization, convalescence and retirement purposes of its employees. All investments under this section shall not exceed five per cent of the insurer's surplus; or if a mutual or reciprocal insurer, all such investments shall not exceed five per cent of the surplus in excess of the surplus required to be maintained under this code for its authority to transact insurance.

History.—§160, ch. 59-205.
Note.—Similar provisions found in former §635.28.

625.0135 Real estate; limits of investments. —No investment in real property shall be made by any insurer pursuant to §625.0133 (real estate for leasing) or §625.0134 (real estate for employee facilities) which will cause the insurer's investment in all real property owned or held by it directly or indirectly to exceed ten per cent of its assets.

History.—§161, ch. 59-205.
Note.—Similar provisions found in former §635.28.

625.0136 Time limit for disposal of real estate.—

(1) Except as provided in subsection (4), an insurer shall dispose of real property within time limits as follows:

(a) If acquired under §625.0132 (1) (a) (home office and branch office property) or §625.134 (real property for employee facilities), the insurer shall sell the property within five years after it ceased to be used or to be necessary for the purposes stated therein.

(b) If acquired under paragraphs (b) (in satisfaction of debts, etc.), (c) (in part payment on other real estate sold), or (d) (by gift, devise, merger, etc.) of §625.0132 (1), the insurer shall sell the property within five years after the insurer acquired title thereto.

(c) If acquired under §625.0132 (1) (e) (for enhancement of other property), the insurer shall sell the property within five years after the date of acquisition by the insurer of the real property the marketability or sales price of which was so enhanced.

(d) If acquired under §625.0133 (for leasing), the insurer shall within five years after the termination or expiration of the lease, sell the property or re-lease the property for an additional term under the same conditions provided for in §625.0133 as for an original leasing.

(2) Any real property otherwise subject to disposal under paragraphs (b) through (d), of subsection (1), may be retained by the insurer for home office or branch office purposes for so long as so used, and subject to provisions otherwise applicable to such home office and branch office property.

(3) Any real property otherwise subject to disposal under paragraphs (a), (b), or (c), above, may be retained by the insurer for leasing under §625.0133 for so long as so used, and subject to provisions otherwise applicable to such real property for leasing.

(4) Upon proof satisfactory to him that the

interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by certificate grant a reasonable additional period, as specified in the certificate, within which the insurer shall dispose of any particular parcel of real property.

(5) Nothing contained in this section shall prevent any insurer from improving or conveying its real property, notwithstanding the lapse of five years without having procured such certificate from the commissioner.

History.—§162, ch. 59-205.
Note.—Similar provisions found in former §§635.28, 635.33.

625.0137 Time limit for disposal of other ineligible property and securities.—Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition, shall be disposed of within three years from date of acquisition unless within such period the security has attained to the standard of eligibility; except, that any security or personal property acquired under any agreement of bulk reinsurance, merger or consolidation, may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the commissioner under chapter 628 of this code. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

History.—§163, ch. 59-205.
Note.—Similar provisions found in former §635.33.

625.0138 Failure to dispose of real estate, property, or securities; effect, penalty.—Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the commissioner, as provided in §§625.0136 or 625.0137, shall not be allowed as an asset of the insurer.

History.—§164, ch. 59-205.
Note.—Similar provisions found in former §635.33.

625.0139 Investments of foreign insurers.—The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially as high as that required under this chapter for similar funds of like domestic insurers.

History.—§165, ch. 59-205.
Note.—Similar provisions found in former §626.05.

PART III

ADMINISTRATION OF DEPOSITS

625.0200 Authorized deposits of insurers.—The following deposits of insurers when made through the commissioner shall be accepted and held, and shall be subject to the provisions of this chapter:

(1) Deposits required under this code for authority to transact insurance in this state.

(2) Deposits of domestic insurers when made pursuant to the laws of other states, provinces and countries as requirement for authority to transact insurance in such state, province or country.

(3) Deposits of reserves made by domestic life insurers under §627.0226 (registered policies).

(4) Deposits in such additional amounts as are permitted to be made under §625.0208.

History.—§166, ch. 59-205.
Note.—Similar provisions found in former §§635.11, 635.14.

625.0201 Purpose of deposit.—Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under §§624.0210 (deposit requirement, domestic and foreign insurers) and 624.0211 (deposit of alien insurers) shall be held for the purposes stated in the respective sections.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province or country, and as required by the laws of such state, province or country, shall be held for the protection of the insurer's policyholder or policyholders and creditors.

(3) Deposits of reserves made by domestic life insurers under §627.0226 (registered policies) shall be held for the common benefit of all the holders of its life insurance policies or annuity contracts.

(4) Deposits required pursuant to the retaliatory provision, §624.0228, shall be held for such purposes as are required by such law, and as specified by the commissioner's order by which the deposit is required.

History.—§167, ch. 59-205.
Note.—Similar provisions found in former §§626.25, 631.06, 635.11, 648.02.

625.0202 Securities eligible for deposit.—

(1) All such deposits required under §§624.0210 and 624.0211 for authority to transact insurance in this state shall consist of certificates of deposit issued by solvent banks, or any combination of securities the market value of which is readily ascertainable and, if nego-

tiable by delivery or assignment, of the kinds described in the following sections of this code:

(a) Section 625.0106 (United States government obligations);

(b) Section 625.0108 (state and Canadian public obligations);

(c) Section 625.0109 (county, municipal and district obligations);

(d) Section 625.0110 (public improvement bonds);

(e) Section 625.0111 (public utility obligations);

(f) Section 625.0112 (securities of certain federal agencies);

(g) Section 625.0113 (public housing obligations);

(h) Section 625.0115 (international bank);

(i) Section 625.0116 (corporate bonds and debentures);

(j) Section 625.0118 (equipment trust certificates); and

(k) Section 625.0119 (building and loan, savings and loan).

(2) All such deposits required of a domestic insurer pursuant to the laws of another state, province or country shall be comprised of securities, if negotiable by delivery or assignment, of the kind or kinds required or permitted by the laws of such state, province or country, except common stocks, mortgages of any kind and real estate.

(3) Deposits of the reserves of a domestic life insurer under §627.0226 (registered policies) shall consist of securities, if negotiable by delivery or assignment, and assets eligible for investment of the insurer's reserves under part II of chapter 625, as stated in §625.0104.

(4) Deposits of foreign insurers made in this state under the retaliatory provision, §624.0228, shall consist of such securities or assets as are required by the commissioner pursuant to such provision.

History.—§168, ch. 59-205.
Note.—Similar provisions found in former §§626.25, 635.11, 635.12, 648.02, 648.17.

625.0203 Depositary.—

(1) Except as provided in §§625.0204 or 625.0205 all deposits made in this state under this code shall be made with the commissioner. The commissioner in his official capacity shall take, receipt for and hold in trust deposits made under this code for the purpose or purposes for which the respective deposits were so made, subject to the provisions of part III of this chapter.

(2) The commissioner shall hold all such deposits in safekeeping in the vaults located in the offices of the state treasurer.

(3) Securities or other assets deposited with or through the commissioner under part III of this chapter by foreign or alien insurer shall not, on account of such securities or assets thus being in this state, be subject to taxation.

(4) The state shall be responsible for the safekeeping of all securities or other assets deposited with the commissioner under this code.

History.—§169, ch. 59-205.
Note.—Similar provisions found in former §§631.06, 635.11, 635.15, 648.02.

625.0204 Outside deposit by surety insurer.—

(1) In lieu of a deposit of securities with the commissioner as required under §624.0210, a surety insurer may deposit a like amount in cash with the trust department of a national or state bank of Florida, to be approved for that purpose by the commissioner, in the name of the commissioner and for the same purposes as required for the deposit, and for which the commissioner shall give the insurer a receipt.

(2) During the insurer's solvency it shall be entitled to receive the interest on the deposit, and the deposit shall be otherwise subject to withdrawal and to other conditions and requirements as apply to deposits of securities with the commissioner under part III of this chapter.

History.—§170, ch. 59-205.
Note.—Similar provisions found in former §648.17.

625.0205 Custodial arrangements.—

(1) In lieu of a deposit being made with him in fact, the commissioner in his discretion may, upon written request of the insurer and where of greater convenience to the insurer, permit such deposit to be made with and held by the trust department of a national or state bank of Florida approved by the commissioner for the purpose, and under custodial arrangements likewise approved by him.

(2) All such custodial arrangements shall comply in substance with the requirements of this code as to like deposits with the commissioner of other insurers, as to the amount, purposes, maintenance, replenishment, release, and withdrawal of such deposit or part thereof, as to the rights of the insurer therein, and in all other respects except as to actual custody.

(3) Where of convenience to the insurer in the buying, selling, and exchange of securities comprising the deposit of its reserves by a domestic life insurer under §627.0226 (registered policies), and in the collection of interest and other income currently accruing thereon, the insurer may, with the commissioner's written approval in advance, deposit certain of such securities under custodial arrangements with an established bank or trust company located outside this state.

(4) The form and terms of all such custodial agreements shall be as prescribed or approved by the commissioner consistent with the applicable provisions of this code.

(5) The compensation and expenses of any such custodian shall be borne by the insurer.

(6) The commissioner may at any time, in his discretion, terminate any such custodial arrangement and require the deposit represented thereby to be made with him direct as otherwise provided for under this code.

History.—§171, ch. 59-205.

625.0206 Assignment, conveyance of assets or securities.—

(1) The insurer shall duly assign to the commissioner and his successors in office in trust all securities being deposited with him under this code which are not negotiable by delivery; or, in lieu of such assignment, the insurer may give the commissioner an irrevocable power of attorney authorizing him to transfer the securities or any part thereof for any purpose within the scope of part III of this chapter.

(2) In the case of securities or assets held under custodial arrangements pursuant to §625.0205, the custodian's receipt therefor shall be delivered to the commissioner in trust if negotiable, or assigned to him so that legal title to such securities or assets are vested in the commissioner and his successors in office.

(3) The insurer shall convey to the commissioner and his successors in office in trust any real estate being deposited with him under part III of this chapter in connection with deposit of the reserves of a domestic life insurer.

(4) Upon release to the insurer, or other person entitled thereto, of any such security or asset the commissioner shall reassign or transfer or reconvey the same to such insurer or person; or, in the case of power of attorney given pursuant to subsection (1), he shall deliver the power of attorney, together with the securities covered thereby, to the insurer or person entitled thereto.

History.—§172, ch. 59-205.
Note.—Similar provisions found in former §§631.06, 635.12, 648.02.

625.0207 Appraisal. — The commissioner may, in his discretion, prior to acceptance for deposit of any particular asset or security, or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

History.—§173, ch. 59-205.
Note.—Similar provisions found in former §635.12.

625.0208 Excess deposits.—

(1) If securities or assets deposited by an insurer under part III of this chapter are subject to material fluctuations in market value, the commissioner may, in his discretion, require the insurer to deposit and maintain on deposit additional securities or assets in such amount as may be reasonably necessary to assure that the deposit will at all times have a market value of not less than the amount specified under or pursuant to the law by which the deposit is required.

(2) If not so required by the commissioner, an insurer may at its option so deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than twenty per cent of such required or permitted deposit, or twenty thousand dollars, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of securities and assets deposited, and to facilitate the exchange and substitution of such securities and assets. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer, such excess deposit shall be released only as provided in §625.0212.

History.—§174, ch. 59-205.
Note.—Similar provisions found in former §634.05.

625.0209 Rights of insurer during solvency. —So long as the insurer remains solvent and is in compliance with this code it may:

(1) Demand, receive, sue for and recover the income from the securities or assets deposited;

(2) Exchange and substitute for the deposited securities or assets, or any part thereof, other eligible securities and assets of equivalent or greater value; and

(3) At any reasonable time inspect any such deposit.

History.—§175, ch. 59-205.
Note.—Similar provisions found in former §§631.07, 635.12, 635.14, 648.17.

625.0210 Levy upon deposit.—No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits made pursuant to the retaliatory provision, §624.0228, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is required.

History.—§176, ch. 59-205.
Note.—Similar provisions found in former §§631.09, 648.10.

625.0211 Deficiency of deposit.—

(1) If for any reason the market value of assets and securities of an insurer held on deposit in this state under this code falls below the amount so required, the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within thirty days after receipt of notice thereof by registered or certified mail from the commissioner, the commissioner shall revoke the insurer's certificate of authority.

(2) If for any reason the market value of assets and securities of a domestic life insurer, representing deposit of the reserves of outstanding registered life insurance policies and registered annuity contracts under §627.0226 and laws heretofore in force, falls below the amount so required and as determined from the insurer's most recent annual statement or most recent examination of the insurer by the commissioner, the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure such deficiency. If the insurer has failed to cure the deficiency, after the commissioner has given the insurer notice thereof by registered mail, within such reasonable time, not exceeding ninety days, as may be allowed therefor by the commissioner and so specified in his notice, the insurer shall

be deemed to be insolvent and the commissioner shall revoke its certificate of authority and institute delinquency proceedings against the insurer under chapter 631 of this code.

History.—§177, ch. 59-205.
Note.—Similar provisions found in former §648.13.

625.0212 Duration and release of deposit.—

(1) Every certificate of deposit filed and every deposit made in this state by an insurer, prior to or pursuant to this code, made voluntarily or pursuant to specific requirements, including assets and securities held in another state under custodial arrangements permitted under §625.0205(3) shall be subject to the applicable provisions of this code as amended from time to time. If the deposit is required under the retaliatory provision, §624.0228, the deposit shall be held for so long as the basis of such retaliation exists.

(2) Any such deposit, whether in the form of a certificate of deposit or otherwise, shall be released and returned:

(a) To the insurer during solvency to the extent such deposit is in excess of the amount required;

(b) To the insurer, during solvency, upon its written request, to the extent such deposit is in excess of the amount then required under this code; or,

(c) To the insurer, during solvency, upon its written request, when such insurer has met all requirements and the commissioner is satisfied the deposit is no longer necessary.

(d) Upon proper order of a court of competent jurisdiction, to the receiver, conservator, rehabilitator, liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(3) Deposits of assets representing the reserves of a domestic life insurer as to its registered life insurance policies and registered annuity contracts shall not be subject to release by reinsurance, but shall be held and maintained for the account of the assuming insurer to the extent of the required reserves under such policies and contracts.

History.—§178, ch. 59-205; (2) (c) r. §2, ch. 61-166; §2, ch. 63-19.
Note.—Similar provisions found in former §§631.10, 635.15, 648.02, 648.17.

625.0213 Proofs for release of deposit.—

(1) Before authorizing the release of any deposit or excess portion thereof to the insurer, as provided in §625.0212, the commissioner shall require the insurer to file with him a written statement in such form and with such verification as he deems advisable setting forth the facts upon which it bases its entitlement to such release.

(2) If release of the deposit is claimed by the insurer upon the ground that its liabilities in this state, as to which the deposit was originally made and is held, have been assumed by another insurer authorized to transact insurance in this state, the insurer shall file with the commissioner a duly attested copy of the contract or agreement of such reinsurance.

(3) Upon being satisfied by such statement and such other information and evidence as he may reasonably require, and by such examination, if any, of the affairs of the insurer as he deems advisable to make, that the insurer is entitled to the release of its deposits or excess portions thereof as provided in §625.0212, the commissioner shall release, or authorize the custodian bank or trust company in the case of deposits made under §625.0204 or §625.0205 to release, the deposit or excess portion thereof to the insurer or its authorized representative. The commissioner shall have no liability as to any such release so made or authorized by him in good faith.

(4) Upon the failure of the commissioner to release any deposit whether in the form of a certificate of deposit or otherwise or any excess portion thereof, requested as provided in §625.0212 upon compliance by the insurer with the requirements of this section or within ninety days after receipt of the insurer's written request, whichever is later, the commissioner shall, upon petition by the insurer, post or cause to be posted a notice of pendency of the insurer's request, at the place customarily used for the posting of public notices, at the courthouse of each county, and shall make a copy of such notice available to the established news agencies having offices at Tallahassee, Florida. The commissioner may prescribe the general form of such notice, shall specify the insurer's name, or may list such names where more than one request is pending at the same time. Such notice shall state therein that such insurer or insurers has petitioned for the release and return of deposits pursuant to and in compliance with §§625.0212 and 625.0213, that he has no information upon which to base a finding that the insurer or insurers named in the notice is not lawfully entitled to obtain the release and return of such deposits, and that unless such information is presented to him within ninety days from the date specified in the notice such deposits must be returned to the insurer or insurers. In the event that no such information is presented to the commissioner within such ninety day period, he shall thereupon release and return the deposit or deposits as requested by the insurer or insurers whose request was not challenged. In the event that such information is presented to the commissioner within said period, he shall refuse to release or return the deposit of the insurer or insurers concerned and shall hold a hearing with respect thereto upon the request of such insurer or insurers.

History.—§179, ch. 59-205; (4) n. §3, ch. 63-19.
Note.—Similar provisions found in former §§631.10, 635.15, 648.02, 648.17.

CHAPTER 626

INSURANCE CODE; FIELD REPRESENTATIVES AND OPERATIONS

PART I INSURANCE REPRESENTATIVES; LICENSING PROCEDURES AND GENERAL REQUIREMENTS

PART II GENERAL LINES AGENTS AND SOLICITORS; QUALIFICATIONS AND REQUIREMENTS

PART III LIFE INSURANCE AGENTS

PART IV DISABILITY INSURANCE AGENTS

PART V INSURANCE ADJUSTERS

PART VI UNAUTHORIZED INSURERS AND SURPLUS LINES

PART VII TRADE PRACTICES AND FRAUDS

PART I

INSURANCE REPRESENTATIVES; LICENSING PROCEDURES AND GENERAL REQUIREMENTS

626.011 Short title.—Part I of chapter 626 may be referred to as the "licensing procedures law."

History.—§181, ch. 59-205.

626.022 Scope of chapter.—

(1) Part I of chapter 626 applies as to insurance agents, solicitors, service representatives, and adjusters, as to any and all kinds of insurance, and as to stock, mutual, reciprocal and all other types of insurers, except that:

(a) It does not apply as to:

1. Title insurance.
2. Reinsurance.

(b) The applicability of this chapter as to fraternal benefits societies shall be as provided in chapter 632.

(c) Bail bondsmen, as defined in §903.37, except as provided in chapter 903.

(2) For the purposes of part I of chapter 626 "insurance" includes also annuity contracts.

History.—§180, ch. 59-205.
Note.—Similar provisions found in former §§625.01, 627.98, 627.0104, 628.12.

626.031 Agent defined, in general.—As used in part I of this chapter "agent" or "insurance agent" means a general lines agent, life agent, or disability agent as defined in this chapter or related chapters, or all such agents, as indicated by context.

History.—§182, ch. 59-205.
Note.—Similar provisions found in former §§625.01, 627.72, 627.76, 648.15.

626.041 General lines agent defined.—

(1) For the purposes of this code a "general lines agent" is one so transacting any one or more of the following kinds of insurance:

(a) Property insurance.
(b) Casualty insurance.
(c) Surety insurance.
(d) Disability insurance, when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance.
(e) Marine insurance.

(2) With respect to any such insurances no person shall, unless licensed therefor as an agent:

(a) Solicit insurance or procure applications therefor; or

(b) In this state receive or receipt for any money on account of or for any insurer, or receive or receipt for money from other persons to be transmitted to any insurer for a policy, contract, or certificate of insurance or any renewal thereof, although such policy, certificate, or contract is not signed by him as agent or representative of the insurer; or

(c) Directly or indirectly represent himself or herself to be an agent of any insurer or as an agent, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof, or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state; or

(d) In this state engage or hold himself out as engaging in the business of analyzing or abstracting insurance policies or of counselling or advising or giving opinions (other than as a licensed attorney at law) relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counselling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer; or

(e) In any wise directly or indirectly make or cause to be made, or attempt to make or cause to be made, any contract of insurance for or on account of any insurer; or

(f) If a member of a partnership or association, or a stockholder, officer or agent of a corporation which holds an agency appointment from any insurer, solicit, negotiate, or in any way directly or indirectly effect insurance contracts; or

(g) Receive or transmit applications for suretyship, or receive for delivery bonds founded on applications forwarded from this state, or otherwise procure suretyship to be effected by a surety insurer upon the bonds of persons in this state, or upon bonds given to persons in this state.

(3) A salaried employee who performs clerical or administrative services only in the office is not deemed thereby to be an agent within the intent of this section.

(4) A salaried employee of a general lines agent who performs clerical or administrative services only for such agent in the office of the agent is not deemed thereby to be an agent within the intent of this section.

(5) As used in part I of this chapter property insurance also includes marine insurance, unless context requires otherwise.

History.—§183, ch. 59-205.
Note.—Similar provisions found in former §§625.01, 627.72, 627.76, 627.86, 648.15.

626.051 Life agent defined.—

(1) For the purposes of part I of this chapter a "life agent" is one so representing an insurer as to life insurance and annuity contracts. The term shall also include an agent appointed as such as to life insurance, fixed dollar annuity contracts, variable annuity contracts and disability insurance by the same insurer.

(2) Except as provided in §626.112 (4), with respect to any such insurances or contracts no person shall, unless licensed therefor as an agent:

(a) Solicit insurance or annuities or procure applications therefor; or

(b) In this state engage or hold himself out as engaging in the business of analyzing or abstracting insurance policies or of counselling or advising or giving opinions to persons relative to insurance or insurance contracts other than

1. As a consulting actuary advising insurer; or

2. As to the counselling and advising of labor unions, associations, trustees, employers or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

History.—§184, ch. 59-205; (1) a. by §6, ch. 61-441.
Note.—Similar provisions found in former §§625.01, 634.01.

626.062 Disability agent defined.—

(1) For the purposes of part I of this chapter a "disability agent" is one so representing, as to disability insurance only, an insurer transacting disability insurance.

(2) Except as provided in §626.112 (4), with respect to such insurance no person shall, unless licensed therefor as an agent:

(a) Solicit insurance or procure applications therefor; or

(b) In this state engage or hold himself out as engaging in the business of analyzing or abstracting insurance policies or of counselling or advising or giving opinions to persons relative to insurance or insurance contracts other than

1. As a consulting actuary advising insurers; or

2. As to the counselling and advising of labor unions, associations, trustees, employers or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

History.—§185, ch. 59-205.
Note.—Similar provisions found in former §625.01.

626.071 Solicitor defined.—

(1) For the purposes of this code a "solicitor" is an individual appointed by a general lines agent to solicit applications for insurance as a representative of such agent. An individual employed on salary only by an agent, and devoting full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the agent, is not deemed to be a solicitor if his compensation neither includes any commissions on such business nor is related to the volume of such applications, insurance or premiums.

(2) No person without being duly licensed therefor and conforming to this code shall directly or indirectly represent himself or herself to be the solicitor for any agent, or as solicitor, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver or forward, directly or indirectly, any insurance contract or renewal thereof, or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state.

History.—§186, ch. 59-205.
Note.—Similar provisions found in former §627.72.

626.081 Service representative defined.—

(1) For the purposes of this code "service representatives" are individuals employed by insurers, or general agents, including traveling salaried representatives of reciprocal or interinsurance exchanges or of mutual insurers operating on the premium deposit plan; for the purpose of assisting general lines agents and solicitors in negotiating and effecting insurance contracts. No such person shall be licensed as an agent or solicitor in this state.

(2) This section does not apply as to life or disability insurance.

History.—§187, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 628.12.

626.091 Supervising or managing general agent defined.—

(1) A "supervising" or "managing" general agent is an individual, firm or corporation appointed or employed by an insurer to supervise or manage the business written by the general lines agents appointed by the insurer in this state. No such person shall be licensed as a general lines agent or solicitor in this state.

(2) This section does not apply as to life or disability insurance.

History.—§188, ch. 59-205.
Note.—Similar provisions found in former §§627.27, 645.01.

626.101 Adjuster, claims investigator defined.—For the purposes of part I of this chapter:

(1) An "adjuster" means a public adjuster, independent adjuster, or company employee adjuster, as respectively defined in part V of chapter 626.

(2) A "claims investigator" is as defined in §626.0406.

History.—§189, ch. 59-205.

626.112 License required; agents, solicitors, adjusters.—

(1) No person shall in this state be, act as, or advertise or hold himself out to be, an insurance agent or solicitor or adjuster unless he is then licensed as such agent or solicitor or adjuster under a currently effective license issued to such person by the commissioner pursuant to this code.

(2) No agent or solicitor shall solicit or

otherwise transact as agent or solicitor, or represent or hold himself out to be an agent or solicitor as to, any kind or kinds of insurance as to which he is not then licensed as such agent or solicitor under a currently effective license issued to such person by the commissioner pursuant to this code.

(3) No person shall act as an adjuster, or represent or hold himself out to be, or perform any of the functions of, an adjuster, as to any class of business for which he is not then licensed as an adjuster under a currently effective license issued to such person by the commissioner pursuant to this code, and then only to the extent authorized by such license.

(4) An individual employed by a life or disability insurer as an officer or other salaried representative, may solicit and effect contracts of life insurance or annuities, or of disability insurance, without being licensed as an agent, when and only when he is accompanied by and solicits for and on the behalf of an agent duly licensed as the agent of such insurer as to the kind of insurance so solicited or effected.

(5) Violation of this section is subject to the penalties provided for in §626.131.

History.—§190, ch. 59-205.
Note.—Similar provisions found in former §§627.76, 627.80, 628.12, 634.02, 634.17, 636.24, 644.03.

626.121 Permit required; service representatives, claims investigators.—

(1) No person shall in this state be, act as, or represent or hold himself out to be a service representative unless he then holds a currently effective service representative permit issued to such person by the commissioner pursuant to this code. This provision does not apply as to similar representatives or employees of casualty insurers whose duties are restricted to disability insurance.

(2) No person shall in this state be, act as, or represent or hold himself out to be a claims investigator, or perform any of the functions of a claims investigator, unless he then holds a currently effective claims investigator permit issued to such person by the commissioner pursuant to this code, and then only to the extent authorized by such permit.

(3) Violations of this section shall be subject to the penalties provided for by §626.131.

History.—§191, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 636.24.

626.131 Penalty for violation of licensing requirement.—

(1) Any person, other than an insurer, who violates any provision of §626.112 or §626.121 shall, in addition to denial, suspension, revocation or refusal of license or other administrative penalties available under this code, upon conviction be subject to the penalties of fine and imprisonment as provided by §626.671.

(2) The commissioner may, in his discretion, suspend or revoke the certificate of authority of any insurer that violates any provision of §626.112 or §626.121. If such violation is inadvertent, the commissioner may require the insurer to pay a penalty of five dollars as to each individual concerned in such violation, in addition to the fees and taxes otherwise payable; and if the violation is wilful the insurer upon conviction thereof by a court of competent jurisdiction shall be guilty of a felony.

History.—§192, ch. 59-205.
Note.—Similar provisions found in former §§625.011, 627.96.

626.141 Violation not to affect validity of insurance.—An insurance contract which is otherwise valid and binding as between the parties thereto, shall not be rendered invalid by reason of having been solicited, handled, or procured by or through an unlicensed agent or solicitor.

History.—§193, ch. 59-205.
Note.—Similar provisions found in former §625.211.

626.151 License, permit to be issued only on compliance.—

(1) For the protection of the people of this state, the commissioner shall not issue or continue or renew or permit to exist any license as agent or solicitor or adjuster, or any permit as service representative or claims investigator, except in compliance with the applicable provisions of this code.

(2) The commissioner shall not issue, or continue or renew or permit to exist any such license or permit as to any individual who has not established to the commissioner's satisfaction that he is qualified therefor in accordance with the applicable provisions of this code.

History.—§194, ch. 59-205.
Note.—Similar provisions found in former §§627.77, 627.99, 634.24.

626.161 Licensing forms.—The commissioner shall prescribe, consistent with the applicable requirements of this code, and furnish all printed forms required under this code in connection with the application for and issuance of licenses, permits, examinations for licenses, and for appointment and termination of appointment of agents and solicitors.

History.—§195, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 627.79, 627.84, 634.04, 634.05, 634.18, 636.25, 644.06.

626.171 Application for license or permit.—

(1) The commissioner shall not issue a license as agent or solicitor or adjuster, or a permit as service representative or claims investigator, to any person except upon written application therefor filed with him, qualification therefor as provided in this code, and payment in advance of all applicable license taxes and fees required under §624.0300 (filing, license and miscellaneous fees). Any such application for license shall be made under the oath of the applicant.

(2) Application for license as a general lines agent shall be signed by the applicant.

(3) Application for license as a life agent or disability agent shall be signed by the applicant, shall be filed with the commissioner by the insurer proposed to be so represented, and shall be accompanied by an appointment of the applicant by the insurer as its agent, subject to issuance of the license.

(4) Application for license as a solicitor

shall be signed by the applicant.

(5) Application for license as an adjuster shall be signed by the applicant and filed by him (if to be a self-employed public or independent adjuster) or by his proposed employer.

(6) Application for a service representative's permit shall be made by the insurer, its manager, general agent, supervising or managing general agent, or representative of such insurer, by whom the individual proposing to be a service representative is to be so employed.

(7) Application for a claim investigator's permit shall be signed by the applicant, and shall be endorsed and filed by the adjuster or insurer by whom the individual proposing to be a claims investigator is to be so employed.

(8) Each such application shall call for information concerning the applicant and application as required by the commissioner and under the following respective sections of this code:

(a) If for general lines agent's license, §626.0105;

(b) If for life agent's license, §626.0210;

(c) If for disability agent's license, §626.0306;

(d) If for solicitor's license, §626.0108;

(e) If for adjuster's license, §626.0419;

(f) If for service representative's permit, §626.0117; and

(g) If for claim investigator's permit, §626.0417.

Each such application shall be accompanied by payment of the taxes and fees, and fees for filing application for examination of the applicant, where applicable as specified therefor under §624.0300 (filing, license, and miscellaneous fees), and under §626.271 (examination application fee; determination, refund).

History.—§196, ch. 59-205.

Note.—Similar provisions found in former §§627.72, 627.74, 627.75, 627.79, 627.80, 627.81, 634.04, 634.05, 634.18, 636.25, 644.06.

626.181 Number of applications required.—After a license as agent, solicitor, or adjuster has been issued to an individual upon the basis, in part, of personal and other data contained in an original application for the license, the same individual shall not be required to file another application for a similar license (regardless, in the case of an agent, of the number of insurers to be represented by him as agent or the number of subsequent requests for similar license made by or on his behalf) unless specifically ordered by the commissioner to complete a new application; or unless during any period of twenty-four months since the filing of the original application such individual was not licensed as such agent, solicitor or adjuster, unless the failure to be so licensed was due to military service, in which event the period within which a new application is not required may, in the commissioner's discretion, be extended to twelve months following the date of discharge from military service if the military service does not exceed three years, but in no event to extend under this clause for a period of more than four years from the date of filing of the original application.

History.—§197, ch. 59-205.

Note.—Similar provisions found in former §627.81.

626.191 Repeated applications.—The failure of an applicant to secure a license or permit upon an application shall not preclude him from applying again as many times as he may desire, but the commissioner shall not give consideration to or accept any further application by the same individual for a similar license or permit dated or filed within sixty days subsequent to the date the commissioner denied the last application, except as provided in §626.281.

History.—§198, ch. 59-205.

Note.—Similar provisions found in former §§627.81, 636.25.

626.201 Investigation.—The commissioner may propound any reasonable interrogatories in addition to those contained in the application, to any applicant for license or permit, or on any renewal or continuation thereof, relating to his qualifications, residence, prospective place of business, and any other matter which, in the commissioner's opinion, is deemed necessary or advisable for the protection of the public and to ascertain the applicant's qualifications. The commissioner may, upon completion of the application, make such further investigation as he may deem advisable of the applicant's character, experience, background, and fitness for the license or permit. The commissioner shall in all cases interview each first time applicant for license as a general lines agent. Such an inquiry or investigation shall be in addition to any examination required to be taken by the applicant as hereinafter in this chapter provided.

History.—§199, ch. 59-205.

Note.—Similar provisions found in former §§627.77, 634.06, 644.07.

626.211 Approval, disapproval of application.—

(1) If upon the basis of the completed application for license or permit and such further inquiry or investigation as the commissioner may make concerning the applicant the commissioner is satisfied that, subject to any examination required to be taken and passed by the applicant for a license, the applicant is qualified for the license or permit applied for and that all pertinent taxes and fees have been paid, he shall approve the application.

(2) Upon such approval in the case of applicants for license as agent, solicitor, or adjuster who are subject to written examination under §626.221, the commissioner shall notify the applicant when and where he may take the required examination as provided in §626.251, but subject to any applicable waiting period provided in §626.231 as to applicants for license as general lines agent or solicitor.

(3) Upon such approval in the case of applicants for license or permit who are not so subject to examination, the commissioner shall

promptly issue the license (as provided in §626.291) or permit applied for (as provided in §626.351).

(4) If upon the basis of the completed application and such further inquiry or investigation the commissioner deems the applicant to be lacking in any one or more of the required qualifications for the license or permit applied for as specified in §626.0105 as to general lines agents, §626.0209 as to life agents, §626.0305 as to disability agents, §626.0108 as to solicitors, and part V of this chapter as to adjusters and claims investigators, the commissioner shall disapprove the application and notify the applicant thereof, stating the grounds of disapproval. At the same time the commissioner shall return to the applicant or other person entitled thereto any state license tax and county license tax received by the commissioner in connection with the application for license, as provided in §626.291 (5).

History.—§200, ch. 59-205.
Note.—Similar provisions found in former §§627.81, 634.06, 634.24, 636.25, 644.07.

626.221 Examination required; exemptions.

(1) The commissioner shall not issue any license as agent, solicitor, or adjuster to any individual who has not personally qualified for, taken, and passed to the commissioner's satisfaction, a written examination of the scope prescribed in §626.241.

(2) An individual already licensed as a solicitor shall not be licensed as a general lines agent without application and examination for such license, unless exempted as to the examination under paragraph (i) of this section.

(3) Except, that no such examination shall be necessary in the following cases:

(a) An applicant for license as life agent or disability agent who is currently licensed as such an agent of another insurer as to the same class or classes of business as that proposed to be transacted under the new license.

(b) An applicant for a renewal license as a life agent or disability agent, unless the commissioner determines that an examination is necessary to establish the competence or trustworthiness of such individual.

(c) Applicants for limited license as agent for sale of accident insurance as provided under §626.321 (1) (c).

(d) Applicants for limited license as agent for sale of baggage insurance as provided under §626.321 (1) (d).

(e) Applicants for limited license for the sale of credit life and disability insurance as provided for under §626.321 (1) (e); or for limited license as credit insurance agent as provided for under §626.321 (1) (f).

(f) In the commissioner's discretion, an applicant for license as a life agent whose similar license has expired or been suspended within two years prior to the date of application.

(g) An applicant who within thirty days prior to application for license as agent, solicitor or adjuster was a full-time salaried employee of the commissioner and of the insurance department of this state and had continuously been such an employee with responsible insurance duties for not less than two years, and who had been a licensee prior to employment by the commissioner and the insurance department with the same type and class of license as that being applied for.

(h) An applicant for license as a solicitor, who is currently licensed as a general lines agent or held such a license or had successfully passed the examination for such an agent's license within twenty-four months prior to the date application for solicitor's license is filed with the commissioner. This provision or paragraph (i), below, shall not be deemed to permit an individual to be licensed both as such an agent and as a solicitor at the same time.

(i) An individual who qualified as a solicitor by taking and successfully passing an agent's examination and who subsequently was licensed as a solicitor may, upon filing an application therefor, be licensed as a general lines agent as to the same kinds of business and without taking another examination, if the applicant holds a currently effective solicitor's license or held such a license within twenty-four months prior to the date of filing the application with the commissioner.

(j) A person who has been licensed by the commissioner as a public adjuster or independent adjuster, or licensed either as an agent or company adjuster as to all property, casualty, and surety insurances, may be licensed as a company adjuster as to any of such insurances, or as an independent adjuster or public adjuster, without additional written examination if his application for license is filed with the commissioner within twenty-four months next following date of cancellation or expiration of the prior license.

(k) A person who has been licensed by the commissioner as a company employee adjuster for automobile physical damage, fire, and allied lines including marine, casualty, workmen's compensation, boiler and machinery or any combination thereof, may be licensed as a company employee adjuster without additional written examination, if his application for license is filed with the commissioner within twenty-four months next following date of cancellation or expiration of the prior license.

(l) Applicants for temporary license, except as provided in the respective sections of this code applicable thereto.

(m) Applicants for license as a nonresident agent, if so provided in sections of this code applicable to such licensees.

(4) No fee for filing application for examination shall be payable as to any applicant for license exempted from examination under this section.

History.—§201, ch. 59-205.
Note.—Similar provisions found in former §§627.81, 627.84, 634.06, 634.07, 636.25, 636.26, 636.27, 636.28, 644.07, 644.10.

626.231 Eligibility for examination; waiting period, general lines agents and solicitors.—

(1) No person shall be permitted to take an examination for license until his application for the license has been approved by the commissioner as provided in §626.211, and then only if the fee required under §624.0300 for filing application for the examination has been received by the commissioner in advance of the applicant's appearance for the examination.

(2) An applicant for license as a general lines agent or solicitor whose application has been approved by the commissioner, shall become eligible to take the examination only upon expiration of sixty days after the date his application for license was filed in the offices of the commissioner at Tallahassee; except, that if the applicant for license as a general lines agent is currently licensed as a solicitor, he shall be eligible for the examination for an agent's license upon approval of his application therefor by the commissioner and shall not be subject to the sixty day waiting period.

(3) The sixty day waiting period provided for in subsection (2) shall run concurrently with any special schooling and/or experience required under §626.0106 of the applicant as part of the qualifications for the license, or with the completion of the residence requirement provided for under §626.0105 (2) as to general lines agents or under §626.0108 (2) as to solicitors, and the applicant may for the purpose file his application for license while such schooling and/or experience is in progress, as provided in §626.0106 (3), or while such residence requirement is being completed, as the case may be.

History.—§202, ch. 59-205.
Note.—Similar provisions found in former §§627.81, 636.42.

626.241 Scope of examination.—

(1) Each examination for a license as agent, solicitor, or adjuster shall be of such scope as is deemed by the commissioner to be reasonably necessary to test the applicant's ability and competence, and knowledge of the kinds of insurance and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent provisions of the laws of this state.

(2) Examinations given applicants for license as general lines agent or solicitor shall cover as to all property, casualty, and surety insurances; except as provided in subsection (5), as to limited licenses.

(3) Examinations given applicants for life agent's license shall cover as to the class of life insurance to be written under the license as defined in part III of this chapter, and, if to be licensed as to the "ordinary" class, including fixed dollar annuity contracts or an "ordinary-variable annuity" class. The commissioner may provide different examinations, in his discretion, for applicants appointed by different types of insurers.

(4) Examinations given applicants for disability agent's license shall cover as to disability insurance.

(5) Examinations given applicants for a limited license as agent, where applicable, shall be limited in scope to the kind of business to be transacted under such license as provided in §626.321.

(6) Examinations given applicants for a license as an independent adjuster or as a public adjuster shall cover adjusting in all lines of insurance other than life, annuity, and disability.

(7) Examinations given applicants for license as a company employee adjuster shall cover adjusting in all lines of insurance, other than life, annuity, and disability; or, in accordance with the application for the license, the examination may be limited to adjusting in:

(a) Automobile physical damage, or

(b) Fire and allied lines including marine.

or

(c) Casualty, or

(d) Workmen's compensation, or

(e) Boiler and machinery, or

(f) Any combination of the aforementioned categories.

History.—§203, ch. 59-205; (3) a. by §7, ch. 61-441.
Note.—Similar provisions found in former §§627.81, 627.82, 634.06, 634.07, 636.25, 636.26, 636.27, 636.28, 644.07.

626.251 Time and place of examination; notice.—

(1) The commissioner shall mail written notice of the time and place of the examination to each applicant for license required to take an examination under §626.221 and who will be eligible under §626.231 to take the examination as of the examination date. The notice shall be so mailed, postage prepaid and addressed to the applicant at his address shown on his application for license (or at such other address as requested by the applicant in writing filed with the commissioner at Tallahassee prior to the mailing of the notice), not less than fifteen days in advance of the examination date. Notice shall be deemed given when so mailed.

(2) The examination shall be held in an adequate and designated examination room in that one of the commissioner's offices in this state which is located nearest to the applicant's place of residence; except that an examination may be taken at any other office of the commissioner if mutually convenient to the commissioner and the applicant.

(3) The commissioner shall make an examination available to the applicant, to be taken as soon as reasonably possible after the applicant is eligible therefor. Any examination required under part I of this chapter shall be available in the commissioner's office at Tallahassee or elsewhere in Florida on at least one designated business day of each week.

History.—§204, ch. 59-205.
Note.—Similar provisions found in former §§625.37, 627.81, 634.06, 636.25, 644.07.

626.261 Conduct of examination.—

(1) The applicant for license shall appear in person and personally take the written examination for license, at the time and place specified in the commissioner's notice thereof.

(2) The examination shall be conducted by the commissioner or by his salaried employee designated by him for the purpose.

(3) The questions propounded shall be as prepared by the commissioner, consistent with the applicable provisions of this code.

(4) The applicant shall be entitled to take at the same place and date examinations covering all licenses for which his application or applications have been currently approved and for which he is eligible under §626.231.

(5) All examinations shall be given and graded in a fair and impartial manner, and without unfair discrimination in favor of or against any particular applicant.

History.—§205, ch. 59-205.
Note.—Similar provisions found in former §§627.81, 634.06, 636.25, 644.07.

626.271 Examination application fee; determination, refund.—

(1) At the time of filing his application for license each applicant who is subject to written examination as provided under §626.221, shall pay to the commissioner a fee for filing application for the examination in the amount prescribed in §624.0300 (filing, license and miscellaneous fees). A separate and additional application for examination filing fee shall be so payable for each separate type or class of license applied for, notwithstanding that all such examinations are taken on the same date and at the same place.

(2) The fee for filing application for examination shall not be subject to refund.

History.—§206, ch. 59-205.
Note.—Similar provisions found in former §§627.81, 636.42, 644.05.

626.281 Re-examination.—

(1) Any applicant for license who has either

(a) Taken an examination and failed to make a passing grade, or

(b) Failed to appear for the examination or to take or complete the examination at the time and place specified in the commissioner's notice provided for in §626.251, may, after expiration of sixty days from the date of the previous such examination either taken or scheduled, upon payment of an additional examination application filing fee for such second examination take a second examination based upon the same application for license. If the applicant fails to pass such second examination he shall not be eligible for or be permitted to take another examination for the same type or class of license except pursuant to a new application for license and payment of new license taxes and fees and examination application filing fees as required for an initial application for license; and no such application for license shall be received on file or considered by the commissioner until after expiration of sixty days after the date of denial of the license as provided for in §626.291. Except, that as to disability insurance an applicant failing the first examination shall be allowed to take a second examination upon payment of an additional examination application filing fee, and if such applicant fails the second examination he shall be required to wait for a period of sixty days before again applying for license.

(2) The commissioner may, in his discretion, require any individual whose license as an agent, solicitor, or adjuster has expired or has been suspended, to take and successfully pass such a written examination prior to reinstating or relicensing such individual, as to any type or class of license. The regular examination application filing fee shall be paid as to each such examination.

(3) The commissioner may, in his discretion, require any individual licensed as an agent, solicitor, or adjuster whose license was originally to be issued after examination as required by §626.221 or under laws heretofore in force, to take and successfully pass an examination as for original issuance of license as a condition precedent to the renewal or continuation of the licensee's current license. The regular examination application filing fee shall be paid as to each such examination.

History.—§207, ch. 59-205.
Note.—Similar provisions found in former §§627.77, 627.81, 636.33, 644.07.

626.291 Denial, issuance of license.—

(1) As soon as reasonably possible after the applicant has completed any examination required under §626.221, the commissioner shall grade his examination paper. If he finds that the applicant has received a passing grade, the commissioner shall promptly notify the applicant thereof and in due course issue and transmit the license to which such examination related. If he finds that the applicant did not make a passing grade on the examination for a particular license, the commissioner shall promptly mail notice to the applicant and the insurer or proposed employer to that effect and of his denial of the license so applied for.

(2) As to applicants for license for which no examination is required, the commissioner shall promptly issue the license applied for as soon as he has approved the application therefor as provided in §626.211.

(3) The commissioner shall transmit the original and a copy of each such license as follows:

(a) Agents' licenses, original to the insurer and copy to the licensee;

(b) Solicitors' licenses, original to the appointing agent and copy to the licensee;

(c) Adjusters' licenses, original to the licensee if to be a self-employed public adjuster or independent adjuster; otherwise the original license shall be transmitted to the employer and a copy to the licensee.

(4) While the license is in force the original thereof shall be retained by the appointing insurer or (in the case of solicitor's license) the appointing agent.

(5) Upon denial of a license the commissioner shall refund to the applicant or payor entitled thereto any state license tax and county license tax received by him in connection with the application for the license. No such

refund shall be made under any circumstances after issuance of a license if the applicable license year has commenced before receipt by the commissioner of the request for cancellation of license and refund at his office at Tallahassee.

History.—§208, ch. 59-205.
Note.—Similar provisions found in former §§627.83, 634.04, 634.07, 636.25, 644.07.

626.301 Form and contents of licenses, in general.—

(1) Each license as agent, solicitor, or adjuster issued by the commissioner shall be in such form as the commissioner may designate and show the type and serial number of license, date of issuance, name and address of the licensee, general conditions pertaining to expiration, continuation or renewal, and further matters as hereinbelow specified, all consistent with the applicable provisions of this code.

(2) The license of a general lines agent shall show the kinds of insurance the licensee is authorized to transact as such agent, and the name and address of the insurer represented by the licensee as agent.

(3) The license of a solicitor shall show the name and address of the agent by whom he is appointed as solicitor, and the kinds of insurance the licensee is authorized to transact as solicitor under the license.

(4) The license of a life agent shall show the type and class of life insurance business the licensee is authorized to transact as agent and the name and address of the insurer so represented.

(5) The license of a disability agent, as to an insurer not represented by the licensee under a general lines agent's license as provided in §626.311(1), shall show the name and address of the insurer so represented.

(6) The license of an adjuster shall show the types and classes of coverage as to which the licensee is authorized to act as adjuster under the license.

(7) Any such license shall contain such other matters, consistent with the applicable provisions of this code, as the commissioner deems advisable.

History.—§209, ch. 59-205.
Note.—Similar provisions found in former §§205.45, 634.07, 636.25.

626.311 Scope of license.—

(1) Except as to limited licenses authorized under §626.321, the applicant for license as a general lines agent or solicitor shall qualify for all property, marine, casualty, and surety lines. The license of a general lines agent may also cover disability insurance, without additional license, fees or taxes, if disability insurance is included in the agent's appointment by an insurer as to which the licensee is also appointed as agent for property or casualty or surety insurance. The license of a solicitor shall provide, in substance, that it covers all of such kinds of insurance that his appointing general lines agent is currently so authorized to transact under the general lines agent's license. No such license shall be issued limited to particular classes or subdivisions of such kinds of insurance or any of them.

(2) The license of a life agent shall cover such types and classes of life insurance business (as defined in part III of this chapter) as is designated for the purpose by the insurer in the insurer's appointment filed with the commissioner. The licensee shall be limited to selling the class of insurance specified for the insurer named in the license.

(3) Except as to limited license as accident insurance agent authorized under §626.321, the license of a disability agent shall cover all kinds of disability insurance, and no such license shall be issued limited to particular classes or subdivisions of disability insurance.

(4) No agent licensee shall transact or attempt to transact under his license any kind of insurance or class thereof for which he does not have currently in force of record with the commissioner an agency appointment by an authorized insurer.

(5) The scope of adjuster licenses shall be as provided in part V of this chapter.

History.—§210, ch. 59-205.

626.321 Limited licenses.—

(1) The commissioner shall issue a license as to an individual qualified therefor, as agent authorized to transact as such thereunder a limited class of business, in any of the following categories:

(a) Motor vehicle physical damage insurance. License covering insurance against only the loss of or damage to any motor vehicle which is designed for use upon a highway, or as such vehicles may be defined by law in Florida from time to time, including trailers and semi-trailers designed for use with such vehicles (except traction engines, road rollers, tractor cranes, power shovels, and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. The applicant for such a license shall take and pass to the commissioner's satisfaction, as provided for examinations generally, a written examination covering motor vehicle physical damage insurance. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of insurance coverage, except a limited license as to credit life and disability insurances as provided in paragraph (e), of this subsection.

(b) Industrial fire insurance. License covering only industrial fire insurance as defined in §626.0103. The applicant for such a license shall take and pass to the commissioner's satisfaction, as provided for examinations for license generally, a written examination covering such insurance. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of insurance coverage except as to life and disability insurances.

(c) Personal accident insurance. License

covering only policies of personal accident insurance, covering the risks of travel, the license to be issued only to a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale of transportation tickets, for his employer, and authorizing sale of such ticket policies only in connection with the sale of transportation tickets; or to the full-time salaried employee of an agent licensed as to such kind of insurance. No such policy shall be for a duration of more than forty-eight hours or for the duration of a specified one-way trip or round trip, as applicable.

(d) Baggage insurance. License covering only insurance of personal effects, the license to be issued only to a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale, or handling of, transportation of baggage and personal effects of travelers, and authorizing sale of such insurance only in connection with such transportation; or issued to the full-time salaried employee of a licensed general lines agent.

(e) Credit life or disability insurance. License covering only credit life and/or disability insurance as defined in part VIII of chapter 627, the license to be issued only to an individual employed by a life or disability insurer as an officer or other salaried or commissioned representative, or an individual employed by or associated with a lending or financing institution or creditor, and authorizing sale of such insurance only with respect to borrowers or debtors of such lending or financing institution or creditor. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of life or disability insurance coverage.

(f) Credit insurance. License covering only credit insurance, as such insurance is defined in §624.0404(1)(i) ("casualty insurance" defined), and no individual so licensed shall during the same period hold a license as an agent or solicitor as to any other or additional kind of insurance.

(2) The name of the insurer represented and the limitations of any license issued under this section shall be expressed therein. The licensee shall have a separate and additional license as to each such insurer.

(3) Except as otherwise expressly provided, individuals applying for or holding a limited license shall be subject to the same applicable requirements and responsibilities as apply under parts I and II of this chapter (general lines agents and solicitors qualifications and requirements) to general lines agents in general, if licensed as to motor vehicle physical damage insurance, or industrial fire insurance, or baggage insurance, or credit insurance; or as apply under parts I and III of this chapter (life insurance agents) or part IV of this chapter (disability insurance agents) to life agents or disability agents in general, as the case may be, if licensed as to personal accident insurance or credit life or credit disability insurance.

History.—§211, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 627.82, 627.84, 634.06, 644.07.

626.331 Number of licenses permitted or required.—

(1) Except as otherwise expressly provided in this code, the same individual may at any one time hold any and all categories of license as to which he has qualified and been licensed under this code.

(2) A general lines agent shall be required to have a separate license as to each insurer by whom he is appointed as an agent as to property, casualty and surety insurances or any of them, and including disability insurance where transacted by an insurer also represented by the agent as to property, casualty or surety insurance.

(3) A life agent shall have a separate license as to each life insurer so represented.

(4) A disability agent shall have a separate license as to each disability insurer so represented, except as provided in subsection (2).

(5) The commissioner may issue a single agent's license covering both life and disability insurances to an individual qualified as to both such kinds of insurance and appointed as agent as to both such kinds by the same insurer.

(6) Any general lines, life, or disability agent appointed by an insurer and licensed by the commissioner to solicit contracts of disability insurance as defined in §624.0402, may on behalf of and with the consent of any other insurer transacting disability insurance solicit disability insurance covering persons sixty-five years of age or older and their spouses without being required to secure a license as to such other insurer.

History.—§212, ch. 59-205; (6) n. §1, ch. 63-17.
Note.—Similar provisions found in former §§634.07, 644.10.

626.341 Additional licenses; life and disability agents.—At any time while his license is in force a life agent or disability agent may apply to the commissioner for an additional license or licenses as life or disability agent for an additional insurer or insurers. The application shall set forth each insurer the applicant is then licensed to represent, and such other information as the commissioner may require. The application shall include, or be accompanied by, appointment of the applicant as agent by each additional insurer as to which license is applied for. Upon receipt of the application and appointment and payment of the applicable license taxes and fees, the commissioner may issue such additional license without, in his discretion, further investigation concerning the applicant.

History.—§213, ch. 59-205.
Note.—Similar provisions found in former §§634.07, 644.10.

626.351 Issuance; contents of permits.—

(1) The commissioner shall promptly issue as to an applicant therefor, whose application he has approved as provided in §626.211, a per-

mit as service representative or as claims investigator, as the case may be.

(2) Each such permit shall be in such form as the commissioner may prescribe consistent with the applicable provisions of this code. The permit shall set forth its serial number, date of issuance, name and address of the permittee, name and address of his employer, general conditions as to expiration, continuation or renewal, and such other pertinent matter as the commissioner deems advisable.

(3) A claims investigator's permit shall also set forth the type and class of coverage the permittee is authorized to handle as a claims investigator, as referred to in §626.0418.

(4) A service representative shall have a separate permit as to each employer represented by him, except that he may so represent under one permit all insurers represented by his employer general agent or comprising an affiliated group of insurers.

(5) Upon issuance the commissioner shall transmit the original of the permit to the employer and a copy of the permit to the permittee. While in force, the original of the permit shall be retained by the employer.

(6) The commissioner shall not make refund of any fees paid as to any permit after issuance of the permit if the applicable permit year or term has commenced before receipt by the commissioner at his offices at Tallahassee of request for cancellation of the permit and refund.

History.—§214, ch. 59-205.
Note.—Similar provisions found in former §627.72.

626.361 Effective date and initial period of license.—

(1) All licenses as to which all requisite applications, payment of fees and taxes, passing of examinations, and waiting periods have been completed and evidence thereof in the customary form received by the commissioner at his office in Tallahassee within one calendar month prior to the expiration of the applicable license year then current or within one calendar month after the commencement of the next following new license year, shall be dated and be effective as of the first day of such new license year and shall be as for the entire such license year (subject to suspension, revocation, renewal, continuation, or termination as otherwise provided for in this chapter); but such a license, if issued pursuant to qualification therefor during the last calendar month of the preceding license year as hereinabove provided, shall be deemed to relate back in effectiveness to the date within such calendar month on which the last of such qualifying requirements was received by the commissioner at his offices in Tallahassee.

(2) All other licenses shall be dated and become effective as of the date of issue.

History.—§215, ch. 59-205.

626.371 Payment of fees, taxes for unlicensed period.—If upon application and qualification for a license and such investigation thereof as the commissioner may make it appears to the commissioner that a formerly licensed applicant has been actively engaged or is currently actively engaged as such a licensee, but without being licensed as in part I of this chapter required, the commissioner may, in his discretion, if he finds that such failure to be licensed was an inadvertent error on the part of an insurer so represented, nevertheless issue the license as applied for but subject to the condition that the applicant shall, before the license is issued, pay to the commissioner all fees and license taxes which would have been due had the applicant been so licensed during such current and prior periods, together with a license continuation fee of five dollars for each such current and prior years.

History.—§216, ch. 59-205.

626.381 Continuation, expiration of license; general lines agents.—

(1) The license of a general lines agent, and all limited licenses as to motor vehicle physical damage insurance or industrial fire insurance or baggage insurance issued pursuant to §626.321, shall continue in force until suspended, revoked or otherwise terminated, but subject to annual continuation by the insurer named therein on or before September 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in §624.0300 (filing, license and miscellaneous fees), accompanied by the insurer's written request for such renewal or continuation.

(2) Annually on or before September 1, each insurer shall file with the commissioner the alphabetical lists, statements and information as to licenses being renewed or continued, or being terminated, accompanied by payment of the applicable renewal or continuation fee and license taxes, as required under §626.501.

(3) Any such license as to which request for renewal or continuation is not received by the commissioner at his offices at Tallahassee as required by subsection (1) shall be deemed to have expired as at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the commissioner after such September 1 but on or before the next following October 15 may be accepted and effectuated by the commissioner, in his discretion; and any such request and payment received by the commissioner after such October 15 and on or before the next following November 15, may be accepted and effectuated by the commissioner, in his discretion, only if accompanied by an additional license continuation fee in the amount of five dollars.

(4) The original license certificate issued to any such licensee shall remain outstanding and in effect for so long as the license represented thereby continues in force as hereinabove provided.

(5) This section does not apply as to temporary licenses.

History.—§217, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 627.74, 627.75, 627.77.

626.391 Same; life, disability, and limited agents.—

(1) Except as otherwise provided in §626.0213 as to life agents and §626.0308 as to disability agents (military service), each life agent license, disability agent license, together with limited license issued as to personal accident insurance or credit life or credit disability insurance under §626.321, shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to annual continuation by the insurer named therein on or before March 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in §624.0300 (filing, license and miscellaneous fees), accompanied by the insurer's written request for such renewal or continuation.

(2) Annually, prior to March 1, each insurer shall file with the commissioner the alphabetical lists, statements and information as to agency appointments and licenses being renewed or continued, or being terminated, accompanied by payment of the applicable renewal or continuation fees and license taxes, as required under §626.501.

(3) Any such license as to which request for renewal or continuation is not received by the commissioner at his office at Tallahassee as required by subsection (1) shall be deemed to have expired as at midnight on the March 31 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the commissioner after such March 1 but on or before the next following April 15 may be accepted and effectuated by the commissioner, in his discretion; any such request and payment received by the commissioner after such April 15 and on or before the next following May 15, may be accepted and effectuated by the commissioner, in his discretion, only if accompanied by an additional license continuation fee of five dollars.

(4) The original license certificate issued to any such licensee shall remain outstanding and in effect for so long as the license represented thereby continues in force, as hereinabove provided.

(5) This section does not apply as to temporary licenses.

History.—§218, ch. 59-205.
Note.—Similar provisions found in former §§634.11, 644.11.

626.401 Same; solicitors.—

(1) The license of a solicitor shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to annual continuation by the appointing general lines agent named therein on or before September 1 by payment of the fee and license taxes for annual continuation of license as provided in §624.0300 (filing, license and miscellaneous fees), accompanied by the appointing agent's written request for such continuation.

(2) The appointing agent shall on or before September 1 of each year furnish to the commissioner at his office at Tallahassee the alphabetical lists, statements, and information as to solicitors whose appointments and licenses are being renewed or continued, or terminated, accompanied by payment of the applicable fees and license taxes, as required under §626.501.

(3) Any such license as to which request for renewal or continuation is not received by the commissioner at his offices at Tallahassee as required by subsection (1) shall be deemed to have expired as at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the commissioner after such September 1 but on or before the next following October 15 may be accepted and effectuated by the commissioner, in his discretion; and any such request and payment received by the commissioner after such October 15 and on or before the next following November 15, may be accepted and effectuated by the commissioner, in his discretion, only if accompanied by an additional license continuation fee of five dollars.

(4) Any such license shall terminate forthwith upon written request filed with the commissioner either by the appointing agent or the licensee, accompanied by proof satisfactory to the commissioner that written notice of such termination has been given to the appointing agent or licensee, as the case may be. Notice addressed to such other party at his address last of record with the notifying party, postage prepaid and placed in a United States mail depository shall be deemed to have been given when so mailed, for the purposes of this section. If not so mailed, notice shall be given by delivery thereof to the licensee.

History.—§219, ch. 59-205.

626.411 Same; adjusters.—

(1) The license of an adjuster shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to annual continuation by the employer, in the case of a company employee adjuster, or by the licensee, in the case of public adjusters and independent adjusters, on or before September 1 by payment of the license tax provided in §624.0300 (filing, license and miscellaneous fees) accompanied by written request for such continuation.

(2) Any such license as to which request for renewal or continuation is not received by the commissioner at his offices at Tallahassee as required by subsection (1) shall be deemed to have expired at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the commissioner after such September 1 but on or before the next following October 15 may be accepted and effectuated by the commissioner, in his discretion; and any such request and payment received by the commissioner after such October 15 and on or be-

fore the next following November 15, may be accepted and effectuated by the commissioner, in his discretion, only if accompanied by an additional license continuation fee of five dollars.

(3) As to any adjuster licensee whose employment or license is being terminated by his employer, information as to the reasons for such termination shall be filed as required under §626.511.

(4) This section does not apply as to temporary licenses.

History.—§220, ch. 59-205.
Note.—Similar provisions found in former §§636.33, 636.42.

626.421 Continuance, expiration of permit; service representatives, claims investigators.—

(1) The permit issued to a claims investigator, unless earlier suspended, revoked or otherwise terminated, shall expire as provided in §626.0417.

(2) The permit issued to a service representative shall continue in force until expired, suspended, revoked or otherwise terminated but subject to annual continuation by the licensee's employer on or before September 1 by payment of the fee provided in §624.0300 (filing, license and miscellaneous fees) accompanied by the employer's written request for the continuation. Any such permit as to which request for renewal or continuation is not received by the commissioner at his office at Tallahassee as required above, shall be deemed to have expired at midnight on the September 30 next following such failure. Request for renewal or continuation of any such permit or payment of fee therefor which is received by the commissioner after such September 1 but on or before the next following October 15 may be accepted and effectuated by the commissioner, in his discretion; and any such request and payment received by the commissioner after such October 15 and on or before the next following November 15, may be accepted and effectuated by the commissioner, in his discretion, only if accompanied by an additional permit continuation fee of five dollars.

(3) As to any service representative or claims investigator whose employment or permit is being terminated by his employer, information as to the reasons for such termination shall be filed as required under §626.511.

History.—§221, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 636.42.

626.431 Effect of expiration of license or permit.—

(1) Upon expiration of any license or permit, as provided in §§626.381-626.421, the individual formerly so licensed or permitted shall be completely without any of the authority or rights theretofore conferred by the license or permit, and shall not thereafter, while without the required license or permit, engage or attempt to engage in any transaction or business for which such a license or permit is required under this code.

(2) No such individual shall again be granted such a license or permit unless and until he applies and fully qualifies therefor as provided in this code, including the taking and passing of any written examination which may be required under applicable provisions; and such an examination shall be required in all cases where application for the new license or permit is made after expiration of two years from the date of expiration or termination of the prior similar license or permit.

History.—§222, ch. 59-205.

626.441 License or permit not transferable. —A license or permit issued under part I of this chapter is valid only as to the individual named therein as licensee or permitee; and is not transferable to another individual.

History.—§223, ch. 59-205.
Note.—Similar provisions found in former §627.72.

626.451 Appointment of agents.—

(1) Each insurer appointing an agent in this state shall file the appointment with the commissioner, and at the same time pay the fee and license taxes as prescribed in §624.0300 (filing, license and miscellaneous fees). Every such appointment shall be subject to the issuance of the appropriate agent's license.

(2) As a part of each appointment there shall be a certified statement or affidavit of an appropriate officer or official of the appointing insurer or of its general agent stating what investigation, if any, the insurer or general agent has made concerning the proposed agent and his background, and the insurer's or general agent's opinion to the best of its knowledge and belief as to the moral character, fitness and reputation of the proposed appointee.

(3) In the appointment of a life agent the insurer shall also certify therein, if true, that the applicant has the necessary training or that the insurer will guarantee that he will have the necessary training to hold himself out as a life agent; and the insurer shall further certify that it is willing to be bound by the acts of such life agent, within the scope of his employment.

History.—§224, ch. 59-205.
Note.—Similar provisions found in former §§627.74, 627.79, 634.04, 644.05, 644.06.

626.461 Continuation of appointment of agent.—Subject to annual renewal or continuation by the insurer as provided in §626.391, in the case of life agents, disability agents, and agents holding limited licenses under §626.321, and as provided in §626.381 in the case of general lines agents, the insurer's appointment of the agent shall continue in effect until the agent's license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the commissioner by either the insurer or the agent.

History.—§225, ch. 59-205.
Note.—Similar provisions found in former §644.11.

626.471 Termination of appointment of agent.—

(1) Subject to the agent's contract rights,

an insurer may terminate its appointment of any general lines agent, life agent, disability agent, or limited license agent at any time. The insurer shall promptly give written notice of termination to the agent, either by delivery thereof to the agent in person or by mailing it, postage prepaid and addressed to the agent at his address last of record with the insurer or the insurer's general agent. Notice so mailed shall be deemed to have been given when deposited in a United States post office mail depository. As soon as possible and at all events within thirty days after terminating the appointment of an agent (other than as to an appointment terminated by the insurer's failure to continue or renew it) the insurer shall file written notice thereof with the commissioner, together with a statement that it has given the agent notice thereof as hereinabove provided.

(2) Upon termination of the appointment of an agent, whether by failure to renew or continue the appointment or license or otherwise, the insurer shall file with the commissioner the information required under §626.511.

(3) An agent may terminate his appointment by an insurer at any time, by giving written notice thereof to the insurer and filing a copy of the notice with the commissioner. Such termination shall be subject to the insurer's contract rights.

(4) Upon receipt of notice of termination of the agency appointment of an agent, the commissioner shall forthwith terminate the pertinent license of the licensee.

History.—§226, ch. 59-205.
Note.—Similar provisions found in former §§627.74, 634.11, 634.12, 644.11, 644.12.

626.481 Termination of appointment of solicitor.—

(1) An agent terminating the appointment of a solicitor (other than by failure to renew or continue the appointment as provided in §626.401) shall immediately file written notice thereof with the commissioner, together with a statement that it has given or mailed notice thereof to the solicitor. Notice mailed to the solicitor addressed to him at his address last of record with the agent, postage prepaid, shall be deemed to be given when placed in a United States post office mail depository.

(2) As to each such termination the appointing agent shall file with the commissioner the information relative thereto as required under §626.511.

(3) Upon receipt of the notice of termination of the appointment, the commissioner shall forthwith terminate the solicitor's license.

History.—§227, ch. 59-205.
Note.—Similar provisions found in former §627.75.

626.491 Termination of appointment of adjuster, service representative, or claims investigator.—

(1) The employer of any adjuster, service representative, or claims investigator, shall promptly file with the commissioner written notice of any termination of the appointment and employment of the licensee or permittee, together with a statement as to the reasons for such termination.

(2) Information, documents, records, and statements furnished or disclosed to the commissioner pursuant to subsection (1), shall be privileged and shall not be basis for or admissible as evidence in any action against the employer.

(3) Upon receiving any such notice of termination, the commissioner shall forthwith terminate the license or permit affected thereby.

History.—§228, ch. 59-205.
Note.—Similar provisions found in former §636.32.

626.501 Alphabetical lists of licenses continued or terminated.—

(1) The insurer in the case of agents, and the appointing general lines agent in the case of solicitors, shall annually, prior to:

(a) March 1, in the case of appointments and licenses of life agents, disability agents, and of agents holding limited licenses issued under §626.321, or

(b) September 1, in the case of appointments and licenses of general lines agents or solicitors, file with the commissioner an alphabetical list for each such license type and class, of the names and addresses of each licensee whose appointment and license in this state is being renewed or is to continue in effect, accompanied by payment of the applicable renewal or continuation fees and license taxes.

(2) At the same time the insurer or general lines agent, as the case may be, shall also file with the commissioner an alphabetical list for each such license type and class of the names and addresses of each licensee whose appointment and license in this state is being terminated and is not to remain in effect, accompanied by a statement of the appointing insurer or its general agent or by the appointing general lines agent, as the case may be, and such other reasonable proof as the commissioner may prescribe or accept, that written notice of intention so to terminate his appointment and license has been given to each such licensee. Such notice of intention to terminate may be given, for the purposes of this provision, either by delivery thereof to the licensee or by mailing it postage prepaid and addressed to the licensee at his address last of record with the appointing insurer or appointing general lines agent, as the case may be; notice so mailed shall be deemed to have been given when placed in a mail depository of the United States post office.

(3) As to each such appointment and license being terminated, as referred to in subsection (2), the appointing insurer or general lines agent shall also file with the commissioner the information as to the reasons and facts involved in such termination as required under §626.511.

History.—§229, ch. 59-205.
Note.—Similar provisions found in former §§205.45, 627.74.

626.511 Reasons for termination; privileged information.—

(1) Any insurer terminating the appointment and license of an agent, any general lines

agent terminating the appointment and license of a solicitor, and any employer terminating the employment, license or permit of an adjuster, service representative, or claims investigator, whether such termination is by direct action of the appointing insurer, agent, or employer or by failure to renew or continue the appointment and license as in part I of this chapter provided, shall file with the commissioner a statement of the reasons, if any, for and facts relative to such termination. In the case of termination of the appointment of agents, such information may be filed by the insurer or by the insurer's general agent.

(2) In the case of terminations by failure to renew or continue the appointment or license, the information required under subsection (1), shall be filed with the commissioner as soon as possible, and at all events within thirty days, after the date notice of intention not to so renew or continue was filed with the commissioner as required in this chapter. In all other cases the information required under subsection (1) shall be filed with the commissioner at the time of, or at all events within ten days after, notice of the termination was filed with the commissioner as required in part I of this chapter.

(3) Any information, document, record, or statement so furnished or disclosed to the commissioner shall be absolutely privileged and shall not be admissible as evidence in or as basis for any action against the appointing insurer or general lines agent, or employer, or against any representative of any of the foregoing.

History.—§230, ch. 59-205.
Note.—Similar provisions found in former §§627.74, 627.75, 634.12, 644.12.

626.521 Character, credit reports.—

(1) As to each applicant who for the first time in this state is applying and qualifying for a license as agent, solicitor, or adjuster, or for a permit as service representative or claims investigator, the appointing insurer or its manager or general agent in this state (in the case of agents), or the appointing general lines agent (in the case of solicitors), or the employer (in the case of service representatives, claims investigators, and of adjusters who are not to be self-employed) shall coincidentally with such appointment or employment secure and thereafter keep on file a full detailed credit and/or character report, made by an established and reputable independent credit reporting service, relative to the individual so appointed or employed; except that a life insurer may use its own reporting service for the making of such a report, unless otherwise expressly requested by the commissioner.

(2) Within sixty days after such appointment or employment has been made or commenced, the insurer, manager, general agent, general lines agent, or employer, as the case may be, shall furnish to the commissioner on a form furnished by the commissioner, such information as he may reasonably require relative to such individual and investigation; except, that in the case of a life insurer such information shall be so furnished to the commissioner upon his request.

(3) As to such applicants for adjuster license who are to be self-employed the commissioner shall secure, at the cost of the applicant, a full detailed credit and/or character report, made by an established and reputable independent credit reporting service relative to the applicant.

(4) Any information so furnished shall be absolutely privileged and shall not be admissible or used as evidence in any action against the insurer, manager, general agent, general lines agent, employer, reporting service, or other persons furnishing the same.

History.—§231, ch. 59-205.
Note.—Similar provisions found in former §§627.74, 627.75, 634.06, 636.25, 644.06.

626.531 Insurance vending machines.—

(1) A licensed resident agent appointed by the insurer and licensed as to disability insurance (whether under a general lines agent license or otherwise) may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machines or other coin-operated devices supervised by him and placed at airports, railroad stations, or bus stations, where transportation tickets for common carriers are sold and of convenience to the traveling public, upon the following conditions only:

(a) That the policy to be so sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine therefor in a particular proposed location would be of material convenience to the public;

(b) That the type of vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) That reasonable means, as determined by the commissioner, are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy;

(d) That prompt refund is provided to the applicant or prospective applicant of money inserted in defective machines and for which no insurance, or a less amount than paid for, is actually received;

(e) Such vending machine shall be so constructed and operated that it shall retain a copy of the application, showing the date, name and address of applicant and beneficiary and the amount of insurance;

(f) No policy of insurance vended through such machine shall be for a period of time longer than forty-eight hours, or for the duration of a specified one-way trip or round trip, as applicable;

(g) Each such machine shall have provided on it or immediately adjacent thereto, in a prominent location, adequate envelopes for the use of patrons of such machines in mailing the policies vended through such machines, or that the policy itself (if designed to permit such

procedure) may be mailed without an envelope; and

(h) Such licensed agent shall cause to be inspected and tested each such vending machine with reasonable frequency, and at least once each day on five out of each seven days; and should same not be in good working condition shall cause a notice to be prominently displayed thereon that the same is out of order. Such notice shall be maintained so long as such condition exists.

(2) As to each such vending machine to be so used, the commissioner shall issue to the agent a special vending machine license. The license shall apply to a specific machine or to any machine of identical type which is substituted for it, and shall specify the name and address of the insurer and agent, the name of the policy to be so sold, the serial number of the machine, and the place where the machine is to be in operation. The license shall be subject to termination, suspension, or revocation coincidentally with that of the agent. The commissioner shall also revoke the license as to any machine as to which he finds that any of the conditions upon which the machine was licensed as referred to in subsection (1), have been violated, or no longer exist. Proof of the existence of a subsisting license shall be displayed on or about each such vending machine in use in such manner as the commissioner may reasonably require.

History.—§232, ch. 59-205; (2) §1, ch. 63-20.

626.532 Continuation, expiration of insurance vending machine license.—

(1) The license of a vending machine shall continue in force until expired, suspended, revoked, or otherwise terminated, but subject to annual continuation by the agent named therein on or before September 1 by payment of the fee as provided in §624.0300, for each license year or part thereof for each respective vending machine.

(2) The agent shall on or before September 1 of each year furnish to the commissioner at his office at Tallahassee, Florida, a list and information as to the vending machine licenses being renewed or continued or terminated, accompanied by payment of the applicable fees. Such list shall give the name and address of the insurer and agent, name of the policy to be sold, serial number of the vending machine, and the place where the machine is to be in operation.

(3) Any such license as to which request for renewal or continuation is not received by the commissioner at his office at Tallahassee, Florida, as required by subsection (1) shall be deemed to have expired as at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fees therefor which is received by the commissioner after such September 1 but on or before the next following October 15 may be accepted and effectuated by the commissioner, in his discretion; and any such request and payment received by the commissioner after such October 15 and on or before the next following November 15, may be accepted and effectuated by the commissioner, in his discretion, only if accompanied by an additional license continuation fee of fifteen dollars.

History.—§2, ch. 63-20.

626.541 Corporation and business names; officers; associates; notice of changes.—

(1) Any individually licensed agent or agents, or adjuster or adjusters, doing business under a firm or corporation name or under any business name other than their own individual name or names shall annually on or before September 1 file with the commissioner, on forms furnished by him a written statement of the firm, corporation or business name being so used, the address of any office or offices or places of business making use of such name, and the name and residence address of each director and each officer of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

(2) In the event of any change of such name, or directors or officers, or of any of such addresses, or in the personnel so associated, written notice of such change shall promptly be filed with the commissioner by or on behalf of those licensees terminating any such firm, corporation, or business name or continuing to operate thereunder.

History—§233, ch. 59-205.

626.551 Notice of change of address.—Every licensed agent or adjuster shall promptly notify the commissioner in writing of a change of his principal business address.

History.—§234, ch. 59-205.
Note.—Similar provisions found in former §§634.15, 644.15.

626.561 Reporting and accounting for funds.—

(1) All premiums, return premiums or other funds belonging to insurers or others received by an agent, solicitor or adjuster in transactions under his license shall be trust funds so received by the licensee in a fiduciary capacity, and the licensee in the applicable regular course of business shall account for and pay the same to the insurer, insured or other person entitled thereto.

(2) Any agent, solicitor or adjuster who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use, shall upon conviction be guilty of larceny by embezzlement and shall be punished as provided by law.

History.—§235, ch. 59-205.

626.571 Delinquent agencies; notice of trusteeship.—If any agent or agency becomes delinquent in payment of accounts owing to the insurer or insurers represented by the agent or agency, and a trusteeship or similar arrangement for the administration of the affairs of the agent or agency is instituted, the insurer or insurers involved therein shall immediately give written notice thereof to the commissioner. The notice shall state the name and address of each

such agent, the circumstances and estimated amount of delinquency, and such other information as the insurer deems pertinent or as the commissioner may reasonably require.

History.—§236, ch. 59-205.

626.581 Commissions contingent upon adjustment savings prohibited.—

(1) It shall be unlawful for any insurer to enter into any agreement or understanding with its general or state agent or for any insurer, either directly or through its general or state agent, to enter into any agreement or understanding with any local resident agent of such insurer in this state, the effect of which is to make the net amount of any such agent's commissions on policies of insurance negotiated and issued by such insurer in this state contingent upon savings effected in the adjustment, settlement and payment of losses covered by such insurer's policies, and in pursuance of which agreement or understanding the agent acts as adjuster for claims under such policies and pays claims incurred by such insurer under the policies from a stated percentage of the premiums collected or remitted to the agent thereon and retained by him; and any such agreements and understandings now existing are declared unlawful and shall be terminated immediately.

(2) Nothing in this section shall be construed to apply to or affect any contingent commissions agreement under which the general or state agent or local resident agent does not pay claims arising under policies of the insurer he represents from a stated percentage of premiums collected by him or remitted to such agent and retained by him.

History.—§237, ch. 59-205.
Note.—Similar provisions found in former §627.0100.

626.591 Same; penalty for violation.—If any insurer or agent is found by the commissioner to be in violation of §626.581 the commissioner may, in his discretion, suspend or revoke the insurer's certificate of authority and the agent's license. Any such suspension or revocation shall be for a period of not less than six months, and the insurer or agent shall not subsequently be authorized or licensed to transact insurance unless the commissioner is satisfied that the insurer or agent will not again violate any of the provisions of §626.581.

History.—§238, ch. 59-205.
Note.—Similar provisions found in former §§627.0101, 627.0102.

626.601 Improper conduct; inquiry.—

(1) The commissioner may, upon his own motion, and shall, upon a written complaint signed by any interested person and filed with the commissioner, inquire into any alleged improper conduct of any licensed agent, solicitor or adjuster in this state, or of any person holding a permit as service representative or claims investigator under this code.

(2) In the prosecution of such inquiries the agent, solicitor or adjuster shall, whenever so required by the commissioner, cause his books and records to be open for inspection for the purpose of such inquiries.

(3) As a prerequisite to exercising the right or authority to investigate the books and records of such a licensee, the commissioner shall serve upon the licensee a copy of the general charges against him, so as to appraise the licensee of the general purpose, nature, and scope of the investigation or inquiry, and including the name and identity of the person, if any, who may have filed a complaint with the commissioner as referred to in subsection (1) if the investigation is in any way related to such complaint.

(4) Such general charges are not required to allege any facts constituting any alleged improper conduct of the licensee, for such inquiry or investigation is authorized as a fact-finding inquiry or investigation for the purpose of determining the existence or non-existence of facts constituting such improper conduct as would justify the commissioner in instituting proceedings to suspend or revoke the license of any such licensee as hereinafter in this chapter provided.

(5) Service of such copy of general charges may be made by delivering copy to the licensee or mailing same by registered or certified mail with return receipt requested addressed to him at his business or residence address. If so mailed, notice shall be deemed to have been given when deposited in a mail depository of the United States post office.

(6) The charges or complaints against any agent, solicitor or adjuster may be informally alleged and need not be in any such language as is necessary to charge a crime on an indictment or information.

(7) The expense for any hearings or investigations under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

History.—§239, ch. 59-205.
Note.—Similar provisions found in former §626.28.

626.611 Grounds for compulsory refusal, suspension, revocation of license or permit.— The commissioner shall deny, suspend, revoke, or refuse to renew or continue the license of any agent, solicitor, or adjuster, or the permit of any service representative or claims investigator if he finds after notice and hearing thereon as provided for in §626.631 that as to the applicant, licensee or permittee any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license or permit as specified in this code.

(2) Material misstatement, misrepresentation or fraud in obtaining the license or permit, or in attempting to obtain the same.

(3) Failure to pass to the commissioner's satisfaction any examination required under this code.

(4) If the license or permit is wilfully used or to be used, to circumvent any of the requirements or prohibitions of this code.

(5) Wilful misrepresentation of any insurance policy or annuity contract or wilful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(6) If, as an adjuster or claims investigator or agent permitted to adjust claims under this code, he has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contract.

(7) For demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(8) For demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or permit.

(9) Fraudulent or dishonest practices in the conduct of business under the license or permit.

(10) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license.

(11) For rebating, or attempt thereat, or for unlawfully dividing or offering to divide his commission with another.

(12) Has obtained or attempted to obtain or has used or is using a license as agent or solicitor for the purpose of soliciting or handling "controlled business" as such controlled business is defined in an applicable provision of this code.

(13) Wilful failure to comply with, or wilful violation of, any proper order, rule or regulation of the commissioner, or wilful violation of any provision of this code.

History.—§240, ch. 59-205.

Note.—Similar provisions found in former §§627.77, 627.93, 627.94, 634.13, 634.16, 636.37, 636.44, 644.13, 644.16.

626.621 Grounds for discretionary refusal, suspension, revocation of license or permit.—The commissioner may, in his discretion, deny, suspend, revoke or refuse to renew or continue the license of any agent, solicitor or adjuster, or the permit of any service representative or claims investigator if he finds after notice and hearing thereon as provided in §626.631 that as to the applicant, licensee or permittee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation or refusal is not mandatory under §626.611:

(1) For any cause for which issuance of the license or permit could have been refused had it then existed and been known to the commissioner.

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or permit.

(3) Violation of any lawful order or rule or regulation of the commissioner.

(4) Failure or refusal, upon demand, to pay over to any insurer he represents or has represented any money coming into his hands belonging to the insurer.

(5) Violation of the provision against "twisting," as defined in §626.0604.

(6) If in the conduct of business under the license or permit he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part VII of this chapter, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(7) Wilful overinsurance of any property insurance risk.

(8) Conviction of a felony.

(9) If a life agent, he has violated the code of ethics.

History.—§241, ch. 59-205.

Note.—Similar provisions found in former §§625.21, 627.77, 627.93, 634.13, 634.16, 636.37, 636.44, 644.13, 644.16.

626.631 Procedure for refusal, suspension, or revocation of license or permit.—

(1) If any licensee or permittee is convicted by a court of a violation of this code, the license or permit of such individual shall thereby be deemed to be immediately revoked, without any further procedure relative thereto by the commissioner.

(2) As to licenses and permits denied by the commissioner upon application therefor, the applicant if aggrieved thereby shall have the right to a hearing thereon and may appeal to the court from any adverse decision of the commissioner relative thereto as provided in general in part II of chapter 624 (the insurance commissioner).

(3) As to licenses or permits issued under part I of this chapter and thereafter suspended or revoked, or renewal or continuation thereof refused by the commissioner except for failure of the licensee to pass any examination required under part I of this chapter, the procedures hereinafter set forth in this section shall apply.

(4) If after an investigation or upon other evidence the commissioner has reason to believe that there may exist any one or more grounds for the suspension, revocation, or refusal to renew or continue the license of any agent or solicitor or adjuster or the permit of any service representative or claims investigator, as such grounds are specified in §§626.611 and 626.621, the commissioner shall mail written notice of his intention to suspend, revoke, or refuse to renew or continue the license or permit, as the case may be, accompanied by a copy of the charges against the licensee or permittee, to the licensee or permittee and to each insurer represented by a licensee agent or employing a licensee adjuster or permittee, and to the appointing general lines agent as to a licensee solicitor. Such notice and charges shall be mailed by registered mail, addressed to the licensee or permittee at his residence or

principal business address last of record with the commissioner, and to the insurer or appointing agent addressed to the insurer or agent at its or his address last of record with the commissioner. The notice shall be deemed given when so addressed and mailed postage prepaid at a United States post office or branch thereof.

(5) If within twenty days after the date of mailing the notice and charges as provided for in subsection (4), neither the licensee or the permittee, nor the insurer or appointing agent have filed with the commissioner at his office in Tallahassee a written answer to such charges coupled with a written request for a hearing thereon, the commissioner may proceed to suspend, revoke, or refuse to renew the license or permit.

(6) If within such twenty days an answer and request for hearing is so filed with the commissioner, the commissioner shall hold a hearing with respect to the charges, the hearing to be held within sixty days of the date of the mailing of the notice and charges referred to in subsection (4), unless postponed by mutual consent of the parties. The commissioner shall give the licensee or permittee and each insurer or appointing agent that has filed with him the answer to the charges and request for hearing as provided in subsection (5) written notice of the hearing and of the matters to be considered thereat not less than ten days in advance of the hearing date.

(7) All such hearings shall be conducted under the provisions of §624.0125 (conduct of hearings), and in accordance with other applicable provisions of part II of chapter 624 (the insurance commissioner) including, but not limited to, §§624.0120 (witnesses and evidence), 624.0121 (testimony compelled; immunity from prosecution) and 624.0122 (same; penalty for refusal to testify), to the extent that such provisions are not in conflict with the express provisions of this section.

(8) The commissioner's statement of charges, papers, documents, reports or evidence relative to the subject of a hearing under this section shall not be subject to subpoena without his consent until after the same shall have been published at the hearing, unless after notice to the commissioner and hearing the court determines that the commissioner would not be unnecessarily hindered or embarrassed by such subpoenas.

(9) Following the hearing the commissioner shall make his order thereon as required under §624.0126 (order on hearing) and mail a copy thereof by registered mail to the address last of record in his office of each party to the hearing. If by his findings made upon the hearing the commissioner finds that one or more of the grounds therefor exist as specified in §§626.611 and 626.621, his order shall incorporate the taking of action relative to suspension, revocation, or refusal to renew or continue the license or permit as required under §626.611 or as authorized under §626.621.

History.—§242, ch. 59-205.
Note.—Similar provisions found in former §§627.73, 627.94, 627.0102, 634.13, 636.38, 644.13.

626.641 Duration of suspension or revocation.—

(1) The commissioner shall, in his order suspending a license or permit, specify the period during which the suspension is to be in effect, but such period shall not exceed one year. The license or permit shall remain suspended during the period so specified; subject, however, to any rescission or modification of the order by the commissioner, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license or permit which has been suspended shall not be reinstated except upon request for such reinstatement, but the commissioner shall not grant such reinstatement if he finds that the circumstance or circumstances for which the license or permit was suspended still exist or are likely to recur.

(2) No individual licensed or the permittee under any license or permit which has been revoked by the commissioner, shall have the right to apply for another license or permit under this code within two years from the effective date of such revocation, or, if judicial review of such revocation is sought, within two years from the date of final court order or decree affirming the revocation. The commissioner shall not, however, grant a new license or permit to any individual if he finds that the circumstance or circumstances for which the previous license or permit was revoked still exist or are likely to recur; if an individual's license as agent or solicitor has been revoked upon the ground specified in §626.611 (12) (controlled business), the commissioner shall refuse to grant or issue any new license so applied for.

(3) If licenses as agent or solicitor as to the same individual have been revoked at two separate times, the commissioner shall not thereafter grant or issue any license or permit under this code as to such individual.

(4) During the period of suspension, or after revocation of the license or permit, the former licensee or permittee shall not engage in or attempt to profess to engage in any transaction or business for which a license or permit is required under this code.

History.—§243, ch. 59-205.
Note.—Similar provisions found in former §§627.94, 634.13, 636.38, 644.13, 645.12.

626.651 Effect of suspension, revocation upon associated licenses and licensees.—

(1) Upon suspension, revocation or refusal to renew or continue any one license of an agent or solicitor the commissioner shall at the same time likewise suspend or revoke all other licenses held by the licensee under this code.

(2) In case of the suspension or revocation of license of any general lines agent, the license of any and all other agents who are

members of such agency, whether incorporated or unincorporated, and any and all solicitors employed by such agency, who knowingly are parties to the act which formed the ground for the suspension or revocation may likewise be suspended or revoked for the same period as that of the offending agent; but this shall not prevent any agent or solicitor, except the one whose license was first suspended or revoked, from being licensed as a member of or a solicitor for some other agency. The provisions of this subsection shall not apply to life agents.

(3) The procedures provided for in §626.631 shall likewise apply as to suspensions, revocations and refusals to renew or continue as referred to in subsection (2).

History.—§244, ch. 59-205.
Note.—Similar provisions found in former §§627.93, 627.0105.

626.661 Surrender of license or permit.—

(1) Though issued to a licensee or permittee, all certificates of licenses and permits issued under this chapter are at all times the property of the state of Florida, and upon notice of any suspension, revocation, refusal to renew, failure to renew, expiration or other termination of the license, such license or permit shall no longer be in force and effect.

(2) This section shall not be deemed to require the surrender to the commissioner of any certificate of license or permit, unless such surrender has been requested by the commissioner.

History.—§245, ch. 59-205; §2, ch. 61-105.

626.671 Penalty for violation.—Any individual who knowingly makes a false or otherwise fraudulent application for any license or permit under part I of this chapter, or who knowingly violates any provision of part I of this chapter, shall upon conviction thereof and in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any license or permit, be punishable as for a misdemeanor by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment in the discretion of the court. Each instance of violation shall be considered a separate offense.

History.—§246, ch. 59-205.
Note.—Similar provisions found in former §§625.011, 627.96, 627.0103, 634.16, 644.16.

626.681 Administrative fine in lieu of suspension, revocation of license.—

(1) If, upon procedures provided for in §626.631, the commissioner finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any license or permit issued under this chapter, the commissioner may, in his discretion, in lieu of such suspension, revocation or refusal, and except on a second offense or where such suspension, revocation or refusal is mandatory, impose upon the licensee or permittee an administrative penalty in the amount of $100, or if the commissioner has found wilful misconduct or wilful violation on the part of the licensee or permittee, $500. The administrative penalty may, in the commissioner's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the licensee in connection with any transaction as to which the grounds for suspension, revocation or refusal related.

(2) The commissioner may allow the licensee or permittee a reasonable period, not to exceed 30 days, within which to pay to the commissioner the amount of the penalty so imposed. If the licensee or permittee fails to pay the penalty in its entirety to the commissioner at his office at Tallahassee within the period so allowed, the licenses or permit of the licensee or permittee shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period and without any further proceedings.

History.—§247, ch. 59-205.

626.691 Probation.—

(1) If, upon procedures provided for in §626.631, the commissioner finds that one or more grounds exist for the suspension, revocation or refusal to renew or continue any license or permit issued under part I of this chapter the commissioner may, in his discretion, except where an administrative fine is not permissible under §626.681, or where such suspension, revocation or refusal is mandatory, in lieu of such suspension, revocation or refusal, or in connection with any administrative monetary penalty imposed under §626.681, place the offending licensee or permittee on probation for a period, not to exceed two years, as specified by the commissioner in his order.

(2) As a condition to such probation or in connection therewith, the commissioner may specify in his order reasonable terms and conditions to be fulfilled by the probationer during the probation period. If during the probation period the commissioner has good cause to believe that the probationer has violated such terms and conditions or any of them, he shall forthwith suspend, revoke or refuse to renew or continue the license or permit of the probationer, as upon the original ground or grounds referred to in subsection (1), by his order given to the licensee or permittee and insurers or agents represented by him, without the necessity of further advance notice, hearing, or procedure.

History.—§248, ch. 59-205.

626.701 Appeal from the commissioner.— Any action, decision, order of the commissioner, or failure of the commissioner to act, decide, or order, relative to any matter which is subject to this chapter, shall be subject to review by the courts as provided in §624.0128 (appeals from the commissioner).

History.—§249, ch. 59-205.

626.711 Retaliatory provision, agents.—

(1) When under the laws of any other state any fine, tax, penalty, license fee, deposit of money, or security, or other obligation or prohi-

bition is imposed upon resident insurance agents of Florida doing business in such other state, then so long as such laws continue in force or are so administered, the same requirements, obligations and prohibitions, of whatever kind, shall be imposed upon every insurance agent of such other state doing business in Florida.

(2) If any insurer permits its insurance contract to be issued in violation of this section, its certificate of authority to do business in Florida shall be suspended for a period of three months.

(3) If any resident agent of Florida shall knowingly countersign any insurance contract in violation of this section, or shall otherwise knowingly violate any of the provisions hereof, his license to write insurance in this state shall be suspended for a period of three months.

(4) This section does not apply as to life or disability insurance.

History.—§250, ch. 59-205.
Note.—Similar provisions found in former §627.0106.

PART II

GENERAL LINES AGENTS AND SOLICITORS; QUALIFICATIONS AND REQUIREMENTS

626.0100 Short title.—Part II of this chapter may be referred to in any legal proceedings as the "general lines agents law."

History—§252, ch. 59-205.

626.0101 Scope of part II.—Part II of this chapter applies only as to:

(1) General lines agents, as defined in §626.041;

(2) Solicitors, as defined in §626.071; and

(3) Service representatives, as defined in §626.081.

History.—§251, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 627.98, 627.0104, 628.12.

626.0102 Part II is supplementary to licensing law.—Part II of this chapter is supplementary to part I of this chapter of the code, "the licensing procedures law."

History.—§253, ch. 59-205.

626.0103 Industrial fire insurance defined.—For the purposes of this code "industrial fire insurance" is insurance against loss by fire of buildings or other structures, which may include extended coverage and windstorm insurance, under which the premiums are collected monthly or more often and the face amount of the insurance provided by the policy on one risk under the same ownership is not more than two thousand five hundred dollars including the contents of such buildings or other structures, and the insurer issuing such policy is operating under a system of collecting a debit by its agents.

History.—§254, ch. 59-205.
Note.—Similar provision found in former §627.72.

626.0104 Purpose of license.—

(1) The purpose of a license issued under this code to a general lines agent or solicitor is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent or solicitor with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation as an "agent" or "solicitor," or to enable the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him upon his own interests or those of other persons with whom he is closely associated in capacities

other than that of insurance agent or solicitor.

(2) The commissioner shall not grant, renew, continue, or permit to exist any license as such agent or solicitor as to any applicant therefor or licensee thereunder if he finds that the license has been or is being or will probably be used by the applicant or licensee for the purpose of securing rebates or commissions on "controlled business," that is, on insurance written on his own interests or those of his family or of any firm, corporation or association with which he is associated, directly or indirectly, or in which he has an interest other than as to the insurance thereof.

(3) A violation of this section shall be deemed to exist or be probable (as to an applicant for license) if the commissioner finds that during any twelve months period aggregate commissions or other compensation accruing in favor of the applicant or licensee based upon the insurance procured or to be procured (in the case of an applicant for license) by or through the licensee with respect to insurance of his own interests or those of his family or of any firm, corporation or association with which he is associated or in which he is interested as above referred to in subsection (2), have exceeded or will exceed thirty-five per cent of the aggregate amount of commissions and compensation accruing or to accrue in his favor during the same period as to all insurance coverages procured or to be procured by or through him. Except, any general lines agent who, on July 1, 1959, had aggregate commissions or other compensation on controlled business as defined in this section in excess of the aforesaid thirty-five per cent, shall be permitted to continue writing such insurance for the same insured or insureds, so long as the agent continues to hold a general lines agent's license in good standing to transact the same kinds of insurance so written, until the termination of such license by failure to renew or continue, suspension or revocation.

(4) This section shall not be deemed to prohibit the licensing under a limited license as to motor vehicle physical damage insurance, as provided for in §626.321, any person employed by or associated with a motor vehicle sales or financing agency, with respect to insurance of the interest of such agency in a motor vehicle sold or financed by it. This section shall not apply with respect to the interest of a real estate mortgagee in or as to insurance covering such interest, or in the real estate subject to such mortgage.

History.—§255, ch. 59-205.
Note.—Similar provisions found in former §§627.79, 627.93.

626.0105 Qualifications for agent license.—The commissioner shall not grant or issue a license as general lines agent as to any individual found by him to be untrustworthy or incompetent or who does not meet each and all of the following qualifications, and unless from the application for license it affirmatively appears:

(1) That the applicant is a natural person of at least twenty-one years of age.

(2) That the applicant is a citizen of the United States; has been a bona fide resident of this state for at least one year last past, and will actually reside in this state at least six months out of each year.

(3) That his place of business will be located in this state and he will be actively engaged in the business of insurance, and will maintain a place of business accessible to the public.

(4) That the license is not being sought for the purpose of writing or handling controlled business, in violation of §626.0104.

(5) That the applicant is qualified as to knowledge, experience, or instruction in the business of insurance and meets the requirements relative thereto as provided in §626.0106.

(6) That the applicant is not a service representative, as defined in §626.081, nor a supervising or managing general agent, as defined in §626.091, nor a special agent or similar service representative of a disability insurer which also transacts property, casualty, or surety insurance; except, that the president, vice-president, secretary or treasurer, including a member of the board of directors, of a corporate insurer, if otherwise qualified under and meeting the requirements of part II of this chapter, may be licensed as a local resident agent.

History.—§256, ch. 59-205.
Note.—Similar provisions found in former §§627.72, 627.77, 627.79.

626.0106 Requirement as to knowledge, experience or instruction.—

(1) Except as provided in subsection (3), no applicant for a license as a general lines agent (other than as to a limited license as to baggage insurance pursuant to §626.321 (1) (d)) shall be qualified therefor or be so licensed unless within the two years immediately preceding the date his application for license is filed with the commissioner, he has:

(a) Successfully completed classroom courses in insurance satisfactory to the commissioner at a school, college, or extension division thereof, approved by the commissioner; or

(b) Completed a correspondence course in insurance satisfactory to the commissioner and regularly offered by accredited institutions of higher learning in this state and, except those applying for limited licenses under §626.321, has had at least six months of responsible insurance duties as a substantially full time bona fide employee of an agent, an insurer, their managers, general agents, or representatives, in all lines of insurance set forth in §626.041 (1); or

(c) Had at least one year in responsible insurance duties as a substantially full-time bona fide employee of an agent, an insurer, their managers, general agents, or representatives, in all lines of insurance (exclusive of aviation and wet marine and transportation insurances, but not exclusive of boats of less than thirty-six feet in length or aircraft not held out for

hire) as set forth in §626.041 (1), without the education requirement mentioned in paragraphs (a) or (b).

(2) Where applicant's qualifications as required in paragraphs (b) or (c) are based in part upon the periods of employment at responsible insurance duties prescribed therein, the applicant shall submit with his application for license, on a form prescribed by the commissioner, the affidavit of his employer setting forth the period of such employment, that the same was substantially full-time, and giving a brief abstract of the nature of the duties performed by the applicant.

(3) In the case of applicants for license who are enrolled in and actively pursuing classroom courses as referred to in subsection (1) (a), or a correspondence course as specified in subsection (1) (b), the commissioner may in his discretion permit the applicant to file his application for license not earlier than sixty days prior to the completion of such courses and of the six months of insurance employment and experience as referred to in subsection (1) (b), in order that the completion of the courses and of such insurance employment and experience may run concurrently with the sixty day waiting period required under §626.231 (2) for eligibility for examination. An individual who was qualified to sit for an agent's or adjuster's examination at the time he was employed by the commissioner and who while so employed was employed in responsible insurance duties as a full-time bona fide employee shall be permitted to take an examination if application for such examination is made within ninety days after the the date of termination of his employment with the commissioner.

History.—§257, ch. 59-205.
Note.—Similar provisions found in former §§627.79, 627.81, 628.12.

626.0107 Agency firms and corporations; special requirements.—If a partnership, corporation or association holds an agency contract all members of the partnership or association who solicit, negotiate or effect insurance contracts, and all officers and stockholders of the corporation who solicit, negotiate or effect insurance contracts are required to qualify and be licensed individually as agents, and all of such agents shall be individually appointed by and licensed as to each property and casualty insurer entering into an agency contract with such agency. Each such appointing insurer as soon as known to it shall comply with this section and shall determine and require that each agent so associated in or so connected with such agency is likewise appointed and licensed as to the same such insurer.

History.—§258, ch. 59-205.
Note.—Similar provision found in former §§627.77, 627.86.

626.01071 Corporations, liability of agent.—Any general lines insurance agent who is an officer, director, stockholder, or employee of an incorporated general lines insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his direct supervision and control while acting on behalf of the corporation.

History.—§4, ch. 63-20.

626.0108 Qualifications for solicitor license.—The commissioner shall not grant or issue a license as solicitor as to any individual found by him to be untrustworthy or incompetent, or who does not meet each and all of the following qualifications, and unless from the application for the license it affirmatively appears:

(1) That the applicant is a natural person.

(2) That the applicant is a citizen of the United States and has been a bona fide resident of this state for more than six months last past.

(3) That within the twelve months next preceding the date the application for license was filed with the commissioner, the applicant has completed a course in insurance approved by the commissioner or has had at least six months experience in responsible insurance duties as the substantially full-time employee of an agent, or of an insurer, their managers, general agents, or representatives.

(4) That the license is not being sought for the purpose of writing or handling controlled business, in violation of §626.0104.

(5) That the applicant will be employed by only one agent, which agent will supervise the work of the applicant and his conduct in the insurance business, and that the applicant will spend all of his business time in the employment of the agent, and will be domiciled in the office of the appointing agent as defined in §626.0109.

(6) That as of upon issuance of the license applied for the applicant is not an agent, and is not a service representative, as defined in §626.081, nor a supervising or managing general agent, as defined in §626.091.

(7) That the appointing agent, if any, has endorsed the application, and has obligated himself thereby to supervise the solicitor's conduct and business.

History.—§259, ch. 59-205.
Note.—Similar provisions found in former §§205.45, 627.72, 627.80.

626.0109 Solicitor's office domicile defined.—"Domiciled in the office of the appointing agent" as used in §626.0108 (5) means that the solicitor shall be housed wholly and completely within the actual confines of the office of the agent whom he represents, together with any such furniture, books, records, equipment and paraphernalia necessary for the conduct of such insurance business. The solicitor shall not maintain any such office or furniture, books, records, equipment or paraphernalia at any other address or location, nor shall he maintain or make use of any other quarters, or space, or address, for the purpose of the conduct of such business. No advertising or letterhead or telephone listing of the solicitor shall indicate any business address other than that of

the agent by whom he is employed. No solicitor may be employed from any location except where an agent licensed to write such lines spends his full time in charge of such location.

History.—§260, ch. 59-205.
Note.—Similar provisions found in former §627.80.

626.0110 Who may appoint solicitors; appointment exclusive.—

(1) Every person duly licensed as a general lines agent, except those holding limited licenses provided for in §626.321, may appoint as solicitors any persons who hold or have qualified for a solicitor's license.

(2) The same individual shall not be licensed as solicitor as to more than one appointing agent at any one time, as the name of such appointing agent is designated in the solicitor's license.

(3) Appointment of a solicitor shall be made as part of the application for license, as provided in §626.171.

History.—§261, ch. 59-205.
Note.—Similar provisions found in former §§205.45, 627.75, 627.85.

626.0111 Solicitor's powers; agent's responsibility.—

(1) A solicitor's license shall not cover any kind of insurance for which the agent by whom he is appointed is not then licensed.

(2) A solicitor, as such, shall not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign his name to insurance contracts.

(3) All business transacted by a solicitor under his license shall be in the name of the agent by whom he is appointed, and the agent shall be responsible for all acts of the solicitor within the scope of such appointment.

History.—§262, ch. 59-205.
Note.—Similar provisions found in former §627.88.

626.0112 Temporary license; death, disability, absence of agent.—

(1) The commissioner may, in his discretion, issue a temporary license as agent to a licensed agent's employee, family member, business associate, or personal representative, or to the representative of a direct writing insurer of which the agent was the licensed agent in the area served by the agency, for the purpose of continuing or winding up the business affairs of the agent or agency, all subject to the following conditions:

(a) The agent so being replaced must have become deceased; or unable to perform his duties as agent because of military service, or illness or other physical or mental disability; or, in the case of a direct writing insurer, as above mentioned, have had his employment or agency appointment terminated by the insurer;

(b) There must be no other person connected with the agent's business who is licensed as a general lines agent.

(c) The proposed temporary licensee must be qualified as for a regular general lines agent's license under this code except as to residence, examination, education, or experience.

(d) Application for the temporary license must be made by the applicant upon statements and affidavit filed with the commissioner on forms as prescribed and furnished by him.

(e) The temporary license shall be issued and be valid for a period of not over six months, and, except as to disabling or confining illness, shall not be renewed either to the then holder of the temporary license or to any other person for or on behalf of the agent, agency, or direct writing insurer.

(f) Under a temporary license the licensee shall not represent as agent any insurer not last represented by the agent so being replaced, nor be licensed as to any additional kind or classification of insurance than those covered by the last existing agency appointments of such replaced agent; except, that if during the temporary license period an insurer withdraws from such agency, the temporary licensee may be appointed and licensed as agent by another like insurer only for the period remaining under the temporary license originally issued as to such withdrawing insurer or during any renewal of such original license as authorized under paragraph (e), and the agency contract between the licensee and such other insurer shall so provide. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

(g) The holder of a temporary license may be granted a regular agent's license upon taking and successfully completing a classroom course or correspondence course in insurance or having the insurance employment experience as prescribed in §626.0106, and passing an examination as required by §626.221; but the commissioner may waive the requirements as to residence, and the time of taking such examination as prescribed in §626.231(2).

(2) Except in the case of renewal of a temporary license due to the continuing disability of the agent, as defined and provided for in paragraph (e), the commissioner shall not grant to the same individual more than one temporary license during any twelve months period. There shall be not more than one renewal of the temporary license due to such disabling or confining illness of such licensed agent, and such renewal shall follow consecutively the expiration of the original temporary license, and in no event shall the total period covered by any original temporary license and the renewal thereof exceed twelve consecutive months.

(3) If a temporary licensee is used to replace an individual whose agency appointment or employment and license has been terminated by the insurer, such latter individual shall not again be appointed or licensed as an agent of the same insurer or affiliated insurers within a period of twenty-four months following the date of such termination.

(4) If an absent or disabled agent being replaced under a temporary license returns or becomes able to resume the active conduct of the agency, or if the disposition of the affairs of

the agency of a deceased or mentally incompetent agent is completed, or the temporary licensee has qualified for a regular license, before expiration otherwise of the temporary license, the temporary license shall thereupon forthwith terminate, and the licensee shall promptly deliver the temporary license certificate to the commissioner at Tallahassee for cancellation.

(5) The applicant for a temporary license shall pay to the commissioner, prior to the issuance thereof, the applicable license fee as specified therefor in §624.0300 (filing, license, and miscellaneous fees).

(6) Except as in this section expressly provided, the holder of a temporary license shall be subject to the same requirements and responsibilities as apply under this code to agents regularly licensed.

History.—§263, ch. 59-205.
Note.—Similar provisions found in former §627.78.

626.0113 Same; industrial fire agent; pending examination.—

(1) The commissioner may in his discretion, issue a temporary limited license as industrial fire agent, as such a limited license is provided for in §626.321, for a temporary period not exceeding ninety days to an individual otherwise qualified, who is completing the educational or training requirements prescribed in §626.0106, and who will, prior to termination of such ninety day period, take the required examination.

(2) The fee for such a temporary license shall be as specified in §624.0300 (filing, license and miscellaneous fees).

History.—§264, ch. 59-205.
Note.—Similar provisions found in former §627.82.

626.0114 Nonresident agents; licensing and restrictions.—

(1) The commissioner may, upon written application and the payment of a license fee as specified therefor in §624.0300 (filing, license and miscellaneous fees), issue a license as a general lines agent to an individual who is otherwise qualified therefor under parts I and II of this chapter (licensing procedures law), but who is not a resident of this state, if by the laws of the state of his residence, residents of this state may be licensed in like manner as a nonresident agent of his state.

(2) The commissioner shall not, however, issue any such license to any nonresident who has an office or place of business in this state, or who has any direct or indirect pecuniary interest in any insurance agent, insurance agency, or in any solicitor licensed as a resident of this state; nor to any individual who does not, at time of issuance and throughout the existence of the Florida license, hold a license as agent or broker issued by the state of his residence; nor to any individual who is employed by any insurer as a service representative or who is a supervising or managing general agent in any state, whether or not also licensed in another state as an agent or broker. The commissioner shall have discretion to refuse to issue any such license to a nonresident when he has reason to believe that the applicant by ruse or subterfuge is attempting to avoid the intent and prohibitions contained in this subsection, or to believe that any of the grounds exist as for suspension or revocation of license as set forth in §§626.611 and 626.621.

(3) Such a nonresident shall not enter this state for the purpose of inspecting any risk or property without the written permission of the insured, or of a countersigning agent, resident in this state, on such risk. Nor shall he directly or indirectly solicit, negotiate or effect insurance contracts in this state unless accompanied by a countersigning agent, resident in this state, on such risk.

(4) All insurance policies as defined in §627.01011, written under the nonresident agent's license, including those written or issued pursuant to the surplus lines law, part VI of this chapter, on risks or property located in this state must be countersigned by a local agent resident of this state; and it shall be the duty and responsibility of the nonresident agent, and, if called upon to do so by the countersigning agent, of the insurer likewise, to assure that such resident local agent receives the same commission as allowed by the state of residence of the nonresident agent, but in no event shall the resident local agent receive, accept, or retain less than fifty per cent of the usual Florida local agent's commission, or fifty per cent of the nonresident agent's commission, whichever is less, on policies of insurance covering property as defined in §624.0403 and insurance covering in whole or in part real property and tangible personal property, including property floater policies. On all other policies of insurance, including insurance covering motor vehicles, plate glass, burglary, robbery, theft, larceny, boiler and machinery, workmen's compensation, fidelity and surety, bodily injury liability, and property damage liability, in no event shall he receive, accept, or retain less than twenty-five per cent of the usual Florida local agent's commission or twenty-five per cent of the nonresident agent's commission, whichever is less.

(5) Except as in this section and §§626.0115 and 626.0116 provided, nonresident agents shall be subject to the same requirements as apply to agents resident in this state.

History.—§265, ch. 59-205.
Note.—Similar provisions found in former §627.85.

626.0115 Same; service of process.—

(1) Each licensed nonresident agent shall appoint the commissioner as his attorney to receive service of legal process issued against the agent in this state, upon causes of action arising within this state out of transactions under his license. Service upon the commissioner as attorney shall constitute effective legal service upon the agent.

(2) The appointment shall be irrevocable for as long as there could be any cause of ac-

tion against the agent arising out of his insurance transactions in this state.

(3) Duplicate copies of such legal process against such agent shall be served upon the commissioner by a person competent to serve a summons.

(4) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent at his last address of record with the commissioner.

(5) The commissioner shall keep a record of the day and hour of service upon him of all such legal process.

History.—§266, ch. 59-205.
Note.—Similar provisions found in former §627.85.

626.0116 Same; retaliatory provision.—When under the laws of any other state any fine, tax, penalty, license fee, deposit of money or security or other obligation, limitation or prohibition is imposed upon resident insurance agents of Florida in connection with the issuance of, and activities under, a nonresident agent's license under the laws of such state as to such Florida agent, including the sharing of commissions, then so long as such laws continue in force or are so administered, the same requirements, obligations, limitations and prohibitions, of whatever kind, shall be imposed upon every insurance agent of such other state doing business in Florida under a nonresident agent's license issued under §626.0114.

History.—§267, ch. 59-205.

626.0117 Service representatives; application for permit.—The application for a permit as service representative (as defined in §626.081), shall show the applicant's name, residence address, name of employer, position or title, type of work to be performed by the applicant in this state, and such additional information as the commissioner may reasonably require.

History.—§268, ch. 59-205.
Note.—Similar provisions found in former §627.72.

626.0118 Same; managers; activities.—Individuals employed by insurers, their managers, general agents or representatives as service representatives, and supervising or managing general agents (as defined in §626.091) employed for the purpose of or engaged in assisting agents and solicitors in negotiating and effecting contracts of insurance, shall engage in such activities when, and only when, accompanied by, or at the specific direction in writing of, an agent or solicitor duly licensed as a resident licensee under this code.

History.—§269, ch. 59-205.
Note.—Similar provisions found in former §627.72.

626.0119 Furnishing supplies to unlicensed agent prohibited; penalty.—

(1) No insurer shall furnish to any agent, or prospective agent named or appointed by it, any blank forms, applications, stationery or other supplies to be used in soliciting, negotiating or effecting contracts of insurance, on its behalf until such agent shall have received from the commissioner a license to act as an insurance agent and shall have duly qualified as such.

(2) Any insurer, or any officer, director or agent thereof violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of $100 for each and every violation, or by imprisonment for not less than 90 days nor more than 6 months in the county jail.

History.—§270, ch. 59-205.
Note.—Similar provisions found in former §627.09.

626.0120 Branch agencies.—

(1) Each branch place of business established by an agent or agency firm, corporation, or association, shall be in active full time charge of a licensed general lines agent.

(2) If the agent or agency establishes places of business in more than one county, additional county license tax is payable as provided in §624.0303.

History.—§271, ch. 59-205.
Note.—Similar provisions found in former §627.79.

626.0121 Agent's records.—Every agent issuing or countersigning any insurance policy, as defined in §627.01011, must maintain in his office such records of policies written or countersigned by him to enable the insuring public to obtain all necessary information, including daily reports, concerning such policies at least until the expiration date thereof.

History.—§272, ch. 59-205.
Note.—Similar provisions found in former §627.91.

626.0122 Place of business in residence.—No requirement of part II of this chapter that an agent shall maintain within this state a place of business which is accessible to the public shall be deemed to prohibit the maintenance of such a place of business in connection with the place of residence of either the agent or of other persons, if:

(1) A separate room is set aside by the agent for and is actually used as his office or place of business, and

(2) Such room is easily accessible to the public and is in fact in the usual course of his business used by the agent in his dealings with the public, and

(3) The existence of such place of business is suitably advertised, as determined by the commissioner.

History.—§273, ch. 59-205.

626.0123 Compensation of agents; mutual insurers.—A mutual insurer may compensate its agents upon such basis as is fixed by agreements between the insurer and its respective agents.

History.—§274, ch. 59-205.
Note.—Similar provisions found in former §627.99.

626.0124 Same; reciprocal insurers.—Each agent of a reciprocal insurer shall be compensated either by commission or by salary, but not by both commission and salary. At the time its certificate of authority is issued, renewed or continued under this code each reciprocal

insurer shall certify to the commissioner whether each of its agents will be paid upon a commission basis or upon a salary basis.

History.—§275, ch. 59-205.

Note.—Similar provisions found in former §628.12.

626.0125 Exchange of business.—

(1) (a) "Excess business" is defined as risks requiring insurance above the limits of that which the agent's own insurer will accept.

(b) "Rejected business" is defined as risks which an agent's own insurer is authorized to write but rejects for underwriting reasons.

(2) An agent may place only such excess or rejected business for which he is appointed and licensed, and for which the insurer by which he is appointed is authorized to write, with an insurer for which he is not a licensed agent, by placing such business through a licensed agent of such other insurer; provided, however, an agent may place a class of business which his insurer is authorized to write, with an insurer for which he is not a licensed agent, by placing such business through a licensed agent of such insurer, when it is to the best interest of the insured to do so and whether or not it is "rejected business."

(3) The foregoing limitations and restrictions shall not be construed, and shall not apply, to the placing of surplus lines business under the provisions of part VI of this chapter.

History.—§276, ch. 59-205.

Note.—Similar provisions found in former §627.89.

626.0126 Sharing commissions; penalty.—

(1) No agent or solicitor shall divide with others or share in any commissions payable on account of insurance, except as follows:

(a) A resident agent may divide or share in commissions with his own employed solicitors, and with other resident agents appointed and licensed to write the same kind or kinds of insurance.

(b) A resident agent and a nonresident agent, subject to provisions of §626.0114, may divide among themselves commissions as to kinds of insurance for which both are appointed and licensed.

(2) No such licensee shall share a commission with any corporation unless such corporation is an insurance agency.

(3) In addition to other penalties provided therefor, the license of any licensee violating or participating in the violation of this section shall be revoked.

History.—§277, ch. 59-205.

Note.—Similar provisions found in former §627.89.

626.0127 Rights of agent following termination of appointment.—

(1) Following termination of his agency appointment and license as to an insurer, the agent may for the period herein provided continue to service, and receive from the insurer commissions or other compensation relative to, policies written by him for the insurer during the existence of the appointment and license. He may countersign all certificates or endorsements necessary to continue such policies to the expiration date thereof, including renewal option periods, and collect and remit premiums due thereon, but shall not otherwise, except with the consent of the insurer, change or modify the policy in any way nor increase the hazards insured against therein.

(2) This section does not apply as to agents of direct writing insurers or to agents and insurers between whom the relationship of employer and employee exists.

History.—§278, ch. 59-205.

Note.—Similar provisions found in former §627.90.

626.0128 Appeals.—Appeals from the actions of the commissioner in the administration of this chapter may be taken as provided in §624.0128 (appeals from the commissioner).

History.—§279, ch. 59-205.

PART III
LIFE INSURANCE AGENTS

626.0200 Short title.—Part III of this chapter may be referred to in any legal proceedings as the "life agent law."

History.—§281, ch. 59-205.

626.0201 Scope of part III.—Part III of this chapter applies only as to agents of life insurers, and to agents who are appointed by and licensed as to the same insurer as to both life

and disability insurances.

History.—§280, ch. 59-205.

626.0202 Part III is supplementary to licensing law.—Part III of this chapter is supplementary to part I of this chapter, the "licensing procedures law."

History.—§282, ch. 59-205.

626.0203 Life agent defined.—For the purposes of part III of this chapter a "life agent" is as defined in §626.051.

History.—§283, ch. 59-205.

Note.—Similar provisions found in former §634.01.

626.0204 Life insurer defined.—For the purposes of part III of this chapter a "life insurer" means an insurer writing life insurance, fixed dollar annuity contracts and variable annuity contracts, or either of such types of contracts.

History.—§284, ch. 59-205; §8, ch. 61-441.

Note.—Similar provisions found in former §634.01.

626.0205 Ordinary class insurer and ordinary-variable annuity class insurer defined.—

(1) An "ordinary class" insurer is an insurer writing life insurance on the legal reserve plan, for amounts of one thousand dollars or more, with premiums payable on the annual, semi-annual, quarterly, monthly or weekly basis.

(2) An "ordinary-variable annuity class" insurer is an insurer writing an ordinary class of insurance which issues annuity contracts providing for payments or values which vary directly according to investment experience.

History.—§285, ch. 59-205; (2) n. by §18, ch. 61-441.

Note.—Similar provisions found in former §634.01.

626.0206 Industrial class insurer defined.—An "industrial class" insurer is an insurer writing industrial life insurance, as defined in §627.0301, and as to such insurance operates under a system of collecting a debit by its agent.

History.—§286, ch. 59-205.

Note.—Similar provisions found in former §634.01.

626.0207 Ordinary-combination class insurer defined.—An "ordinary-combination class" insurer is an insurer writing both ordinary class insurance and industrial class insurance, as defined in §§626.0205 and 626.0206, respectively.

History.—§287, ch. 59-205.

Note.—Similar provisions found in former §634.01.

626.0208 Purpose of license.—

(1) The purpose of a license issued under this code to a life agent is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation as an "agent," or to enable the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him upon his own interests or upon those of other persons with whom he is closely associated in capacities other than as an insurance agent.

(2) The commissioner shall not renew, continue, or permit to exist any license of a life agent if he finds that such licensee obtained, or attempted to obtain, such license not for the purpose of holding himself out to the general public as a life insurance agent but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or members of his family, or officers, directors, stockholders, partners, or employees of a business in which he, or a member of his family is engaged, or the debtors of a firm, association, or corporation of which he is an officer, director, stockholder, partner, or employee.

(3) This section shall not be deemed to prohibit the licensing of any person employed by or associated with a lending or financing institution or creditor, with respect to insurance only, under credit life and/or disability insurance policies which are subject to part VIII of chapter 627, of borrowers from such institution.

History.—§288, ch. 59-205; (2) a. by §1, ch. 61-360.

Note.—Similar provisions found in former §§634.05, 634.13.

626.0209 Qualifications for license.—

(1) The commissioner shall not grant or issue a license as life agent as to any individual found by him to be untrustworthy or incompetent, or who does not meet the following qualifications:

(a) Must be a natural person of at least eighteen years of age.

(b) Must be a citizen of the United States or of Canada, and be a bona fide resident of this state.

(c) Must not be an employee of the United States veterans administration or state service office as referred to in §626.0212, or be on active duty in the armed forces of the United States, as provided in §626.0213.

(d) Must not be a funeral director or undertaker, or an employee or representative thereof, or have an office in or in connection with a funeral establishment.

(e) Must not intend or be likely to use the license primarily for the purpose of writing or handling "controlled business" as referred to in §626.0208.

(f) Must take and pass any examination for license required under §626.221.

(2) An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of subsection (1) (b), notwithstanding the existence, at time of application for license, of a license in his name on the records of another state as a resident agent of such other state, if the applicant furnishes or the commissioner acquires proof satisfactory to the commissioner that the applicant has made written request for the cancellation of such other license, either to the insurer represented thereunder or to the proper official of the other state.

History.—§289, ch. 59-205.

Note.—Similar provisions found in former §§634.05, 634.06.

626.0210 Application for license.—

(1) Application for a license as life agent shall be made and filed as provided under §626.-171.

(2) In the application the applicant shall set forth:

(a) His full name, age, residence, place of business and occupation for the five years next prior to the date of application;

(b) His qualifications for the license, namely:

1. What efforts he has made or intends to make to familiarize himself with the life insurance laws of this state and with the provisions of the contracts to be negotiated;

2. What insurance experience he has had, if any;

3. What insurance instruction he has had or expects to receive;

(c) Whether he has been refused or has had suspended or revoked a license to solicit insurance by the insurance department or supervising officials of any state;

(d) Whether any insurer or any general agent claims the applicant is indebted under any agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto, if any;

(e) Whether he has had an agency contract cancelled, and if so, when, by what insurer or general agent, and the reason therefor; and

(f) Such other or additional information as the commissioner may deem proper to enable him to determine the character, experience, ability and other qualifications of the applicant to hold himself out to the public as a life agent.

History.—§290, ch. 59-205.

Note.—Similar provisions found in former §634.18.

626.0211 Application of qualification standards.—In determining the competence and qualifications of applicants for license as life agents the commissioner may take into consideration whether the agent will be appointed and licensed as to the ordinary class, or ordinary-variable annuity class, of life insurance, or as to the industrial class; and in the application of the standards of competence and qualification as provided in this chapter he may require greater degree thereof as to applicants for license as to the ordinary class or ordinary-variable annuity class of insurance.

History.—§291, ch. 59-205; §9, ch. 61-441.

626.0212 Veterans administration employees disqualified.—No person employed by the United States veterans administration or state service office shall be licensed as a life agent. The license of any person who accepts such employment shall automatically terminate when the employment commences.

History.—§292, ch. 59-205.

Note.—Similar provisions found in former §634.17.

626.0213 Military service; special provisions.—

(1) The commissioner shall not issue a license as life agent to any person on active duty in the armed forces of the United States; except, that the existing license of a person when called into active duty may be renewed or continued for a period not to extend beyond the time when the licensee's active continuous service in the armed forces reaches six months duration.

(2) The license of any person who is called into such active duty shall automatically terminate at such time as his active continuous service reaches six months duration.

(3) Any person whose license has terminated as provided in subsection (2), shall if otherwise qualified therefor be entitled to a similar license within twelve months after an honorable discharge if application therefor is made within four years after entry into such service, upon payment of applicable license tax and fees therefor, but without taking or passing an examination.

(4) Any provision of subsections (1), (2), or (3), to the contrary notwithstanding, any person on active duty in the armed forces who held a current and valid license as life agent on April 1, 1957, shall have the privilege of renewing or continuing the license annually.

(5) Any person who has successfully taken and passed an examination for a life agent license and who was entitled to the license but the same was not issued due to his entry into active service with the armed forces of the United States shall upon being honorably discharged be entitled to be licensed as provided in subsection (3), if such service began within twelve months after he took and successfully passed the examination.

History.—§293, ch. 59-205.

Note.—Similar provisions found in former §634.17.

626.0214 Temporary license; pending examination.—

(1) Each applicant for a life agent's license to represent an insurer of the industrial or ordinary-combination class, may at the insurer's request have issued to him a temporary license for a period not exceeding ninety days, within which ninety day period the applicant must take a written examination as provided in §626.241 (scope of examination). The commissioner shall not issue a temporary license as to an ordinary class agent except as provided in §626.0215.

(2) If the applicant fails to pass the first examination his temporary license terminates unless, in the commissioner's discretion, the applicant is permitted to take a second examination. An applicant permitted to take the second examination must file application therefor and take the examination within the time set by the commissioner. If he fails to pass the second examination his temporary license is then and there terminated.

(3) After failing to pass the second examination the applicant is not eligible for a re-examination until a sixty day waiting period has elapsed, at the end of which period he may,

through an insurer, apply for another license just as any other first time applicant.

(4) The commissioner may refuse to issue such a temporary license pending passage of the examination, as to applicants for license as to any insurer whose applicants have repeatedly and without good cause failed to appear for the examination during the ninety day temporary license period.

(5) If within the ninety day period of such a temporary license, and not later than the expiration date of the license, the applicant holding such license takes and passes personal written examination to the commissioner's satisfaction, a regular license shall be issued to him to complete the license year then current.

(6) Application for the temporary license shall be accompanied by the applicable fee as prescribed in §624.0300 (filing, license and miscellaneous fees). No refund of such a fee shall be made after a temporary license is issued.

History.—§294, ch. 59-205.

Note.—Similar provisions found in former §634.09.

626.0215 Same; executors, administrators.—The commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, upon the payment of the required license fee, may issue a temporary life agent's license without requiring the applicant to pass a written examination, as follows:

(1) To the executor or administrator of the estate of a deceased person who at the time of his death was a licensed life agent;

(2) To a surviving next of kin of such a deceased person, if no administrator or executor has been appointed and qualified, but any license issued under this subsection shall be revoked upon issuance of a license to an executor or administrator under subsection (1);

(3) No license issued under this section shall be effective for more than ninety days. The commissioner, in his discretion, may renew the license once upon proper application and for good cause.

History.—§295, ch. 59-205.

Note.—Similar provisions found in former §634.10.

626.0216 Nonresident agents.—

(1) The commissioner may issue a license as life agent to a person not resident of this state, upon compliance with the applicable provisions of this code, if the state of such person's residence will accord the same privilege to a resident of this state.

(2) The commissioner may enter into reciprocal agreements with the appropriate official of any such other state waiving the written examination of any applicant resident in such other state, provided:

(a) A written examination is required of applicants for a life insurance agent's license in such other state;

(b) The appropriate official of the other state certifies that the applicant holds a currently valid license as a life insurance agent in such other state and either passed such a written examination or was the holder of a life insurance agent's license prior to the time a written examination was required;

(c) That in such other state, a resident of this state is privileged to procure a life insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state.

(3) No such applicant or licensee shall have a place of business in this state, nor be an officer, director, stockholder, or partner in any corporation or partnership doing business in this state as a life insurance agency.

(4) If the laws of another state require the sharing of commissions with resident agents of that state on applications for life insurance, or life insurance including disability insurance, written by nonresident agents, then the same provisions shall apply when resident agents of that state, licensed as nonresident agents of Florida, write applications for insurance on residents of this state.

History.—§296, ch. 59-205; (3) §3, ch. 63-20.

Note.—Similar provisions found in former §634.08.

626.0217 Excess or rejected business.—

(1) A licensed life agent may place excess or rejected risks within the class of business for which he is licensed and which the insurer licensing him is authorized to transact, with any other authorized insurer without being required to secure a license as to such other insurer.

(2) "Excess business" is that portion of a risk which is in excess of the amount thereof that the agent's own insurer will accept.

(3) "Rejected business" is a risk that the agent's own insurer is authorized to write but rejects for underwriting reasons, or is willing to accept only on a substandard basis; but which business will be accepted and issued by another authorized insurer at a lower rate.

History.—§297, ch. 59-205.

Note.—Similar provisions found in former §634.07.

626.0218 Unlawful payment or sharing of commissions.—

(1) No life insurer or licensed life agent shall pay directly or indirectly any commission or other valuable consideration to any person for services as a life insurance agent within this state, unless such person holds a currently valid license to act as a life insurance agent as required by the laws of this state; except that a life insurer may pay such commission or other valuable consideration to and a licensed life insurance agent may share any commission or other valuable consideration with an incorporated insurance agency in which all employees, stockholders, directors or officers who solicit, negotiate or effectuate life insurance contracts are qualified life insurance agents holding a currently valid license as required by the laws of this state.

(2) No person other than a duly licensed life agent shall accept any such commission or

other valuable consideration, except as provided in subsection (1).

(3) This section shall not prevent the payment or receipt of renewal or other deferred commissions or pensions to or by any person solely because such person has ceased to hold a license to act as a life insurance agent; and shall not prevent the payment of renewal or other deferred commissions to any incorporated insurance agency solely because any of its stockholders has ceased to hold a license to act as a life insurance agent.

History.—§298, ch. 59-205; §1, ch. 63-381.
Note.—Similar provisions found in former §634.17.

626.02181 Corporations, liability of agent.—Any life insurance agent who is an officer, director, stockholder, or employee of an incorporated life insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his direct supervision and control while acting on behalf of the corporation.

History.—§5, ch. 63-20.

626.0219 Representing another insurer in same industrial debit territory.—

(1) No insurer shall employ or appoint to sell weekly premium or industrial insurance in a given debit territory any agent who has within the six months next preceding sold such insurance for another insurer in the same or any part of the same debit territory, unless prior to such employment the written approval of the previous insurer is obtained and filed with the commissioner.

(2) This section shall not be construed as preventing such an individual from representing another insurer in a different debit territory.

History.—§299, ch. 59-205.
Note.—Similar provisions found in former §634.04.

626.0220 Code of ethics.—

(1) The commissioner shall after consultation with the Florida association of life underwriters adopt a "code of ethics," or continue any such code heretofore so adopted, to govern the conduct of life agents in their relations with the public, other agents and the insurers.

(2) The code of ethics shall apply standards of conduct designed to avoid the commission of acts or the existence of circumstances which would constitute ground for suspension, revocation, or refusal of license under §§626.611 and 626.621, and to avoid the use of unfair trade practices and unfair methods of competition which would be in violation of any provision of part VII of this chapter (trade practices and frauds).

(3) All applicants for license as life agents shall subscribe to the code of ethics.

History.—§300, ch. 59-205.
Note.—Similar provisions found in former §634.03.

PART IV

DISABILITY INSURANCE AGENTS

626.0300 Short title.—Part IV of this chapter may be referred to in any legal proceedings as the "disability agent law."

History.—§302, ch. 59-205.

626.0301 Scope of part IV.—

(1) Part IV of this chapter applies only as to agents of disability insurers, which agents are not appointed or licensed as to the same insurer as to either life insurance, or as to property, casualty, or surety insurance.

(2) Agents appointed and licensed as to the same insurer as to both life insurance and disability insurance are deemed to be "life agents," are not subject to this chapter, but are subject to part I (licensing procedures law) and part III (life agents law) of this chapter.

(3) Agents appointed and licensed as to the same insurer as to both disability insurance and property or casualty or surety insurance are deemed as to be "general lines agents," are not subject to part IV of this chapter, but are subject to part I (licensing procedures law) part II (general lines agent law) of this chapter.

(4) All agents subject to this chapter are "disability agents" as defined in §626.0303.

History.—§301, ch. 59-205.
Note.—Similar provisions found in former §644.04.

626.0302 Part IV is supplementary to licensing law.—Part IV of this chapter is supplementary to part I of this chapter, the "licensing procedures law."

History.—§303, ch. 59-205.
Note.—Similar provisions found in former §644.17.

626.0303 Disability agent defined.—

(1) A "disability agent" is any person appointed as agent by an insurer to solicit applications for or to negotiate and effectuate contracts of disability insurance, as such insurance is defined in §624.0402.

(2) Any person who acts for an insurer, or on behalf of a licensed representative of an insurer, to solicit applications for or to negotiate and effectuate disability insurance contracts, whether or not he is appointed as an agent, subagent, solicitor, canvasser, or by any other title, shall be deemed to be a disability agent as defined in this section.

History.—§304, ch. 59-205.

Note.—Similar provisions found in former §644.01.

626.0304 Purpose of license.—

(1) The purpose of a license issued under this code to a disability agent is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation as an "agent," or to enable the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him upon his own interests or upon those of other persons with whom he is closely associated in capacities other than as an insurance agent.

(2) The commissioner shall not grant, renew, continue, or permit to exist any license as a disability agent as to any applicant therefor or licensee thereunder if he finds that the license has been or is being or will be used by the applicant or licensee, not for the purpose of holding himself out to the general public as a disability agent, but principally for the purpose of soliciting, negotiating, handling or procuring "controlled business,"—that is, disability insurance covering himself or member of his family, or the officers, directors, stockholders, partners, employees, or debtors of a partnership, association, or corporation, of which he or a member of his family is an officer, director, stockholder, partner or employee, or covering members of an association of which he is a director, officer or employee.

(3) A violation of this section shall be deemed to exist, or be probable (as to applicant for license), if the commissioner finds that during a twelve month period the premium writings represented by such "controlled business" insurance contracts signed, countersigned, issued or sold by the licensee have been, or in the case of applicant for license, probably will be under circumstances found by the commissioner to exist, in excess of premium writings during the same period by the licensee or proposed licensee as represented by disability insurance contracts to the general public other than the classes of persons above classified as "controlled business."

(4) This section shall not be deemed to prohibit the licensing of any person employed by or associated with a lending or financing institution, with respect to insurance only, under credit life and/or disability insurance policies which are subject to part VIII of chapter 627, of borrowers from such institution or creditor.

History.—§305, ch. 59-205.

Note.—Similar provisions found in former §644.13.

626.0305 Qualification for license.—

(1) The commissioner shall not grant or issue a license as disability agent as to any individual found by him to be untrustworthy or incompetent, or who does not meet the following qualifications:

(a) Must be a natural person of at least eighteen years of age.

(b) Must be a citizen of the United States or of Canada, and be a bona fide resident of this state.

(c) Must not be an employee of the United States veterans administration or state service office, as referred to in §626.0307, or be on active duty in the armed forces of the United States, as provided in §626.0308.

(d) Must not intend or be likely to use the license principally for the purpose of writing or handling "controlled business" as referred to in §626.0304.

(e) Must take and pass any examination for license required under §626.221.

(2) An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of subsection (1) (b), notwithstanding the existence, at time of application for license, of a license in his name on the records of another state as a resident agent of such other state, if the applicant furnishes or the commissioner acquires proof satisfactory to the commissioner that the applicant has made written request for the cancellation of such other license, either to the insurer represented thereunder or to the proper official of the other state.

History.—§306, ch. 59-205.

Note.—Similar provisions found in former §644.07.

626.0306 Application for license.—

(1) Application for a license as disability agent shall be made and filed as provided under §626.171.

(2) In the application the applicant shall set forth:

(a) His full name; his residence, age, occupation and place of business for five years next preceding the date of application;

(b) Whether he has ever held a license to solicit disability insurance or any other kind of insurance in any state;

(c) Whether he has been refused, or has had suspended or revoked a license to solicit disability insurance or any other kind of insurance in this or any other state;

(d) What insurance experience he has had;

(e) What instruction in disability insurance and in the insurance laws of this state he has had or expects to have;

(f) Whether any insurer or general agent claims that he is indebted under an agency contract or otherwise, and if so. the name of the

claimant, the nature of the claim and the applicant's defense thereto;

(g) Whether he has had an agency contract cancelled and if so when, by what insurer or general agent, and the reasons therefor;

(h) Whether he will devote all or part of his efforts to acting as a disability agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed;

(i) Whether, if applicant is married, his or her spouse has ever applied for or held a license to solicit disability insurance or any other kind of insurance in any state and whether such license has been refused, suspended, or revoked; and

(j) Such other information as the commissioner may deem proper to enable him to determine the character, experience, ability and other qualifications of the applicant to hold himself out to the public as a disability agent.

History.—§307, ch. 59-205.
Note.—Similar provisions found in former §644.06.

626.0307 Veterans administration employees disqualified.—No person employed by the United States veterans administration or state service office shall be licensed as a disability agent. The license of any person who accepts such employment shall automatically terminate when the employment commences.

History.—§308, ch. 59-205.
Note.—Similar provisions found in former §644.03.

626.0308 Military service; special provisions.—

(1) The commissioner shall not issue a license as disability agent to any person on active duty in the armed forces of the United States; except, that the existing license of a person when called into active duty may be renewed or continued for a period not to extend beyond the time when the licensee's active continuous service in the armed forces reaches six months duration.

(2) The license of any person who is called into such active duty shall automatically terminate at such time as his active continuous services reaches six months duration.

(3) Any person whose license has terminated as provided in subsection (2), shall if otherwise qualified therefor be entitled to a similar license within twelve months after an honorable discharge if application therefor is made within four years after entry into such service, upon payment of applicable license tax and fees therefor, but without taking or passing an examination.

(4) Any provision of subsections (1), (2), or (3) to the contrary notwithstanding, any person on active duty in the armed forces who held a current and valid license as disability agent on April 1, 1957, shall have the privilege of renewing or continuing the license annually.

(5) Any person who has successfully taken and passed an examination for a disability agent license and who was entitled to the license but the same was not issued due to his entry into active service with the armed forces of the United States shall, upon being honorably discharged, be entitled to be licensed as provided in subsection (3), if such service began within twelve months after he took and successfully passed the examination.

History.—§309, ch. 59-205.
Note.—Similar provisions found in former §644.03.

626.0309 Nonresident agents.—

(1) The commissioner may issue a license as a disability agent to a person not a resident of this state, upon compliance with the applicable provisions of this code, if the state of such person's residence will accord the same privilege to a resident of this state.

(2) The commissioner may enter into reciprocal agreements with the appropriate official of any such other state waiving the written examination of any applicant resident in such other state, provided:

(a) A written examination is required of applicants for disability insurance agent's license in such other state;

(b) The appropriate official of the other state certifies that the applicant holds a currently valid license as a disability insurance agent in such other state and either passed such a written examination or was the holder of a disability insurance agent's license prior to the time a written examination was required;

(c) That in such other state, a resident of this state is privileged to procure a disability insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state.

(3) No such applicant or licensee shall have a place of business in this state, nor be an officer, director, stockholder, or partner in any corporation or partnership doing business in this state as a disability insurance agent.

(4) If the laws of another state require the sharing of commissions with resident agents of that state on applications for disability insurance written by nonresident agents, then the same provisions shall apply when resident agents of that state, licensed as nonresident agents of Florida, write applications for insurance on residents of this state.

History.—§310, ch. 59-205.
Note.—Similar provisions found in former §644.09.

626.0310 Same; service of process.—The provisions of §626.0115 (nonresident agents; service of process) shall also apply as to nonresident disability insurance agents licensed by the commissioner pursuant to §626.0309.

History.—§311, ch. 59-205.

626.0311 Excess or rejected business.—

(1) A licensed disability agent may place excess or rejected risks within the class of business for which he is licensed and which the insurer licensing him is authorized to transact.

with any other authorized insurer without being required to secure a license as to such other insurer, but subject to the agent's agreement with the insurer licensing him.

(2) "Excess business" is that portion of a risk which is in excess of the amount thereof that the agent's own insurer will accept.

(3) "Rejected business" is a risk that the agent's own insurer is authorized to write but rejects for underwriting reasons, or is willing to accept only on a substandard basis; but which business will be accepted and issued by another authorized insurer at a lower rate.

(4) This section shall be construed to permit an agent properly licensed by the commissioner to broker business with another licensed agent in this state, if both such agents are so licensed as to the class of business involved, and where such brokerage arrangement is desired and to the best interest of the insured.

History.—§312, ch. 59-205.
Note.—Similar provisions found in former §644.10.

626.0312 Unlawful payment or sharing of commissions.—

(1) No disability insurer or licensed disability agent shall pay directly or indirectly any commission or other valuable consideration to any person for services as a disability insurance agent within this state, unless such person holds a currently valid license to act as a disability insurance agent as required by the laws of this state; except that a disability insurer may pay such commission or other valuable consideration to and a licensed disability insurance agent may share any commission or other valuable consideration with an incorporated insurance agency in which all employees, stockholders, directors or officers who solicit, negotiate or effectuate disability insurance contracts are qualified disability insurance agents holding a currently valid license as required by the laws of this state.

(2) No person other than a duly licensed disability agent shall accept any such commission or other valuable consideration, except as provided in subsection (1).

(3) This section shall not prevent the payment or receipt of renewal or other deferred commissions or pensions to or by any person solely because such person has ceased to hold a license to act as a disability insurance agent; and shall not prevent the payment of renewal or other deferred commissions to any incorporated insurance agency solely because any of its stockholders has ceased to hold a license to act as a disability insurance agent.

History.—§313, ch. 59-205; §2, ch. 63-381.
Note.—Similar provisions found in former §644.03.

626.0313 Corporations, liability of agent.— Any disability insurance agent who is an officer, director, stockholder, or employee of an incorporated disability insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his direct supervision and control while acting on behalf of the corporation.

History.—§6, ch. 63-20.

PART V

INSURANCE ADJUSTERS

626.0400 Short title.—Part V of this chapter may be referred to in any legal proceedings as the "insurance adjusters law."

History.—§315, ch. 59-205.

626.0401 Scope of part V.—

(1) Part V of this chapter applies only as to insurance adjusters and claims investigators as hereinafter in this part V defined.

(2) Unless otherwise required by context, the term "adjusters" as used in this said part applies to all licensees and permittees defined herein as any type of adjuster or as a claims investigator.

(3) Said part V does not apply as to life insurance, disability insurance, or annuity contracts.

History.—§314, ch. 59-205.
Note.—Similar provisions found in former §636.23.

626.0402 Part V is supplementary to licensing law.—Part V of this chapter is supplementary to part I of this chapter, the "licensing procedures law."

History.—§316, ch. 59-205.

626.0403 Public adjuster defined.—A "public adjuster" is any person, except a duly licensed attorney at law as hereinafter in §626.0409 provided, who, for money, commission, or any other thing of value, acts or aids in any manner on behalf of an insured in negotating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims; and also includes any person who, for money, commission or any other thing of value, solicits, investigates or adjusts such claims on behalf of any such public adjuster.

History.—§317, ch. 59-205.
Note.—Similar provisions found in former §636.23.

626.0404 Independent adjuster defined.—An "independent adjuster" is any person who is self-employed or is associated with or employed by an independent adjusting firm or other independent adjuster, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract and/or undertakes to effect settlement of such claim, loss or damage.

History.—§318, ch. 59-205.
Note.—Similar provisions found in former §636.23.

626.0405 Company employee adjuster defined.—A "company employee adjuster" is a person employed on an insurer's staff of adjusters, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss or damage payable under a contract of insurance, and/or undertakes to effect settlement of such claim, loss or damage.

History.—§319, ch. 59-205.
Note.—Similar provisions found in former §636.23.

626.0406 Claims investigator defined.—A "claims investigator" is a person who is an employee of a currently licensed independent adjuster or adjusting firm or insurer and whose responsibilities shall be as defined in §626.0404 or §626.0405 as for an independent adjuster or company employee adjuster, and who will operate as a student or learner under the instruction and supervision of a licensed insurance adjuster, except that a claims investigator shall not be permitted by his employer to negotiate settlements with the insured or claimant for amounts in excess of one thousand dollars.

History.—§320, ch. 59-205.
Note.—Similar provisions found in former §636.23.

626.0407 Nonresident adjuster defined.—A "nonresident adjuster" is a person who is not a resident of this state and who is a currently licensed or authorized adjuster in his home state for the type or kinds of insurance he intends to adjust claims for in this state, and who is an employee of an insurer admitted to do business in this state, and who does not maintain an office in this state for the purpose of adjusting losses in this state.

History.—§321, ch. 59-205.
Note.—Similar provisions found in former §636.23.

626.0408 Emergency adjuster defined.—A "catastrophe" or "emergency" adjuster is a person who is not a licensed adjuster under part V of this chapter, but who has been designated and certified to the commissioner by insurers as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer, whom the commissioner may permit, in the event of a catastrophe or emergency, for the purposes and under the conditions which the commissioner shall fix and for the period of the emergency as the commissioner shall determine, to adjust claims, losses, or damages under the policies of insurance issued by the insurers.

History.—§322, ch. 59-205.
Note.—Similar provisions found in former §636.23.

626.0409 Attorneys at law exempted.—Attorneys at law duly licensed to practice law in the courts of this state, and in good standing with the Florida bar, shall not be required to be licensed under the provisions of this code to authorize them to adjust or participate in the adjustment of any claim, loss or damage arising under policies or contracts of insurance.

History.—§323, ch. 59-205.
Note.—Similar provisions found in former §636.36.

626.0410 Insurers' officers, reciprocals' representatives may adjust.—

(1) Nothing in part V of this chapter shall be construed to prevent an executive officer of any insurer, or the duly designated attorney or agent authorized and acting for subscribers to reciprocal insurers, from adjusting any claim, loss or damage under any insurance contract of such insurer.

(2) If any such officer, attorney or agent, in connection with the adjustment of any such claim, loss or damage engages in any of the misconduct described in or contemplated by §626.611(6), the commissioner may suspend or revoke the insurer's certificate of authority.

History.—§324, ch. 59-205.
Note.—Similar provisions found in former §636.35.

626.0411 Agents and solicitors; adjustments by.—

(1) A licensed insurance agent may, without being licensed as an adjuster, adjust losses for the insurer represented by him as agent if so authorized by the insurer. The license of the agent may be suspended or revoked for violation of or misconduct prohibited by, §626.611(6).

(2) A licensed insurance solicitor shall not adjust losses unless licensed as an adjuster.

History.—§325, ch. 59-205.
Note.—Similar provisions found in former §636.34.

626.0412 Licensed independent adjusters required; insurers' responsibility.—

(1) An insurer shall not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an independent adjuster unless such person is currently licensed as an independent adjuster under this code.

(2) Before referring any such claim or loss, the insurer shall ascertain from the commissioner whether the proposed independent adjuster is currently licensed as such. Having once ascertained that a particular person is so licensed, the insurer may assume that he will continue to be so licensed until the insurer has knowledge, or receives information from the commissioner, to the contrary.

(3) This section does not apply as to "catastrophe" or "emergency" adjusters as provided for in part V of this chapter.

History.—§326, ch. 59-205.

626.0413 Adjuster license types; combinations prohibited.—

(1) An individual qualified as such under this code may be licensed as either a public adjuster or independent adjuster or company employee adjuster.

(2) The same individual shall not be concurrently licensed as to more than one of the adjuster types referred to in subsection (1).

History.—§327, ch. 59-205.
Note.—Similar provisions found in former §636.25.

626.0414 Public adjuster's qualifications, bond.—

(1) The commissioner shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the license fee therefor specified in §624.0300 (filing, license and miscellaneous fees), and possesses the following qualifications:

(a) Is a natural person at least twenty-one years of age.

(b) Is a citizen of the United States, and is a bona fide resident of Florida and has been such a resident for not less than one year immediately preceding the date of filing application for the license.

(c) Is trustworthy and has such business reputation as reasonably to assure that he will conduct his business as insurance adjuster fairly and in good faith and without detriment to the public.

(d) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts (other than life, annuity, disability insurances), and is sufficiently informed as to the terms and the effects of the provisions of those types of insurance contracts and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he may have business as a public adjuster.

(e) Must have taken and passed any written examination required under §626.221 and related sections of this code.

(2) At the time of application for license as a public adjuster the applicant shall file with the commissioner a bond executed and issued by a surety insurer authorized to transact such business in this state, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duties as a public adjuster under the license applied for. The bond shall be in favor of the commissioner and shall specifically authorize recovery by the commissioner of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his business as public adjuster. The aggregate liability of the surety for all such damages shall in no event exceed the penal sum of the bond.

History.—§328, ch. 59-205.
Note.—Similar provisions found in former §636.26.

626.0415 Independent adjuster's qualifications.—The commissioner shall issue a license to an applicant for an independent adjuster's license upon determining that the license fee therefor specified in §624.0300 (filing, license and miscellaneous fees) has been paid, and that the applicant possesses the following qualifications:

(1) Is a natural person at least twenty-one years of age.

(2) Is a citizen of the United States, is a bona fide resident of Florida and has been such a resident for not less than one year immediately preceding the date of filing application for the license; except, that the commissioner may, in his discretion, waive the requirement for one year residence in this state if the applicant is an employee of an adjuster licensed by the commissioner or an employee of an adjusting firm or corporation supervised by a currently licensed adjuster.

(3) Is trustworthy and has such business reputation as reasonably to assure that he will conduct his business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training or instruction concerning the adjusting of damage or loss under insurance contracts (other than life, annuity, and disability insurance contracts), and is sufficiently informed as to the terms and the effects of the provisions of such types of contracts and possesses adequate knowledge of the insurance laws of this state relating to such contracts as to enable and qualify him to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he may have relations as an insurance adjuster, and to adjust all claims in accordance with the

policy or contract and the insurance laws of this state.

(5) Must have taken and passed any written examination required under §626.221 and related sections.

History.—§329, ch. 59-205.
Note.—Similar provisions found in former §636.27.

626.0416 Company employee adjuster's qualifications.—The commissioner shall issue a license to an applicant for a company employee adjuster's license upon determining that the license fee therefor specified in §624.0300 (filing, license and miscellaneous fees) has been paid and that the applicant possesses the following qualifications:

(1) Is a natural person at least twenty-one years of age.

(2) Is a citizen of the United States, and a bona fide resident of Florida.

(3) Is trustworthy and has such business reputation as reasonably to assure that he will conduct his business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss of risks described in his application, and is sufficiently informed as to the terms and the effects of the provisions of insurance contracts covering such risks, and possesses adequate knowledge of the insurance laws of this state relating to such insurance contracts as to enable and qualify him to engage in such business as insurance adjuster fairly and without injury to the public or any member thereof with whom he may have relations as an insurance adjuster, and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

(5) Has taken and passed any written examination as required under §626.221 and related sections of this code.

History.—§330, ch. 59-205.
Note.—Similar provisions found in former §636.28.

626.0417 Claims investigator permit; qualifications and conditions.—Upon the filing of an application for a permit as claims investigator and the advance payment of the registration fee therefor as specified in §624.0300 (filing, license and miscellaneous fees), the commissioner may issue such a permit, but subject to the following conditions:

(1) The applicant must be a natural person of at least twenty-one years of age; must be a citizen of the United States and a bona fide resident of Florida; must be trustworthy, and must have such business reputation as reasonably to assure that he will conduct his business as claims investigator fairly and in good faith and without detriment to the public;

(2) The applicant's employer is responsible for the adjustment acts of the claims investigator during the six months learning period provided for in subsection (6);

(3) The applicant must have had sufficient instruction concerning the investigation of damage or loss of risks described in his application, and must be sufficiently informed as to the terms and the effect of the provisions of those types of insurance contracts covering such risks, and possess adequate knowledge of the insurance laws of this state relating to such contracts as to enable and qualify him to engage in such business of claims investigator, and to investigate all claims in accordance with the policy or contract and the insurance laws of this state;

(4) The application shall be accompanied by a certificate of employment and a report as to the applicant's integrity and moral character, on a form to be prescribed by the commissioner and executed by the employer;

(5) The applicant must file application for and take an appropriate adjuster's examination as provided in §626.221 and related sections of this code, given by the commissioner within six months from the date of the permit. The permit shall automatically be revoked if the applicant fails to take and pass such examination within the six months. If during the six months period the applicant takes and passes the examination, the commissioner shall, upon receipt of adjuster's license tax, issue to him a license as independent adjuster or company employer adjuster, as the case may be;

(6) Under the permit the permittee shall have authority to handle only such classes of business as his supervising licensed adjuster is licensed to handle;

(7) The permit shall be effective for a period of six months only from its date of issue; and

(8) The commissioner shall not issue a claims investigator's permit to any individual who had ever theretofore held such a permit in this state.

History.—§331, ch. 59-205.
Note.—Similar provisions found in former §636.30.

626.0418 License, permit classes; company employee adjusters, claims investigators.—

(1) An applicant for license as a company employee adjuster or claims investigator licensed to represent such an adjuster may qualify as to, and his license or permit when issued may be limited to cover adjusting in, any one of the following classes of insurance or combinations thereof:

(a) Motor vehicle physical damage, as defined in §626.321(1) (a);
(b) Fire and allied lines including marine;
(c) Casualty;
(d) Workmen's compensation;
(e) Boiler and machinery; or
(f) Any combination of the foregoing.

(2) The applicant's application for license or permit shall specify which of the foregoing classes of business the application and license or permit are to cover.

History.—§332, ch. 59-205.

626.0419 Application for license or permit.—(1) Application for a license or permit under part V of this chapter shall be made as provided in §626.171 and related sections of this code.

(2) The commissioner shall so prepare the form of the application as to elicit and require from the applicant the information necessary to enable the commissioner to determine whether the applicant possesses the qualifications prerequisite to issuance of the license or permit to the applicant as set forth in the applicable sections of part V of this chapter.

(3) The commissioner may, in his discretion, require that the application be supplemented by the certificate or affidavit of such person or persons as he deems necessary for his determination of the applicant's residence, business reputation and reputation for trustworthiness. The commissioner shall prescribe and may furnish the forms for such certificates and affidavits.

History.—§333, ch. 59-205.

Note.—Similar provisions found in former §636.25.

626.0420 Relicensing after military service.—The commissioner may, without requiring a further written examination, issue a license as adjuster to a formerly licensed adjuster of this state who held a currently effective adjuster's license at the time of entering service in the armed forces of the United States, subject to the following conditions:

(1) The period of military service must not have been in excess of three years;

(2) The application for the license must be filed with the commissioner and the license fee therefor paid, within twelve months following date of honorable discharge of the applicant from the military service; and

(3) The new license will be of the same type and class as that currently effective at the time the applicant entered military service; and if such type and class of license is not being currently issued under this code, the new license shall be of that type and class or classes most closely, in the commissioner's opinion, resembling those of the former license.

History.—§334, ch. 59-205.

Note.—Similar provisions found in former §636.33.

626.0421 Temporary license.—The commissioner may, in his discretion, issue a temporary license as independent adjuster or as company employee adjuster, subject to the following conditions:

(1) The applicant must be an employee of an adjuster currently licensed by the commissioner, or an employee of an authorized insurer, or an employee of an established adjusting firm or corporation which is supervised by a currently licensed independent adjuster;

(2) The application must be accompanied by a certificate of employment and a report as to applicant's integrity and moral character on a form prescribed by the commissioner and executed by the employer;

(3) One or more of the following reasons or circumstances must exist, or such other reasons or circumstances as in the commissioner's discretion may reasonably necessitate the issuance of the temporary license:

(a) Absence of licensed employee adjuster by reason of death, illness, or other disability, call to military service, vacation, insurance or adjusting schools;

(b) Opening of new offices or expansion of operation on temporary basis and/or unusual or seasonal influx of claims or losses requiring larger staff temporarily;

(c) Termination of license of an employee adjuster; or

(d) Losses or claims involving specialized policies or risks requiring the services of a specially trained adjuster.

(4) Existence of any of the reasons or circumstances referred to in subsection (3), shall be certified by the employer.

(5) The temporary license shall be effective for a period of sixty days, but subject to earlier termination at the request of the employer or if suspended or revoked by the commissioner upon grounds applicable under this code as to adjusters.

(6) In no event shall an adjuster licensed under this section adjust losses in this state after expiration of the temporary license without having taken and passed the written examination as for a regular adjuster's license.

(7) If during the sixty day temporary license period the applicant takes and passes the examination as for a regular license the theretofore temporary license shall continue in effect as a regular license (but subject to expiration, renewal or continuation as provided for adjuster licenses under this code) if the licensee remains continuously employed as referred to in subsection (1), under the supervision of a licensed adjuster or as an employee of an authorized insurer, and if the licensee resides continuously in this state for one year.

(8) The license fee specified therefor in §624.0300 must be paid before issuance of the temporary license.

History.—§335, ch. 59-205.

Note.—Similar provisions found in former §636.29.

626.0422 Nonresident adjusters.—The commissioner shall, upon application therefor, issue a license to an applicant for a nonresident adjuster's license upon determining that the applicant has paid the license fee required under §624.0300 and possesses the following qualifications:

(1) Is a currently licensed insurance adjuster in his home state, if such state requires a license.

(2) Is an employee of an insurer admitted to do business in this state.

(3) Does not maintain an office in this state for the purpose of adjusting losses in this state.

(4) That he has filed a certificate or letter of authorization from the insurance department of his home state, if such state requires an ad-

juster to be licensed, stating that he holds a current license or authorization to adjust insurance losses. Such certificate or authorization must be signed by the insurance commissioner, or his deputy, of the adjuster's home state and reflect whether or not the adjuster has ever had his license or authorization in his home state suspended or revoked and if such is the case, the reason for such action.

History.—§336, ch. 59-205.
Note.—Similar provisions found in former §636.31.

626.0423 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the commissioner may issue a permit, for the purposes and under the conditions which he shall fix and for the period of emergency as he shall determine, to persons who are residents or nonresidents of this state and who are not licensed adjusters under part V of this chapter but who have been designated and certified to him as qualified to act as adjusters by independent resident adjusters or by an authorized insurer or by a licensed general lines agent to adjust claims, losses or damages under policies or contracts of insurance issued by such insurers. The fee for such permit shall be as provided in §624.0300(12)(e).

(2) If any person not a licensed adjuster who has been permitted to adjust such losses, claims or damages under the conditions and circumstances set forth in subsection (1), engages in any of the misconduct described in or contemplated by §§626.611 and 626.621 (grounds for suspension, revocation or refusal of license), the commissioner, without notice and hearing, shall be authorized to issue his order denying such person the privileges granted under this section, and thereafter it shall be unlawful for any such person to adjust any such losses, claims or damages in this state.

History.—§337, ch. 59-205.
Note.—Similar provisions found in former §636.40.

626.0424 Office and records.—

(1) Every licensed independent adjuster and every licensed public adjuster shall have and maintain in this state a place of business accessible to the public, and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of such an office in the home of the licensee. The license of the adjuster shall show the address of his place of business, and the licensee shall promptly give written notice to the commissioner of any change of such address.

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than one year after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

History.—§338, ch. 59-205.

626.0425 Exclusive employment, public and independent adjusters.—

(1) No individual licensed as a public adjuster shall be so employed during the same period by more than one public adjuster or public adjuster firm or corporation.

(2) No individual licensed as an independent adjuster shall be so employed during the same period by more than one independent adjuster or independent adjuster firm or corporation.

History.—§339, ch. 59-205.

626.0426 Adjustments to comply with contract, law.—Every adjuster and claim investigator shall adjust or investigate every claim, damage, or loss made or occurring under an insurance contract, in accordance with the terms and conditions of the contract and of the applicable laws of this state.

History.—§340, ch. 59-205.

626.0427 Rules and regulations; code of ethics.—The commissioner may promulgate such reasonable rules and regulations as may be necessary for the proper administration of part V of this chapter, including a code of ethics to foster the education of adjusters concerning the ethical, legal and business principles which should govern their conduct.

History.—§341, ch. 59-205.
Note.—Similar provisions found in former §636.41.

PART VI

UNAUTHORIZED INSURERS AND SURPLUS LINES

626.0500 Representing or aiding unauthorized insurer prohibited.—

(1) No person shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state, in the solicitation, negotiation, procurement or effectuation of insurance or annuity contracts, or renewals thereof, or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state.

(2) This section does not apply to:

(a) Matters authorized to be done by the commissioner under the unauthorized insurers process law, §§626.0503 through 626.0509.

(b) Surplus lines insurance when written pursuant to the surplus lines law, §§626.0510 through 626.0534.

(c) Transactions as to which certificate of authority is not required of an insurer, as stated in §624.0201 (exceptions, certificate of authority required).

(3) No insurance contract entered into in violation of this section shall be deemed to have been rendered invalid thereby.

History.—§342, ch. 59-205.

Note.—Similar provisions found in former §§625.212, 637.63, 644.02.

626.0501 Penalty for representing unauthorized insurer.—

(1) Any person who in this state represents or aids an unauthorized insurer in violation of §626.0500 shall upon conviction thereof be guilty of a misdemeanor, and be subject to a fine not in excess of $1,000, or imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment in the discretion of the court.

(2) In addition to the penalties provided for in subsection (1), such violator shall be liable, personally, jointly and severally with any other person or persons liable therefor, for payment of taxes payable on account of such insurance under §626.0535 (report and tax of independently procured coverages).

History.—§343, ch. 59-205.

Note.—Similar provisions found in former §§637.63, 644.02, 645.14.

626.0502 Suits by unauthorized insurers prohibited.—As to transactions not permitted under §624.0201, no unauthorized insurer shall institute, file, or maintain, or cause to be instituted, filed, or maintained, any suit, action or proceeding in this state to enforce any right, claim or demand arising out of any insurance transaction in this state.

History.—§344, ch. 59-205.

626.0503 Unauthorized insurers process law; short title; interpretation.—

(1) Sections 626.0503 through 626.0509 may be cited as the "unauthorized insurers process law."

(2) Such law shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—§345, ch. 59-205.

626.0504 Purpose of process law.—The purpose of the unauthorized insurers process law is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in the state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this chapter, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of public law 15, 79th congress of the United States, chapter 20, 1st session, s. 340,

as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

History.—§346, ch. 59-205.
Note.—Similar provisions found in former §625.29.

626.0505 Acts constituting commissioner as process agent.—Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer:

(1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein;

(2) The solicitation of applications for such contracts;

(3) The collection of premiums, membership fees, assessments or other considerations for such contracts; or

(4) Any other transaction of insurance is equivalent to and shall constitute an appointment by such insurer of the commissioner and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

History.—§347, ch. 59-205.
Note.—Similar provisions found in former §625.30.

626.0506 Service of process; judgment by default.—

(1) Service of process upon an insurer pursuant to §626.0505 shall be made by delivering to and leaving with the commissioner or some person in apparent charge of his office two copies thereof. The commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. The service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(2) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (1) of this section be valid if served upon any person within this state, who, in this state on behalf of such insurer, is

(a) Soliciting insurance, or

(b) Making, issuing or delivering any contract of insurance, or

(c) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance;

and a copy of such process is sent within ten days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(3) No plaintiff shall be entitled to a judgment by default or a decree pro confesso under this section until the expiration of thirty days from date of the filing of the affidavit of compliance.

(4) Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

History.—§348, ch. 59-205.
Note.—Similar provisions found in former §625.30.

626.0507 Defense of action by unauthorized insurer; damages and attorney fee.—

(1) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under §§626.0505 and 626.0506, such insurer shall:

(a) Procure a certificate of authority to transact insurance in this state, or

(b) Deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding, and that the insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located, and that if, nevertheless, such suit is brought on such final judgment the insurer shall waive all defenses thereto.

(c) Any proof, evidence or testimony in support of such motion shall be taken in the jurisdiction of the court in which the action or proceeding is pending.

(d) If the unauthorized insurer seeks to

take discovery or de bene esse depositions of witnesses beyond the jurisdiction of the court in which the action is pending, upon seasonable application by the plaintiff, the court by appropriate order shall require the unauthorized insurer, before such depositions are taken, to make similar deposit as described in paragraph (b) above, in sufficient amount to pay the reasonable expenses of the plaintiff and his attorney in attending the taking of such depositions, including reasonable attorney's fees to be fixed by the court.

(2) The court in any action or proceeding in which service is made in the manner provided in §626.0506 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1), and to defend such action.

(3) Nothing in subsection (1) is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in §626.0506, hereof on the ground either:

(a) That such unauthorized insurer has not done any of the acts enumerated in §626.0505, or

(b) That the person on whom service was made pursuant to §626.0506(2) was not doing any of the acts therein enumerated.

History.—§349, ch. 59-205.
Note.—Similar provisions found in former §625.31.

626.0508 Attorney fee. — In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, the trial judge shall allow to the plaintiff a reasonable attorney fee or compensation and include such fee or compensation in any judgment that may be rendered n such action.

History.—§350, ch. 59-205.
Note.—Similar provisions found in former §625.32.

626.0509 Exemptions from process act.—The provisions of §§626.0503 through 626.0508 shall not apply to any action, suit or proceeding against any unauthorized foreign or alien insurer arising out of any contract of insurance,

(1) Covering reinsurance, wet marine and transportation, commercial aircraft or railway insurance risks, or

(2) Against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside of this state, or

(3) Against loss of or damage to any property having a permanent situs outside this state, or

(4) Issued under and in accordance with the surplus lines law, where such insurer enters a general appearance or where such contract of insurance contains a provision designating the commissioner and his successor or successors in office or designating a Florida resident agent to be the true and lawful attorney of such unauthorized insurer upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance and service of process effected on such commissioner, his successor or successors in office or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer in such action.

History.—§351, ch. 59-205.
Note.—Similar provisions found in former §625.33.

626.0510 Surplus lines law; short title; purposes.—

(1) Sections 626.0510 through 626.0534 constitute and may be referred to as "the surplus lines law."

(2) It is declared that the purposes of the surplus lines law are to provide orderly access for the insuring public of Florida to insurers not authorized to transact insurance in this state, through only qualified, licensed, and supervised surplus lines agents resident in Florida, for insurance coverages and to the extent thereof not procurable from authorized insurers; to protect such authorized insurers, which under the laws of Florida must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in this surplus lines law.

(3) This section, and this surplus lines law, do not apply as to insurance coverages which are subject to §626.0535 (report and tax of independently procured coverages).

History.—§352, ch. 59-205.

626.0511 Definitions.—As used in this surplus lines law:

(1) "Surplus lines agent" means an individual licensed as provided in part VI of this chapter to handle the placement of insurance coverages with unauthorized insurers; and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent if so placed through a countersigning Florida licensed resident agent of such insurer.

(2) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this surplus lines law.

(3) To "export" means to place in an unauthorized insurer under this surplus lines law, insurance covering a subject of insurance resident, located, or to be performed in Florida.

History.—§353, ch. 59-205.
Note.—Similar provisions found in former §645.01.

626.0512 Surplus lines insurance authorized.—If certain insurance coverages of subjects resident, located, or to be performed in

this state cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be eligible for export under §626.0513 or §626.0514;

(2) The insurer must be an eligible surplus lines insurer under §626.0514 or §626.0515;

(3) The insurance must be so placed through a licensed Florida surplus lines agent resident in Florida; and

(4) The other applicable provisions of this surplus lines law must be complied with.

History.—§354, ch. 59-205.

626.0513 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(a) The full amount of insurance required must not be procurable, after a diligent effort has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.

(b) The premium rate at which the coverage is exported shall not be lower than that rate applicable, if any, and filed by and in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.

(c) The policy or contract form under which the insurance is exported shall not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks; except, that a coverage may be exported under a unique form of policy designed for use with respect to a particular subject of insurance if a copy of such form is filed with the commissioner by the surplus lines agent desiring to use the same and is subject to the commissioner's disapproval within ten days of filing such form exclusive of Saturdays, Sundays, and legal holidays if he finds that use of such special form is not reasonably necessary for the principal purposes of the coverage or that its use would be contrary to the purposes of this surplus lines law with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(d) Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported shall not provide for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts in actual and current use by one or more authorized insurers. This paragraph shall not apply with respect to workmen's compensation self-insurance qualified as such under chapter 440.

(2) Except, that the commissioner may by rules and regulations declare eligible for export generally and notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of subsection (1), any class or classes of insurance coverage or risk for which he finds, after a hearing, which he shall hold annually or more often, of which notice thereof was given to each insurer authorized to transact such class or classes in this state, that there is no reasonable or adequate market among authorized insurers. Any such rules and regulations shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the commissioner.

(3) Subsection (1) does not apply to wet marine and transportation or aviation risks which are subject to §626.0514.

History.—§355, ch. 59-205; (1) (c) §1, ch. 63-86.
Note.—Similar provisions found in former §645.05.

626.0514 Eligibility for export; wet marine, aviation.—

(1) Insurance coverage of wet marine and transportation or aviation risks as defined in this code in §624.0406(1) (a) 1. may be exported under the following conditions:

(a) The insurance must be placed only by or through a licensed Florida surplus lines agent;

(b) The insurer must be one made eligible by the commissioner specifically for such coverages, based upon information furnished by the insurer and indicating that the insurer is well able to meet its financial obligations; and

(c) The surplus lines agent shall, within sixty days after procurement of the policy or contract, file with the commissioner a copy of the policy, cover note, or contract.

(2) This section shall not apply as to pleasure boats, nor as to private aircraft owned by private owners for business and pleasure purposes only (excluding commercial), exclusive of check flight or ferry flight coverage only.

History.—§356, ch. 59-205; §2, ch. 63-86.
Note.—Similar provisions found in former §645.05.

626.0515 Eligible surplus lines insurers.—

(1) No surplus lines agent shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer as provided for under this section.

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the commissioner in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by a licensed surplus lines agent;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed, and must have been such an insurer for not less than the three years next preceding; or must be the wholly-owned subsidiary of an already eligible surplus lines insurer or authorized insurer that has been so

eligible for a period of not less than the three years next preceding;

(c) Before granting eligibility the requesting surplus lines agent or the insurer shall furnish the commissioner with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate—in the case of statements originally made in the currencies of other counties—then current and shown in the statement, and with such additional information relative to the insurer as the commissioner may request;

(d) The insurer, if organized under the laws of a state of the United States, must have surplus as to policyholders of not less than the amount required under this code for a life authorized insurer; or, if an alien insurer, must have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the commissioner to be reasonably adequate, in the amount of not less than eight hundred thousand dollars. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of public obligations of the United States, or of any state, county, or municipality thereof, or by other investments of the same general character and quality as are eligible investments for like funds of like domestic insurers under part II of chapter 625 of this code;

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims;

(f) The insurer must be eligible, as for authority to transact insurance in this state, under subsections (3) (management and affiliations), and (4) (voting control or operation by alien government or agency) of §624.0203; and

(g) This subsection does not apply as to unauthorized insurers made eligible under §626.0514 as to wet marine and aviation risks as in such section provided.

(3) The commissioner shall from time to time publish a list of all currently eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines agent at his office last of record with the commissioner.

(4) This section shall not be deemed to cast upon the commissioner any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary.

(5) Where it appears that any particular insurance risk which is eligible for export, but insurance coverage thereon, in whole or in part, is not procurable from the eligible surplus lines insurers, after a diligent effort, then the surplus lines agent may file a supplemental affidavit stating such facts and advising the insurance commissioner that such part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers, in the amounts and percentages set forth in the affidavit. Such named unauthorized insurer shall, however, before accepting any risk in this state, deposit with the insurance commissioner United States government bonds of the market value of ten thousand dollars which shall be held by said commissioner for the benefit of Florida policyholders only and the surplus lines agent shall procure from such unauthorized insurer and file with the insurance commissioner a certified copy of its statement of condition as of the close of the last calendar year. If such statement reveals, including both capital and surplus, net assets of at least five hundred thousand dollars, then the surplus lines agent may proceed to consummate such contract of insurance. Whenever any insurance risk or any part thereof, is placed with an unauthorized insurer, as provided herein, the policy, binder or cover note shall bear conspicuously on its face in boldface type the following notation: "All or part of the insurers participating in this risk have not been authorized to transact business in Florida, nor have they been declared eligible as a surplus lines insurer by the insurance commissioner of this state. The placing of such insurance by a duly licensed surplus lines agent in this state, shall not be construed as approval of such insurer by the insurance commissioner of Florida. Consequently, you do not have the protection of the insurance laws of Florida." All other provisions of this code shall apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

History.—§357, ch. 59-205; (5) §1, ch. 61-105; (2) (b) §3, ch. 63-86; (2) (d) §1, ch. 63-209.
Note.—Similar provisions found in former §645.08.

626.0516 Withdrawal of eligibility; surplus lines insurer.—

(1) If at any time the commissioner has reason to believe that any unauthorized insurer then on the list of eligible surplus lines insurers is insolvent, or in unsound financial condition, or does not make reasonable prompt payment of just losses and claims in this state, or that it is no longer eligible under the conditions therefor provided in §626.0515, he shall withdraw the eligibility of the insurer to insure surplus lines risks in this state.

(2) If the commissioner finds, after a hearing thereon of which notice was given to all licensed surplus lines agents, that an insurer currently eligible as a surplus lines insurer has wilfully violated the laws of Florida he may, in his discretion, withdraw the eligibility of the insurer to insure surplus lines risks in this state.

(3) The commissioner shall promptly mail notice of all such withdrawals of eligibility to each surplus lines agent at his address last of record with the commissioner.

History.—§358, ch. 59-205.
Note.—Similar provisions found in former §645.08.

626.0517 Export procedure.—

(1) Within sixty days after the effectuation of any surplus lines insurance (exclusive of Saturdays, Sundays, and legal holidays), the surplus lines agent shall file with the commissioner in his office at Tallahassee:

(a) A copy of the binder, cover note, certificate, policy, or other confirmation of insurance showing the identity and location of the subject of the proposed insurance; name and address of proposed insured; name of proposed insurer or insurers; perils to be covered; form or type of policy or contract under which to be insured; any special or additional coverages or conditions; amount of premium or rate; and such other pertinent information as the commissioner may reasonably require; and

(b) The affidavit of the surplus lines agent, on forms as prescribed and furnished by the commissioner, as to efforts made to place the coverage with authorized insurers and the results thereof.

(2) This section does not apply as to wet marine and transportation or aviation coverages which are subject to §626.0514.

History.—§359, ch. 59-205; (1) §4, ch. 63-86.
Note.—Similar provisions found in former §645.05.

626.0518 Surplus lines examining office; filings confidential.—

(1) For the expeditious examination of surplus lines insurance coverages as provided for in §626.0517, the commissioner shall establish and maintain in his offices at Tallahassee such facilities, as an "examining office," as may reasonably be necessary for the purpose.

(2) In the operation of the examining office, the commissioner may employ or obtain necessary personnel and office furniture, fixtures and facilities, and/or may make joint use of personnel, furniture, fixtures and facilities otherwise employed or used in his office.

(3) Filings made by surplus lines agents with the examining office, other than the affidavits provided for in §626.0517(1)(b), shall not be open to public inspection and shall be held as confidential information. This provision shall not apply as to the quarterly reports filed by such agents pursuant to §625.0528 or to any information in connection with a unique form of policy issued pursuant to §626.0513 (1)(c).

History.—§360, ch. 59-205.

626.0519 Evidence of the insurance; changes; penalty.—

(1) Upon placing a surplus line coverage, the surplus lines agent shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate, cover note, or other confirmation of insurance. Such document shall be executed or countersigned by the surplus lines agent and shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) No surplus lines agent shall issue any such document, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(3) If after the issuance and delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note, or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly issue and deliver to the insured a substitute certificate, cover note or confirmation, or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this surplus lines law if originally issued on such basis.

(4) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has issued and delivered a certificate, cover note or confirmation, as hereinabove provided, upon request therefor by the insured the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note, or confirmation theretofore issued.

(5) Any surplus lines agent who knowingly or negligently issues a false certificate, cover note, or confirmation of insurance, or false endorsement therefor, or who fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate, cover note or confirmation, or endorsement as provided in subsection (3), shall, upon conviction, be subject to the penalties provided by §624.15 of this code or to any greater applicable penalty otherwise provided by law.

History.—§361, ch. 59-205.

626.0520 Filing copy of policy or certificate.—Immediately upon issuing a surplus lines policy, the surplus lines agent shall file with the commissioner an exact copy of the policy so issued. If a policy has not been issued, the surplus lines agent shall so file an exact copy of

his certificate, cover note, or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the commissioner an exact copy of any substitute certificate, cover note, or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note, or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the commissioner as to the substance of any change represented by such substitute certificate, cover note, or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued.

History.—§362, ch. 59-205.
Note.—Similar provisions found in former §645.05.

626.0521 Information required on contract.—Each surplus lines agent through whom a surplus lines coverage is procured shall write or print on the outside of the policy and on any certificate, cover note, or other confirmation of the insurance his name, address, identification number, and the name and address of the local agent through whom the business originated; and shall have stamped or written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words: THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW.

History.—§363, ch. 59-205; §5, ch. 63-86.
Note.—Similar provisions found in former §645.07.

626.0522 Surplus lines insurance valid.—Insurance contracts procured as "surplus lines" coverages from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties, and shall be given acceptance and recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers.

History.—§364, ch. 59-205.

626.0523 Liability of insurer as to losses and unearned premiums.—

(1) If the unauthorized insurer has assumed the risk as to a surplus lines coverage placed under this surplus lines law, and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the insurer with respect to such insurance or for any other cause.

(2) Each unauthorized insurer assuming a surplus lines direct risk under this surplus lines law shall be deemed thereby to have subjected itself to the terms of this section.

History.—§365, ch. 59-205.

626.0524 Licensing of surplus lines agent.—

(1) Any individual while licensed as a resident general lines agent as to property, casualty, and surety insurances, and who is deemed by the commissioner to have had sufficient experience in the insurance business to be competent for the purpose, may be licensed as a surplus lines agent, upon taking and successfully passing a written examination as to surplus lines, as given by the commissioner.

(2) Any individual while employed as a supervising or managing general agent, as defined in §626.091 of this code, or the full-time salaried employee of such general agent, and who otherwise possesses all of the other qualifications of a general lines agent under this code, may, upon taking and successfully passing a written examination as to surplus lines, as given by the commissioner, be licensed as a surplus lines agent solely for the purpose of placing with surplus lines insurers property, marine, casualty, or surety coverages originated by resident local general lines agents; except, that no examination as for a general lines agent's license shall be required of any supervising or managing general agent, or such employee thereof, who held a Florida surplus lines agent's license as of January 1, 1959.

(3) Application for the license shall be made to the commissioner on forms as designated and furnished by him.

(4) License fee in the amount specified in §624.0300 (filing, license and miscellaneous fees) shall be paid to the commissioner in advance. The license shall expire at midnight on the September 30 next following date of issuance, and shall be renewable upon written request therefor filed with the commissioner and accompanied by payment of the license fee, prior to expiration.

(5) The applicant must file and thereafter maintain the bond as required under §626.0525.

(6) Examinations as to surplus lines, as required under subsections (1) and (2) shall be subject to the provisions of part I of this chapter as applicable to applicants for licenses in general. But no such examination shall be required as to persons who held a Florida surplus lines agent's license as of the effective date of this code, except where examinations subsequent to issuance of an initial license are provided for in general under such part I.

(7) Any individual who has been licensed by the commissioner as a surplus lines agent as provided in this section may be subsequently licensed without additional written examination if his application for license is filed with the commissioner within twenty-four months next following date of cancellation or expiration of the prior license. Except that the commissioner may, in his discretion, require any individual to take and successfully pass an examination as for original issuance of license as a condition precedent to the renewal or continuation of the licensee's current license.

History.—§366, ch. 59-205; (7) n. §6, ch. 63-86.
Note.—Similar provisions found in former §§645.02-645.04.

626.0525 Surplus lines agent's bond.—Prior to issuance of license, the applicant shall file with the commissioner, and thereafter for as long as any such license remains in effect he shall keep in force and unimpaired, a bond in favor of the commissioner or his successors in office in the penal sum of not less than five thousand dollars, aggregate liability, with authorized corporate surety or sureties approved by the commissioner. The commissioner may, in his discretion, require a bond in larger amount commensurate with the volume of surplus lines business transacted or to be transacted by a particular surplus lines agent. The bond shall be conditioned that the surplus lines agent will faithfully conduct business under the license in accordance with the provisions of the surplus lines law and rules and regulations of the commissioner for the effectuation thereof, and that the licensee will promptly remit to the commissioner the taxes as provided for by such law. No such bond shall be terminated unless not less than thirty days prior written notice thereof is given the licensee and filed with the commissioner.

History.—§367, ch. 59-205.
Note.—Similar provisions found in former §645.11.

626.0526 May accept business from local agents; local agent shall not misrepresent.—

(1) A resident general lines agent while licensed as a surplus lines agent under part VI of this chapter may originate surplus lines business and may accept surplus lines business from any other originating resident general lines agent appointed and licensed as to the kind or kinds of insurance involved, and may compensate such agent therefor.

(2) A supervising or managing general agent while licensed as a surplus lines agent under part VI of this chapter may accept and place solely such surplus lines business as is originated by a resident general lines agent appointed and licensed as to the kind or kinds of insurance involved and may compensate such general lines agent therefor.

(3) No such general lines agent shall knowingly misrepresent to the surplus lines agent any material fact involved in any such insurance, or in the eligibility thereof for placement with a surplus lines insurer.

History.—§368, ch. 59-205.

626.0527 Records of surplus lines agent.—

(1) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

(a) Amount of the insurance and perils insured against;

(b) Brief general description of property insured and where located;

(c) Gross premium charged;

(d) Return premium paid, if any;

(e) Rate of premium charged upon the several items of property;

(f) Effective date of the contract, and the terms thereof;

(g) Name and post office address of the insured;

(h) Name and home office address of the insurer;

(i) Amount collected from the insured; and

(j) Other information as may be required by the commissioner.

(2) The record shall at all times be open to examination by the commissioner without notice, and shall be so kept available and open to the commissioner for three years next following expiration or cancellation of the contract.

History.—§369, ch. 59-205.
Note.—Similar provisions found in former §645.06.

626.0528 Quarterly report; summary of exported business.—

(1) Each surplus lines agent shall on or before the end of the month next following each calendar quarter file with the commissioner a verified report in duplicate of all surplus lines insurance transacted by him during such calendar quarter.

(2) The report shall be on forms as prescribed and furnished by the commissioner and shall show:

(a) Aggregate gross premiums charged;

(b) Aggregate of returned premiums and taxes paid to insureds;

(c) Aggregate of net premiums; and

(d) Additional information as required by the commissioner.

(3) The report shall include a separate report of the applicable items referred to in subsection (2) as to wet marine and aviation coverages written under §626.0514.

(4) Not less frequently than quarterly the commissioner shall prepare and make available upon request to persons interested therein, a report summarizing by lines of insurance as reasonably classified by the commissioner, all insurance business exported under this surplus lines law during such quarter, as based upon the quarterly reports hereinabove required.

History.—§370, ch. 59-205; (2) §7, ch. 63-86.

626.0529 Surplus lines tax.—

(1) The premiums charged for surplus lines coverages are subject to a premium receipts tax of three per cent of all gross premiums charged for such insurance. The surplus lines agent shall collect from the insured the amount of the tax at the time of the delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The surplus lines agent is prohibited from absorbing such tax, or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his commission.

(2) The surplus lines agent shall pay to the commissioner the tax related to each calendar quarter's business as reported, and at the same time as provided for the filing of the quarterly report, under §626.0528.

(3) If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portion of the premium which is properly allocable to the risks or exposures located in this state.

(4) This section does not apply as to insurance of or with respect to vessels, cargo, or aircraft written under §626.0514, or as to insurance of risks of the state government or its agencies, or of any county or municipality or of any agency thereof.

(5) Of the taxes collected under this section the commissioner shall deposit one-third thereof to the credit of the state's general fund, and shall deposit the remaining two-thirds to the credit of the miscellaneous service fund provided for in §624.0324.

History.—§371, ch. 59-205.
Note.—Similar provisions found in former §645.09.

626.0530 Collection of tax.—If the tax payable by a surplus lines agent under this surplus lines law is not so paid within the time prescribed, the same shall be recoverable in a suit brought by the commissioner against the surplus lines agent and the surety or sureties on the bond filed by the surplus lines agent under §626.0525.

History.—§372, ch. 59-205.
Note.—Similar provisions found in former §645.11.

626.0531 Accounting for funds; contingent commissions.—The following sections also apply as to surplus lines agents:

(1) Section 626.561 (reporting and accounting for funds);

(2) Section 626.581 (commissions contingent upon adjustment savings prohibited); and

(3) Section 626.591 (same; penalty for violation).

History.—§373, ch. 59-205.

626.0532 Suspension, revocation or refusal of surplus lines agent license.—

(1) The commissioner shall suspend, revoke, or refuse to renew the license of a surplus lines agent and all other licenses and permits held by the licensee under this code, upon any one or more of the following grounds:

(a) Removal of the licensee's office from the state;

(b) Removal of the accounts and records of his surplus lines business from this state during the period when such accounts and records are required to be maintained under §626.0527;

(c) Closure of the licensee's office for a period of more than thirty consecutive days.

(d) Failure to make and file his quarterly reports when due as required by §626.0528.

(e) Failure to pay the tax on surplus lines premiums, as provided for in this surplus lines law.

(f) Failure to maintain the bond as required by §626.0525.

(g) Suspension, revocation, or refusal to renew or continue the license as a general lines agent.

(h) Lack of qualifications as for an original surplus lines agent's license.

(i) Violation of this surplus lines law.

(j) For any other applicable cause for which the license of a general lines agent could be suspended, revoked, or refused under §626.611 (grounds for compulsory refusal, suspension, revocation of license or permit).

(2) The commissioner may, in his discretion, suspend, revoke, or refuse to renew the license of any surplus lines agent upon any applicable ground for which a general lines agent's license could be suspended, revoked, or refused under §626.621 (grounds for discretionary refusal, suspension, revocation of license or permits).

(3) The commissioner shall, in the suspension, revocation, or refusal to renew the license of a surplus lines agent, follow the same procedures, as applicable, as provided for refusal, suspension, or revocation of licenses of general lines agents under §626.631 (procedure for refusal, suspension, or revocation of license or permit), but subject to §626.0533 as to failure to file annual statement or pay tax.

(4) The following sections shall also apply, to the extent so applicable, as to surplus lines agents:

(a) Section 626.641 (duration of suspension or revocation).

(b) Section 626.651 (effect of suspension, revocation upon associated licenses and licensees).

(c) Section 626.661 (surrender of license or permit).

(d) Section 626.681 (administrative fine in lieu of suspension, revocation of license).

(e) Section 626.691 (probation).

History.—§374, ch. 59-205.
Note.—Similar provisions found in former §§625.21, 645.12.

626.0533 Special procedure; failure to file report or pay tax.—

(1) If any licensed surplus lines agent fails to file the quarterly report required or pay the taxes as required of him under this surplus lines law, the commissioner shall issue an order directed to the licensee requiring the licensee to file such report and pay such tax or to show cause by a day certain to be named therein why the commissioner should not revoke his license. The notice shall provide a return day not sooner than thirty days subsequent to its issuance and shall be served upon the licensee by registered mail at his business post office address.

(2) The licensee may, not less than ten days prior to such return day, file his response in writing with the commissioner showing cause why he has not paid such tax, but the only defenses available to the licensee with respect thereto shall be that the commissioner is requiring the payment of a tax greater than that due from the licensee, and such defense will be available only if the licensee shall have

filed return purporting to show the tax payable by the licensee, and shall have tendered the amount of tax computed by the licensee to be due.

(3) If on the return day the licensee has not filed such return and paid the tax and has not filed any such defense and made such tender, the commissioner shall revoke the licenses of the licensee.

(4) If the licensee files such defense to the order and makes such tender within the time required, on the return day the commissioner shall hold a hearing with respect to such matters and if the commissioner determines after such hearing that the licensee has failed to pay the tax required, and the licensee does not within five days thereafter pay such tax, the commissioner shall enter his order revoking the licenses of such licensee.

(5) If any such licensee is required by an order to pay any tax he contends is not legally due, he may pay same under protest and obtain review of the commissioner's order in the manner set forth in §624.0128 of this code.

History.—§375, ch. 59-205.
Note.—Similar provisions found in former §645.12.

626.0534 Actions against insurer; service of process.—

(1) An unauthorized insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract issued by it or certificate, cover note, or other confirmation of such insurance issued by the surplus lines agent, pursuant to the same procedure as is provided in §624.0222 of this code as to authorized insurers.

(2) The unauthorized insurer accepting the risk or issuing the policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section, and to have appointed the commissioner as its agent for service of process issuing upon any cause of action arising in this state under any such policy, contract, or insurance.

(3) Each unauthorized insurer requesting eligibility pursuant to §626.0515 shall file with the commissioner its appointment of the commissioner and his successors in office, on a form as furnished by the commissioner, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(4) At the time of such appointment of the commissioner as its process agent the insurer shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change the designation at any time by a new filing.

(5) This section shall be cumulative to any other methods which may be provided by law for service of process upon the insurer.

History.—§376, ch. 59-205; §8, ch. 63-86.
Note.—Similar provisions found in former §645.13.

626.0535 Report and tax of independently procured coverages.—

(1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state or exempted from tax under §626.0529(4), shall within thirty days after the date such insurance was so procured, continued, or renewed, file a report of the same with the commissioner in writing and upon forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application, in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of subsection (1).

(3) For the general support of the government of this state, there is levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a tax at the rate of three per cent of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within thirty days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in subsection (1), the insured shall pay the amount of the tax to the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3).

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of six per cent per annum, compounded annually.

(6) The tax shall be collectible from the insured by civil action brought by the commissioner, or by distraint.

(7) The commissioner shall deposit all taxes and interest collected under this section to the credit of the miscellaneous service fund provided for in §624.0324.

(8) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of §§626.0500 (representing or aiding unauthorized insurer prohibited), 626.0501 (penalty for representing unauthorized insurer), or 626.0502 (suits by unauthorized insurers prohibited), or any other provision of this code.

(9) This section does not apply as to life or disability insurances.

History.—§377, ch. 59-205; (4) §9, ch. 63-86.

626.0536 Records produced on order.—

(1) Every person by or as to whom insurance is procured or placed in an unauthorized insurer, upon the commissioner's order shall produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order such person upon conviction thereof shall be liable to a fine of not more than $500.

(2) This section does not apply to life insurance or disability insurance.

History.—§378, ch. 59-205.

PART VII

TRADE PRACTICES AND FRAUDS

626.0600 Purposes of trade practices law; short title.—

(1) The purpose of §§626.0601 through 626.0626 is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the act of congress of March 9, 1945, (public law 15, 79th congress) by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

(2) Sections 626.0600 through 626.0626 may be referred to as the "trade practices law."

History.—§379, ch. 59-205.
Note.—Similar provisions found in former §643.01.

626.0601 Unfair methods, deceptive acts prohibited.—No person shall engage in this state in any trade practice which is defined in part VII of this chapter as, or determined pursuant to this same part VII to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

History.—§380, ch. 59-205.
Note.—Similar provisions found in former §643.03.

626.0602 Misrepresentation, false advertising of policies.—No person shall make, issue, circulate, or cause to be made, issued, or circulated, any estimate, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or make any misleading representation or any misrepresentation as to the

financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

History.—§381, ch. 59-205.
Note.—Similar provisions found in former §§625.21, 643.04.

626.0603 False information, advertising.—No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

History.—§382, ch. 59-205.
Note.—Similar provisions found in former §643.04.

626.0604 "Twisting" prohibited.—No person shall make any misleading representations or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, or convert any insurance policy, or to take out a policy of insurance in another insurer.

History.—§383, ch. 59-205.
Note.—Similar provisions found in former §§625.21, 634.13, 643.04, 644.13.

626.0605 Misrepresentations in adjustment of claims.—No person shall in connection with adjusting any claim, loss or damage under a contract or policy of insurance, misrepresent to an insured or any other person having an interest in the proceeds payable under such contract or policy, the terms, coverage or effect of such contract or policy, for the purpose and with the intent of effecting settlement of such claim, loss or damage under such contract or policy on less favorable terms than those provided in and contemplated by such contract or policy.

History.—§384, ch. 59-205.
Note.—Similar provisions found in former §636.43.

626.0606 False financial statements.—

(1) No person shall file with any supervisory or other public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omit to make a true entry of any material fact pertaining to the business of the insurer in any book, report or statement of the insurer.

History.—§385, ch. 59-205.
Note.—Similar provisions found in former §643.04.

626.0607 Defamation.—No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, or of an organization proposing to become an insurer, and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

History.—§386, ch. 59-205.
Note.—Similar provisions found in former §643.04.

626.0608 Boycott, coercion and intimidation.—No person or persons shall enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

History.—§387, ch. 59-205.
Note.—Similar provisions found in former §643.04.

626.0609 Coercion of business.—

(1) No person, firm or corporation engaged in selling real or personal property or in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property and no trustee, director, officer, agent, or other employee of any such person, firm or corporation shall require, as a condition precedent, concurrent, or subsequent to the sale or financing the purchase of such property or to lending money upon the security of a mortgage thereon, or as a condition precedent, concurrent, or subsequent for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person, firm or corporation purchasing such property or for whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal or other act is to be granted, or performed, negotiate any policy of insurance or renewal thereof covering such property through a particular insurer, agent or solicitor.

(2) This section shall not prevent the exercise by any person, firm or corporation of its right to designate reasonable financial requirements as to the insurer, the terms and provisions of the policy and the adequacy of the coverage with respect to insurance on property pledged or mortgaged to such person, firm or corporation; and nothing herein contained shall be construed as to prohibit the right of any person, firm or corporation from voluntarily negotiating or soliciting the placing of such insurance.

History.—§388, ch. 59-205.
Note.—Similar provisions found in former §§627.92, 643.04.

626.06091 Coercion; life insurance; disability insurance.—No life insurer or other person financing the purchase of real or personal property or lending money on the security of real or personal property shall require, as a condition precedent, concurrent, or subsequent to financing the purchase of such property or to lending money upon the security of a mortgage thereon, or as a condition precedent, concurrent, or subsequent for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person purchasing such property or for whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal, or other act is to be granted, or performed, either directly or indirectly, acquire a policy of life or disability insurance from or through a particular insurer, agent, or solicitor. This section shall not apply to insurance policies of debtor groups authorized under §§627.0402 and 627.-0604 or policies of credit life and disability insurance regulated by part VIII of chapter 627.

History.—§1, ch. 61-146.

626.0610 Unfair discrimination; life insurance, annuities and disability insurance.—

(1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

History.—§389, ch. 59-205.

Note.—Similar provisions found in former §§635.02, 643.04.

626.0611 Rebates and special inducements; life, annuity and disability contracts.—Except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity or disability insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow, or give, directly or indirectly, as an inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract.

History.—§390, ch. 59-205.

Note.—Similar provisions found in former §§625.19, 643.04.

626.0612 Exceptions to discrimination, rebates provision; life, disability, and annuity contracts.—Nothing in §§626.0610 and 626.0611 shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses, or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders.

(2) In the case of life insurance policies issued on the debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer, in an amount which fairly represents the saving in collection expense.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(4) Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

(5) Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check or payroll deduction plan or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

History.—§391, ch. 59-205.

Note.—Similar provisions found in former §§635.05, 635.26, 643.04.

626.0613 Rebates prohibited; property, casualty, surety insurances.—

(1) No property, casualty or surety insurer or any employee thereof, and no agent or solicitor shall pay, allow, or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy, nor any employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

(3) Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to agents or solicitors duly licensed in this state, or as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or the unused or

unabsorbed portion of premiums and premium deposits.

History.—§392, ch. 59-205.

Note.—Similar provisions found in former §§629.18, 630.10.

626.06131 Rebates prohibited; title insurance.—

(1) No title insurer or any member, employee, attorney, agent or solicitor thereof, shall pay, allow or give or offer to pay, allow or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate, or abatement of the charge made incident to the issuance of such insurance, or any special favor or advantage or any monetary consideration or inducement whatever. The words "charge made incident to the issuance of such insurance" shall be construed to encompass underwriting premium, agent's commission, abstracting charges, title examination fee and closing charges.

(2) Nothing in this section shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services in the actual examination of title to real property as a condition to the issuance of title insurance, or as prohibiting the payment of earned commissions to duly appointed agents who actually issue the policy of title insurance for the underwriting company.

(3) No insured named in a policy, nor any other person directly or indirectly connected with the transaction involving the issuance of said policy, including, but not limited to, mortgage broker, real estate broker, builder or attorney, nor any employee, agent, representative or solicitor thereof, nor any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any such rebate or abatement of said charge, or any monetary consideration or inducement, other than as set forth in subsection (2).

History.—§1, ch. 61-141.

626.0614 Certain other inducements prohibited.—No insurance policy or annuity contract shall provide for, and no insurer, agent, solicitor or any other person shall as an inducement to the purchase of insurance or an annuity or in connection with or reference to such insurance or annuity contract, directly or indirectly:

(1) Pay or allow, or give or offer, any paid employment or contract for services of any kind;

(2) Give or sell, or purchase or offer or agree to give, sell, purchase, allow, or provide for, any agreement of any form or nature promising returns and profits, or any stocks, bonds, or other securities, or trading stamps, or other property, or interest present or contingent therein, of any insurer or other corporation, association, partnership, or person, or any dividends or profits accrued or to accrue thereon;

(3) Give, allow, arrange for, or offer any advisory board contract, or similar contract, promising returns and profits.

History.—§393, ch. 59-205.

Note.—Similar provisions found in former §§625.20, 643.04.

626.0615 Advertising gifts permitted.—No provision of §§626.0610 through 626.0614 shall be deemed to prohibit a licensed agent from giving to insureds, prospective insureds, and to others, for the purpose of advertising, any article of merchandise having a value of not more than five dollars.

History.—§394, ch. 59-205.

626.0616 Free insurance prohibited.—

(1) No person in this state shall advertise, offer or provide free insurance as an inducement to the purchase or sale of real or personal property, or of services directly or indirectly connected with such real or personal property.

(2) For the purposes of this section, "free" insurance is insurance for which no identifiable and additional charge is made to the purchaser of such real property or personal property or services, or insurance for which an identifiable or additional charge is made in an amount less than the cost of such insurance as to the seller or other person, other than the insurer, providing the same.

(3) Subsections (1) and (2) do not apply to:

(a) Insurance of loss of or damage to the real or personal property involved in any such sale or services, under a policy covering the interests therein of the seller or vendor;

(b) Blanket disability insurance as defined in §627.0607 of this code;

(c) Credit life insurance or credit disability insurance;

(d) Any individual, isolated, nonrecurring unadvertised transaction not in regular course of business;

(e) Title insurance.

(4) No person shall use the word "free" to describe life or disability insurance in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.

History.—§395, ch. 59-205.

626.0617 Illegal dealings in premiums; excess or reduced charges for insurance.—

(1) No person shall knowingly collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as permitted by this code.

(2) No person shall knowingly collect as premium or charge for insurance any sum in excess or less than the premium or charge applicable to such insurance, and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or, in cases where classifications, premiums, or rates are not required by this code to be so filed and approved,

such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VI of this chapter, of the amount of applicable state and federal taxes in addition to the premium required by the insurer.

(3) This section does not apply to life or disability insurance.

History.—§396, ch. 59-205.

Note.—Similar provisions found in former §§629.08, 629.18, 630.03, 630.10.

626.0618 Insurance cost specified in "price package."—

(1) Where the premium or charge for insurance of or involving such property or merchandise is included in the over-all purchase price or financing of the purchase of merchandise or property, the vendor or lender shall separately state and identify the amount charged and to be paid for the insurance, and the classifications, if any, upon which based; and the inclusion or exclusion of the cost of insurance in such purchase price or financing shall not increase, reduce, or otherwise affect any other factor involved in the cost of the merchandise or property or financing as to the purchaser or borrower.

(2) This section does not apply to transactions which are subject to the automobile sales finance act of 1957.

(3) This section does not apply to credit life or credit disability insurance which is in compliance with §627.0705 (2) of this code.

History.—§397, ch. 59-205.

Note.—Similar provisions found in former §646.02.

626.0619 Fictitious groups.—

(1) No insurer or any person on behalf of any insurer shall make, offer to make, or permit any preference or distinction in property, marine, casualty, or surety insurance as to form of policy, certificate, premium, rate, benefits, or conditions of insurance, based upon membership, nonmembership, employment, or of any person or persons by or in any particular group, association, corporation, or organization, and shall not make the foregoing preference or distinction available in any event based upon any fictitious grouping of persons as defined in this code, such fictitious grouping being hereby defined and declared to be any grouping by way of membership, nonmembership, license, franchise, employment, contract, agreement or any other method or means.

(2) The restrictions and limitations of this section shall not extend to life and disability insurance.

History.—§398, ch. 59-205.

Note.—Similar provisions found in former §643.04.

626.0620 Desist orders for prohibited practices.—

(1) If the commissioner has reason to believe that any person has been engaged or is engaging in this state in any unfair method of competition, or any unfair or deceptive act or practice expressly prohibited in this trade practices law, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than twenty days after the date of the service thereof.

(2) At the hearing such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(3) Provisions of part II of chapter 624 of this code relative to the powers of the commissioner, witnesses, evidence and hearings shall apply as to procedures under this trade practices law, except where in conflict with the express provisions of this trade practices law.

(4) If, after such hearing, the commissioner finds that the method of competition or the act or practice in question is defined in this law and that the person complained of has engaged in such method of competition, act or practice in violation of this law, he shall reduce his findings to writing and issue and cause to be served upon such person an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

(5) Until the expiration of the time allowed by law for filing a petition for review (by appeal or writ of certiorari) if no such petition has been duly filed within such time, or if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the circuit court of the county of residence of the person accused, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(6) After the expiration of the time allowed for filing such a petition for review, if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(7) A cease and desist order issued by the commissioner under this section shall become final:

(a) Upon the expiration of the time allowed for filing of petition for review, if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in subsection (5); or

(b) Upon the final decision of the court

if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(8) No order or proceeding, or absence of such order or proceeding, of the commissioner pursuant to this trade practices law or order of court to enforce any such order, if made, shall in any way relieve or absolve any person affected thereby from any other liability, penalty or forfeiture under law.

(9) Violation of any such desist order shall be deemed to be and shall be punishable as a violation of this code.

History.—§399, ch. 59-205.

Note.—Similar provisions found in former §§643.06, 643.07, 643.08.

626.0621 Service of notices and processes.—Statements of charges, notices, orders and other processes of the commissioner under this trade practices law may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

History.—§400, ch. 59-205.

Note.—Similar provisions found in former §643.06.

626.0622 Appeals from cease and desist orders.—Any person required by an order of the commissioner under §626.0620 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in this trade practices law may obtain a review of such order by filing an appeal therefrom in accordance with the provisions and procedures for appeals from the orders of the commissioner in general under §624.0128 of this code. To the extent that the commissioner's order is affirmed on such review, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

History.—§401, ch. 59-205.

Note.—Similar provisions found in former §643.08.

626.0623 Procedures as to undefined practices. —

(1) Whenever the commissioner has reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this trade practices law, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than twenty days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in §626.0620 of this trade practices law. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.

(2) If such report charges a violation of this trade practices law and if such method of competition, act or practice has not been discontinued, the commissioner may at any time after thirty days after the service of such report, cause a petition to be filed in the circuit court of this state of the circuit wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act, or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

(3) A transcript of the proceedings before the commissioner, including all evidence taken and the report and findings shall be filed with such petition. If either party applies to the court for leave to adduce additional evidence and shows, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

(4) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

History.—§402, ch. 59-205.

Note.—Similar provisions found in former §643.09.

626.0624 Appeal by intervenor.—If the report of the commissioner under §626.0623 does not charge a violation of this trade practices law, then any intervenor in the proceedings may, within thirty days after the service of such report, cause a notice of appeal to be filed in the circuit court of Leon county for a review of such report. Upon such review, the

court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the commissioner, constitutes a violation of this trade practices law. Section 626.0623 (3) shall apply as to any such review.

History.—§403, ch. 59-205.
Note.—Similar provisions found in former §643.10.

626.0625 Violation of cease and desist order; penalty.—

(1) Any person who violates a cease and desist order of the commissioner issued under this trade practices law after it has become final and while such order is in effect, shall be cited to appear before the commissioner upon five days notice to show cause why an order revoking the license or certificate of authority should not be entered. At such hearing, if the commissioner determines that such violation was committed wilfully and knowingly he shall forthwith revoke the license or certificate of authority of such person. Such order of revocation may be reviewed as provided for in §624.-0128 of this code.

(2) Any person who violates a cease and desist order or an order of revocation after it has become final and while such order is in effect, shall be guilty of a misdemeanor and upon conviction shall be fined a sum not to exceed $1,000 or be imprisoned in the county jail for a period not to exceed 6 months, or both.

History.—§404, ch. 59-205.
Note.—Similar provisions found in former §643.11.

626.0626 Commissioner's powers of investigation.—The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

History.—§405, ch. 59-205.
Note.—Similar provisions found in former §643.05.

626.0627 Interlocking ownership and management.—

(1) Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent with any other provision of this code, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business.

(2) Any person otherwise qualified may be a director of two or more insurers which are competitors, unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

History.—§406, ch. 59-205.

626.0628 Prohibited arrangements as to funerals.—

(1) No life insurer shall designate in any life insurance policy the person to conduct the funeral of the insured, or organize, promote or operate any enterprise or plan or enter into any contract with any insured under which the freedom of choice in the open market of the person having the legal right to such choice, is restricted as to purchases, arrangements and conduct of a funeral service or any part thereof for any individuals insured by the insurer.

(2) No insurer shall contract or agree to furnish funeral merchandise or services in connection with the burial of any person upon the death of any person insured by such insurer.

(3) No insurer shall contract or agree with any funeral director or undertaker to the effect that such funeral director or undertaker shall conduct the funeral of any person insured by such insurer.

(4) No insurer shall provide, in any insurance contract covering the life of any person in this state, for the payment of the proceeds or benefits thereof in other than legal tender of the United States and of this state, or for the withholding of such proceeds or benefits, all for the purpose of either directly or indirectly providing, inducing, or in furtherance of any arrangement or agreement designed to require or induce the employment of a particular person to conduct the funeral of the insured.

History.—§407, ch. 59-205.
Note.—Similar provisions found in former §639.01.

626.0629 Certain life insurance relations with funeral directors prohibited.—

(1) No life insurer shall permit any funeral director or undertaker to act as its representative, adjuster, claim agent, special claim agent or agent for such insurer in soliciting, negotiating or effecting contracts of life insurance on any plan or of any nature issued by such insurer or in collecting premiums from holders of any such contracts.

(2) No life insurer shall affix, or permit to be affixed, advertising matter of any kind or character of any funeral director or undertaker to such policies of insurance, or circulate or permit to be circulated any such advertising matter with such insurance policies, or attempt in any manner or form to influence policyholders of the insurer to employ the services of any particular funeral director or undertaker.

(3) No such insurer shall maintain an office or place of business, or permit its agent to maintain an office or place of business, in the office, establishment or place of business of any funeral director or undertaker in this state.

History.—§408, ch. 59-205.
Note.—Similar provisions found in former §638.16.

626.0630 Misrepresentations in application for insurance.—Any agent, solicitor, examining physician, applicant or other person who knowingly makes any false and fraudulent statement

or representation in or with reference to any application or negotiations for insurance, shall upon conviction be guilty of a misdemeanor and be punished by a fine of not to exceed $1,000 or imprisonment in the county jail for not more than 6 months, or both such fine and imprisonment in the discretion of the court.

History.—§409, ch. 59-205.

Note.—Similar provisions found in former §637.61.

626.0631 False claims; obtaining or retaining money dishonestly.—

(1) Any agent, physician, claimant or other person who causes to be presented to any insurer a false claim for payment, knowing the same to be false, or

(2) Any agent, solicitor, collector or other person who shall represent any such insurer or collect or do business without the authority of the insurer, or secure cash advances by false statements, or shall fail to turn over when required or satisfactorily account for all collections of such insurer, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to the penalties provided by §624.15 of this code.

History.—§410, ch. 59-205.

Note.—Similar provisions found in former §§625.18, 637.62.

626.0632 Proposal required.—If a person simultaneously holds a securities license and a life insurance license, he shall prepare and leave with each prospective buyer a written proposal, on or before delivery of any investment plan. Investment plan shall mean a mutual funds program, and the proposal shall consist of a prospectus describing the investment feature and a full illustration of any life insurance feature. The proposal shall be prepared in duplicate, dated and signed by the licensee. The original shall be left with the prospect and the duplicate shall be retained by the licensee for a period of not less than three years. In lieu of a duplicate copy, a receipt for standardized proposals filed with the commissioner may be obtained and held by the licensee.

History.—§1, ch. 61-449.

CHAPTER 627
INSURANCE CODE; RATES AND CONTRACTS

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PART I
RATES AND RATING ORGANIZATIONS

627.011 Short title.—Part I of this chapter may be referred to as "the rating law."

History.—§412, ch. 59-205.

627.021 Scope of part I.—

(1) Part I of this chapter applies only to property, casualty, and surety insurances (as defined in part V of chapter 624 of this code) of subjects of insurance resident, located or to be performed in this state, except as provided in subsection (2).

(2) This chapter does not apply to:

(a) Reinsurance, except joint reinsurance as provided in §627.311 of this chapter.

(b) Disability insurance.

(c) Insurance against loss of or damage to aircraft, their hulls, accessories or equipment, or against liability, other than workmen's com-

pensation and employer's liability, arising out of the ownership, maintenance or use of aircraft.

(d) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(3) For the purposes of this chapter all motor vehicle insurance shall be deemed to be casualty insurance only.

History.—§413, ch. 59-205.
Note.—Similar provisions found in former §§628.12, 629.02, 629.03, 630.01.

627.031 Purpose of part I; interpretation.—The purpose of part I of chapter 627 is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within its scope. Nothing in said part I is intended:

(1) To prohibit or discourage reasonable competition, or

(2) Prohibit or encourage, except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This part of chapter 627 shall be liberally interpreted to carry into effect the provisions of this section.

History.—§411, ch. 59-205.

627.041 Definitions.—As used in part I of this chapter as to property insurance:

(1) "Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

(2) "Premium" means the consideration paid or to be paid to an insurer for the issuance and delivery of any binder or policy of insurance.

History.—§414, ch. 59-205.
Note.—Similar provisions found in former §629.01.

627.051 Divisions of part I; insurer's designation where two laws apply.—

(1) Sections 627.061 (making of rates; property insurance), 627.071 ("inland marine" definition), and 627.201 (deviations; property insurance) shall apply only to property insurance on risks located in this state. Such sections, together with other sections applicable as to property insurance, are designated as the property rate regulatory provisions of this chapter. Except where distinguished by context "property insurance" also includes "inland marine" insurance.

(2) Sections 627.081 (making of rates; casualty and surety), 627.211 (deviations; casualty and surety), and 627.351 (assigned risk plan; casualty and surety) shall apply only as to casualty and surety insurances on risks or operations in this state. Such sections, together with other sections applicable as to casualty and surety insurances, are designated as the casualty and surety rate regulatory provisions of this chapter.

(3) If any kind of insurance, subdivision or combination thereof, or type of coverage subject to the property rate regulatory provisions of this chapter, is also subject to the casualty and surety rate regulatory provisions of this chapter, an insurer to which both such groups of provisions are otherwise applicable shall file with the commissioner a designation as to which such group of rate regulatory provisions shall be applicable to it with respect to such kind of insurance, subdivision, or combination thereof, or type of coverage.

History.—§415, ch. 59-205.
Note.—Similar provisions found in former §§629.02, 630.01.

627.061 Making of rates; property insurance.—

(1) Rates for property insurance shall be made in accordance with the following provisions:

(a) Manual, minimum, class rates, rating schedules or rating plans shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.

(b) Rates shall not be excessive, inadequate or unfairly discriminatory.

(c) Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

(2) Except to the extent necessary to meet the provisions of subsection (1)(b) of this section, uniformity among insurers in any matter within the scope of this section is neither required nor prohibited.

(3) Rates made in accordance with this section may be used subject to the applicable provisions of this chapter.

History.—§416, ch. 59-205.
Note.—Similar provisions found in former §§629.03, 629.06, 629.14.

627.071 Inland marine defined.—For the purposes of this code "inland marine" insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner, or as established as general custom of the business, as inland marine insurance.

History.—§417, ch. 59-205.
Note.—Similar provisions found in former §629.03.

627.081 Making of rates; casualty and surety.—

(1) All rates as to casualty and surety insurances shall be made in accordance with the following provisions:

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(b) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(c) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(d) Rates shall not be excessive, inadequate or unfairly discriminatory.

(2) Except to the extent necessary to meet the provisions of subsection (1)(d), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

History.—§418, ch. 59-205.

Note.—Similar provisions found in former §630.02.

627.091 Rate filings.—

(1) As to property insurance every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner. The commissioner may investigate inland marine rates not required to be filed under this subsection and may require the filing of any particular such rate not otherwise required to be filed.

(2) As to casualty and surety insurances every insurer shall file with the commissioner every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use.

(3) Every filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, he shall within fifteen days after the date of filing require the insurer to furnish the information upon which it supports the filing and in such event the waiting period provided for in §627.101(2) shall commence as of the date such information is furnished. The information furnished in support of a filing may include:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) Its interpretation of any statistical data it relies upon;

(c) The experience of other insurers or rating organizations; or

(d) Any other factors which the insurer or rating organization deems relevant.

(4) A filing and any supporting information shall be open to public inspection as provided in §627.101.

(5) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings in its behalf; but nothing contained in this chapter shall be construed as requiring any insurer to become a member or a subscriber to any rating organization.

History.—§419, ch. 59-205.

Note.—Similar provisions found in former §§629.03, 629.08, 629.17, 630.03.

627.101 When filing becomes effective.—

(1) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

(2) Within fifteen days after the date of the filing, together with any additional information, if any, in support of the filing which has been requested by the commissioner under §627.091(3), has been received by the commissioner, the commissioner shall place the filing and its supporting information on file in his office for public inspection, and give notice thereof to the insurer or rating organization that made the filing. Prior to being so placed on file for public inspection the filing shall be deemed a privileged communication not open to public inspection; but this provision shall not be deemed to prohibit any insurer or rating organization from discussing, or require any such insurer or rating organization to discuss, with any person or organization any filing which it proposes to make or has made with the commissioner.

(3) A filing which the commissioner has placed on file for public inspection as provided in subsection (2) shall so remain on file for fifteen days (counting such filing date as the first day of such public inspection period), and shall not be approved, disapproved, or become effective during such fifteen-day period except after a public hearing. If not theretofore approved or disapproved after a public hearing thereon, or affirmatively approved or disapproved by the commissioner on the sixteenth day after the filing was so placed on file

for public inspection, the filing shall become effective as at 12:01 A.M. on such sixteenth day, unless within such fifteen-day period the commissioner has concluded it to be in the public interest to hold a public hearing to determine whether the filing meets the requirements of this chapter, and given notice of such hearing to the insurer or rating organization that made the filing, and in which case the effectiveness of the filing shall be subject to the further order of the commissioner made as provided in §627.111.

(4) An insurer or rating organization may, at the time it makes a filing with the commissioner, request a public hearing thereon. In such event the commissioner shall forthwith place the filing on file in his office for public inspection and shall give notice of the hearing, and otherwise hold and conduct the hearing as provided in §627.111, and the effectiveness of the filing shall be subject to the commissioner's order made following the hearing.

(5) If any such filing would result in a change in premium or premium rate as to automobile liability insurance, the commissioner shall coincidentally with placing the filing on file in his office for public inspection as provided hereinabove in this section, inform the established news agencies having offices at Tallahassee thereof and post or cause to be posted a notice of the pendency of such filing, at the place customarily used for the posting of public notices, at the court house of each Florida county whose residents are to be affected by the proposed premium or premium rate change. The commissioner may prescribe the general form of such notice, may therein summarize the filing or filings covered thereby, and may make a reasonable grouping of filings by different rating organizations and insurers which may be pending at the same time for inclusion in the same such notice. The commissioner shall certify in writing as to the informing of such news agencies and as to such posting, and a copy of the certificate shall be made part of the commissioner's records pertaining to such filings. The effectiveness of any such filing or action of the commissioner relative thereto shall not be affected by failure of the commissioner so to inform any particular news agency or failure to post or cause to be posted a copy of any such notice at any particular court house as hereinabove provided.

(6) If the commissioner disapproves a filing he shall promptly give notice of such disapproval to the insurer or rating organization that made the filing, stating the respects in which he finds the filing does not meet the requirements of this chapter. If the commissioner approves a filing he shall give prompt notice thereof to the insurer or rating organization that made the filing, and in which case the filing shall become effective upon such approval or upon such subsequent date as may be satisfactory to the commissioner and the insurer or rating organization that made the filing. If the filing becomes effective in the absence of affirmative approval, or disapproval, as provided in subsection (3), the filing shall become operative upon such effective date or upon such subsequent date as may be provided for therein.

(7) Except, that specific inland marine rates on risks specially rated by a rating organization, or any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body and not covered by a previous filing, or any other special surety filing which in the commissioner's opinion should become immediately effective, shall become effective when filed and shall be deemed to meet the requirements of part I of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

History.—§420, ch. 59-205.

Note.—Similar provisions found in former §§629.03, 629.09, 629.17, 630.03.

627.111 Hearing as to filing; effective date of filing.—

(1) If, pursuant to §627.101(3) the commissioner determines to hold a public hearing as to a filing, or holds such a public hearing pursuant to request therefor under §627.101(4), he shall give written notice thereof to the rating organization or insurer that made the filing, shall hold such hearing within thirty days after commencement of the public inspection period provided for in §627.101(2) or §627.101(4), and not less than ten days prior to the date of the hearing he shall give written notice of the hearing to the insurer or rating organization that made the filing. The commissioner may also, in his discretion, give advance public notice of such hearing by publication of notice in one or more daily newspapers of general circulation in this state.

(2) The hearing shall be conducted and the order thereon shall be made as provided in §627.371.

(3) If the commissioner's order disapproves the filing, the filing shall not become effective during the effectiveness of such order. If the commissioner's order approves the filing, the filing shall become effective upon the date of the order or upon such subsequent date as may be satisfactory to the insurer or rating organization that made the filing.

(4) Any such order of the commissioner shall be subject to judicial review as provided in §627.391.

History.—§421, ch. 59-205.

Note.—Similar provisions found in former §§629.03, 629.09, 629.17, 630.03.

627.121 Coverage changes pending hearing and order.—

(1) After the commissioner places a filing on file in his office for public inspection as provided in §627.101, and pending the effectiveness of the filing, whether or not a public hearing is held with respect to the filing as provided in §627.101 and §627.111, as to coverages proposed to be affected by such filing the following provisions shall apply:

If a filing would result in increase of premium

or premium rate, or restriction of forms or conditions of coverage, then upon the commissioner placing the filing on file in his office for public inspection as provided in §627.101, the insurer or rating organization, or member or subscriber of the rating organization, that made the filing shall notify the agents affected thereby, and pending the effectiveness of the filing, whether or not a public hearing is held as to the filing, as to insurance coverages proposed to be affected by the filing no insurance policy or contract or item of insurance shall be cancelled or reduced in amount on a pro rata basis, except at the request of the insurer in accordance with the provisions contained in the policy or contract.

(2) This section does not apply as to workmen's compensation insurance.

History.—§422, ch. 59-205.

627.131 Disapproval of special inland marine or surety filing.—If within thirty days after a specific inland marine rate on a risk specially rated by a rating organization subject to §627.101(7), has become effective, or if within thirty days after a special surety or guaranty filing subject to §627.101(7) has become effective, the commissioner finds that such filing does not meet the requirements of this chapter, he shall send to the rating organization or insurer which made the filing written notice of disapproval of the filing specifying therein in what respects he finds that the filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. The disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice.

History.—§423, ch. 59-205.

Note.—Similar provisions found in former §§629.05, 630.03.

627.141 Subsequent disapproval of filing.—

(1) If at any time after a filing has been approved by him or has otherwise become effective the commissioner finds, after a hearing held on not less than twenty days' written notice specifying the matters to be considered at the hearing and given to every insurer and rating organization which made the filing, that the filing no longer meets the requirements of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet such requirements and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. The commissioner shall send a copy of the order to every such insurer and rating organization. The order shall not affect any insurance contract or policy made or issued prior to the expiration of the period set forth in the order.

(2) This section does not apply to the special inland marine or surety filings referred to in §627.131 until after expiration of the thirty day period provided for in such section.

History.—§424, ch. 59-205.

Note.—Similar provisions found in former §§629.09, 630.03.

627.151 Basis of approval or disapproval of filing; scope of disapproval power.—

(1) In determining at any time whether to approve or disapprove a filing, or to permit a filing otherwise to become effective, the commissioner shall give consideration only to the applicable standards and factors referred to in §627.061 as to property insurance coverages, and as referred to in §627.081 as to casualty and surety insurance coverages.

(2) As to property insurance no manual, minimum, class rate, rating schedule, rating plan, rating rule, rating system, plan of operation or any of the foregoing shall be disapproved if the rates thereby produced meet the requirements of this chapter.

(3) As to casualty and surety insurances no manual of classifications, rule, rating plan, rating system, plan of operation or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, shall be disapproved if the rates thereby produced meet the requirements of this chapter.

History.—§425, ch. 59-205.

Note.—Similar provisions found in former §§629.09, 629.14, 629.17.

627.161 Exemption from filing.—Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate or unfairly discriminatory.

History.—§426, ch. 59-205.

627.171 Excess rates.—Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

History.—§427, ch. 59-205.

Note.—Similar provisions found in former §§629.12, 630.05.

627.181 Appeal by insureds and others as to filings.—

(1) Any person or organization aggrieved with respect to any filing which has been approved without a hearing may within thirty days after the date of such approval make written application to the commissioner for a hearing thereon, except that the insurer or rating organization that made the filing shall not be authorized to proceed under this section. Such application shall specify the grounds to be relied upon by the applicant.

(2) If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty days after receipt of such application, hold a hearing upon not less than ten

days' written notice to the applicant and to every insurer and rating organization which made such filing.

(3) If, after such hearing, the commissioner finds that the filing does not meet the requirements of part I of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(4) Any such person or organization denied a hearing, or who after such hearing suffers an adverse order, shall have the right of appeal from such order as provided by §627.391 (appeals from the commissioner), and the commissioner and the insurer or rating organization which made the filing shall be parties to such appeal.

History.—§428, ch. 59-205.

627.191 Adherence to filings.—No insurer or employee thereof, and no agent shall make or issue a contract or policy except in accordance with the filings which are in effect for such insurer as provided in part I of this chapter, or in accordance with §627.161 (exemption from filing) or §627.171 (excess rates) of this code. This section does not apply to contracts or policies for inland marine risks as to which filings are not required.

History.—§429, ch. 59-205.

Note.—Similar provisions found in former §§629.08, 629.18, 630.03, 630.10.

627.201 Deviations; property insurance.—

(1) Every member of or subscriber to a property insurance rating organization shall adhere to the filings made on its behalf by such organization; except that any such insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance or combination thereof. Such application shall specify the basis for the modification and a copy thereof shall also be sent simultaneously to such rating organization.

(2) The commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten days' written notice thereof. If the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing.

(3) In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in §627.061. The commissioner shall issue an order permitting the deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner.

History.—§430, ch. 59-205.

Note.—Similar provisions found in former §629.09.

627.211 Deviations; casualty and surety.—

(1) Every member of or subscriber to a casualty or surety insurance rating organization shall adhere to the filings made on its behalf by such organization; except that any such insurer may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance:

(a) Comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or

(b) For which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to the rating organization.

(2) The commissioner shall set a time and place for a hearing at which the insurer and the rating organization may be heard and shall give them not less than ten days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive the hearing.

(3) In considering the application for permission to file the deviation, the commissioner shall give consideration to the principles for rate making as set forth in §627.081. The commissioner shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner, but no such termination shall be effectuated until after the deviation has been in effect for a period of at least six months.

History.—§431, ch. 59-205.

Note.—Similar provisions found in former §630.05.

627.221 Rating organizations; licensing; fee.—

(1) A corporation, an unincorporated association, a partnership or an individual, whether

located within or outside this state, may make application to the commissioner for license as a rating organization. As to property or inland marine insurance the application shall be for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in the application. As to casualty and surety insurances the application shall be for such kinds of insurance or subdivisions thereof as are specified in the application. The applicant shall file with its application:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business,

(b) A list of its members and subscribers,

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and

(d) A statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying (in the case of a casualty or surety rating organization) the kinds of insurance or subdivisions thereof, or (in the case of a property insurance rating organization) the kinds of insurance or subdivision or class of risk or part or combination thereof, for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him.

(2) Licenses issued pursuant to this section shall expire on the September 30 next following date of issuance, and shall be subject to annual renewal.

(3) The fee for the license shall be in the amount specified therefor in §624.0300 (filing, license, and miscellaneous fees). This fee when collected shall be deposited to the credit of the license receipts fund provided for under §624.0323.

(4) Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this section.

History.—§432, ch. 59-205.

Note.—Similar provisions found in former §§629.04, 629.05, 630.04.

627.231 Subscribers to rating organizations.—

(1) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to subscribe to its rating services. As to property and marine rating organizations an insurer shall be so permitted to subscribe to rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which the rating organization is authorized so to act. As to casualty and surety rating organizations an insurer shall be so permitted to subscribe to rating services for any kind of insurance or subdivision thereof for which the rating organization is authorized so to act. The rating organization shall give notice to subscribers of proposed changes in such rules and regulations.

(2) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(3) Each rating organization shall furnish its rating services without discrimination to its members and subscribers.

History.—§433, ch. 59-205.

Note.—Similar provisions found in former §§629.03, 629.05.

627.241 Notice of changes.—Every rating organization shall notify the commissioner promptly of every change in:

(1) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

History.—§434, ch. 59-205.

Note.—Similar provisions found in former §§629.05, 629.16, 630.04.

627.251 Bureau rules not to affect dividends.—No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

History.—§435, ch. 59-205.

Note.—Similar provisions found in former §630.04.

627.261 Technical services.—Any rating organization may subscribe for or purchase actuarial, technical or other services, and such

services shall be available to all members and subscribers without discrimination.

History.—§436, ch. 59-205.

627.271 Stamping bureau.—Any property insurance rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

History.—§437, ch. 59-205.

627.281 Appeal from rating organization.—

(1) Any member or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization, and the commissioner shall, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization, issue an order approving the decision of such rating organization, or directing it to give further consideration to such proposal; or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(2) As to casualty and surety insurances, if such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in §627.081 (1) (b), from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in §627.081.

History.—§438, ch. 59-205.

Note.—Similar provisions found in former §630.06.

627.291 Information to be furnished insureds; appeal by insureds.—

(1) Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(2) Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

History.—§439, ch. 59-205.

Note.—Similar provisions found in former §§629.10, 629.11, 630.07.

627.301 Advisory organizations.—

(1) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

(2) Every advisory organization shall file with the commissioner:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its by-laws, rules and regulations governing its activities,

(b) A list of its members,

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and

(d) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of §627.321.

(3) If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of part I of this chapter, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of part I of this chapter, and requiring the discontinuance of such act or practice.

(4) No insurer which makes its own filing nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection (3). If the commissioner finds such insurer or rating organization

to be in violation of this subsection he may issue an order requiring the discontinuance of such violation.

History.—§440, ch. 59-205.

Note.—Similar provisions found in former §626.27.

627.311 Joint underwriters and joint reinsurers.—

(1) Every group, association or other organization of insurers which engages in joint underwritings or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and, with respect to joint reinsurance, to §§624.15 (general penalty) and 627.321 (examinations) of this code.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

History.—§441, ch. 59-205.

Note.—Similar provisions found in former §629.13.

627.321 Examinations.—

(1) The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state as provided in this chapter and he may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization referred to in §627.301 and of each group, association or other organization referred to in §627.311. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

(2) The commissioner shall furnish two copies of the examination report to the organization, group or association examined and shall notify such organization, group or association that it may, within twenty days thereafter, request a hearing on the report or on any facts or recommendations therein. Before filing any such report for public inspection, the commissioner shall grant a hearing to the organization, group or association examined if so requested thereby. The report of any such examination, when filed for public inspection, shall be admissible in evidence in any action or proceeding brought by the commissioner against the organization, group or association examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner may withhold the report of any such examination from public inspection for such time as he may deem proper.

History.—§442, ch. 59-205.

Note.—Similar provisions found in former §§626.27, 629.15, 630.04.

627.331 Recording and reporting of loss and expense experience.—

(1) The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the applicable standards set forth in §627.061 as to property insurances, and in §627.081 as to casualty and surety insurances. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History.—§443, ch. 59-205.

Note.—Similar provisions found in former §§629.07, 630.08.

627.341 Interchange of rating plan data; consultation, cooperative action in rate making.—

(1) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(2) In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may

consult with them with respect to rate making and the application of rating systems.

(3) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of part I of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of part I of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of part I of this chapter and requiring the discontinuance of such activity or practice.

History.—§444, ch. 59-205.

Note.—Similar provisions found in former §630.08.

627.351 Assigned risk plan; casualty and surety.—Agreements may be made among casualty and surety insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modification for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. The commissioner shall, after consultation with the insurers licensed to write automobile liability insurance in this state, adopt a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such automobile liability insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been adopted, all such insurers shall subscribe thereto and shall participate therein. Such plan or plans shall include rules for classification of risks and rates therefor. Such plan or plans shall provide for the payment to the producing agent of not less than fifteen per cent of the annual premium on private passenger automobile insurance.

History.—§445, ch. 59-205.

627.361 False or misleading information.—No person shall wilfully withhold information from or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under part I of this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in §624.15 of this code.

History.—§446, ch. 59-205.

Note.—Similar provisions found in former §§629.19, 630.09.

627.371 Hearings.—

(1) An insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing, may, within thirty days after notice of the order to the insurer or organization, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within twenty days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing. The hearing shall be concluded within fifteen days from the commencement thereof, provided however, that the commissioner upon application with notice to the interested parties and for good cause shown, may grant additional time, not exceeding fifteen days. Within twenty days after the conclusion of such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor, and shall give a copy of such order or decision to all interested parties.

(2) The order shall contain specific findings of fact by the commissioner in relation to the matter before him, such findings to be supported by a preponderance of the evidence. Any party may file with the commissioner proposed findings of fact, to be accepted or rejected by the commissioner.

(3) Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

(4) Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence, except that the right of any person to invoke such rules and the rule of exclusion of witnesses is preserved.

History.—§447, ch. 59-205.

Note.—Similar provisions found in former §§629.21, 630.03.

627.381 Penalty for violations.—

(1) The commissioner may, if he finds that any person or organization has violated any provision of part I of this chapter, impose a penalty of not more than $250 for each such violation, but, if he finds such violation to be wilful, he may impose a penalty of not more than $1,000 for each such violation. Such penalties may be in addition to any other penalty provided by law.

(2) The commissioner may suspend the license or authority of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license or authority of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license or authority shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension

is based is modified, rescinded or reversed.

(3) No penalty shall be imposed and no license or authority shall be suspended except upon a written order of the commissioner stating his findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation.

History.—§448, ch. 59-205.

Note.—Similar provisions found in former §§629.20, 630.11.

627.391 Appeals from the commissioner.—

(1) All final rulings, orders or decisions of the commissioner under part I of this chapter (§§627.031 through 627.391) shall be subject to review by appeal to the district court of appeal, first district. Such an appeal shall be commenced by filing a notice of appeal within thirty days after the rendition of such ruling, order or decision with such court and a copy of same similarly filed with the commissioner, and if not so commenced the right to appeal shall no longer exist. The commissioner shall be made a party to every such appeal.

(2) Upon the filing of a copy of the notice of appeal with the commissioner he shall prepare or cause to be prepared an official record, which may be in typewritten form, certified by him which shall contain a copy of all proceedings, the findings and order of the commissioner, and any transcript of testimony and exhibits or record thereof. If no hearing was held by the commissioner on the matter which is the subject of appeal, the commissioner shall in like manner prepare and certify a transcript of the files in his office pertaining to such matter. Within forty days after the copy of notice of appeal was filed with the commissioner he shall file the official record with the court in which the appeal is pending.

(3) When any final ruling, order or decision of the commissioner relates to an increase or decrease of premium or rate or to a change in any rating system the filing of the notice of appeal shall, pending the final decision in the appellate proceedings, act as a stay of any such ruling, order or decision, except where such ruling, order or decision approves or permits a filing of an insurer or rating organization.

Any insurer affected by the ruling, order or decision may, pending the decision on appeal:

(a) Where a rate decrease is ordered, continue to charge the rate which obtained prior to such order, ruling or decision; or

(b) Where a filing for rate increase has been proposed and rejected, charge such proposed increased rate; on condition the difference in premium, as collected, shall be deposited in a special account by the insurer in a bank or banks in this state approved by the commissioner, and to be paid to the holders of policies issued after the commissioner's ruling, order or decision should the same be affirmed by the appellate court, together with all interest which may accrue thereon subsequent to such deposit aforesaid, or paid to the insurer in the event such ruling, order or decision is reversed by such appellate court.

(4) The district court of appeal shall affirm, reverse or modify the commissioner's ruling, order or decision appealed from.

(5) If the district court of appeal finds that the commissioner's ruling, order or decision is not supported by the preponderance of the evidence or is not in accordance with law, the court shall reverse or modify the commissioner's ruling, order or decision.

History.—§449, ch. 59-205.

Note.—Similar provisions found in former §630.12.

PART II
THE INSURANCE CONTRACT

627.01001 Scope of part II.—No provision of part II of this chapter shall apply as to:

(1) Reinsurance.

(2) Policies or contracts not issued for delivery in this state nor delivered in this state, except as provided in §627.01091(6) (approval of forms for delivery in jurisdictions where local approval not provided for).

(3) Wet marine and transportation insurance.

(4) Title insurance, except as to the following provisions:

(a) Section 627.01051 (power to contract, etc.),
(b) Section 627.0114 (charter, by-law provisions),
(c) Section 627.0115 (execution of policies),
(d) Section 627.0118 (construction of policies),
(e) Section 627.0126 (payment of judgment by insurer; penalty failure), and
(f) Section 627.0127 (attorney fee).
(5) Credit life or credit disability insurance.
History.—§450, ch. 59-205.

627.01011 Policy defined.—
(1) "Policy" means written contract of or written agreement for or effecting insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements and papers which are a part thereof.
(2) The word "certificate" as used in this section does not include certificates as to group life or disability insurance or as to group annuities issued to individual insureds.
History.—§451, ch. 59-205.

627.01021 Premium defined.—"Premium" is the consideration for insurance, by whatever name called. Any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge in consideration for an insurance contract is deemed part of the premium.
History.—§452, ch. 59-205.

627.01031 Insurable interest; personal insurance.—An insurer shall be entitled to rely upon all statements, declarations and representations made by an applicant for insurance relative to the insurable interest which such applicant has in the insured; and no insurer shall incur any legal liability except as set forth in the policy, by virtue of any untrue statements, declarations or representations so relied upon in good faith by the insurer.
History.—§453, ch. 59-205.

627.01041 Same; property.—
(1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.
(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.
(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.
History.—§454, ch. 59-205.

627.01051 Power to contract; purchase of insurance by or for minors.—
(1) Any person of competent legal capacity may contract for insurance.
(2) Any minor of the age of fifteen years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities or for insurance upon his own life, body, health, property, liabilities or other interests, or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under:
(a) Any contract for annuity or for insurance upon his own life, body or health, or
(b) Any contract such minor effected upon his own property, liabilities or other interests, or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefits accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise, any premium on any such annuity or insurance contract.
(3) If any minor mentioned in subsection (2), is possessed of an estate that is being administered by a guardian or curator, no such contract shall be binding upon such estate as to payment of premiums, except as and when consented to by the guardian or curator and approved by the probate court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each premium payment.
(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2), shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of such minor.
History.—§455, ch. 59-205.

627.01061 Alteration of application.—No alteration of any written application for any life or disability insurance policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.
History.—§456, ch. 59-205.

627.01071 Application as evidence.—
(1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies or to monthly debit life insurance policies.

(2) If any policy of life or disability insurance delivered or issued for delivery in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within thirty days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request a copy of such application, reproduced by any legible means. In the case of such a request from the beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

History.—§457, ch. 59-205.

Note.—Similar provisions found in former §§642.031, 642.08.

627.01081 Representations in applications.—All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefor, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(1) Fraudulent; or

(2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(3) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

History.—§458, ch. 59-205.

Note.—Similar provisions found in former §§642.031, 642.08.

627.01091 Filing, approval of forms.—

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or group certificates issued under master contracts delivered in this state, or printed rider or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to surety bonds, or to specially rated inland marine risks, nor to policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject (other than as to disability insurance), or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the commissioner for information purposes only at his request.

(2) Every such filing shall be made not less than thirty days in advance of any such use or delivery. At the expiration of such thirty days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional fifteen days the period within which he may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial thirty day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) The commissioner's order disapproving any such form shall state the grounds therefor in such detail as reasonably to inform the insurer thereof. Upon request made by the insurer within thirty days after an order of disapproval, the commissioner shall hold a hearing thereon within thirty days after receipt of the request. The commissioner may for cause, after notice stating the grounds therefor and a hearing, withdraw a previous approval. Within thirty days after any such hearing, the commissioner shall make a written order setting forth his action taken and, if such action is that of disapproval, summarizing his findings in support thereof. No insurer shall issue or use any form disapproved by the commissioner, or as to which the commissioner has withdrawn approval, after the effective date of the commissioner's order.

(4) The commissioner shall mail notice of any hearing provided for in this section by registered mail to the insurer at least twenty days in advance of the hearing. The hearing shall be held in the commissioner's office at Tallahassee.

(5) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(6) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by

such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

History.—§459, ch. 59-205.

Note.—Similar provisions found in former §§635.16, 635.171, 635.172, 635.173, 635.175, 642.01, 642.02, 642.031.

627.0110 Grounds for disapproval. — The commissioner shall disapprove any form filed under §627.01091, or withdraw any previous approval thereof, only if the form:

(1) Is in any respect in violation of or does not comply with this code.

(2) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(3) Has any title, heading, or other indication of its provisions which is misleading.

(4) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

(5) If for disability insurance, provides benefits which are unreasonable in relation to the premium charged, or contains provisions which are unfair or inequitable or contrary to the public policy of this state, or which encourage misrepresentation.

History.—§460, ch. 59-205.

Note.—Similar provisions found in former §§635.171, 635.175, 642.01.

627.0111 Standard provisions, in general.—

(1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular provision in a particular insurance policy form if:

(a) He finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy, and

(b) The policy is otherwise approved by him.

(2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

History.—§461, ch. 59-205.

627.0112 Contents of policies in general; identification.—

(1) Every policy shall specify:

(a) The names of the parties to the contract.

(b) The subject of the insurance.

(c) The risks insured against.

(d) The time when the insurance thereunder takes effect and the period during which the insurance is to continue.

(e) The premium.

(f) The conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.

(3) Subsections (1) and (2) shall not apply as to surety contracts, or to group insurance policies.

(4) All policies and annuity contracts issued by domestic insurers, and the forms thereof filed with the commissioner, shall have printed thereon an appropriate designating letter or figure, or combination of letters or figures or terms identifying the respective forms of policies or contracts. Whenever any change is made in any such form, the designating letters, figures or terms thereon shall be correspondingly changed.

History.—§462, ch. 59-205.

Note.—Similar provisions found in former §635.02.

627.0113 Additional policy contents.—A policy may contain additional provisions not inconsistent with this code and which are:

(1) Required to be inserted by the laws of the insurer's domicile;

(2) Necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) Desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included therein.

History.—§463, ch. 59-205.

627.0114 Charter, by-law provisions.—No policy shall contain any provision purporting to make any portion of the charter, by-laws or other constituent document of the insurer (other than the subscribers' agreement or power of attorney of a reciprocal insurer) a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

History.—§464, ch. 59-205.

627.0115 Execution of policies.—

(1) Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing individual may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the ap-

parent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

History.—§465, ch. 59-205.

627.0116 Underwriters' and combination policies.—

(1) Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policy shall plainly show the true name of the insurer.

(2) Two or more authorized insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy, and

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to co-surety obligations.

History.—§466, ch. 59-205.

627.0117 Validity of noncomplying contracts.—

(1) Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this code, shall not be thereby rendered invalid (except as provided in §627.0114) but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.

(2) Any insurance contract delivered or issued for delivery in this state covering a subject or subjects of insurance resident, located or to be performed in this state and which, pursuant to the provisions of this code, the insurer may not lawfully insure under such a contract, shall be cancellable at any time by the insurer, any provision of the contract to the contrary notwithstanding; and the insurer shall promptly cancel the contract in accordance with the commissioner's request therefor. No such illegality or cancellation shall be deemed to relieve the insurer of any liability incurred by it under the contract while in force, or to prohibit the insurer from retaining the pro rata earned premium thereon. This provision does not relieve the insurer from any penalty otherwise incurred by the insurer under this code on account of any such violation.

History.—§467, ch. 59-205.

627.0118 Construction of policies.—Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any application therefor or any rider or endorsement thereto.

History.—§468, ch. 59-205.

627.0119 Binders.—Binders or other contracts for temporary property, marine, casualty or surety insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

History.—§469, ch. 59-205.

627.0120 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance, except where a condition required by the insurer has not been met by the applicant or insured.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, or memorandum thereof containing the same such information, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum. This subsection does not apply to inland marine floater policies.

History.—§470, ch. 59-205.

627.0121 Assignment of policies.—A policy may be assignable, or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or disability policy, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written

notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

History.—§471, ch. 59-205.

627.0122 Payment discharges insurer.—Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract, or the exercise of any right or privilege thereunder, and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

History.—§472, ch. 59-205.

627.0123 Minor may give acquittance.—

(1) Any minor domiciled in this state who has attained the age of sixteen years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding three thousand dollars in any one year made by a life insurer under the maturity, death or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, if such policy, contract or agreement provides for the payment to such minor. No such minor shall be deemed competent to alienate the right to or to anticipate or commute such payments. This section shall not be deemed to restrict the rights of minors set forth in §627.01051 of this chapter.

(2) If a guardian of the property of any such minor is duly appointed and written notice thereof is given to the insurer at its home office, any such payment thereafter falling due shall be paid to the guardian for the account of the minor, unless the policy or contract under which the payment is made expressly provides otherwise.

(3) This section shall not be deemed to require any insurer making any such payment to determine whether any other insurer may be effecting a similar payment to the same minor.

History.—§473, ch. 59-205.

627.0124 Forms for proof of loss to be furnished.—An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

History.—§474, ch. 59-205.

627.0125 Claims administration not waiver.—Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(1) Acknowledgement of the receipt of notice of loss or claim under the policy.

(2) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(3) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

History.—§475, ch. 59-205.

Note.—Similar provisions found in former §642.031.

627.0126 Payment of judgment by insurer; penalty for failure.—

(1) Every judgment or decree for the recovery of money, heretofore or hereafter entered in any of the courts of this state against any authorized insurer, shall be fully satisfied within sixty days from and after the entry thereof, or in the case of an appeal from such judgment or decree then within sixty days from and after the affirmance of the same by the appellate court.

(2) If the judgment or decree is not satisfied as required under subsection (1), and proof of such failure to satisfy is made by filing with the commissioner a certified transcript of the docket of the judgment or decree together with a certificate by the clerk of the court wherein the judgment or decree was entered that the judgment or decree remains unsatisfied, in whole or in part, after the time aforesaid, the commissioner shall forthwith revoke the insurer's certificate of authority. The commissioner shall not issue to such insurer any new certificate of authority until the judgment or decree is wholly paid and satisfied and proof thereof filed with the commissioner under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the same is satisfied of record, and until the expenses and fees incurred in the case are also paid by the insurer.

History.—§476, ch. 59-205.

Note.—Similar provisions found in former §625.09.

627.0127 Attorney fee.—Upon the rendition of a judgment or decree by any of the courts of this state against an insurer in favor of an insured or the named beneficiary under a policy or contract executed by the insurer, the trial judge shall adjudge or decree against the insurer and in favor of the insured or beneficiary, a reasonable sum as fees or compensation for

the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had. Except, that without any prejudice or effect whatsoever as to suits relating to other kinds of insurance, no such attorney fee shall be allowed in any such suit based on a claim arising under a life insurance policy or annuity contract if such suit was commenced prior to expiration of sixty days after proof of the claim was duly filed with the insurer. Where so awarded compensation or fees of the attorney shall be included in the judgment or decree rendered in the case.

History.—§477, ch. 59-205.

Note.—Similar provisions found in former §625.08.

PART III

LIFE INSURANCE POLICIES AND ANNUITY CONTRACTS

627.0200 Scope of part III.—Part III of this chapter applies to contracts of life insurance and to annuity contracts, other than reinsurance, group life insurance, group annuities, and industrial life insurance; except that §§627.0212 (excluded or restricted coverage), 627.0221 (incontestability after reinstatement), 627.0225 (standard nonforfeiture law), and 627.0228 (prohibited policy plans) part III of this chapter shall also apply to industrial life insurance. Part III of this chapter shall not apply to credit life insurance except as provided in part VIII of chapter 627.

History.—§478, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0201 Standard provisions required.—

(1) No policy of life insurance, except as stated in subsection (3), shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions as required by §§627.0202-627.0211 inclusive, and §§627.0224 and 627.0225 of this chapter, or provisions which in the commissioner's opinion are more favorable to the policyholder.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

(3) This section does not apply to annuity contracts, or to any provision of a life insurance policy or contract supplemental thereto relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

History.—§479, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0202 Grace period.—There shall be a provision that the insured is entitled to a grace period of not less than thirty days or at the option of the insurer of one month but not less than thirty days, within which payment of any premium after the first may be made, subject at the option of the insurer to an interest charge not in excess of six per cent per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force; but in case the policy becomes a claim during the grace period before the overdue premium is paid, or the deferred premiums of the current policy year, if any, are paid, the amount of such premium or premiums with interest not in excess of six per cent per annum thereon may be deducted in any settlement under the policy.

History.—§480, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0203 Entire contract.—There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties, and that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

History.—§481, ch. 59-205.

Note.—Similar provisions found in former §§635.02, 635.211.

627.0204 Incontestability.—There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from

its date of issue, except for nonpayment of premiums and except, at the option of the insurer, as to provisions relative to benefits in event of disability and as to provisions which grant additional insurance specifically against death by accident or accidental means.

History.—§482, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0205 Misstatement of age or sex.—There shall be a provision that if it is found that the age or sex of the insured (or the age or sex of any other individual considered in determining the premium or benefit) has been misstated, the amount payable or benefit accruing under the policy shall be such as the premium would have purchased according to the correct age or sex. Such calculations shall be in accordance with the insurer's rate at date of issue and at the option of the insurer this may be so specified in the policy.

History.—§483, ch. 59-205.

Note.—Similar provisions found in former §§630.04, 635.211.

627.0206 Dividends.—

(1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy provided the policy is in force and all premiums to that date are paid.

(2) Except as hereinafter provided, any dividend so apportioned shall at the option of the party entitled to elect such option be either payable in cash or applied to any one of such other dividend options as may be provided by the policy. If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other option may be elected, such period shall be not less than thirty days following the date on which such dividend is due and payable.

(3) The annually apportioned dividend shall be deemed to be payable in cash within the meaning of subsection (2) even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed six years from the date of apportionment and that interest will be added to such dividend at a specified rate.

(4) If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

History.—§484, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0207 Policy loan.—

(1) There shall be a provision that after the policy has a cash surrender value and while no premium is in default, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a rate of interest not exceeding six per cent per annum, payable in advance, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year.

(2) The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of loan value thereof, then the policy shall terminate and become void, but not until at least thirty days notice shall have been mailed by the insurer to the last known address of the insured or policy owner and of any assignee of record at the home office of the insurer.

(3) The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six months after application therefor.

(4) This section shall not apply to term policies nor to term insurance benefits provided by rider or supplemental policy provision.

History.—§485, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0208 Reinstatement.—There shall be a provision that the policy may be reinstated upon written application therefor at any time within three years after the date of default in the payment of any premiums, unless the policy has been surrendered for its cash value or unless the paid-up term insurance, if any, has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums, and payment (or, within the limits permitted by the then cash value of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premium and indebtedness at a rate not exceeding six per cent per annum compounded annually.

History.—§486, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0209 Authority to alter contract.—There shall be a provision, at the option of the insurer, that no agent shall have the power or au-

thority to waive, change, or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement or rider signed by a duly authorized officer of the insurer.

History.—§487, ch. 59-205.
Note.—Similar provisions found in former §635.211.

627.0210 Settlement on proof of death.—There shall be a provision that when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and surrender of the policy.

History.—§488, ch. 59-205.
Note.—Similar provisions found in former §635.211.

627.0211 Table of installments.—If a policy provides for payment of its proceeds in installments, a table showing the amount and period of such installments shall be included in the policy; except, that certain tables may be omitted from the policy if in the commissioner's judgment it is not practical to include them.

History.—§489, ch. 59-205.
Note.—Similar provisions found in former §635.211.

627.0212 Excluded or restricted coverage.—A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy, and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

History.—§490, ch. 59-205.
Note.—Similar provisions found in former §§635.211, 635.213.

627.0213 Annuity, pure endowment contracts; standard provisions required.—

(1) No fixed dollar annuity, variable annuity or pure endowment contract, other than reversionary annuities, survivorship annuities, or group annuities, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions set forth in §§627.0214-627.0219, inclusive, or provisions which in the opinion of the commissioner are more favorable to the policyholder. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not to that extent be incorporated therein.

(2) This section shall not apply to contracts for annuities included in or upon the lives of beneficiaries under life insurance policies.

History.—§491, ch. 59-205; (1) a. by §10, ch. 61-441.
Note.—Similar provisions found in former §635.201.

627.0214 Annuities; grace period.—In a fixed dollar annuity, variable annuity or pure endowment contract, other than a reversionary, survivorship or group annuity, there shall be a provision that there shall be a period of grace of one month but not less than thirty days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge thereon at a rate to be specified in the contract but not exceeding six per cent per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

History.—§492, ch. 59-205; §11, ch. 61-441.
Note.—Similar provisions found in former §635.201.

627.0215 Same; incontestability.—If any statements, other than those relating to age, sex and identity are required as a condition to issuing a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship or group annuity, and subject to §627.0217, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

History.—§493, ch. 59-205; §12, ch. 61-441.
Note.—Similar provisions found in former §635.201.

627.0216 Same; entire contract.—In a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

History.—§494, ch. 59-205; §13, ch. 61-441.
Note.—Similar provisions found in former §635.201.

627.0217 Same; misstatement of age or sex.—In a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six per cent per annum, may be charged against the current or next succeeding

payment or payments to be made by the insurer under the contract.

History.—§495, ch. 59-205; §14, ch. 61-441.
Note.—Similar provisions found in former §635.201.

627.0218 Same; dividends.—If a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that, beginning not later than the end of the third contract year, the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

History.—§496, ch. 59-205; §15, ch. 61-441.
Note.—Similar provisions found in former §635.201.

627.0219 Same; reinstatement.—In a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated upon written application therefor at any time within one year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding six per cent per annum payable annually; and in cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

History.—§497, ch. 59-205; §16, ch. 61-441.
Note.—Similar provisions found in former §635.201.

627.0220 Reversionary annuities; standard provisions.—

(1) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(a) Any such reversionary annuity contract shall contain the provisions specified in §§627.0214 through 627.0218 except that under §627.0214 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

(b) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash value of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six per cent per annum compounded annually.

(2) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

History.—§498, ch. 59-205.

627.0221 Incontestability after reinstatement.—A reinstated policy of life insurance, fixed dollar annuity contract or variable annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

History.—§499, ch. 59-205; §17, ch. 61-441.

627.0222 Policy settlements.—Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

History.—§500, ch. 59-205.

627.0223 Policy must contain entire contract.—No life insurer or any agent thereof shall make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon.

History.—§501, ch. 59-205.

627.0224 Nonforfeiture benefits; certain interim policies.—Each life insurance policy issued between the effective date of this code and the operative date of §627.0225 (standard nonforfeiture law) shall provide:

(1) That, in the event of default in any premium, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy.

(2) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value at least equal to the minimum cash surrender value hereinafter specified. The minimum cash surrender value shall be equal to

(a) The reserve on the date of default of the premium less a sum of not more than two and one-half per cent of the face amount, or

(b) An amount as defined in §627.0225 but on the basis of the commissioners' 1941 standard ordinary mortality table in lieu of the commissioners' 1958 standard ordinary mortality table

therein specified. The policy shall reserve to the insurer the right to defer the granting of any cash surrender value for six months after demand therefor with surrender of the policy.

(3) That a specified paid-up nonforfeiture benefit the present value of which shall be at least equal to the cash surrender value shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default, provided, however, that where the mortality table used is the commissioners' 1941 standard ordinary mortality table, the rates of mortality to be assumed in calculating any extended term insurance with accompanying pure endowment, if any, may be not more than one hundred and thirty per cent of the rates of mortality according to such table.

(4) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter.

(5) This section does not apply to term policies of uniform amount of fifteen years duration or less, to increasing term policies of fifteen years duration or less, nor to decreasing term policies.

History.—§502, ch. 59-205.

Note.—Similar provisions found in former §635.211.

627.0225 Standard nonforfeiture law; life insurance.—

(1) This section shall be known as the standard nonforfeiture law.

(2) NONFORFEITURE PROVISIONS.—In the case of policies issued on or after the operative date of this section as defined in subsection (11), no policy of life insurance, except as set forth in subsection (10), shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder.

(a) That in the event of default in any premium payment, after premiums have been paid for at least one full year in the case of ordinary insurance or three full years in the case of industrial insurance, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

(b) That upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance, and five full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.

(d) That if the policy shall have become paid up by completion of all premium payments, or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance, or the fifth policy anniversary in the case of industrial insurance, the insurer will pay upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(3) Any of the provisions or portions thereof set forth in paragraphs (a) through (f) of subsection (2) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(4) CASH SURRENDER VALUE. — Any

cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2), shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsection (6), corresponding to premiums which would have fallen due on and after such anniversary, and

(b) The amount of any indebtedness to the insurer on account of or secured by the policy.

Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments, or any policy continued under any paid-up nonforfeiture benefits, whether or not required by such subsection (2), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(5) PAID-UP NONFORFEITURE BENEFITS.—Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy, or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(6) THE ADJUSTED PREMIUM.—The adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(a) The then present value of the future guaranteed benefits provided for by the policy;

(b) Two per cent of the amount of the insurance if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(c) Forty per cent of the adjusted premium for the first policy year;

(d) Twenty-five per cent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in paragraphs (c) and (d) above, no adjusted premium shall be deemed to exceed four per cent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(7) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of subsection (6) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy for a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioners' 1958 standard ordinary mortality table, provided that for any category of such policies issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners' 1958 extended term insurance table, for ordinary policies, and, in the case of industrial policies, not more than one hundred thirty per cent of the rates of mortality according to the 1941 standard industrial mortality table. Provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(9) CALCULATION OF VALUES.—Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4)-(8) of

this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. If term insurance benefits are provided by a rider or by a supplemental policy provision to which, if issued as a separate policy, this section would apply, additional cash surrender values and additional paid-up nonforfeiture benefits, if any, at least equal to those required if issued as a separate policy, may be provided by the insurer and shall be deemed to be in compliance with this section. Notwithstanding the provisions of subsection (4), additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, and

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits,

and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) EXCEPTIONS.—This section shall not apply to any re-insurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of, fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium calculated as specified in subsections (6)-(8) is less than the adjusted premium so calculated on a policy of uniform amount issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty and under the term shall be fifteen years; thereafter, the term shall decrease one year for each year of age beyond fifty.

(11) OPERATIVE DATE.—After the effective date of this code, any insurer may file with commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer) this section shall become operative with respect to the policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1966.

History.—§503, ch. 59-205; (9) (e) n. and subsequent para. renum. by §3, ch. 61-106.

Note.—Similar provisions found in former §§635.211, 635.213.

627.0226 Registered policies; deposit of assets.—

(1) Any life insurer which has outstanding any policies heretofore issued under laws heretofore in force providing for the deposit with the commissioner of assets equal to the legal reserve on such policies in force, less any loans or liens on such policies not in excess of such legal reserve, and providing for a certificate upon the face of such policies in substantially the following words: "This policy is registered, and approved securities equal in value to the legal reserve thereon are held in trust by the insurance commissioner," shall continue to make such deposits as required by such laws and such policies.

(2) No insurer shall hereafter issue any new such policy.

(3) All deposits under this section are subject to the applicable provisions of part III of chapter 625 of this code (administration of deposits).

History.—§504, ch. 59-205.

Note.—Similar provisions found in former §§635.11, 635.13.

627.0227 Same; deficiency of deposit.—

(1) If at any time the value of assets held on deposit as to a particular insurer under §627.0226 is less than the legal reserves currently required to be held as to all the insurer's life insurance policies and annuity contracts, which are subject to §627.0226, then in force, the insurer shall not issue any additional life insurance policies or annuity contracts while such deficiency exists. This provision does not apply as to industrial life insurance.

(2) If the insurer has failed to cure such a deficiency after the commissioner has given the insurer notice thereof by registered mail, within such reasonable time, not exceeding ninety days, as may be allowed therefor by the commissioner and so specified in such notice, the insurer shall be deemed to be insolvent and the commissioner shall revoke its certificate of authority and institute delinquency proceedings against the insurer under chapter 631 of this code.

History.—§505, ch. 59-205.

627.0228 Prohibited policy plans.—

(1) No insurer shall issue policies, certificates or contracts to policyholders or members providing for the grouping of its policyholders or members into groups and divisions, classified according to age, and providing for payment of contingent endowment benefits, by whatever name called, from special funds created for such purpose to the oldest member in seniority of the group or division, or under any other similar plan.

(2) The commissioner shall revoke the cer-

tificate of authority of any insurer which violates this section. Any officer or agent of an insurer who violates this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in §624.15 of this code.

History.—§506, ch. 59-205.
Note.—Similar provisions found in former §§635.17, 635.18, 635.23, 637.15.

PART IV

INDUSTRIAL LIFE INSURANCE POLICIES

627.0300 Scope of part IV.—The provisions of part IV of this chapter shall apply only to industrial life insurance policies. Sections 627.0212 (excluded or restricted coverage), 627.0221 (incontestability after reinstatement), 627.0225 (standard nonforfeiture law), and 627.0228 (prohibited policy plans) of part III of chapter 627 shall also apply as to industrial life insurance policies.

History.—§507, ch. 59-205.
Note.—Similar provisions found in former §635.213.

627.0301 Industrial life insurance defined.—For the purposes of this code "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policy as part of the descriptive matter, and issued by an insurer which, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

History.—§508, ch. 59-205.
Note.—Similar provisions found in former §635.212.

627.0302 Required provisions.—

(1) No policy of industrial or weekly premium life insurance shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions as required in §§627.0303 through 627.0314 inclusive, and §627.0225 or provisions which in the commissioner's opinion are more favorable to the policyholder.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

History.—§509, ch. 59-205.
Note.—Similar provisions found in former §635.213.

627.0303 Grace period.—There shall be a provision that the insured is entitled to a grace period of four weeks within which the payment of any premiums after the first may be made, except that in policies the premiums for which are payable monthly, the period of grace shall be one month, but not less than thirty days; that during the period of grace the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any premiums then due and unpaid may be deducted from any settlement under the policy.

History.—§510, ch. 59-205.
Note.—Similar provisions found in former §635.213.

627.0304 Entire contract; statements in application.—There shall be a provision that the policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, a provision that the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in such application shall, in the absence of fraud, be deemed to be representations and not warranties.

History.—§511, ch. 59-205.
Note.—Similar provisions found in former §635.213.

627.0305 Incontestability.—There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue except for nonpayment of premiums, and except, at the option of the insurer, as to provisions providing benefits for disability or specifically for death by accident or accidental means.

History.—§512, ch. 59-205.
Note.—Similar provisions found in former §635.213.

627.0306 Misstatement of age or sex.—There shall be a provision that if it is found that the age or sex of the individual insured, or the age or sex of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased according to the correct sex or age. Such calculations shall be in accordance with the insurer's rate at date of issue and at the insurer's option this may be so specified in the policy.

History.—§513, ch. 59-205.
Note.—Similar provisions found in former §635.213.

627.0307 Dividends.—If a participating policy, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy.

History.—§514, ch. 59-205.

Note.—Similar provisions found in former §635.213.

627.0308 Reinstatement.—There shall be a provision that the policy may be reinstated at any time within two years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value or unless the paid-up term insurance, if any, has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums and payment (or, within the limits permitted by the then cash value of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premiums and indebtedness at a rate not exceeding six per cent per annum compounded annually.

History.—§515, ch. 59-205.

Note.—Similar provisions found in former §635.213.

627.0309 Settlement.—There shall be a provision that when the policy becomes a claim by the death of the insured, settlement shall be made upon surrender of the policy and receipt of due proof of death or after a specified period not exceeding sixty days after such surrender and receipt of such proof. At the insurer's option surrender of the premium receipt book may also be required.

History.—§516, ch. 59-205.

Note.—Similar provisions found in former §635.213.

627.0310 Authority to alter contract.—There shall be a provision that no agent shall have the power or authority to waive, change or alter any of the terms or conditions of any policy; except that at the option of the insurer the terms or conditions may be changed by an endorsement or rider signed by a duly authorized officer of the insurer.

History.—§517, ch. 59-205.

Note.—Similar provisions found in former §635.213.

627.0311 Beneficiary. — Each such policy shall have a space for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy. The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

History.—§518, ch. 59-205.

Note.—Similar provisions found in former §635.213.

627.0312 Facility of payment.—The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than thirty days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor, or dies before the insured or is not legally competent to give valid release, then the insurer may make payment thereunder to the executor or administrator of the insured, or to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto or to any person who has incurred expense for the maintenance, medical attention or burial of the insured. The policy may also include a similar provision applicable to any other payment due under the policy.

History.—§519, ch. 59-205.

Note.—Similar provisions found in former §635.213.

627.0313 Nonforfeiture benefits; certain interim policies.—Each industrial life insurance policy issued between the effective date of this code and the operative date of §627.0225 (standard nonforfeiture law) shall provide:

(1) That, in the event of default in any premiums, the insurer will grant upon proper request not later than thirteen weeks or three months after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy.

(2) That upon surrender of the policy within thirteen weeks or three months after the due date of any premium payment in default after premiums have been paid for at least five full years, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value at least equal to the minimum cash surrender value hereinafter specified. The minimum cash surrender value shall be equal to

(a) The reserve on the date of default of the premium less a sum of not more than two and one-half per cent of the face amount, or

(b) An amount as defined in §627.0225. The policy shall reserve to the insurer the right to defer the granting of any cash surrender value for six months after demand therefor with surrender of the policy.

(3) That a specified paid-up nonforfeiture benefit, the present value of which shall be at least equal to the cash surrender value, shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than thirteen weeks or three months after the due date of the premium in default, provided, however, that where the mortality table used is the 1941 standard industrial mortality table, the rates of mortality to be assumed in calculating any extended term insurance with accompanying pure endowment, if any, may be not more than one hundred and thirty per cent of the rates of mortality according to such table.

(4) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture

benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter.

(5) This section does not apply to term policies of uniform amount of fifteen years duration or less, to increasing term policies of fifteen years duration or less, nor to decreasing term policies.

History.—§520, ch. 59-205.

Note.—Similar provisions found in former §635.213.

627.0314 Title.—There shall be a title on the face of each such policy briefly describing its form.

History.—§521, ch. 59-205.

627.0315 Direct payment of premiums.—In the case of weekly premium policies, there may be a provision that upon proper notice to the insurer, while premiums on the policy are not in default beyond the grace period, of the intention to pay future premiums directly to the insurer at its home office or any office designated by the insurer for the purpose, the insurer will at the end of each period of a year from the due date of the first premium so paid, for which period such premiums are so paid continuously without default beyond the grace period, refund a stated percentage of the premiums in an amount which fairly represents the savings in collection expense.

History.—§522, ch. 59-205.

627.0316 Conversion.—There may be a provision in the case of industrial policies granting to the insured, upon proper written request and upon presentation of evidence of insurability satisfactory to the insurer, the privilege of converting any industrial insurance policy to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired.

History.—§523, ch. 59-205.

PART V

GROUP LIFE INSURANCE

627.0400 Group contracts must meet group requirements.—

(1) No life insurance policy shall be delivered or issued for delivery in this state insuring the lives of more than one individual unless to one of the groups as provided for in §§627.0401-627.0405, and unless in compliance with the other applicable provisions of part V of this chapter.

(2) Subsection (1) shall not apply to life insurance policies:

(a) Insuring only individuals related by blood, marriage or legal adoption; or

(b) Insuring only individuals having a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) Insuring only individuals otherwise having an insurable interest in each other's lives.

(3) Nothing in this chapter shall affect the provisions of §§112.08 to 112.14.

History.—§524, ch. 59-205.

Note.—Similar provisions found in former §635.24.

627.0401 Employee groups.—The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprie-

tors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the policyholder's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire gross premium charged for the insurance by the insurer is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least sixty per cent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least ten employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

History.—§525, ch. 59-205; (3) §1, ch. 63-187.

Note.—Similar provisions found in former §635.24.

627.0402 Debtor groups.—The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five per cent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five per cent of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(3) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor, or five thousand dollars, whichever is less, except that loans not exceeding one year duration shall not be subject to the five thousand dollars limit; provided further, that on such loans not exceeding one year duration the limit of coverage shall not exceed ten thousand dollars with any one insurer.

(4) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

History.—§526, ch. 59-205.

Note.—Similar provisions found in former §635.24.

627.0403 Labor union groups.—The lives of a group of individuals may be insured under a policy issued to a labor union, or to the trustees of a fund established in this state by a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof

determined by conditions pertaining to their employment, or to membership in the union, or both. In the case of a policy issued to the trustees of a fund established in this state by a labor union, the policy may provide that the trustees or their employees, or both, may be insured under the policy if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the policyholder either wholly from the policyholder's funds or funds contributed by the employer or employers of the insured persons, or by the labor union, or by both, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire gross premium charged for the insurance by the insurer is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty per cent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least ten members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

History.—§527, ch. 59-205; (2) §1, ch. 61-107; (3) §2, ch. 63-187.
Note.—Similar provisions found in former §635.24.

627.0404 Trustee groups.—The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers in the same industry, or by two or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) No policy may be issued

(a) To insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund), or

(b) To insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the employer has assumed obligations through a collective bargaining agreement and is participating in the fund either pursuant to those obligations with regard to one or more classes of his employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of his employees, or unless the policy is issued to the trustees of a fund established by two or more labor unions.

(2) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director.

Except as otherwise provided herein with respect to retired employees, no individual proprietor or partner shall be eligible for insurance under the policy as an employee unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership and further that he has five or more full-time employees, other than his parents, spouse or children, who are eligible for the insurance and who elect to be insured under the policy. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(3) The premium for the policy shall be paid by the policyholder either wholly from the policyholder's fund or funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire gross premium charged for the insurance by the insurer is to be derived from funds contributed by the insured employees or members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five per cent of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all

eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at date of issue at least one hundred persons and not less than a minimum of five persons, other than individual proprietors or partners, per employer unit unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the employer unit is a subsidiary corporation of an employer in the group or is an affiliated corporation, proprietorship or partnership of an employer in the group whose business and that of such employer is under common control, or unless the policy is issued to the trustees of a fund established by two or more labor unions; and in addition to the foregoing requirements if the fund is established by the members of a group of employers the policy may be issued only if either

(a) The participating employers constitute at date of issue at least sixty per cent of those employer members whose employees are not already covered for group life insurance, or

(b) The total number of persons covered at date of issue exceeds six hundred; and the policy shall not require that, if a participating employer discontinues membership in such group of employers, the insurance of his employees shall cease solely by reason of such discontinuance.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, or employers or unions.

History.—§528, ch. 59-205; §2, ch. 61-107.
Note.—Similar provisions found in former §635.24.

627.0405 Credit union groups.—The lives of a group of individuals may be insured under a policy issued to a credit union, which shall be deemed to be the policyholder for the purpose of this section, the premium on which is to be paid by the credit union or by the credit union and its members jointly, and insuring all of its eligible members for the amounts of insurance, not in excess of the share balance, or two thousand dollars, whichever is less, as to each member, based upon some plan which will preclude individual selection, for the benefit of the share account of the member or some person or persons other than the credit union or its officials, provided, that all eligible members of a credit union may be insured; provided, also, that when the premium is to be paid by the credit union and its members jointly and the benefits are offered to all eligible members, not less than seventy-five per cent of such members may be so insured.

History.—§529, ch. 59-205; §1, ch. 63-6.
Note.—Similar provisions found in former §635.24.

627.0406 Limit as to amount.—

(1) No such policy of group life insurance may be issued to an employer or to a labor union, or to the trustees of a fund established in whole or in part by an employer or a labor union, which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to any employer or employers of such person or to any labor union or labor unions of which such person is a member or to the trustees of any fund or funds established in whole or in part by such employer or employers or such labor union or labor unions, exceeds twenty thousand dollars, unless two hundred per cent of the annual compensation of such person from such employer or employers exceeds twenty thousand dollars, in which event all such term insurance shall not exceed one hundred thousand dollars or two hundred per cent of such annual compensation, whichever is the lesser.

(2) No policy of group life insurance as described above providing insurance in excess of twenty thousand dollars on any individual shall be delivered in this state unless the eligibility requirements for the life insurance and schedule of amounts of life insurance with respect to individuals insured for more than twenty thousand dollars do not unfairly discriminate in favor of the officers, employees who are directors, partners, or proprietors.

History.—§530, ch. 59-205; §1, ch. 63-201.
Note.—Similar provisions found in former §635.24.

627.0407 Provisions required in group contracts.—No policy of group life insurance shall be delivered in this state unless it contains in substance the provisions set forth in §§627.0408-627.0417 or provisions which in the opinion of the commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder; except, however, that:

(1) Sections 627.0413-627.0417 inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor;

(2) The standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

(3) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

History.—§531, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0408 Grace period.—The group life insurance policy shall contain a provision that

the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

History.—§532, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0409 Incontestability.—The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him.

History.—§533, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0410 Application; statements deemed representations.—The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

History.—§534, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0411 Insurability.—The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

History.—§535, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0412 Misstatement of age.—The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

History.—§536, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0413 Payment of benefits.—The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding five hundred dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

History.—§537, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0414 Certificate.—The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in §§627.0415, 627.0416, and 627.0417.

History.—§538, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0415 Conversion on termination of eligibility.—The group life insurance policy shall contain a provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that:

(1) The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less, in the case of a person whose membership in the class or classes eligible for coverage terminates but who continues in employment in another class, the amount of any life insurance for which such person is or becomes eligible under any other group policy within thirty-one days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) The premium on the individual policy shall be at the insurer's then customary rate

applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

History.—§539, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0416 Conversion on termination of policy.—The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by §627.0415, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

(1) The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and

(2) Two thousand dollars.

History.—§540, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0417 Death pending conversion.—The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with §627.0415 or §627.0416 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

History.—§541, ch. 59-205.
Note.—Similar provisions found in former §635.25.

627.0418 Use of dividends, refunds, fees, etc.—If a dividend, premium refund, rate reduction, commission or service fee is received by any employer, labor union or association, under any and all group insurance policies heretofore or hereafter delivered in this state, with respect to which they are the policyholder, or an affiliate or subsidiary of a policyholder, covering the employees of one or more employers or the members of one or more labor unions or associations, or any combination thereof to which such employees or members contribute to the cost of the premiums for such insurance, the excess, if any, of the aggregate of such dividends, premium refunds, rate reductions, commissions and service fees over the aggregate expenditure of such employer, labor union or association towards the cost of such insurance, including its administration, for the current and preceding two years to the extent that they were not defrayed by dividends, premium refunds, rate reductions, commissions and service fees, shall be applied by the policyholder for the sole benefit of insured employees or members on a basis which precludes individual selection and unfair discrimination. If the aforesaid dividend, premium refund, rate reduction, commission or service fee is received by a trusteed fund, it shall be applied by the trustees for the sole purposes of the trust.

History.—§542, ch. 59-205.
Note.—Similar provisions found in former §625.251.

627.0419 Premium rates.—A life insurer may issue insurance policies under the provisions of this chapter at premium rates less than the usual rates or premiums for individual insurance policies.

History.—§543, ch. 59-205.
Note.—Similar provisions found in former §635.26.

PART VI

DISABILITY INSURANCE POLICIES

627.0500 Scope of part VI.—Nothing in part VI of this chapter shall apply to or affect:

(1) Any policy of liability or workmen's compensation insurance with or without supplementary expense coverage therein.

(2) Any group or blanket policy.

(3) Life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to disability insurance as:

(a) Provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means, or as

(b) Operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

(4) Reinsurance.

History.—§544, ch. 59-205.
Note.—Similar provisions found in former §§642.01, 642.09.

627.0501 Scope, format of policy.—No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) The entire money and other considerations therefor shall be expressed therein;

(2) The time when the insurance takes effect and terminates shall be expressed therein;

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed twenty-one years and any other person dependent upon the policyholder;

(4) The style, arrangement and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(5) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in §§627.0505-627.0528, inclusive, shall be printed, at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(6) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or by-laws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

(8) The commissioner may require any disability insurance policy or certificate containing a provision commonly known as a deductible provision to have printed or stamped on such policy or certificate "this policy or certificate contains a deductible provision," or appropriate words of similar import approved by the commissioner. This legend shall appear on the first page of such policy or certificate in at least eighteen point type and may be either as an overprint or by means of a rubber stamp impression in a contrasting color.

History.—§545, ch. 59-205; (8) n. by §1, ch. 61-423.
Note.—Similar provisions found in former §§642.01, 642.031.

627.0502 Death benefits.—Any such policy may contain a provision for paying a benefit for death from any cause in an amount not exceeding two hundred and fifty dollars, which benefit shall not relieve such policy from the requirements of this chapter. This provision shall not limit benefits for death by accident.

History.—§546, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0503 Nonresident insured.—If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in part VI of this chapter.

History.—§547, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0504 Required provisions; captions, omissions, substitutions.—

(1) Except as provided in subsection (2), each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in §§627.0505-627.0516, inclusive, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions cor-

responding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown, or at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

History.—§548, ch. 59-205.

Note.—Similar provisions found in former §642.031.

627.0505 Entire contract; changes.—There shall be a provision as follows:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

History.—§549, ch. 59-205.

Note.—Similar provisions found in former §642.031.

627.0506 Time limit on certain defenses.—There shall be a provision as follows:

"Time Limit on Certain Defenses: (1) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three-year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three-year period, nor to limit the application of §§627.0518-627.0522 in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) Until at least age fifty or, (b) In the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

"After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.

"(2) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(For the purpose of permitting insurers to use a uniform policy in several states, the insurer is permitted to print in the policy form in required provisions (1) and (2), above, the term "three years." Nevertheless, the provisions of the contract and text of the statute to the contrary notwithstanding, the time limits for such defenses under any contract delivered or issued for delivery to any person in this state shall not exceed two years.)

History.—§550, ch. 59-205.

Note.—Similar provisions found in former §642.031.

627.0507 Grace period.—There shall be a provision as follows:

"Grace Period: A grace period of .... (insert a number not less than '7' for the weekly premium policies, '10' for monthly premium policies and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

(A policy which contains a cancellation provision may add, at the end of the above provision:

"subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.")

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

"Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

History.—§551, ch. 59-205.

Note.—Similar provisions found in former §642.031.

627.0508 Reinstatement.—There shall be a provision as follows:

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has pre-

viously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement."

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

History.—§552, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0509 Notice of claim.—There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of insured or the beneficiary to the insurer at . . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given."

History.—§553, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0510 Claim forms.—There shall be a provision as follows:

"Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

History.—§554, ch. 59-205.
Note.—Similar provisions found in former §§642.031, 642.09.

627.0511 Proofs of loss.—There shall be a provision as follows:

"Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required."

History.—§555, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0512 Time of payment of claims.—There shall be a provision as follows:

"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid . . . . (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

History.—§556, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0513 Payment of claims.—There shall be a provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

The following provisions, or either of them,

may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $_____ (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

History.—§557, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0514 Physical examination, autopsy.—There shall be a provision as follows:

"Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

History.—§558, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0515 Legal actions.—There shall be a provision as follows:

"Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the written proof of loss is required to be furnished."

History.—§559, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0516 Change of beneficiary.—There shall be a provision as follows:

"Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change a beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

History.—§560, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0517 Optional policy provisions. — Except as provided in §627.0504 (2), no such policy delivered or issued for delivery to any person in this state shall contain provision respecting the matters set forth in §§627.0518-627.0528, inclusive, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

History.—§561, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0518 Change of occupation.—There may be a provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

History.—§562, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0519 Misstatement of age or sex.—There may be a provision as follows:

"Misstatement of Age or Sex: If the age or sex of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased according to the correct age or sex."

History.—§563, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0520 Other insurance in this insurer.—There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for _____ (insert type of coverage or coverages) in excess of $_____ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

History.—§564, ch. 59-205.

Note.—Similar provisions found in former §642.031.

627.0521 Insurance with other insurers.—(Provision of service or expense incurred basis).

(1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in §627.0522 there shall be added to the caption of the foregoing provision the phrase "—Expense Incurred Benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

History.—§565, ch. 59-205.

Note.—Similar provisions found in former §642.031.

627.0522 Same; other benefits.—

(1) There may be a provision as follows:

"Insurance With Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in §627.0521, there shall be added to the caption of the foregoing provision the phrase "—Other Benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party

liability coverage shall be included as "other valid coverage."

History.—§566, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0523 Relation of earnings to insurance.—

(1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of $200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums: (a) Until at least age fifty, or (b) In the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

History.—§567, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0524 Unpaid premiums.—There may be a provision as follows:

"Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

History.—§568, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0525 Cancellation.—There may be a provision as follows: "Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

History.—§569, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0526 Conformity with statutes.—There may be a provision as follows:

"Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

History.—§570, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0527 Illegal occupation.—There may be a provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

History.—§571, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0528 Intoxicants and narcotics.—There may be a provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

History.—§572, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0529 Order of certain provisions.—The provisions which are the subject of §§627.0505-627.0528, inclusive, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in

such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided that the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

History.—§573, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0530 Third party ownership.—The word "Insured," as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

History.—§574, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0531 Requirements of other jurisdictions.—

(1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

History.—§575, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0532 Other policy provisions.—No policy provision which is not subject to part VI of this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

History.—§576, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0533 Age limit.—If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

History.—§577, ch. 59-205.
Note.—Similar provisions found in former §642.031.

627.0534 Excess insurance.—

(1) No provision of this chapter shall be deemed to prohibit an insurer from issuing a policy as, or including in a policy a provision providing for, excess insurance; that is, to the effect that the insurer's liability for benefits payable on account of expense incurred for any hospitalization, medical, surgical and other service resulting from covered sickness or injury of the insured, shall be limited to that part of such expense, if any, which is in excess of all benefits payable on account thereof by the same insurer under any other policy or policies covering the same insured and by all other insurers and service organizations by whom benefits are payable as to the same such expense.

(2) Any such policy, or any policy containing any such provision, shall have imprinted or stamped conspicuously upon the face thereof the designation "excess insurance" or appropriate words of similar import approved by the commissioner.

History.—§578, ch. 59-205.

627.0535 Industrial disability insurance.—Industrial disability insurance is that form of individual disability insurance for which the premium is payable weekly. No such policy of industrial disability insurance may be delivered or issued for delivery in this state unless it has printed thereon the words "industrial policy" or "weekly premium policy" or words of similar import. Each such policy shall be subject to the provisions of this chapter except that:

(1) Any such policy may contain a provision requiring proof of continuance of disability. If such provision is used it shall be in the following words: "Affirmative proof of continuance of disability must be furnished at the expiration of each period for which a claim is filed."

(2) The insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

History.—§579, ch. 59-205.
Note.—Similar provisions found in former §642.05.

627.0536 Construction of noncomplying contracts.—If any insurer writes or issues in this state any disability insurance contract, as contemplated by this chapter, and the form of such contract is not authorized by or in conformity with the provisions of this chapter, such contract shall nevertheless be a valid and binding contract of the insurer, and shall be construed as though the terms and provisions thereof were in conformity with those required by this chapter, any provision in such contract to the contrary notwithstanding.

History.—§580, ch. 59-205.
Note.—Similar provisions found in former §642.10.

627.0537 Direct payment for hospital, medical services.— Any disability insurance policy insuring against loss or expense due to hospital confinement or to medical and related services

may provide for payment of benefits direct to any recognized hospital, doctor, or other person who provided such services, in accordance with the provisions of the policy. To comply with this section the words "or to the hospital, doctor, or person rendering services covered by this policy," or similar words appropriate to the terms of the policy, shall be added to applicable provisions of the policy.

History.—§581, ch. 59-205.

Note.—Similar provisions found in former §642.07.

627.0538 Application signed by agent.—If the application for a disability insurance policy is to be made a part of the contract of insurance, the insurer's agent who completed the application shall sign the same in the capacity of soliciting agent.

History.—§582, ch. 59-205.

627.0539 Filing of classifications and rates.—An insurer shall not deliver or issue for delivery in this state any disability insurance policy until it has filed with the commissioner a copy of any classification of risks and premium rates applicable thereto.

History.—§583, ch. 59-205.

Note.—Similar provisions found in former §642.01.

PART VII

GROUP, BLANKET AND FRANCHISE DISABILITY INSURANCE

627.0600 Group contracts must meet group requirements.—

(1) No disability insurance policy shall be delivered or issued for delivery in this state insuring more than one individual unless to one of the groups as provided for in §§627.0602-627.0604, and unless in compliance with the other applicable provisions of part VII of this chapter.

(2) Subsection (1) shall not apply to disability insurance policies:

(a) Insuring only individuals related by blood, marriage or legal adoption; or

(b) Insuring only individuals having a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) Insuring only individuals otherwise having an insurable interest in each other's lives; or

(d) Issued as blanket insurance pursuant to §627.0607.

(3) Nothing in this chapter shall affect the provisions of §§112.08 to 112.14, inclusive.

History.—§584, ch. 59-205.

Note.—Similar provisions found in former §642.04.

627.0601 Group disability insurance defined, in general.—Group disability insurance is that form of disability insurance covering groups of persons under a master group disability insurance policy issued pursuant to any one of §§627.0602-627.0604.

History.—§585, ch. 59-205.

Note.—Similar provisions found in former §642.04.

627.0602 Employee groups.—

(1) A group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, insuring at least ten employees of the employer for the benefit of persons other than the employer. The term employees as used herein may include:

(a) Retired employees,

(b) The individual proprietor or partners if the employer is a proprietor or partnership, and

(c) Elected or appointed officials if the policy is issued to insure employees of a public body. The policy may provide for insuring the employees of one or more subsidiary or affiliated corporations, proprietors and partnerships if the business of the employer and such subsidiary or affiliated corporations, proprietors and partnerships are under common control. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director.

(2) No such policy of insurance as defined in subsection (1) may be issued to any employer, as enumerated therein, unless all employees of such employer, or all of any class or classes thereof, determined by conditions pertaining to their employment, but not determined so as to exclude those in the more hazardous employment solely because of their hazardous employment, are declared eligible and acceptable to the insurer at the time of issuance of the policy, and unless sixty per cent of the eligible employees are so insured.

(3) Any such policy may insure spouse and/or dependent children with or without the employee being insured.

History.—§586, ch. 59-205; (1) §1, ch. 63-218.

Note.—Similar provisions found in former §642.04.

627.0603 Labor union and association groups.—

(1) A group of individuals may be insured under a policy issued to an association, including a labor union, which association shall have a constitution and by-laws and not less than twenty-five individual members and which has been organized and has been maintained in good faith for a period of one year for purposes other than that of obtaining insurance, or to the trustees of a fund established by such an association, which association or trustees shall be deemed the policyholder, insuring at least fifteen individual members of the association for the benefit of persons other than the officers of the association, the association or trustees.

(2) No such policy of insurance as defined in subsection (1) may be issued to any such association, unless all individual members of such association or all of any class or classes thereof, are declared eligible and acceptable to the insurer at the time of issuance of the policy, and unless sixty per cent of the eligible members are so insured.

(3) Any such policy may insure the spouse and/or dependent children with or without the member being insured.

History.—§587, ch. 59-205; (1) a. by §1, ch. 61-368.
Note.—Similar provisions found in former §642.04.

627.0604 Debtor groups.—A group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, under which the debtors of such creditor are indemnified in connection with a specific loan or credit transaction against loss of time resulting from bodily injury or sickness. The debtors eligible for such insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof, determined by conditions pertaining to the indebtedness or to the credit transaction giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary or affiliated corporations, proprietors or partnerships, if the business of the creditor and of such subsidiary or affiliated corporations, proprietors or partnerships is under common control. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five per cent of the new entrants become insured.

History.—§588, ch. 59-205.
Note.—Similar provisions found in former §642.04.

627.06041 Additional groups.—A group of individuals, other than the groups defined in §627.0405, may be insured under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals for disability insurance that could be insured under such group life policy. Any such policy may insure the spouse and dependent children with or without the "employee" being insured.

History.—§1, ch. 61-377.

627.0605 Provisions of group disability policies.—Each group disability policy shall contain in substance the following provisions:

(1) A provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties, and that no statement made for purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary.

(2) A provision that the insurer will furnish to the policyholder, for delivery to each employee or member of the insured group, a certificate setting forth the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

(4) The provisions of part VI of chapter 627 shall not apply to group disability insurance policies, but no such policy shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought on the policy, which is less favorable to the individuals insured than would be permitted by the comparable provisions required for individual disability insurance policies.

History.—§589, ch. 59-205.
Note.—Similar provisions found in former §642.04.

627.0606 Use of dividends, refunds, fees, etc.; premium rates.—

(1) Section 627.0418 of this code shall apply also as to group disability insurance policies.

(2) An insurer may issue insurance policies under the provisions of this chapter at premium rates less than the usual rates or premiums for individual insurance policies.

History.—§590, ch. 59-205.

627.0607 Blanket disability insurance; eligible groups.—Blanket disability insurance is that form of disability insurance covering special groups of individuals as enumerated in one of the following subsections (1) to (6) inclusive:

(1) Under a policy or contract issued to any common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier.

(2) Under a policy or contract issued to an

employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, or under a policy or contract issued to an employer where all employees are covered under any such policy or contract.

(3) Under a policy or contract issued to a college, school, or other institution of learning or to be the head or principal thereof, who or which shall be deemed the policyholder, covering students or teachers.

(4) Under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, which shall be deemed the policyholder, covering all of the members of such department or group.

(5) Under a policy or contract issued to an organization, or branch thereof, such as boy scouts of America, future farmers of America, religious, or educational bodies, or similar organizations, or to an individual, firm or corporation, holding or operating meetings such as summer camps or other meetings for religious, instructive or recreational purposes, covering all those attending such camps or meetings, including counselors, instructors and persons in other administrative positions.

(6) Under a policy or contract issued in the name of a newspaper, which shall be deemed the policyholder, covering independent contractor newspaper boys.

History.—§591, ch. 59-205.

Note.—Similar provisions found in former §642.06.

627.0608 Conditions and provisions of blanket disability policies.—

(1) An individual application shall not be required from a person covered under a blanket disability insurance policy or contract, nor shall it be necessary for the insurer to furnish such person a certificate.

(2) Any benefit under a blanket disability policy shall be payable as provided in §627.0513 (payment of claims).

(3) No such policy shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought on the policy, which is less favorable to the individuals insured than would be permitted by the comparable provisions required for individual disability insurance policies.

(4) The provisions of part VI of chapter 627 shall not apply to blanket disability insurance policies, but no such policy shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought on the policy, which is less favorable to the individuals insured than would be permitted by the comparable provisions required for individual disability insurance policies.

(5) Nothing contained in §627.0607 or in this section shall be deemed to affect the legal liability of policyholders for the death or injury to any person insured under a blanket disability policy.

History.—§592, ch. 59-205.

Note.—Similar provisions found in former §642.06.

627.0609 Other provisions applicable.—The following sections from part VI of chapter 627 (disability insurance policies) shall also apply as to group disability insurance and blanket disability insurance and franchise disability insurance:

(1) Section 627.0534 (excess insurance).

(2) Section 627.0537 (direct payment for hospital, medical services).

(3) Section 627.0539 (filing of classifications and rates).

(4) Section 627.0501 (8) (deductible provisions of policies or certificates).

History.—§593, ch. 59-205; (4) n. by §2, ch. 61-423.

627.0610 Franchise disability insurance.—

(1) "Franchise disability insurance" (also known as "franchise group insurance") is that form of disability insurance issued to:

(a) Five or more employees of any corporation, copartnership, or individual employer or any governmental corporation, agency or department thereof; or

(b) Ten or more individuals who are members of any trade or professional association or of a labor union or any other association having had an active existence for at least two years where such association or union has a constitution or by-laws and is formed in good faith for purposes other than that of obtaining insurance; where such persons with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons, under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated person acting on behalf of such employer or association. Notwithstanding the provisions of any state antidiscriminatory law, such provisions shall not prohibit different rates charged, or benefits payable, or different underwriting procedure for individuals insured under a franchise plan provided rates charged, benefits payable, or underwriting procedure used do not discriminate between franchise plans.

(2) Sections 627.0501-627.0539 of this code shall also apply as to franchise disability insurance.

History.—§594, ch. 59-205.

Note.—Similar provisions found in former §642.04.

PART VIII

CREDIT LIFE AND DISABILITY INSURANCE

627.0700 Scope of part VIII.—Part VIII of chapter 627 applies only to credit life and credit disability insurances as defined in §627.0701.

History.—§595, ch. 59-205.

627.0701 Definitions.—

(1) Credit life insurance is that form of term life insurance which precludes debtor selection as to beneficiary or assignee under which the life of a borrower of money or a purchaser of goods is insured in connection with a specific loan or credit transaction. The policy, certificate, or statement shall be issued on a plan especially designed for the sole purpose of meeting the requirements of the definition of this section and shall bear the description "creditor-debtor insurance only" or words of similar import on the face of each such policy, certificate or statement. There are three recognized forms:

(a) Group credit life insurance is that form of insurance which is subject to the provisions of §627.0402 (debtor groups).

(b) Franchise credit life insurance is that form of insurance by which a master policy is issued to and in favor of a creditor and under which debtors are insured at the option of the creditor.

(c) Individual credit life insurance is individual insurance upon the life of an individual debtor in favor of a creditor.

(2) Credit disability insurance is that form of insurance under which a borrower of money or a purchaser of goods is insured in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness.

(3) Credit life and credit disability insurance as defined in subsections (1) and (2), shall not include life or disability insurance sold in connection with real estate loans of more than thirty-six months duration.

History.—§596, ch. 59-205; (1) a. by §19, ch. 61-530.
Note.—Similar provisions found in former §§634.06, 646.01.

627.0702 Rules and regulations.—

(1) For the effective protection of the public interest the commissioner shall have full power and authority to adopt, promulgate and enforce separate rules and regulations pertaining to issuance and use of each type of credit insurance defined in §627.0701.

(2) Rules and regulations made pursuant to this section shall be principally designed, and shall be promulgated with the purpose of protecting the borrower from excessive charges by or collected through the lender for insurance in relation to the amount of the loan, to avoid duplication or overlapping of insurance coverage and to avoid loss of the borrower's funds by short-rate cancellation or termination of such insurance. However, nothing in such rules and regulations shall be construed to authorize the commissioner to prohibit operation of normal dividend distributions under participating insurance contracts.

(3) The commissioner shall, before adopting any rules or regulations under this chapter, hold a public hearing, giving the interested parties not less than fifteen days notice of such hearing together with a copy of the proposed rules and regulations.

(4) The order of the commissioner adopting rules and regulations shall set forth the date such rules and regulations are to become effective, which date shall be not less than fifteen days after such rules and regulations have been adopted and filed in the office of the commissioner and with the secretary of state. Copy of the order, together with a copy of rules and regulations as adopted, shall be furnished interested parties on the same date that the rules and regulations are filed.

History.—§597, ch. 59-205.
Note.—Similar provisions found in former §646.02.

627.0703 Amount of insurance; credit life.—

(1) The amount of credit life insurance written under one or more policies shall not exceed by more than five dollars the original face amount of the specific contracts of indebtedness in connection with which it is written; except, that where the indebtedness is repayable in substantially equal installments the amount of insurance shall never exceed the approximate unpaid balance of the loan.

(2) The total amount of credit life insurance on the life of any debtor with respect to any loan or loans covered in one or more insurance policies shall at no time exceed five thousand dollars with any one creditor, except that loans not exceeding one year duration shall not be subject to such limits, and provided that on such loans not exceeding one year's duration, the limits of coverage shall not exceed ten thousand dollars with any one insurer.

(3) Notwithstanding the provisions of this section credit life insurance in connection with agricultural loans not exceeding one year may be written up to the amount of the loan commitment on the nondecreasing or level term plan.

History.—§598, ch. 59-205.
Note.—Similar provisions found in former §646.05.

627.0704 Same; credit disability.—(1) The total indemnities provided under the terms of credit disability coverage shall not exceed by more than five dollars the amount of the initial indebtedness; except, that where the indebtedness is repayable in substantially equal installments the amount of insurance shall never exceed the approximate unpaid balance of the loan.

(2) The total amount of credit disability insurance on the life of any debtor with respect to any loan or loans covered in one or more insurance policies, as defined in §627.0701(2), shall at no time exceed five thousand dollars.

History.—§599, ch. 59-205.

Note.—Similar provisions found in former §646.05.

627.0705 Term and evidence of insurance.—(1) The term of credit life insurance or credit disability insurance coverages shall not extend more than fifteen days beyond the term of the indebtedness except where extended without additional cost to the insured borrower or purchaser, and in no event shall the term of the insurance policy exceed five years from the date of issue thereof.

(2) All credit insurance sold shall be evidenced by a policy, certificate or statement of insurance, which shall be delivered to the insured borrower or purchaser. Said policy, certificate, or statement of insurance shall set forth a description of the coverage, including any exceptions, limitations, or restrictions and the amount of the premium in the case of individual or franchise insurance, or the amount of any identifiable charge in the case of group insurance provided that in the case of group insurance in lieu of setting forth the amount of identifiable charge in the certificate or statement of insurance, such identifiable charge may be set forth in an instrument in writing, which shall be delivered to the insured borrower or purchaser.

History.—§600, ch. 59-205.

Note.—Similar provisions found in former §646.06.

627.0706 Filing, approval of forms.—All forms of policies, certificates of insurance, statements of insurance, applications for insurance, binders, endorsements and riders of credit life or disability insurance delivered or issued for delivery in this state shall be filed with and approved by the commissioner before use as provided in §§627.01091 and 627.0110 of this code. In addition to grounds as specified in §627.0110 the commissioner, upon compliance with the procedures set forth in §627.01091, shall disapprove any such form and may withdraw any previous approval thereof if the benefits provided therein are not reasonable in relation to the premiums charged, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of such policy.

History.—§601, ch. 59-205.

627.0707 Licensed agent required.—All policies to which this chapter applies shall be issued through a licensed agent of the insurer.

History.—§602, ch. 59-205.

Note.—Similar provisions found in former §646.08.

627.0708 Premium not deemed loan or finance charge.—The premium or cost of credit life or disability insurance, when written by or through any lender or other creditor, its affiliate or associate or subsidiary or a director, officer or employee of any of them shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary or a director, officer or employee of any of them, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law general or special, civil or criminal of this state, or of any rule, regulation or order issued by any regulatory authority.

History.—§603, ch. 59-205.

Note.—Similar provisions found in former §646.08.

627.0709 Penalty for violations.—Any insurer, agent, or other representative of such insurer, who violates the provisions of this chapter or any valid rule or regulation adopted and promulgated pursuant thereto, after having been ordered to cease and desist from such violation following the procedure as outlined in §626.0620, shall be cited to appear before the commissioner upon five days' notice to show cause why an order revoking the license or certificate of authority should not be entered. At such hearing, if the commissioner determines that such violation was committed willfully and knowingly, he may, in his discretion, forthwith revoke the license or certificate of authority of such agent or insurer. Such order or revocation may be reviewed as provided for cease and desist orders in §626.0620. In addition, any person who violates a cease and desist order or an order of revocation after it has become final and while such order is in effect shall be guilty of a misdemeanor and upon conviction in a court of proper jurisdiction shall be fined a sum not to exceed $1,000 or be imprisoned in the county jail for a period not to exceed 6 months, or both.

History.—§604, ch. 59-205.

Note.—Similar provisions found in former §646.07.

PART IX

PROPERTY INSURANCE CONTRACTS

627.0800 Co-insurance contracts.—No property insurer shall issue any policy or contract of fire insurance covering either real or personal property in this state which contains any clause or provision requiring the insured to take out or maintain a larger amount of fire insurance than that expressed in such policy; nor in any way provide that the insured shall be liable as a co-insurer with the insurer issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy; and any such clause or provision shall be null and void, and of no effect unless there is printed or stamped on the face of such policy or on a form attached thereto the words: "CO-INSURANCE CONTRACT. The rate charged in this policy is based upon use of a co-insurance clause attached hereto, with the consent of the insured." The rate for the insurance with and without the co-insurance clause shall be furnished the insured upon request.

History.—§605, ch. 59-205.
Note.—Similar provisions found in former §631.12.

627.0801 Valued policy law.—

(1) In event of total loss by fire or lightning of any building or structure located in this state and insured by any insurer as to such perils, in the absence of any change increasing the risk without the insurer's consent the insurer's liability, if any, under the policy for such total loss shall be in the amount of money for which such property was so insured as specified in the policy and for which premium has been charged and paid.

(2) In the case of partial loss by fire or lightning of any such property the insurer's liability, if any, under the policy shall be for the actual amount of such loss but not to exceed the amount of insurance specified in the policy as to such property and such perils.

(3) Except, however, that the amount of any loss referred to in subsections (1) or (2) shall be subject to any co-insurance clause contained in the policy pursuant to §627.0800.

(4) This section shall not apply as to personal property or any interest therein.

History.—§606, ch. 59-205.
Note.—Similar provisions found in former §631.04.

627.0802 Same; penalty for violation.—If any insurer writes into or attaches to any policy of fire insurance on any building or structure in this state any provision or condition conflicting with the provisions of §627.0801, and complaint thereof is made to the commissioner by the policyholder, the commissioner shall forthwith revoke the insurer's certificate of authority. The commissioner shall withhold any new certificate of authority from the insurer until a new policy has been issued to the complaining policyholder without such conflicting provision or condition.

History.—§607, ch. 59-205.
Note.—Similar provisions found in former §625.10.

627.0803 Replacement insurance.—In case of total or partial loss of a building or structure insured against fire and lightning the liability of the insurer for such loss shall be as provided in §627.0801; except, that any property insurer may, by appropriate riders or endorsements or otherwise, provide insurance indemnifying the insured for the difference between the insurable value of the insured property at the time any loss or damage occurs, and the amount actually expended to repair, rebuild or replace within this state with new materials of like size, kind and quality, such property as has been damaged or destroyed by fire or lightning.

History.—§608, ch. 59-205.
Note.—Similar provisions found in former §631.05.

627.0804 Return of unearned premium on overinsured personal property.—In the event of a total loss or destruction of any personal property on which the amount of the appraised or agreed loss is less than the total amount insured thereon, the insurer shall return to the insured the unearned premium for the excess of insurance over the appraised or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid; and the unearned premium shall be a just and legal claim against the insurer.

History.—§609, ch. 59-205.
Note.—Similar provisions found in former §625.13.

PART X

CASUALTY INSURANCE CONTRACTS

627.0850 Contracts are subject to general provisions.—All contracts of casualty insurance covering subjects resident, located, or to be performed in this state shall be subject to the applicable provisions of part II of chapter 627, (the insurance contract), and to the other applicable provisions of this code.

History.—§610, ch. 59-205.

627.0851 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(1) No automobile liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in not less than limits described in §324.021 (7), under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, however, that the coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage; provided further that, unless the named insured requests such coverage in writing, the coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) For the purpose of this coverage the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(3) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within one year after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

(4) In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

History.—§1, ch. 61-175; (1) §1, ch. 63-148.

PART XI

SURETY INSURANCE CONTRACTS

627.0900 Surety on required bonds; release.—

(1) Subject to other applicable provisions of part XI of chapter 627, any surety insurer having a currently effective certificate of authority to transact such insurance in this state may be accepted as surety on the bond of any person required by the laws of this state to give bond, and may be the only surety necessary to render the bond valid, but other surety may, in the discretion of the official authorized to approve the bond, be required.

(2) Such a surety insurer may be released from its liability on any such bond on the same terms and conditions as are by law prescribed for the release of individuals, and shall be subject to all the rights and liabilities of natural persons.

History.—§611, ch. 59-205.
Note.—Similar provisions found in former §648.03.

627.0901 Bonds in judicial proceedings.—

(1) In all judicial proceedings, whenever it may become necessary for any party thereto to give a bond for any purpose, the bond of such party having as surety thereon any surety insurer authorized to do business in this state, may be accepted, by any officer or court whose duty is to approve such bond, without other surety. This section shall apply also to bonds given in connection with any appellate proceeding for the purpose of obtaining supersedeas, or for any other purpose.

(2) Such surety insurer may become surety upon administrators', executors' and guardians' bonds, and in such cases there need only be one surety upon such bonds.

History.—§612, ch. 59-205.
Note.—Similar provisions found in former §648.04.

627.0902 Bond premium allowable as expense or costs.—Any receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give bond as such, may include as part of his lawful expense such reasonable sum paid such an insurer for such suretyship not exceeding one per cent per annum on the amount of the bond, as the

head of department, board, court, judge or officer by whom, or the court or body in which, he was appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid such an insurer executing or guaranteeing any bond or undertaking therein.

History.—§613, ch. 59-205.
Note.—Similar provisions found in former §648.05.

627.0903 Sureties upon official bonds.—

(1) Subject to §627.0904, a solvent surety insurer authorized to transact such business in this state and having a paid-up capital stock (if a stock insurer) or surplus (if a mutual or reciprocal insurer) of not less than two hundred and fifty thousand dollars, may, upon proper proof thereof and production of evidence of solvency, be accepted as surety upon the bonds of all city, county and state officers.

(2) Subject to §627.0904, the various officers of this state whose duty it is to approve the sureties upon such bonds may accept such insurer as one of the sureties, or as the only surety, upon such bond as the solvency of the insurer may warrant.

(3) No insurer shall be relieved of its liability upon any such bond by reason of the fact that the books and accounts of the principal have been examined and approved as correct by the proper authorities when in fact there has been a breach of the bond and a loss accruing from such breach.

History.—§614, ch. 59-205.
Note.—Similar provisions found in former §648.08.

627.0904 Certain official and fiduciary bonds; special approval of surety and forms required.—

(1) No surety insurer shall execute a fidelity or surety bond for an officer or employee of this state or of any county, municipality or other subdivision thereof, or for any officer or employee of any bank, trust company or other fiduciary corporation organized under the laws of this state, except upon such assumption of risk and upon forms which have been prescribed or approved by the governor, the comptroller, treasurer and attorney general of the state, or by any three of such officials, and until such insurer shall have procured a special authority from the governor, the comptroller, treasurer and attorney general of the state or of any three of them for the writing of such fidelity or surety bonds.

(2) The governor, comptroller, treasurer and attorney general shall remove from the list of surety insurers whose bonds are acceptable under this section, the names of any such insurers as in their judgment shall fail or refuse to carry out such obligations promptly and in good faith.

History.—§615, ch. 59-205.
Note.—Similar provisions found in former §648.16.

627.0905 Bonds for construction contracts; attorney fees in case of suit.—

(1) Whenever a surety insurer becomes a surety on a contract bond or bonds for either private or public construction in this state, such bond or bonds shall be either:

(a) A combination bond containing both performance and payment provisions and in an amount of not less than the total or estimated contract price, or

(b) Separate bonds for performance and for payment, but in such instances both bonds shall be issued and each shall be in an amount of not less than fifty per cent of the total or estimated contract price.

(2) Section 627.0127 (attorney fee) shall also apply as to suits brought by owners, subcontractors, laborers and material men against a surety insurer under payment or performance bonds written by the insurer under the laws of Florida to indemnify such owners, subcontractors, laborers and material men against pecuniary loss by breach of a building or construction contract; except, that the amount to be so recovered for fees or compensation of such a plaintiff's attorney shall not be more than twelve and one-half per cent of the amount which the judgment or decree awards such plaintiff under the bond (exclusive of the costs of suit and attorney fees or compensation), nor shall it be less than one hundred dollars where the judgment or decree is for more than five hundred dollars nor less than fifty dollars where the judgment or decree is five hundred dollars or less. Such owners, subcontractors, laborers and material men shall be deemed to be "insureds" or "beneficiaries" for the purposes of this section.

History.—§616, ch. 59-205.
Note.—Similar provisions found in former §648.20.

627.0906 Deposit agreements for surety's protection authorized.—It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof made on such notice to such surety or sureties as such court or judge may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

History.—§617, ch. 59-205.
Note.—Similar provisions found in former §648.18.

627.0907 Surety on auto club arrest bond; conditions, limit.—

(1) Any surety insurer which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed two hundred dollars with respect to any guaranteed arrest bond certificates issued in such year by an authorized automobile club

or association by filing with the commissioner an undertaking thus to become surety.

(2) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(a) The name and address of the automobile club or clubs or automobile association or associations with respect to the guaranteed arrest bond certificates of which the surety insurer undertakes to be surety.

(b) The unqualified obligation of the surety insurer to pay the fine or forfeiture in an amount not to exceed two hundred dollars of any person who, after posting a guaranteed arrest bond certificate with respect to which the insurer has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(3) The term, guaranteed arrest bond certificate, as used herein, means any printed card or other certificate issued by the automobile club or association to any of its members, which card or certificate is signed by such member and contains a printed statement that such automobile club or association and a named surety company guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars.

History.—§618, ch. 59-205.
Note.—Similar provisions found in former §648.19.

627.0908 Estoppel to deny power.—Any surety insurer which executes any bond or undertaking of surety under part XI of this chapter shall be estopped in any proceeding to enforce the liability which it has assumed to incur to deny its corporate or other power to execute such bond or assume such liability.

History.—§619, ch. 59-205.
Note.—Similar provisions found in former §648.06.

PART XII

TITLE INSURANCE CONTRACTS

627.0950 Especially applicable provisions; nonapplicable chapters.

627.0950 Especially applicable provisions; nonapplicable chapters.—

(1) Provisions of this code especially applicable as to title insurers are contained in the following sections:

(a) Section 624.0203(7) (as to "business trust insurer").

(b) Section 624.0205(3) (title insurer must be a stock insurer, except as to existing domestic mutual or business trust insurers).

(c) Section 624.0206 (capital, surplus, net trust fund required of new insurers).

(d) Section 624.0207 (special surplus required, new insurers).

(e) Section 624.0208 (capital funds required, old insurers).

(f) Section 624.0210 (deposit requirement).

(g) Section 624.0407 (definition of "title insurance").

(h) Section 625.031(4) (nonadmitted assets do not include certain properties of title insurers).

(i) Section 625.051(5) (title insurers exempt from usual unearned premium reserve).

(j) Section 625.111 (title insurance reserve).

(k) Section 625.0129 (special investments by title insurer).

(l) Section 626.06131 (rebates prohibited; title insurance).

(m) Section 627.01001(4) (limited applicability of chapter, "the insurance contract," as to title insurance).

(n) Section 628.151 (power of title insurer to engage in related businesses).

(2) None of the provisions of any of the following are applicable as to title insurance:

(a) Part I of chapter 626 (insurance representatives; licensing procedures and general requirements);

(b) Part II of chapter 626 (general lines agents and solicitors qualifications and requirements);

(c) Part III of chapter 626 (life insurance agents);

(d) Part IV of chapter 626 (disability insurance agents);

(e) Part V of chapter 626 (insurance adjusters);

(f) Part I of chapter 627 (rates and rating organizations);

(g) Part III of chapter 627 (life insurance policies and annuity contracts);

(h) Part IV of chapter 627 (industrial life insurance policies);

(i) Part V of chapter 627 (group life insurance);

(j) Part VI of chapter 627 (disability insurance policies);

(k) Part VII of chapter 627 (group, blanket and franchise disability insurance);

(l) Part VIII of chapter 627 (credit life and disability insurance);

(m) Part IX of chapter 627 (property insurance contracts);

(n) Part X of chapter 627 (casualty insurance contracts);

(o) Part XI of chapter 627 (surety insurance contracts);

(p) Chapter 629 (reciprocal insurers); and

(q) Chapter 632 (fraternal benefit societies).

History.—§620, ch. 59-205; (1) (l) n., subsequent para.'s renum. by §2, ch. 61-141.

PART XIII

VARIABLE ANNUITY CONTRACTS

627.0975 Application of part XIII.—Part XIII of this chapter applies to annuity contracts with variable benefits and contracts upon the lives of beneficiaries under life insurance contracts with variable benefits as distinguished from fixed dollar annuity contracts and fixed dollar contracts upon the lives of beneficiaries under life insurance contracts, which are set forth in part III of chapter 627.

History.—§1, ch. 61-441.

627.0976 Establishment and maintenance of separate accounts.—Every domestic life insurance company which issues annuity contracts providing for payments or values which vary directly according to investment experience shall establish one or more separate accounts in connection with such contracts, as directed by the commissioner. All amounts received by the company which are required by contract to be applied to provide such variable annuity payments or values shall be added to the appropriate separate account, and the assets of any such separate account shall not be chargeable with liabilities arising out of any other business the company may conduct. Any surplus or deficit from mortality experience which may arise in any such separate account shall be adjusted by withdrawals from, or additions to such account by the company so that the assets of such account are always equal to the assets required to satisfy the company's obligations for such variable payments.

History.—§2, ch. 61-441.

627.0977 Statement of value of annuity benefits.—Any annuity contract on a variable basis delivered or issued for delivery in this state, and any group annuity certificate evidencing variable benefits issued pursuant to any such annuity contract on a group basis, shall contain a statement of the essential features of the procedure to be followed by the insurance company in determining the dollar amount of variable annuity benefits or values thereunder and shall state in clear terms that such amount may decrease or increase according to such procedure. Any such annuity contract delivered or issued for delivery in this state, and any such group annuity certificate, shall contain on its first page, in a prominent position in ten point type or larger, a clear statement that the annuity benefits or values thereunder are on a variable basis.

History.—§3, ch. 61-441.

627.0978 Investment of assets.—

(1) An insurer which issues annuity contracts providing for annuity payments or values which vary directly according to investment experience has established a separate account or accounts in connection with such annuity contract, may invest the assets held by such company in such separate account or accounts without regard to limitations imposed by §625.0104(2)(a), part II.

(2) Where the expense factor for purchase or liquidation of securities would not be increased, any securities purchased or liquidated for any annuity contracts with variable benefits sold in this state by a company, shall whenever possible be executed through a security brokerage office located in this state.

History.—§4, ch. 61-441.

627.0979 Commissioner; rules and regulations; qualification of companies to issue annuity contracts.—

(1) The commissioner shall have the authority to issue such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of chapter 627, part XIII.

(2) No life insurance corporation heretofore or hereafter incorporated pursuant to the provisions of any general or special law of this state shall undertake the issuance of any contract on a variable basis, and no insurance company formed by authority of another state or foreign country and heretofore or hereafter admitted to transact business in this state, shall undertake the issuance or delivery of any contract on a variable basis within this state, until said company has satisfied the commissioner that its condition or methods of operation in connection with the issuance of such contracts on a variable basis will not be such as would render its operation hazardous to the public or its policyholders in this state. In determining the qualification of a company requesting authority to issue or deliver contracts on a variable basis within this state, the commissioner will consider, among other things,

(a) The history of the company;

(b) The character, responsibility and general fitness of the officers and directors of the company; and

(c) The regulation of a foreign company by its state of domicile.

History.—§5, ch. 61-441.

PART XIV

PREMIUM FINANCE COMPANIES

627.0990 Premium finance company defined.—

(1) An insurance premium finance company is:

(a) A person engaged, in whole or in part, in the business of entering into premium finance agreements with insureds; or

(b) A person engaged, in whole or in part, in the business of acquiring premium finance agreements from other premium finance companies.

(2) Credit unions, banks, building and loan associations, and other lending institutions as defined under chapters 516, 519, 656, 657, 658, and 665 are exempt from the provisions of part XIV of this chapter.

(3) The inclusion of a charge for insurance on a bona fide sale of goods or services on installments is not subject to the provisions of part XIV of chapter 627.

History.—§1, ch. 63-16.

627.0991 Premium finance agreement defined.—Premium finance agreement means a promissory note or other written agreement by which an insured promises or agrees to pay to, or to the order of, a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent, in payment of premiums on an insurance contract, together with a service charge as authorized and limited by law.

History.—§1, ch. 63-16.

627.0992 License required.—

(1) Except as provided in §§627.1020 and 627.1021, no person shall engage in the business of a premium finance company without a license therefor obtained from the commissioner, as provided in part XIV of this chapter.

(2) Application for license required under this law shall be in writing, and in the form prescribed by the commissioner.

(3) When an applicant has more than one office, separate applications for license shall be made for each such office.

(4) At the time of filing an application for a license, the applicant shall pay to the commissioner the license fee and, upon original application or upon application subsequent to denial of application, or revocation, suspension or surrender of a license, an investigation fee.

(a) The license fee for each license year or part thereof shall be one hundred dollars for each office where the business of a premium finance company is conducted, except that if the license is issued after March 31 in any year such fee shall be fifty dollars.

(b) The investigation fee, when required by this section, shall be one hundred dollars per office, except that, when an applicant files application for licenses for three or more offices at the same time, the total investigation fee for all the applications shall be three hundred dollars.

History.—§1, ch. 63-16.

627.0993 Approval; disapproval of application; and waiting period.—

(1) Within sixty days after the filing of an application for a license accompanied by payment of the fees for license and investigation, the commissioner shall issue the license or refuse to issue the license, if it is found by him that the management of the premium finance company filing the application is lacking in managerial experience as to make the proposed operation hazardous to the insurance buying public, or which he has good reason to believe is affiliated directly or indirectly through ownership, control, or in other business relations with any person or persons whose business operations are or have been marked as detrimental to the public, policyholders, stockholders, investors, or creditors by manipulation of assets or of accounts or by bad faith. Such license to engage in business in accordance with the provisions of this law at the location specified in the application shall be executed in duplicate by the commissioner, and he shall transmit one copy thereof to the applicant and file a copy in the office of the insurance department.

(2) If the commissioner refuses to issue a license, he shall notify the applicant of the denial, return to the applicant the sum paid as a license fee, but retain the investigation fee to cover the costs of investigating the applicant.

(3) Each license issued hereunder shall remain in full force and effect until the last day of September of the year for which issued unless earlier surrendered, suspended, or revoked pursuant to part XIV, and may be renewed for the ensuing license year upon the filing of an application in conformity with §627.0992 but subject to all of the provisions of this section. If an application for a renewal of a license is filed with the commissioner before October 1 of any year, the license sought to be renewed shall be continued in full force and effect either until the issuance by the commissioner of the renewal license applied for or until five days after the commissioner refuses to issue such renewal license under the provisions of this section.

(4) Only one office may be maintained under each license, but more than one license may be issued to the same licensee pursuant to part XIV.

(5) Any person engaged in the business of a premium finance company on October 1, 1963 may continue in operation in accordance with the provisions of part XIV but must obtain a license for each office at which he engages in the business of a premium finance agency by October 1, 1963.

History.—§1, ch. 63-16.

627.0994 License provisions and posting.—Such license shall state the name and address of the licensee and shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

History.—§1, ch. 63-16.

627.0995 Change of location.—Before any licensee changes any office of his to another location, he shall give written notice thereof to the commissioner who shall without charge issue an endorsement indicating the change and the date thereof, which endorsement shall be attached to the license for such office and be authority for the operation of the business under such license at such new location.

History.—§1, ch. 63-16.

627.0996 Grounds for refusal, suspension, and revocation of license.—

(1) The commissioner may forthwith deny, suspend, revoke, or refuse to renew or continue any license hereunder, if he shall find that:

(a) The licensee has failed to pay the annual license fee or any sum of money lawfully demanded under authority of any other section of this chapter, or to comply with any demand, ruling, or requirement of the commissioner lawfully made pursuant to and within the authority of part XIV.

(b) The licensee has violated any provision of part XIV or any rule or regulation lawfully made by the commissioner under and within the authority of part XIV.

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the commissioner in refusing originally to issue such license.

(2) The commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist; or if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to such licensee or such number of licenses as such grounds apply to, as the case may be.

(3) Any licensee may surrender any license by delivering to the commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(4) No revocation or suspension or surrender of any license shall impair or affect the obligation of any insured under any lawful premium finance agreement previously acquired or held by the licensee.

(5) Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, suspended, or expires in accordance with the provisions of part XIV; but the commissioner shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked, if no fact or condition then exists which clearly would have warranted the commissioner in refusing originally to issue such license under part XIV.

History.—§1, ch. 63-16.

627.0997 Administrative fine and probation in lieu of suspension, revocation, or refusal to renew license.—The commissioner may in his discretion in lieu of a suspension, revocation, or refusal to renew or continue any license, impose on the licensee an administrative penalty or place such licensee on probation pursuant to §§626.681 and 626.691 of this code.

History.—§1, ch. 63-16.

627.0998 Investigations, powers; duties.—The commissioner may conduct examinations and investigations of premium finance companies under the provisions of §§624.0106 and 626.601 of this code.

History.—§1, ch. 63-16.

627.0999 Excessive premium finance charge; penalty.—

(1) Any person, premium finance company, or other legal entity who or which knowingly takes, receives, reserves, or charges a premium finance charge other than that authorized by this law shall thereby forfeit the entire premium finance charge to which such person, premium finance company, or entity would otherwise be entitled and any person who shall have paid such unlawful finance charge may personally or by his legal or personal representative, by suit for recovery thereof brought within two years from the date of such payment,

recover from such person, premium finance company, or legal entity twice the entire amount of the premium finance charge so paid.

(2) Section 624.15 shall be applicable to each wilful violation as to which a greater penalty is not provided by another provision of this code or by other applicable laws of this state.

History.—§1, ch. 63-16.

627.1000 Licensee's books and records; reports.—

(1) The licensee shall keep and use in his business such books, accounts, and records as will enable the commissioner to determine whether such licensee is complying with the provisions of part XIV and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least three years after making the final entry in respect to any premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this requirement.

(2) Each licensee shall annually on or before March 1 file a report with the commissioner giving such information as the commissioner may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state under the authority of part XIV. Such report shall be made under oath and be in the form prescribed by the commissioner who may make and publish annually an analysis and recapitulation of such reports. In addition to such annual reports, the commissioner may require of licensees under oath and in the form prescribed by him, such additional regular or special reports as he may deem necessary to the proper supervision of licensees under part XIV.

History.—§1, ch. 63-16.

627.1001 Rebates and inducements prohibited.—

(1) No premium finance company, and no employee of such a company, shall pay, allow, or offer to pay or allow in any manner whatsoever to an insurance agent or any employee of an insurance agent, or to any other person, either as an inducement to the financing of any insurance policy with the premium finance company or after any such policy has been financed, any rebate whatsoever, either from the service charge for financing specified in the premium finance agreement or otherwise, or shall give or offer to give any valuable consideration or inducement of any kind directly or indirectly, other than an article of merchandise not exceeding one dollar in value which shall have thereon the advertisement of the premium finance company; but a premium finance company may purchase or otherwise acquire a premium finance agreement, provided that it conforms to part XIV in all respects, from another premium finance company with recourse against the premium finance company on such terms and conditions as may be mutually agreed upon; and

(2) No filing of the assignment or notice thereof to the insured shall be necessary to the validity of the written assignment of a premium finance agreement as against creditors or subsequent purchasers, pledgees, or encumbrancers of the assignor.

History.—§1, ch. 63-16.

627.1002 Filing, approval of forms, service charge filing.—

(1) No premium finance agreement form or related form shall be used in this state by a premium finance company unless it has been filed with and approved by the commissioner.

(2) Every such filing shall be made not less than thirty days in advance of issuance or use. At the expiration of thirty days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before the expiration of the initial thirty day period. At the expiration of any such period as so extended and in the absence of prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) In addition each premium finance company shall file with the commissioner the service charge and interest rate plan to be charged in premium financing including all modifications of service charges and interest rate to be paid by the insured or others under a premium finance agreement. Every filing shall state the effective date thereon. Such filing shall be made not less than thirty days prior to its effective date.

History.—§1, ch. 63-16.

627.1003 Form and content of premium finance agreements.—

(1) A premium finance agreement shall be in writing, dated, and signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight point type.

(2) It shall contain the entire agreement of the parties with respect to the insurance contract, the premiums for which are advanced or to be advanced under it, and:

(a) At its top, the words PREMIUM FINANCE AGREEMENT in at least ten point bold type; and

(b) A notice in at least eight point bold type, reading as follows: NOTICE:

1. Do not sign this agreement before you read it or if it contains any blank space.

2. You are entitled to a completely filled-in copy of this agreement.

3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.

(3) A premium finance agreement shall:

(a) Contain the name and place of business

of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which installment or other payments are to be made, a description of the insurance contract, the premiums for which are advanced or to be advanced under the agreement, and the amount of the premiums for such insurance contract; and

(b) Set forth the following items:

1. The total amount of the premiums;
2. The amount of the down payment;
3. The principal balance, which is the difference between subparagraphs 1. and 2.;
4. The amount of the service charge;
5. The balance, which is the sum of subparagraphs 3. and 4., payable by the insured, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof;

(4) The items need not be stated in the sequence or order set forth above, inapplicable items may be omitted; additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(5) No premium finance agreement shall be signed by an insured when it contains any blank space to be filled in after it has been signed; however, if the insurance contract, the premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of its signature by the insured and it so provides, the name of the authorized insurer by whom such insurance contract is issued and the policy number and the due date of the first installment may be left blank and later inserted in the original of the agreement after it has been signed by the insured.

History.—§1, ch. 63-16.

627.1004 Limitation on service and other charges.—

(1) A premium finance company shall not, except as otherwise provided by law, impose, take, receive from, reserve, or charge an insured greater charges than are permitted by part XIV.

(2) A premium finance company may, in a premium finance agreement, contract for, charge, receive, and collect a service charge for financing the premiums under the agreement computed as provided in subsection (3).

(3) (a) The service charge provided for in this section shall be computed on the principal balance of the premium finance agreement from the inception date of the insurance contract, the premiums for which are advanced or to be advanced under the agreement or from the due date of such premiums, disregarding any period of grace or credit allowed for payment thereof, to and including the date when the final installment of the premium finance agreement is payable, at not exceeding ten dollars per one hundred dollars per annum; or if the service charge so computed is less than twelve dollars, a minimum service charge of twelve dollars, provided that when the principal balance is not in excess of one hundred dollars and is:

1. To be repaid in four monthly installments or less, the maximum service charge shall be eight dollars;
2. To be repaid in five or more monthly installments, the maximum service charge shall be ten dollars;

(b) Except as provided in subparagraphs 1. and 2. of paragraph (a), such service charge shall be computed on the principal balance of a premium finance agreement payable in successive monthly installments substantially equal in amount for a period of one year. On a premium finance agreement providing for installments extending for a period less than or greater than one year, the service charge shall be computed proportionately.

(c) When a premium finance agreement provides for unequal or irregular installments, the service charge shall be computed at the effective rate provided for in paragraph (a), having due regard for the schedule of installments.

(d) Such service charge shall be inclusive of all charges incident to the premium finance agreement and for the extension of credit provided for therein.

(e) The above paragraphs of subsection (3) apply, if the premiums under only one insurance contract are advanced or to be advanced under a premium finance agreement; if premiums under more than one insurance contract are advanced or to be advanced under a premium finance agreement, the service charge shall be computed from the inception date of such insurance contracts, or from due date of such premiums; however, not more than one minimum service charge shall apply to each premium finance agreement.

(f) No insurance agent or premium finance company shall induce an insured to become obligated under more than one premium finance agreement for the purpose of obtaining more than one minimum service charge.

History.—§1, ch. 63-16.

627.1005 Delinquency, collection, and cancellation charges; attorney's fees.—

(1) A premium finance agreement may provide for the payment by the insured of a delinquency and collection charge on each installment in default for a period of not less than five days in an amount of one dollar to a maximum not to exceed five per cent of such installment or five dollars, whichever is less, provided that only one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default; and if the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency and collection charge imposed in respect to the installment in default and five dollars.

(2) A premium finance agreement may, also, provide for the payment of attorney's fees not exceeding twenty per cent of the amount due and payable under the agreement if it is re-

ferred for collection to an attorney not a salaried employee of the premium finance company holding the agreement.

(3) Notwithstanding the provisions of this section, a premium finance company shall not take, receive from, or charge an insured any cancellation charge or attorney's fees unless, within ten days after default in the payment of any installment of a premium finance agreement, the premium finance company has mailed a notice of the default to the insured at his address as shown on the agreement and to any insurance agent named therein at his place of business as shown giving the insured at least five days within which to make the payment in default.

History.—§1, ch. 63-16.

627.1006 Restrictions on premium finance agreements.—

(1) No premium finance agreement shall contain any provision by which:

(a) In the absence of default of the insured, the premium finance company holding the agreement may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(b) A power of attorney is given to confess judgment in this state; or

(c) The insured relieves the insurance agent or the premium finance company holding the agreement from liability for any legal rights or remedies which the insured may otherwise have against him.

History.—§1, ch. 63-16.

627.1007 Delivery of copy of premium finance agreement.—Before the due date of the first installment payable under a premium finance agreement, the premium finance company holding the agreement or the insurance agent shall deliver to the insured, or mail to him at his address as shown in the agreement, a copy thereof or, if the agreement contained any blank space when it was signed and such bank space was subsequently filled in, in accordance with §627.1003(5), a copy of the agreement as so filled in.

History.—§1, ch. 63-16.

627.1008 Notice of assignment; payments.— Unless the insured has notice of actual or intended assignment of a premium finance agreement, payment thereunder by him to the last known holder of the agreement shall be binding upon all subsequent holders or assignees.

History.—§1, ch. 63-16.

627.1009 Statement of account; receipts.—

(1) At any time after its execution, but not later than one year after the last payment thereunder, a premium finance company holding a premium finance agreement shall, upon written request of the insured, give or mail to him a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied once each year without charge; if any additional statement is requested, the premium finance company shall supply such statement at a charge not exceeding one dollar for each additional statement so supplied. An insured shall be given a receipt for a payment when made in cash.

(2) After the payment of all sums for which an insured is obligated under a premium finance agreement, and upon his written demand, the premium finance company holding the agreement shall deliver, or mail to the insured at his last known address, such one or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all interest in or rights to the insurance contracts, the premiums for which were advanced or are to be advanced under the agreement.

History.—§1, ch. 63-16.

627.1010 Credit upon anticipation of payments.—

(1) Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final installment of the balance thereof; and, if he does so and the agreement included an amount for service charge, he shall receive and be entitled to receive for such anticipation a refund credit thereon.

(2) The amount of any such refund credit shall represent at least as great proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit for anticipation of payment is less than one dollar, no refund need be made. Where the earned service charge amounts to less than twelve dollars or where the minimum service charge permitted is less than twelve dollars, the refund credit shall be an amount equal to the total service charge less twelve dollars or such minimum service charge. As used in this subsection, the term earned service charge shall mean the total service charge less the refund credit as computed in accordance with the first sentence of this subsection.

History.—§1, ch. 63-16.

627.1011 Refinancing.—A premium finance company may, upon agreement with the insured, extend the scheduled due date or defer the scheduled payment of all or any part of any installment or installments payable thereunder. The agreement for such extension or deferment must be in writing and signed by the parties thereto. The premium finance company may charge and contract for the payment of an extension or deferral charge by the insured and collect and receive the same; but such charge may not exceed an amount equal to one per cent per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension of deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or

installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar.

History.—§1, ch. 63-16.

627.1012 Cancellation of insurance contract upon default.—When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless such cancellation is effectuated in accordance with the following provisions:

(1) Not less than ten days written notice be served upon the insured or insureds shown on the premium finance agreement of the intent of the premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received within ten days.

(2) After expiration of such period, the premium finance company shall mail the insurer a request for cancellation, specifying the effective date of such cancellation, mailing a copy to the insured at his last known address as shown on the premium finance agreement.

(3) Every such notice of cancellation shall include, in type or print of which its face shall not be smaller than twelve point, a statement that if the insurance contract or contracts provide motor vehicle liability insurance required by the financial responsibility law proof of financial responsibility is required to be maintained continuously for a period of three years, pursuant to chapter 324 and that the operation of a vehicle without such financial responsibility is unlawful.

(4) Upon receipt of a copy of such cancellation notice by the insurer or insurers, the insurance contract shall be cancelled with the same force and effect as if the aforesaid notice of cancellation had been submitted by the insured himself, without requiring the return of the insurance contract or contracts.

(5) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he or the insurer first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, a mortgagee, an individual, or a person designated to receive such notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section. The insurer, in accordance with said prescribed notice where it is required to give such notice in behalf of itself or the insured, shall give notice to such governmental agency, person, mortgagee or individual; and it shall determine and calculate the effective date of cancellation from the day it receives the copy of the notice of cancellation from the premium finance company.

(6) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the premium finance company effecting the cancellation for the benefit of the insured or insureds.

History.—§1, ch. 63-16.

PART XV

PREMIUM FINANCING

627.1020 Premium financing by an insurance agent or agency.—

(1) A general lines agent as defined in the code and duly licensed thereunder or a general lines insurance agency transacting kinds of insurance as provided in §626.041, may make certain reasonable service charges for financing such insurance premiums on policies issued or business produced by said agent or agency, §§626.0613 and 626.0617 notwithstanding. The service charge for financing such premium or premiums shall not exceed one dollar per installment, nor exceed six dollars total service charge per annum, for any premium balance of one hundred twenty dollars or less. For any premium balance greater than one hundred twenty dollars but not more than two hundred twenty dollars the service charge shall not exceed nine dollars per annum. The maximum service charge of one dollar per installment for any premium balance greater than two hundred twenty dollars shall not exceed twelve dollars per annum. An insurance agent or agency in lieu of such service charges may charge a rate of interest not to exceed ten per cent simple interest per annum on the unpaid balance.

(2) Every such agent or agency engaging in premium financing whose service charge or rate of interest is more than as provided in subsection (1) shall be subject to part XIV of this chapter.

History.—§2, ch. 63-16.

627.1021 Premium financing by an insurer or subsidiary.—

(1) An insurer as defined in the code and authorized to transact insurance in this state or a subsidiary of such insurer or a corporation under substantially the same management or

control as an authorized insurer or group of authorized insurers, may finance property, casualty, surety, and marine insurance premiums on policies issued or business produced by said insurer or insurers in substantial accordance with the service charges or rate of interest as provided in §627.1020.

(2) Any insurer, subsidiary, corporation or group of insurers referred to in subsection (1) whose service charge or rate of interest is substantially more than that provided in §627.1020 shall be subject to part XIV of this chapter.

History.—§2, ch. 63-16.

627.1022 Premium finance cost specified.—

(1) Where premium financing service charges or interest is included in the overall price or cost of insurance, the insurer, insurance agent, or agency shall separately state and identify the amount of service charges or interest to be paid for the financing of such premiums.

(2) All service charges or interest shall be separately stated and identified in all invoices issued to the policyholder and in the records or accounts maintained by the insurer or corporation as provided in §627.1021 agent, or agency.

History.—§2, ch. 63-16.

627.1023 Insurers filing; approval of forms; service charge filing.—An insurer or a subsidiary of such insurer or a corporation under substantially the same management or control as an authorized insurer or group of authorized insurers shall file premium finance agreement forms or related forms and service charge or interest rate plan to be charged as provided in §627.1002 separately from rates and filings required under part I of this chapter.

History.—§2, ch. 63-16.

CHAPTER 628

INSURANCE CODE; ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

628.011 Scope of chapter.—This chapter applies only as to domestic stock and mutual insurers, except that §628.341(2) (nonassessable policies, mutual insurers) shall apply also as to foreign and alien insurers.

History.—§621, ch. 59-205.

628.021 Stock insurer defined.—A "stock" insurer is an incorporated insurer with its capital divided into shares and owned by its stockholders.

History.—§622, ch. 59-205.

628.031 Mutual insurer defined.—A "mutual" insurer is an incorporated insurer without permanent capital stock, and the governing body of which is elected in accordance with this chapter.

History.—§623, ch. 59-205.

628.041 Applicability of general corporation statutes.—The applicable statutes of this state relating to the powers and procedures of domestic private corporations formed for profit shall apply to domestic stock insurers and to domestic mutual insurers, except where in conflict with the express provisions of this code.

History.—§624, ch. 59-205.
Note.—Similar provisions found in former §632.10.

628.051 Permit required to form insurer; application.—

(1) No domestic insurer shall hereafter be formed unless the persons so proposing have applied to the commissioner for and have received from the commissioner a permit therefor.

(2) Written application for such permit shall be filed with the commissioner and shall include:

(a) Name, type, and purpose of insurer;

(b) Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the insurer;

(c) Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the insurer, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding;

(d) Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts;

(e) A copy of each of any or all proposed articles or certificate of incorporation and pro-

posed by-laws of the proposed insurer; and

(f) Such other pertinent information as the commissioner may reasonably require.

(3) File with the commissioner:

(a) A copy of each of any and all articles or certificates of incorporation of involved corporations, if a copy of the same is not already on file in the department;

(b) A copy of each of any and all syndicate, association, firm, partnership, organization or other similar agreement, by whatever name called, involved in the formation of the proposed insurer or its financing;

(c) If the insurer or proposed insurer is a reciprocal insurer, a copy of the power of attorney and of other agreements existing or proposed as affecting investors, subscribers, the attorney in fact, the insurer or proposed insurer;

(d) A copy of any security, or of any proposed document evidencing any right or interest, proposed to be offered;

(e) A copy of any other pertinent document as reasonably requested by the commissioner.

(4) The application shall be accompanied by the filing fee specified therefor in §624.0300.

History.—§625, ch. 59-205.

628.061 Investigation of proposed organization.—In connection with any proposal to incorporate a domestic insurer as referred to in §628.051, the commissioner shall make an investigation of:

(1) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers organizing the proposed insurer;

(2) The character, financial responsibility, insurance experience, business qualifications of its proposed officers;

(3) The character, the financial responsibility, business experience and standing of the proposed stockholders and directors.

History.—§626, ch. 59-205.

628.071 Granting, denial of permit.—

(1) The commissioner shall expeditiously examine and investigate the application for a permit as referred to in §628.051. Subject to subsection (3), if he finds that:

(a) The application is complete, and

(b) The documents therewith filed are in compliance with law, and

(c) The proposed financial structure is adequate, and

(d) The proposed officers and directors have sufficient insurance experience, ability, and standing to assure reasonable promise of successful operation, he shall issue to the applicant a permit to form the proposed insurer.

(2) No permit granted under the provisions of this section shall be valid after one year from date of issue or after extension of such period, not exceeding one year, as may be authorized by the commissioner upon cause shown. The articles of incorporation and all other proceedings thereunder shall become void one year from issue date of such permit or expiration of such extended period, unless the formation of the proposed insurer shall have been completed and a certificate of authority issued by the commissioner.

(3) If the commissioner does not so find, or finds that the insurer if formed or financed would not be able to qualify for or retain a certificate of authority by reason of the provisions of §624.0203 (3), he shall give written notice to the applicant that a permit will not be granted, stating in detail the grounds therefor.

History.—§627, ch. 59-205; §1, ch. 63-18.

Note.—Similar provisions found in former §628.03.

628.081 Incorporation of domestic insurer.—

(1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Five or more individuals, none of whom is less than twenty-one years of age, may incorporate a stock insurer; ten or more individuals, none of whom is less than twenty-one years of age, may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States.

(3) The incorporators shall execute articles of incorporation in triplicate, and at least three of the incorporators shall acknowledge their execution thereof before an officer authorized to take acknowledgements. The articles of incorporation shall state the purpose for which the corporation is formed, and shall state and show:

(a) The name of the corporation, which shall comply with §624.0204 of this code. If a mutual, the name shall contain "mutual" as part thereof.

(b) The duration of its existence, which may be perpetual.

(c) The kinds of insurance, as defined in this code, which the corporation is formed to transact.

(d) If a stock corporation, its authorized capital stock, number of shares of stock into which divided, and the par value of each such share, which par value shall be at least one dollar but not more than one hundred dollars.

(e) If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred; such liability shall be as stated in the articles of incorporation, but shall not be less than one nor more than ten times the premium for the member's policy at the annual premium rate for a term of one year.

(f) The number of directors, not less than five, who shall constitute the board of directors and conduct the affairs of the corporation; also the names, addresses and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than one year after the date of incorporation.

(g) The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state.

(h) Such other provisions, not inconsistent

with law, deemed appropriate by the incorporators.

(i) The name and residence address of each incorporator, and the citizenship of each incorporator who is not a citizen of the United States.

(4) Articles of incorporation shall be filed and be subject to approval as provided in §628.091.

History.—§628, ch. 59-205.

Note.—Similar provisions found in former §§625.02, 626.021, 632.01, 632.02, 632.04, 632.05, 632.12.

628.091 Filing, approval of articles of incorporation.—

(1) No domestic stock or mutual insurer shall hereafter be formed in this state unless the articles of incorporation thereof are approved by the commissioner prior to filing the same with and approval by the secretary of state as otherwise provided by law.

(2) The incorporators shall file the triplicate originals of the articles of incorporation with the commissioner, accompanied by the filing fee therefor as specified in §624.0300.

(3) The commissioner shall promptly examine the articles of incorporation. If he finds that the articles of incorporation conform to law, and that a permit has been or will be issued as provided by §628.071, he shall endorse his approval on each of the triplicate originals of the articles of incorporation, retain one copy thereof for his files, and return the two remaining copies to the incorporators for filing with the secretary of state as required by law.

(4) If after examining the articles of incorporation the commissioner does not find as referred to in subsection (3), he shall refuse to approve the articles of incorporation and shall return the triplicate originals thereof to the incorporators together with a statement in writing of the reasons for nonapproval.

(5) Any person aggrieved by any action of the commissioner under this section shall have the right to a hearing and to appeal to the courts therefrom as provided in part II of chapter 624.

History.—§629, ch. 59-205.

Note.—Similar provisions found in former §§626.021, 632.03, 632.06.

628.101 Amendment of certificate of incorporation; stock insurer.—A domestic stock insurer shall not effectuate an amendment to its certificate of incorporation until a copy of the proposed amendment has been filed with and approved by the commissioner. The commissioner shall promptly examine any such proposed amendment and shall approve the same unless he finds that the proposed amendment does not comply with law.

History.—§630, ch. 59-205.

Note.—Similar provisions found in former §§625.03, 625.04.

628.111 Same; mutual insurer.—

(1) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.

(2) Upon adoption of the amendment the insurer shall make in triplicate under its corporate seal a certificate thereof, setting forth the amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice-president and secretary or assistant secretary and acknowledged before an officer authorized to take acknowledgments. The insurer shall deliver the triplicate originals of the certificate to the commissioner together with the filing fee specified therefor in §624.0300.

The commissioner shall promptly examine the certificate of amendment, and if he finds that the certificate and the amendment comply with law he shall endorse his approval upon each of the triplicate originals, place one thereof on file in his office and return the remaining two sets to the insurer. The insurer shall forthwith file such endorsed certificates of amendment with the secretary of state as otherwise required by law. The amendment shall be effective when filed with and approved by the secretary of state.

(3) If the commissioner finds that the proposed amendment or certificate does not comply with the law, he shall not approve the same, and shall return the triplicate certificate of amendment to the insurer together with his written statement of reasons for nonapproval.

History.—§631, ch. 59-205.

628.121 Capital stock; amount; payment.—

(1) The articles of incorporation of a stock insurer shall provide for authorized capital in amount not less than that required under this code as to such insurer for the kind or kinds of insurance to be transacted.

(2) In the sale of the insurer's capital stock an amount not less than the minimum paid-in capital stock required under this code as to the insurer for authority to transact the kind or kinds of insurance to be transacted, shall be paid-in in lawful money of the United States or in equivalent United States government securities; any additional sums paid for stock or any stock sold after the minimum required capital has been so paid-in in money, may be in the form of any type of securities in which the insurer is authorized under part II of chapter 625 of this code to invest its funds, subject to the terms and conditions of such chapter, and subject further to the applicable provisions of law.

History.—§632, ch. 59-205.

Note.—Similar provisions found in former §§625.02, 625.05.

628.131 Limitation on organization and stock sales expenses.—

(1) Total expense involved in the incorporation and financing of a new domestic stock insurer shall not exceed fifteen per cent of the funds actually received by or on behalf of the corporation from the sale of its securities, in-

cluding incorporation fees, underwriting fees and costs, attorneys' fees, printing costs and other services and costs involved in such incorporation and financing.

(2) No president, vice-president, secretary, treasurer, director or any other executive officer of any such insurer shall participate in the commissions received or to be received by any person selling or negotiating the sale of any security of such an insurer either directly or indirectly.

History.—§633, ch. 59-205.

Note.—Similar provisions found in former §625.15.

628.141 Underwriters represented on board.—In event the financing of a new domestic stock insurer is by public offering of its securities through an underwriter or underwriters of such an offering, such underwriter or underwriters shall be entitled to have not less than one nominee on the insurer's board of directors.

History.—§634, ch. 59-205.

628.151 Insurance business exclusive.—

(1) No domestic insurer heretofore or hereafter formed shall engage in or have corporate power to engage directly or indirectly in any business other than the insurance business and in business activities reasonably and necessarily incidental to such insurance business.

(2) Except that:

(a) Any title insurer heretofore formed under a charter authorizing it to engage also in the trust business, shall have the right to continue to engage in both such businesses.

(b) A title insurer may also engage in business as an escrow agent, and any insurer may also engage in the business of making, acquiring, selling, dealing in, and servicing of real estate mortgage loans and loans incidental thereto.

(3) A business trust whose declaration of trust was filed with the secretary of state of Florida prior to January 1, 1959, and which, at the time of the adoption of this code, held a certificate of authority as a title insurer may qualify as an insurer for lawyers' professional liability insurance by complying with the applicable provisions of this code.

History.—§635, ch. 59-205.

628.161 Initial qualifications; domestic mutuals.—

(1) When newly organized, a domestic mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection (2).

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than the usual rate charged by stock insurers for comparable coverages, must have deposited surplus funds in the amount shown in column (g), or, in lieu of such applications, premiums and surplus, may deposit surplus in the amount shown in column (h), all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer proposes to transact:

(a) Kind of Insurance	(b) Minimum no. of applicants accepted	(c) Minimum no. of subjects covered	(d) Minimum premium collected	(e) Minimum amount of insurance each subject
Life(i)	500	500	annual	$1000
Disability (ii)	500	500	quarterly	$10 (weekly indem.)
Property(iii)	250	250	annual	$2000
Casualty(iv)	250	500	annual	$2000

(a) Kind of Insurance	(f) Maximum amount of insurance each subject	(g) Deposit of minimum surplus funds (vi)	(h) Deposit of surplus in lieu (vi)
Life(i)	$2500	$100,000	$150,000
Disability (ii)	$25 (weekly indem.)	$100,000	$150,000
Property(iii)	$3000	$150,000	$200,000
Casualty(iv)	$10,000	$150,000	$200,000

The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like Roman numerals appearing in such schedule:

(i) No group insurance or term policies for terms of less than ten years shall be included.

(ii) No group, blanket or family plans of insurance shall be included. In lieu of weekly indemnity a like premium value in medical, surgical and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed twenty-five hundred dollars.

(iii) Only insurance of the owner's interest in real property may be included.

(iv) Must include insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.

(v) The maximums provided for in this column (f) are net of applicable reinsurance.

(vi) The deposit of surplus in the amounts specified in columns (g) and (h) must thereafter be maintained unimpaired. The deposit is subject to the provisions of part III of chapter 625 (administration of deposits).

(3) In addition to the surplus deposited as required under subsection (2), the insurer must possess when first so authorized to transact insurance, expendable surplus in amount as required of a like foreign mutual insurer under §624.0207.

History.—§636, ch. 59-205.

Note.—Similar provisions found in former §§626.11, 632.07.

628.171 Formation of mutual insurer; bond.—

(1) Before soliciting any applications for insurance required under §628.161 as qualifi-

cation for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of twenty thousand dollars in favor of the state of Florida and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) Upon due accounting for and deposit, as required under §628.191, of funds received as premium upon preliminary applications for insurance;

(b) That in event the corporation fails to complete its organization and secure a certificate of authority issued by the commissioner within one year after the date of its certificate of incorporation, all premiums collected in advance from applicant members will be promptly returned to them, all other indebtedness of the corporation other than any compensation to directors, officers, or solicitors of insurance applications, will be paid, and for payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation.

(2) In lieu of such a bond, the incorporators may deposit with the commissioner twenty thousand dollars in cash, or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it hereunder.

History.—§637, ch. 59-205.

628.181 Applications for insurance in formation of mutual insurer.—

(1) Upon receipt of the commissioner's approval of the bond or deposit as provided in §628.171, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this state.

(3) All such applications shall provide that:

(a) Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) No insurance is in effect unless and until the certificate of authority has been issued; and

(c) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date which date shall be not later than one year after the date of the certificate of incorporation.

(4) All qualifying premiums collected shall be in cash.

(5) Solicitation for such qualifying applications for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to paragraph (c) to individuals qualified as for a resident agent's license. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under part I of chapter 626.

History.—§638, ch. 59-205.

628.191 Formation of mutuals; trust deposit of premiums; issuance of policies.—

(1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with §628.181 (3) (c). The corporation shall file an executed copy of such trust agreement with the commissioner.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course, issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority, or thereafter as provided in the respective policies.

History.—§639, ch. 59-205.

628.201 Same; failure to qualify.—If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within one year from and after date of its certificate of incorporation, the corporation shall be dissolved by the commissioner, and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under §628.191.

History.—§640, ch. 59-205.

628.211 Additional kinds of insurance, mutuals.—A domestic mutual insurer, after being authorized to transact one kind of insurance, may be authorized by the commissioner to transact such additional kinds of insurance as are permitted under §624.0205, while otherwise in compliance with this code and while maintaining unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, subject further in the case of insurers other than those to which §624.0208 is applicable, to the additional expendable surplus requirements of §624.0207 applicable to such a stock insurer.

History.—§641, ch. 59-205.

Note.—Similar provisions found in former §632.10.

628.221 By-laws of mutual.—

(1) The initial board of directors of a domestic mutual insurer shall adopt original by-laws, subject to the approval of the insurer's members at the next succeeding meeting. The members shall have power to make, modify and revoke by-laws.

(2) The by-laws shall provide:

(a) That each member is entitled to one vote upon each matter coming to a vote at meetings of members, or to more votes in accordance with a reasonable classification of members as set forth in the by-laws and based upon the amount of insurance in force, or upon the amount of the premiums paid by such member, or upon other reasonable factors. A member shall have the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time;

(b) For election of directors by the members, and the number, qualifications, terms of office, and powers of directors;

(c) The time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The by-laws may provide that the annual meeting shall be held at a place, date and time to be set forth in the policy and without giving other notice of such meeting;

(d) The number, designation, election, terms and powers and duties of the respective corporate officers;

(e) For deposit, custody, disbursement and accounting for corporate funds;

(f) For any other reasonable provisions customary, necessary or convenient for the management or regulation of its corporate affairs and not inconsistent with law.

(3) No provision in the by-laws for determining a quorum of members at any meeting thereof of less than a majority of all the insurer's members shall be effective unless approved by the commissioner. This subsection shall not affect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its by-laws and of every modification thereof or addition thereto. The commissioner shall disapprove any by-law provision deemed by him to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any by-law provision so disapproved.

History.—§642, ch. 59-205.

Note.—Similar provisions found in former §§632.06, 632.10, 632.11.

628.231 Directors; number, election.—

(1) The affairs of every domestic insurer shall be managed by not less than five directors.

(2) Directors must be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than three years each and until their successors are elected and have qualified, and if to be elected for terms of more than one year the insurer's by-laws shall provide for a staggered term system under which the terms of a proportionate part of the members of the board of directors will expire on the date of each annual meeting of stockholders or members.

(3) At least one-fourth of the directors of such insurer must be residents of this state. A majority of the directors must be citizens of the United States.

(4) If so provided in the insurer's by-laws, a director of a stock insurer shall be a stockholder thereof, and a director of a mutual insurer shall be a policyholder thereof.

History.—§643, ch. 59-205.

Note.—Similar provisions found in former §632.10.

628.241 Bonds of mutual officers.—The president, secretary, and treasurer of a domestic mutual insurer, together with such other officers and administrative personnel as may handle the funds thereof, shall be bonded, under a fidelity bond issued by an authorized surety insurer, in such respective amounts, not less than ten thousand dollars in any instance, as may be provided for in the insurer's by-laws or as may reasonably be required by the commissioner. The cost of any such bond shall be paid by the insurer.

History.—§644, ch. 59-205.

Note.—Similar provisions found in former §632.10.

628.251 Management and exclusive agency contracts.—

(1) No domestic mutual insurer or stock insurer, shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, unless the contract is filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within twenty days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such twenty days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) Any such contract shall provide that any such manager or producer of its business shall within ninety days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the respective directors, officers, and other principal management personnel of the manager or producer, and with such classification of items and further detail

as the insurer's board of directors may reasonably require.

(3) The commissioner shall disapprove any such contract if he finds that it:

(a) Subjects the insurer to excessive charges; or

(b) Is to extend for an unreasonable length of time; or

(c) Does not contain fair and adequate standards of performance; or

(d) Contains other inequitable provision or provisions which impair the proper interests of policyholders or members of the insurer.

(4) This section does not apply as to contracts which were lawfully in force as of immediately prior to the effective date of this code.

History.—§645, ch. 59-205.

628.261 Notice of change of directors, officers.—An insurer shall promptly give the commissioner written notice of any change of personnel among the directors or principal officers of the insurer.

History.—§646, ch. 59-205.

628.271 Home office and records; penalty for unlawful removal of records.—

(1) Every domestic insurer shall have and maintain its principal place of business and home office in this state, and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state, and

(b) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices, regional home offices and operations offices, located outside this state as referred to in §628.281.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal, or concealment of such records or assets or material part thereof from the commissioner, is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state, or who conceals or attempts to conceal the same from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony, punishable by a fine of not more than $10,000, or by imprisonment in the penitentiary for not more than 5 years, or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state, beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 631 of this code.

(4) This section is subject to the exceptions provided for in §628.281.

History.—§647, ch. 59-205.

628.281 Exceptions to requirement that home office, records, assets be maintained in this state.—

(1) The provisions of §628.271 shall not be deemed to prohibit or prevent an insurer from:

(a) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and reasonably necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request.

(b) Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business.

(c) Establishing and maintaining its principal operations offices, its usual operations records and such of its assets as may be necessary or convenient for the purpose, in another state in which the insurer is authorized to transact insurance in order that general administration of its affairs may be combined with that of an affiliated insurer or insurers, but subject to the following conditions:

1. That the commissioner consents in writing to such removal of offices, records, and assets from Florida upon evidence satisfactory to him that the same will facilitate and make more economical the operations of the insurer, and will not unreasonably diminish the service or protection thereafter to be given the insurer's policyholders in this state and elsewhere;

2. That the insurer will continue to maintain in this state its principal corporate office or place of business, and maintain therein available to the inspection of the commissioner complete records of its corporate proceedings, and a copy of each financial statement of the insurer current within the preceding five years, including a copy of each interim financial statement prepared for the information of the insurer's officers or directors;

3. That upon the commissioner's written request the insurer will with reasonable promptness produce at its principal corporate offices in this state for examination or for subpoena,

its records or copies thereof relative to a particular transaction or transactions of the insurer as designated by the commissioner in his request; and

4. That if at any time, after a hearing of which not less than thirty days' written notice was given the insurer by registered mail, the commissioner finds that the conditions justifying the maintenance of such offices, records, and assets outside of this state no longer exist, or that the insurer has wilfully and knowingly violated any of the conditions hereinabove stated in subparagraphs 2. and 3., the commissioner may order the return of such offices, records, and assets to this state within such reasonable time, not less than six months, as may be specified in the order; and that for failure to comply with such order, as thereafter modified or extended, if any, the commissioner shall suspend or revoke the insurer's certificate of authority.

(2) Section 628.271 does not apply as to domestic insurers which, as of immediately prior to the effective date of this code, had lawfully established, and thereafter maintain, their principal offices, records, and assets in another state.

History.—§648, ch. 59-205.

628.291 Unauthorized transactions in other states.—

(1) No domestic insurer shall enter into a contract of insurance upon the life or person of a resident of a reciprocal state, or covering property or risks located in a reciprocal state, unless the insurer is authorized pursuant to the laws of such reciprocal state to do business therein, subject to the following exceptions:

(a) Contracts entered into where the prospective insured is personally present in the state in which the insurer is authorized to do business when he signs the application;

(b) Issuance of certificates under any lawfully transacted group life or group disability policy, where the master policy is entered into in a state in which the insurer is authorized to do business;

(c) Contracts made pursuant to a pension or retirement plan of an employer when such contracts are applied for in a state where the employer is personally present or doing business and the insurer is authorized to do business;

(d) The renewal, reinstatement, conversion, or continuance in force with or without modification of contracts otherwise lawfully entered into and which were not originally entered into in violation of this section.

(2) The term "reciprocal state" as used in this section means a state, the laws of which prohibit an insurer organized under the laws of that state from insuring the lives or property of persons resident or located in Florida, unless such insurer is authorized pursuant to the laws of this state to do business in this state.

(3) The commissioner shall annually mail to every domestic insurer notice specifying the several reciprocal states.

History.—§649, ch. 59-205.

Note.—Similar provisions found in former §§625.38, 625.39, 625.40.

628.301 Membership in mutuals.—

(1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, and the policy shall so specify.

(2) Any person, public or private corporation, board, association, firm, estate, trustee or fiduciary may be a member of a domestic mutual insurer. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, and shall not be personally liable upon any contract of insurance for acting in such representative capacity. A mutual insurer may issue policies of insurance covering property of this state, or of any county or municipality of this state, without contingent liability, when such policy contains a provision that the state or any such county or municipality insured under it may not participate in the profits of such insurer.

History.—§650, ch. 59-205.

Note.—Similar provisions found in former §§632.09, 632.11, 632.13.

628.311 Contingent liability of mutual members.—

(1) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's certificate of incorporation.

(2) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

History.—§651, ch. 59-205.

Note.—Similar provisions found in former §§632.12, 632.16.

628.321 Levy of contingent liability.—

(1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the twelve months preceding the date notice of such assessment was mailed to them, and such members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed five per cent of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

(3) In levying an assessment on policies providing for contingent liability, the assessment shall be computed on a basis of premium earned on such policy.

(4) No member shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

History.—§652, ch. 59-205.
Note.—Similar provisions found in former §632.16.

628.331 Enforcement of contingent liability.—

(1) Any assessment made by an insurer under §628.321 is prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer is likewise prima facie correct.

(2) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(3) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than twenty days after mailing, the insurer may institute suit to collect the same.

History.—§653, ch. 59-205.

628.341 Nonassessable policies; mutual insurers.—

(1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued so long as such surplus funds meet such requirement as to amount.

(2) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its articles of incorporation and the laws of its domicile.

History.—§654, ch. 59-205.
Note.—Similar provisions found in former §§632.12, 632.13.

628.351 Same; revocation of authority.—The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder, nor renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability. Such renewal or endorsement shall bear conspicuously on its face the provision for contingent liability of the policyholder.

History.—§655, ch. 59-205.

628.361 Participating policies.—

(1) If provided in its certificate of incorporation, a domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable, and shall not unfairly discriminate as between policyholders within the same such classifications. A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged.

(2) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy.

History.—§656, ch. 59-205.

628.371 Dividends to stockholders.—

(1) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains.

(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus advanced to the insurer under §628.401.

(3) A dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

History.—§657, ch. 59-205.
Note.—Similar provisions found in former §625.14.

628.381 Dividends to mutual policyholders.—

(1) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized

earnings in excess of the surplus required by law to be maintained.

(2) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

History.—§658, ch. 59-205.

628.391 Illegal dividends; penalty.—

(1) Any director of a domestic stock or mutual insurer who knowingly votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under §628.371 or §628.381 shall upon conviction thereof be guilty of a misdemeanor and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by creditors of the insurer to the extent of such dividend.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

History.—§659, ch. 59-205.

Note.—Similar provisions found in former §625.14.

628.401 Borrowed surplus.—

(1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding six per cent per annum, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any set-off; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan to a mutual insurer shall be subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by a mutual insurer unless in advance approved by the commissioner.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge or mortgage of assets.

History.—§660, ch. 59-205.

Note.—Similar provisions found in former §632.17.

628.411 Impairment of capital or assets.—

(1) If a domestic stock insurer's capital (as represented by the aggregate par value of its outstanding capital stock) becomes impaired, or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within ninety days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under part II of chapter 625 (investments) for the investment of the insurer's funds; or by amendment of the insurer's certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient paid-in capital (if a stock insurer) or surplus (if a mutual insurer) under this code; or, if a stock insurer, by reduction of the insurer's authorized capital stock through amendment of its certificate of incorporation, to an amount of paid-in capital stock not below the minimum required for the kinds of insurance thereafter to be transacted.

(3) After any such reduction of authorized capital stock the insurer shall have the right to require the return of the original certificate of stock held by each stockholder in exchange for new certificates to be issued in lieu thereof for such number of shares as the stockholder is entitled to in the proportion that the reduced capital bears to the original capital.

(4) If the deficiency is not made good and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 631 of this code; except that if such deficiency exists because of increased loss reserves required by the commissioner, or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, in his discretion and upon application and good cause shown, and if he finds that

establishment or maintenance of such inadequate reserves or over-valued assets were not wilful on the part of the insurer, extend for not more than an additional sixty days the period within which such deficiency may be so made good and such proof thereof so filed.

History.—§661, ch. 59-205.
Note.—Similar provisions found in former §625.03, 625.04, 626.12, 632.16.

628.421 Assessment of stockholders or members.—

(1) Any insurer receiving the commissioner's notice mentioned in §628.411(1):

(a) If a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its certificate of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder, and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under §628.411, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or issue fractional shares under this subsection.

(b) If a mutual insurer, shall levy such an assessment upon members as is provided for under §628.321.

(2) Neither this section nor §628.411 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

History.—§662, ch. 59-205.
Note.—Similar provisions found in former §§625.03, 625.04.

628.431 Mutualization of stock insurers.—

(1) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any such plan, procedure or mutualization unless:

(a) It is equitable to stockholders and policyholders;

(b) It is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than one year;

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by §608.23, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chaper 631.

History.—§663, ch. 59-205.

628.441 Converting mutual insurer.—

(1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any such plan or procedure unless:

(a) It is equitable to the insurer's members;

(b) It is subject to approval by vote of not less than three-fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner; if a life insurer, right to vote may be limited to members who hold policies other than term or group policies, and whose policies have been in force for not less than one year;

(c) The corporate equity of each policyholder in the insurer (other than as to unearned premiums, nonforfeiture rights, and benefit claims under his policy) is determinable under a fair formula approved by the commissioner, which such equity shall be based upon not less than the insurer's entire surplus (after deducting contributed or borrowed surplus funds) plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been a policyholder of the insurer within three years prior to the date such plan was submitted to the commissioner;

(e) The plan gives to each policyholder of the insurer as specified in paragraph (d) a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under paragraph (c);

(g) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others;

(h) The plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled, of cash in the amount of not less than fifty per cent of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's corporate equity in such mutual insurer; and

(i) The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amounts not less than one-half of such required capital.

History.—§664, ch. 59-205.

628.451 Mergers and consolidations of stock insurers.—

(1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock insurers authorized to transact insurance in this state, by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to the special provisions of this section:

(a) Mergers or consolidations may be initially proposed at any meeting of the board of directors of a domestic stock insurer by the affirmative vote of two-thirds of the total number of directors of the corporation, or at any meeting of the stockholders of the corporation by the affirmative vote of a majority of the total number of shares of stock outstanding and entitled to vote, provided the notice of such meeting shall set forth such proposal.

(b) The plan of merger or consolidation, proposed as required by paragraph (a) of this subsection, shall be submitted to a duly called meeting of the stockholders of record of each domestic stock insurer, and may become effective only if adopted at such meeting by the affirmative vote of seventy-five per cent of the total number of shares of stock outstanding and entitled to vote. The notice of such meeting shall set forth in full the proposed plan of merger or consolidation.

(2) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) Is contrary to law; or

(b) Inequitable to the stockholders of any insurer involved; or

(c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, agent or employee of any insurer party to such merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

(4) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying in detail his reasons therefor.

(5) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

History.—§665, ch. 59-205; (1) a. by §1, ch. 61-5.

628.461 Acquisition of controlling stock.—

(1) In event any person or persons propose to purchase or acquire the controlling capital stock of any domestic stock insurer and thereby to change the control of such insurer, other than as provided for in §628.451(5), such person or persons shall first make application to the commissioner for approval of such proposed change of control. The application shall contain the name and address of the proposed new owner or owners of the controlling stock, and the commissioner shall approve the proposed change of control only after he has become satisfied that the proposed new owner or owners of the controlling stock are qualified by character, experience and financial responsibility to control and operate the insurer in a lawful and proper manner; and that the interest of the insurers, stockholders and policyholders and the interest of the public generally will not be jeopardized by the proposed change in ownership and management. If the commissioner does not by affirmative action approve or disapprove the proposed change within thirty days after the date such application was so filed with him, the proposed change shall be deemed to be approved at the expiration of such thirty day period.

(2) No such change in the control of a domestic stock insurer shall be effectuated unless approved as provided in subsection (1).

(3) In event he disapproves the proposed change in control the commissioner shall give written notice thereof to the person or persons

so applying for approval, setting forth in detail the reasons for disapproval.

History.—§666, ch. 59-205.

628.471 Mergers and consolidations, mutual insurers.—

(1) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as hereinbelow provided.

(3) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds of the members of each mutual insurer voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the commissioner. If a life insurer, right to vote may be limited to members whose policies are other than term and group policies, and have been in effect for more than one year.

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him in writing after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) Inequitable to the policyholders of any domestic insurer involved; or

(b) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve such plan or agreement he shall so notify the insurers in writing specifying in detail his reasons therefor.

History.—§667, ch. 59-205.

628.481 Bulk reinsurance; stock insurers.—

(1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof, with another insurer by an agreement of bulk reinsurance; but no such agreement shall become effective unless filed with the commissioner and approved by him in writing.

(2) The commissioner shall approve such agreement within a reasonable time after such filing unless he finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement he shall so notify the insurer in writing specifying in detail his reasons therefor.

History.—§668, ch. 59-205.

Note.—Similar provisions found in former §626.10.

628.491 Same; mutual insurers.—

(1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner and approved by him in writing.

(2) The commissioner shall approve such agreement within a reasonable time after filing if he finds it to be fair and equitable to each domestic insurer involved, and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he shall so notify each insurer involved in writing specifying in detail his reasons therefor.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies, and have been in effect for more than one year.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of such insurer pursuant to §628.441, of his equity in the business reinsured as determined under a fair formula approved by the commissioner, which equity shall be based upon such member's equity in the reserves, assets (whether or not admitted assets) and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

History.—§669, ch. 59-205.

Note.—Similar provisions found in former §626.10.

628.501 Mutual member's share of assets on liquidation.—

(1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within five years next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority whichever date is the earlier; except, that if the commissioner has reason to believe that those in charge of the management of the insurer have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, he may enlarge the five years qualification period above provided for by such additional period as he may deem to be reasonable.

(2) The distributive share of each such

member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

History.—§670, ch. 59-205.

CHAPTER 629

INSURANCE CODE; RECIPROCAL INSURERS

629.011 Reciprocal insurance defined.—"Reciprocal" insurance is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

History.—§671, ch. 59-205.
Note.—Similar provisions found in former §§628.01, 628.02.

629.021 Reciprocal insurer defined; authorized.—

(1) A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

(2) A reciprocal insurer may be authorized to transact insurance in this state subject to the applicable provisions of this code.

History.—§672, ch. 59-205.
Note.—Similar provisions found in former §§628.01, 628.02.

629.031 Scope of chapter; existing insurers.—

(1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

(2) Existing authorized reciprocal insurers shall after the effective date of this code comply with the provisions of this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required for such compliance.

History.—§673, ch. 59-205.

629.041 Insuring powers of reciprocals.—

(1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) Such an insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance it is authorized to transact direct.

History.—§674, ch. 59-205.
Note.—Similar provisions found in former §628.01.

629.051 Name; suits.—A reciprocal insurer shall:

(1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting"; but this requirement shall not apply as to any insurer holding a certificate of authority to transact insurance in this state immediately prior to the effective date of this code.

(2) Sue and be sued in its own name.

History.—§675, ch. 59-205.
Note.—Similar provisions found in former §628.04.

629.061 Attorney.—

(1) "Attorney," as used in this chapter, refers to the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

(3) The office of the attorney shall be maintained at such place as is designated by the subscribers in the power of attorney.

History.—§676, ch. 59-205.
Note.—Similar provisions found in former §628.02.

629.071 Surplus funds required.—

(1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds as follows:

(a) To transact property insurance, surplus funds of not less than two hundred thousand dollars;

(b) To transact casualty insurance, (other than workmen's compensation) surplus funds of not less than two hundred thousand dollars.

(2) In addition to surplus required to be maintained under subsection (1), the insurer shall have, when first so authorized, expend-

able surplus in amount as required of a like foreign reciprocal insurer under §624.0207.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and so maintains surplus funds in amount equal to the minimum paid-in capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance, subject to any special surplus requirements applicable under §624.0207.

History.—§677, ch. 59-205.
Note.—Similar provisions found in former §§628.03, 628.06.

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority, a declaration setting forth:

(a) The name of the insurer;

(b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) The kinds of insurance proposed to be transacted;

(d) The names and addresses of the original subscribers;

(e) The designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(g) The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;

(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) A copy of the subscribers' agreement;

(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at an adequate rate theretofore filed with and approved by the commissioner;

(k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by §629.071 of this code is on hand; and

(l) A copy of each policy, endorsement and application form it then proposes to issue or use.

Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.

History.—§678, ch. 59-205.
Note.—Similar provisions found in former §628.03.

629.091 Certificate of authority.—

(1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend or revoke the certificate of authority in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

History.—§679, ch. 59-205.
Note.—Similar provisions found in former §§628.10, 628.11.

629.101 Power of attorney.—

(1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) The powers of the attorney;

(b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

(c) The general services to be performed by the attorney;

(d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and

(e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than ten times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this state unless filed with the commissioner.

History.—§680, ch. 59-205.
Note.—Similar provisions found in former §628.02.

629.111 Modifications.—Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

History.—§681, ch. 59-205.

629.121 Attorney's bond.—

(1) Concurrently with the filing of the declaration provided for in §629.081, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2). The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of twenty-five thousand dollars, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate to his own use from the funds of the insurer, any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty days' advance notice in writing of cancellation is given both the attorney and the commissioner.

History.—§682, ch. 59-205.

629.131 Deposit in lieu of bond.—In lieu of the bond required under §629.121, the attorney may maintain on deposit through the office of the commissioner, a like amount in cash or in value of securities qualified for deposit under §625.0202, and subject to the same conditions as the bond.

History.—§683, ch. 59-205.

629.141 Action on bond.—Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

History.—§684, ch. 59-205.

629.151 Service of process; judgment.—

(1) Legal process shall be served upon a domestic reciprocal insurer by serving the commissioner as the insurer's process agent under §§624.0221 and 624.0222.

(2) Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though personal service of process was had upon each such subscriber.

History.—§685, ch. 59-205.

Note.—Similar provisions found in former §628.04.

629.161 Contributions to insurer.—The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner. This section does not apply as to bank loans or to loans made upon security.

History.—§686, ch. 59-205.

Note.—Similar provisions found in former §628.06.

629.171 Annual statement.—

(1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

(2) The statement shall be supplemented by such information as may be required by the commissioner relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

History.—§687, ch. 59-205.

Note.—Similar provisions found in former §628.07.

629.181 Financial condition; method of determining.—In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis;

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for ninety days shall first be charged against such surplus deposit;

(3) The surplus deposits of subscribers shall not be charged as a liability;

(4) All premium deposits delinquent less than ninety days shall be allowed as assets;

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset;

(6) The contingent liability of subscribers shall not be allowed as an asset;

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

History.—§688, ch. 59-205.

629.191 Who may be subscribers.—Individuals, partnerships, and corporations of this state may make application, enter into agreement for and hold policies or contracts in or with and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations. Any officer, representative, trustee, receiver, or legal

representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

History.—§689, ch. 59-205.

Note.—Similar provisions found in former §628.09.

629.201 Subscribers' advisory committee.—

(1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) Supervise the finances of the insurer;

(b) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(c) Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and

(d) Have such additional powers and functions as may be conferred by the subscribers' agreement.

History.—§690, ch. 59-205.

629.211 Subscribers' liability.—

(1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint.

(2) Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in §629.251.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

History.—§691, ch. 59-205.

629.221 Same; on judgment.—

(1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

History.—§692, ch. 59-205.

629.231 Assessments.—

(1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as computed in accordance with §629.251, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable.

History.—§693, ch. 59-205.

629.241 Time limit for assessments.—Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment, or

(2) If an order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his policy is in force or within one year after its termination.

History.—§694, ch. 59-205.

629.251 Aggregate liability.—No one policy or subscriber as to such policy, shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

History.—§695, ch. 59-205.

629.261 Nonassessable policies.—

(1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum paid-in capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for de-

livery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

History.—§696, ch. 59-205.

629.271 Distribution of savings.—A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers, but such distribution may vary as to classes of subscribers based upon the experience of such classes.

History.—§697, ch. 59-205.

629.281 Subscribers' share in assets.—Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in §629.161, and the return of any unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the twelve months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

History.—§698, ch. 59-205.

629.291 Merger or conversion.—

(1) A domestic reciprocal insurer upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with §629.281, and a reasonable length of time within which to exercise such right.

(4) Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer shall be deemed to be a merger for the purposes of this section.

History.—§699, ch. 59-205.

Note.—Similar provisions found in former §628.12.

629.301 Impaired reciprocals.—

(1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up such deficiency or to make the assessment within thirty days after the commissioner orders him to do so, or if the deficiency is not fully made up within sixty days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

History.—§700, ch. 59-205.

Note.—Similar provisions found in former §628.06.

CHAPTER 630

INSURANCE CODE; ALIEN INSURERS; TRUSTEED ASSETS, DOMESTICATION

630.011 Scope of chapter.—This chapter applies only to the trusteed assets of an alien insurer using Florida as a state of entry for transaction of insurance in the United States, and to the domestication of alien insurers in accordance with the procedures herein provided.

History.—§701, ch. 59-205.

630.021 Required deposit of assets.—

(1) An alien insurer may use Florida as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the commissioner.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, shall be in amount not less than the deposits required of an alien insurer under §624.0211 and shall consist of cash and/or securities eligible for the investment of the funds of domestic insurers under part II of chapter 625.

(3) Such a deposit may be referred to as "trusteed assets."

(4) All trusteed assets shall be continuously kept within the United States.

History.—§702, ch. 59-205.
Note.—Similar provisions found in former §631.16.

630.031 Existing trusts.—All trusts of trusteed assets heretofore created and now existing shall be continued under the instruments creating them, unless inconsistent with the provisions of this chapter. No amendment of the deed of trust under which such assets are so held shall be effective unless approved by the commissioner in accordance with the provisions of this chapter.

History.—§703, ch. 59-205.
Note.—Similar provisions found in former §631.16.

630.041 Purpose and duration.—The deposit required by §630.021 shall be for the benefit, security and protection of the policyholders, or policyholders and creditors, of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

History.—§704, ch. 59-205.
Note.—Similar provisions found in former §631.16.

630.051 Trust agreement; approval; amendment.—

(1) The deposit referred to in §630.021 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter, and the agreement and any amendments thereto shall be authenticated in such form and manner as the commissioner may designate or approve.

(2) The agreement shall not be effective until filed with and approved in writing by the commissioner. If the commissioner finds that the trust agreement is sufficient in form and in conformity with law, that the trustee or trustees are eligible as such, and that the trust agreement is adequate to protect the interests of the beneficiaries of the trust, he shall give his written approval thereof. If the commissioner finds, after a hearing of which reasonable notice was given to the insurer, that any of the abovementioned requisites do not exist, he shall refuse to approve the trust agreement and notify the insurer thereof in writing stating the reasons for nonapproval.

(3) If after a trust agreement has become effective the commissioner finds, after a hearing of which reasonable notice was given to the insurer, that the requisites for approval of the agreement no longer exist, he may withdraw his approval by notice thereof in writing to the insurer stating the grounds for such withdrawal.

(4) A trust agreement may be amended, but no amendment shall be effective unless the agreement as so amended is found by the commissioner to be consistent with the provisions of this chapter and the amendment is approved by him.

History.—§705, ch. 59-205.
Note.—Similar provisions found in former §631.16.

630.061 Authority to execute trust agreement.—An alien insurer proposing to use Florida as a state of entry to transact business of insurance in the United States, whether or not it is then authorized to transact insurance in this state, is authorized to make and execute any trust agreement required by this chapter.

History.—§706, ch. 59-205.

630.071 Requirements and contents of trust agreement.—Trusteed assets of an alien insurer held in this state under this chapter shall be subject to, and the trust agreement shall make provisions consistent with, the following conditions:

(1) Legal title to the trusteed assets is vested in the trustee or trustees, and their successors lawfully appointed, in trust for the purposes and duration as stated in §630.041.

(2) Substitution of a new trustee or trustees in case of a vacancy by death, resignation or otherwise may be made, subject to the commissioner's approval.

(3) All trusteed assets shall at all times be maintained as a trust fund separate and distinct from all other assets.

(4) The trustee or trustees shall maintain a record at all times sufficient to identify the assets of the trust.

(5) Withdrawal of or from the trusteed assets shall be made only as provided in §630.081.

History.—§707, ch. 59-205.

Note.—Similar provisions found in former §631.16.

630.081 Withdrawal of assets, in general.—

(1) The trust agreement shall provide, in substance, that no withdrawals of trusteed assets shall be made by the insurer or permitted by the trustee or trustees without the written authorization or approval of the commissioner in advance thereof, except as follows:

(a) Any or all income, earnings, dividends or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager.

(b) For substitution, coincidentally with such withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn, if such substituted securities or assets are likewise such as are eligible for investment of the funds of domestic insurers under part II of chapter 625; and if such withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body, and a copy of such authority has been filed with the trustee or trustees.

(c) For the purpose of making deposits required by law in any state in which the insurer is or thereafter becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if such withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under §624.0211 (1) (a) and (b) of this code. The trustee or trustees shall transfer any assets so withdrawn and in the amount so required to be deposited in the other state direct to the depository required to receive such deposit in such other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) For the purpose of transferring the trusteed assets to an official liquidator, conservator or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The commissioner shall so authorize or approve withdrawal of only such assets as are in excess of the amount of assets required to be so held in trust under §630.021, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent, or if its assets held in the United States are less in amount than as required under §624.0211(1) of this code, upon determination thereof the commissioner shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as otherwise authorized under (1) (a), (b) and (c) and the trustee shall comply with such order and until the further order of the commissioner.

(4) In the case of withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the trust agreement requires similar written approval of the insurance supervisory official of such state in lieu of any required approval of the commissioner. In all such cases the insurer shall notify the commissioner in writing of the nature and extent of such withdrawal.

History.—§708, ch. 59-205.

Note.—Similar provisions found in former §631.16.

630.091 Statement of trustee.—

(1) The trustee or trustees of trusteed assets shall from time to time file with the commissioner statements, in such form as he may designate and request in writing, certifying the character of such assets and the amounts thereof.

(2) If the trustee or trustees fail to file any such statement after request therefor and expiration of a reasonable time thereafter, the commissioner may suspend or revoke the certificate of authority of the insurer.

History.—§709, ch. 59-205.

Note.—Similar provisions found in former §631.16.

630.101 Examination of assets.—The commissioner may from time to time examine trusteed assets of any insurer in accordance with the same conditions and procedures governing the examination of insurers in general under part II of chapter 624.

History.—§710, ch. 59-205.

Note.—Similar provisions found in former §631.16.

630.111 Canadian insurers.—The provisions of this chapter applicable to a United States manager shall, in the case of insurers domiciled in Canada, be deemed to refer to the president, vice-president, secretary or treasurer of such a Canadian insurer.

History.—§711, ch. 59-205.

630.121 Domestication of alien insurer; definitions.—

(1) "Domestication" as used in §§630.131-630.161 means the reorganization of the United States branch of an alien insurer as the result of which a domestic insurer shall succeed to all the business and assets and assume all the liabilities of the United States branch of the alien insurer.

(2) "United States branch" means the busi-

ness unit through which business is transacted within the United States by an alien insurer and the assets and liabilities of such insurer within the United States pertaining to such business.

(3) "Domestic insurer" as used in such sections means a stock insurer incorporated under the laws of this state.

History.—§712, ch. 59-205.

Note.—Similar provisions found in former §625.41.

630.131 Domestication procedure.—

(1) Upon compliance with §§630.131-630.161 any alien insurer now or hereafter authorized to do business in this state which owns beneficially, directly or indirectly, all of the outstanding capital stock of a domestic insurer may, with the prior written approval of the commissioner and subject to the final approval of the commissioner, domesticate its United States branch, if entered through this state, by entering into an agreement in writing with the domestic insurer providing for the acquisition by the domestic insurer of all the liabilities of the United States branch for no consideration other than the assumption of such liabilities; except that the agreement may further provide for additional consideration payable by the issuance by the acquiring domestic insurer of shares of its capital stock.

(2) Such shares of capital stock of the acquiring domestic insurer, or voting trust certificates representing such shares, as are held among the trusteed assets of the United States branch of the alien insurer or are held in a trust created by the alien insurer and of which the alien insurer is a beneficiary shall be deemed to be shares held beneficially, but indirectly, by an alien insurer.

(3) The acquisition of assets and assumption of liabilities of the United States branch by the domestic insurer shall be effected by the filing with the commissioner of an instrument of transfer and assumption in form satisfactory to the commissioner and executed by the alien insurer and the domestic insurer.

(4) A domestic insurer may either be authorized to transact insurance in this state prior to entering into such domestication agreement or may, if the commissioner so approves, be authorized effective with the consummation of the domestication agreement in accordance with the provisions of §630.161.

History.—§713, ch. 59-205.

Note.—Similar provisions found in former §625.42.

630.141 Domestication agreement; authorization, execution.—

(1) The domestication agreement referred to in §630.131 shall be authorized, adopted, approved, signed and acknowledged by the alien insurer in accordance with the laws of the country under which it is organized.

(2) In the case of a domestic insurer the domestication agreement shall be approved, adopted and authorized by its board of directors and executed by its president or any vice-president and attested by its secretary or assistant secretary under its corporate seal.

History.—§714, ch. 59-205.

Note.—Similar provisions found in former §625.43.

630.151 Same; approval.—An executed counterpart of the domestication agreement, together with certified copies of the corporate proceedings of the domestic insurer and the alien insurer, approving, adopting and authorizing the execution of the domestication agreement, shall be submitted to the commissioner for his approval. The commissioner shall thereupon consider the agreement and if he finds that the same is in accordance with the provisions hereof and that the interest of policyholders and creditors of the United States branch of the alien insurer are not materially adversely affected he may approve the domestication agreement and authorize the consummation thereof in compliance with the provisions of §630.161.

History.—§715, ch. 59-205.

Note.—Similar provisions found in former §625.44.

630.161 Consummation of domestication; transfer of assets and deposits.—

(1) Upon the filing with the commissioner of a certified copy of the instrument of transfer and assumption pursuant to which a domestic insurer succeeds to the business and assets of the United States branch of an alien insurer and assumes all its liabilities as provided by §§630.131-630.161 the domestication of the United States branch shall be deemed to be effective and thereupon all the rights, franchise and interests of the United States branch in and to every species of property, real, personal and mixed, and things in action thereunto belonging shall be deemed as transferred to and vested in the domestic insurer and simultaneously therewith the domestic insurer shall be deemed to have assumed all of the liabilities of the United States branch.

(2) All deposits of the United States branch held by the commissioner, or state officers or other state regulatory agencies pursuant to requirements of state laws, shall be deemed to be held as security that the domestic insurer will fully perform its assumption as direct liabilities of all the liabilities to policyholders or policyholders and creditors within the United States of the United States branch, and such deposits shall be deemed to be assets of the domestic insurer and shall be reported as such in the annual financial statements and other reports which the domestic insurer may be required to file. Upon the ultimate release by any such state officer or agency of any such deposits, the securities and cash constituting such released deposit shall be delivered and paid over to the domestic insurer as the lawful successor in interest to the United States branch.

(3) Contemporaneously with the consummation of the domestication of the United States branch, notwithstanding any provision of the statutes to the contrary, the commissioner shall

transfer to the insurer the securities deposited by the United States branch in compliance with the provisions of this law, and the commissioner shall consent that the trustee of the trusteed assets deposited by the United States branch in compliance with the provisions of this law shall withdraw from the trusteed assets and transfer and deliver over to the domestic insurer all assets held by such trustee.

History.—§716, ch. 59-205.

Note.—Similar provisions found in former §625.45

CHAPTER 631

INSURANCE CODE; REHABILITATION AND LIQUIDATION

631.011 Definitions.—For the purpose of this chapter:

(1) "Impairment" or "insolvency" means the capital of a stock insurer or the surplus of a mutual or reciprocal insurer, shall be deemed to be impaired and the insurer shall be deemed to be insolvent, when such insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock if a stock insurer, or the minimum surplus if a mutual or reciprocal insurer, required by this code to be maintained for the kind or kinds of insurance it is then authorized to transact.

(2) "Insurer" means any person, firm, corporation, association or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by the commissioner or the equivalent insurance supervisory official of another state.

(3) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(4) "State" is as defined in §624.08.

(5) "Foreign country" means territory not in any state.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States, and any such insurer is deemed to be domiciled in such state.

(7) "Ancillary state" means any state other than a domiciliary state.

(8) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the uniform insurers liquidation act, as defined in §631.211 are in force, including the provisions requiring that the commissioner of insurance or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(9) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets.

(10) "Preferred claim" means any claim with respect to which the law of the state or of the United States accords priority of payment from the general assets of the insurer.

(11) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(12) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not in-

cluding special deposit claim or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(13) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.

History.—§717, ch. 59-205.

Note.—Similar provisions found in former §625.14.

631.021 Jurisdiction of delinquency proceedings; venue; change of venue; exclusiveness of remedy; appeal.—

(1) The circuit court shall have original jurisdiction of delinquency proceedings under this chapter and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter.

(2) The venue of delinquency proceedings against a domestic insurer shall be in the circuit court in the judicial circuit of the insurer's principal place of business. The venue of such proceedings against foreign and alien insurers shall be in the circuit court of Leon county.

(3) At any time after the commencement of a proceeding under this chapter the commissioner may apply to the court for an order changing the venue of, and removing the proceeding to, Leon county or to any other county of this state in which he deems that such proceeding may be most economically and efficiently conducted.

(4) Delinquency proceedings pursuant to this chapter shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the commissioner.

(5) An appeal shall lie to the district court of appeal, first district, from an order granting or refusing rehabilitation, liquidation, or conservation, and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

History.—§718, ch. 59-205; (5) §29, ch. 63-559.

Note.—Similar provisions found in former §626.12.

631.031 Commencement of delinquency proceedings.—The commissioner shall commence any such proceedings by application to the court for an order directing the insurer to show cause why the commissioner should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers or the public may require.

History.—§719, ch. 59-205.

Note.—Similar provisions found in former §§626.12, 626.14.

631.041 Injunctions.—

(1) Upon application by the commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

History.—§720, ch. 59-205.

Note.—Similar provisions found in former §§626.13, 648.12.

631.051 Grounds for rehabilitation; domestic insurers.—The commissioner may apply to the court for an order appointing him as receiver of and directing him to rehabilitate a domestic insurer upon one or more of the following grounds. That the insurer:

(1) Is impaired or insolvent;

(2) Has refused to submit any of its books, records, accounts or affairs to reasonable examination by the commissioner;

(3) Has concealed or removed records or assets or otherwise violated §§628.271 and 628.281;

(4) Has failed to comply with an order of the commissioner to make good an impairment of capital or surplus or both;

(5) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without having first obtained the written approval of the commissioner;

(6) Is found by the commissioner to be in such condition that further transaction of business by it will be hazardous to its policyholder, creditors, or stockholders;

(7) Has wilfully violated its charter or certificate of incorporation or any law of this state;

(8) Has an officer, director or manager who has unlawfully refused to be examined under oath concerning its affairs;

(9) Has been or is the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or its property otherwise than pursuant to the provisions of this code, but only if such appoint-

ment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder;

(10) Has consented to such an order through a majority of its directors, stockholders, members or subscribers;

(11) Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after the time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final termination, whichever date is the later.

History.—§721, ch. 59-205.

Note.—Similar provisions found in former §§625.14, 626.12.

631.061 Grounds for liquidation.—The commissioner may apply to the court for an order appointing him as receiver (if his appointment as receiver shall not be then in effect) and directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in §631.051, or if such insurer:

(1) Has ceased transacting business for a period of one year, or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this code.

History.—§722, ch. 59-205.

631.071 Grounds for conservation; foreign insurers.—The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of a foreign insurer upon any of the following grounds:

(1) Upon any of the grounds specified in §631.051 or §631.061, or

(2) Upon the ground that its property has been sequestrated in its domiciliary sovereignty or in any other sovereignty.

History.—§723, ch. 59-205.

Note.—Similar provisions found in former §626.12.

631.081 Same; alien insurers.—The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of any alien insurer upon any of the following grounds:

(1) Upon any of the grounds specified in §631.051 or §631.061.

(2) Upon the ground that the insurer has failed to comply, within the time designated by the commissioner, with an order made by him to make good an impairment of its trusteed funds, or

(3) Upon the ground that the property of the insurer has been sequestrated in its domiciliary sovereignty or elsewhere.

History.—§724, ch. 59-205.

Note.—Similar provisions found in former §626.12.

631.091 Grounds for ancillary liquidation; foreign insurers.—The commissioner may apply to the court for an order appointing him as ancillary receiver of and directing him to liquidate the business of a foreign insurer having assets, business or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of such insurer.

History.—§725, ch. 59-205.

631.101 Order of rehabilitation; termination.—

(1) An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply to the court for an order terminating the rehabilitation proceedings and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be made or entered except when, after a hearing, the court has determined that the purposes of the proceeding have been fully accomplished.

History.—§726, ch. 59-205.

Note.—Similar provisions found in former §§626.14, 648.12.

631.111 Order of liquidation; domestic insurers.—

(1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner of insurance or in the name of the insurer, as the court may direct, and to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply for and secure an order dissolving the corporate existence of a domestic insurer upon his application for an order of liquidation of such insurer or at any time after such order has been granted.

History.—§727, ch. 59-205.

Note.—Similar provisions found in former §§626.16, 648.12.

631.121 Same; alien insurers.—An order to liquidate the business of a United States branch of an alien insurer having trusteed assets in this state shall be in the same terms as those

prescribed for domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.

History.—§728, ch. 59-205.

Note.—Similar provisions found in former §626.16.

631.131 Order of conservation or ancillary liquidation of foreign or alien insurers.—

(1) An order to conserve the assets of a foreign or alien insurer shall require the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) An order to liquidate the assets in this state of a foreign insurer shall require the commissioner forthwith to take possession of the property of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this chapter.

History.—§729, ch. 59-205.

Note.—Similar provisions found in former §626.16.

631.141 Conduct of delinquency proceedings; domestic and alien insurers.—

(1) Whenever under this chapter a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As a domiciliary receiver, the commissioner shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this state, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies if deemed desirable for the protection of such assets.

(5) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this chapter for the purpose of rehabilitating, liquidating or conserving the affairs or assets of the insurer.

(6) In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him and he may employ such counsel, clerks and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all duties imposed upon the receiver with respect to such proceedings.

History.—§730, ch. 59-205.

Note.—Similar provisions found in former §§626.16, 626.18, 626.19.

631.152 Same; foreign insurers.—

(1) Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment on the grounds set forth in §631.091:

(a) If he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver, or

(b) If ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state, except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to

the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state.

History.—§731, ch. 59-205.

Note.—Similar provisions found in former §626.16.

631.161 Claims of nonresidents against domestic insurers.—

(1) In a delinquency proceeding begun in this state against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either:

(a) Be proved in this state, or

(b) If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state, as provided in §631.171 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

History.—§732, ch. 59-205.

631.171 Claims against foreign insurers.—

(1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in this state may either:

(a) Be proved in the domiciliary state as provided by the law of that state, or

(b) If ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver within thirty days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

History.—§733, ch. 59-205.

631.181 Form of claim; notice; hearing.—

(1) All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

(2) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date for filing as specified in this chapter.

(3) Within ten days of the receipt of any claim, or within such further period as the court may, for good cause shown, fix, the receiver shall report the claim to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

(4) At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

History.—§734, ch. 59-205.

Note.—Similar provisions found in former §626.15.

631.191 Priority of certain claims.—

(1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims

owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

History.—§735, ch. 59-205.

631.201 Attachment and garnishment of assets.—During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

History.—§736, ch. 59-205.

Note.—Similar provisions found in former §631.09.

631.211 Uniform insurers liquidation act.—(1) Subsections (2) to (13) inclusive, of §631.011, together with §§631.031, 631.041 and 631.141-631.211 constitute and may be referred to as the uniform insurers liquidation act.

(2) The uniform insurers liquidation act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions when applicable conflict with other provisions of this chapter, the provisions of such act shall control.

History.—§737, ch. 59-205.

631.221 Deposit of moneys collected.—The monies collected by the commissioner in a proceeding under this chapter shall be from time to time deposited in one or more state or national banks, savings banks or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state. The commissioner may in his discretion deposit such monies or any part thereof in such a bank or trust company as a trust fund.

History.—§738, ch. 59-205.

631.231 Exemption from fees.—The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding.

History.—§739, ch. 59-205.

631.241 Borrowing on pledge of assets.—For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal or mixed, of such insurer, and the commissioner subject to the approval of the court shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this section.

History.—§740, ch. 59-205.

631.251 Date rights fixed on liquidation.—The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of this chapter with respect to the

rights of claimants holding contingent claims.
History.—§741, ch. 59-205.

631.261 Voidable transfers.—

(1) Any transfer of, or lien upon, the property of an insurer which is made or created within four months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor a preference or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner as receiver in any proceeding under this chapter may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the entering of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.
History.—§742, ch. 59-205.

631.271 Priority of claims for compensation.—

(1) Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding five hundred dollars for each employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced; except that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration.

(2) Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of such employees.
History.—§743, ch. 59-205.

631.281 Offsets.—

(1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2).

(2) No offset shall be allowed in favor of any such person where:

(a) The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in §631.251, entitle him to share as a claimant in the assets of the insurer, or

(b) The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or

(c) The obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer.
History.—§744, ch. 59-205.

631.291 Allowance of certain claims.—

(1) No contingent and unliquidated claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to this chapter, except that such claim shall be considered, if properly presented, and may be allowed to share where:

(a) Such claim becomes absolute against the insurer on or before the last day for filing claims against the assets of such insurer, or

(b) There is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

(2) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed:

(a) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured, and

(b) If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claim against such insurers arising out of his cause of action other than those already presented can be made, and

(c) If the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

(3) No judgment against such an insured taken after the date of entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceedings, either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

(4) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for determining rights and liabilities as provided in §631.251 unless the claimant shall surrender his security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

History.—§745, ch. 59-205.

631.301 Time to file claims.—

(1) If upon the entry of an order of liquidation under this chapter or at any time thereafter during liquidation proceedings the insurer shall not be clearly solvent, the court shall, upon hearing after such notice it deems proper, make and enter an order adjudging the insurer to be insolvent.

(2) After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer to file such claims with him, at a place and within the time specified in the notice, or that such claims shall be forever barred. The time specified in the notice shall be as fixed by the court for filing of claims and which shall be not less than six months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

History.—§746, ch. 59-205.

Note.—Similar provisions found in former §626.15.

631.311 Report and petition for assessment.—Within three years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the commissioner may make and file his report and petition to the court setting forth:

(1) The reasonable value of the assets of the insurer;

(2) The liabilities of the insurer to the extent thus far ascertained by the commissioner;

(3) The aggregate amount of the assessment, if any, which the commissioner deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments and the costs and expenses of the delinquency proceedings in full;

(4) Any other information relative to the affairs or property of the insurer that the commissioner deems material.

History.—§747, ch. 59-205.

631.321 Order and levy of assessment.—

(1) Upon the filing and reading of the report and petition provided for in §631.311, the court, ex parte, may order the commissioner to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full. Any such order shall require the commissioner to assess each such member or subscriber for his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the commissioner and approved by the court.

(2) The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection (1), if such amendment or supplement is filed within three years after the date of the entry of the order of rehabilitation or liquidation.

(3) After the entry of the order to levy an assessment upon members or subscribers of an insurer referred to in subsections (1) or (2), the commissioner shall levy an assessment upon such members or subscribers in accordance with the order.

(4) The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provision of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code; except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against any such policyholder shall be upon the basis of the minimum rate for such risk.

(5) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code.

History.—§748, ch. 59-205.

631.331 Assessment prima facie correct; notice; payment; proceedings to collect.—

(1) Any assessment of a subscriber or member of an insurer made by the commissioner pursuant to the order of court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the commissioner under §631.321(1) shall be prima facie correct.

(2) Each member or subscriber shall be notified of the amount of assessment to be paid by him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

(3) If any such member or subscriber fails to pay the assessment within the period speci-

fied in the notice, which period shall not be less than twenty days after mailing, the commissioner may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place fixed by the court why judgment should not be entered against such member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

(4) If the subscriber or member after due service of a copy of the order and petition referred to in subsection (3) is made upon him:

(a) Fails to appear at the time and place specified in the order, judgment shall be entered against him as prayed for in the petition; or

(b) Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

(5) The commissioner may collect any such assessment through any other lawful means.

History.—§749, ch. 59-205.

631.341 Notice of insolvency to policyholders by insurer, general agent, or agent.—

(1) Any insurer authorized to do business in this state, and its supervising or managing general agent, if any, upon acquiring knowledge or notice of bankruptcy or insolvency of such insurer shall, within seven days of such knowledge or notice, give written notice of such bankruptcy or insolvency to all agents of such insurer, as defined in this code, located within this state. Any such insurer not having agents in this state shall give such notice as aforesaid to all of its existing policyholders in the state.

(2) Unless within fifteen days subsequent to the date of such notice, such agents shall have either replaced or reinsured in a solvent insurer, the insurance underwritten by such bankrupt or insolvent insurer, then such agents shall either personally or by registered mail, send to the last known address of the policyholder, a written notice of bankruptcy or insolvency of such insurer.

(3) The license or certificate of authority of any person, firm, or corporation failing to comply with the provisions of this section shall be subject to revocation as provided in this code.

History.—§750, ch. 59-205.

Note.—Similar provisions found in former §625.36.

CHAPTER 632

INSURANCE CODE; FRATERNAL BENEFIT SOCIETIES

632.011 Fraternal benefit societies defined.—Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of §632.051(1)(b) of this chapter whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society. When used in this chapter the word "society," unless otherwise indicated means fraternal benefit society.

History.—§751, ch. 59-205.

Note.—Similar provisions found in former §625.01.

632.021 Lodge system defined.—A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated or admitted in accordance with its constitution, laws, ritual and rules, which subordinate lodges or branches are required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the lodge system.

History.—§752, ch. 59-205.

Note.—Similar provisions found in former §637.09.

632.031 Representative form of government defined.—A society shall be deemed to have a representative form of government when:

(1) It provides in its constitution or laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's constitution and laws;

(2) The representatives elected constitute a majority in number and have not less than two-thirds of the votes nor less than the votes required to amend its constitution and laws;

(3) The meetings of the supreme legislative or governing body and the election of officers, representatives or delegates are held as often as once in four calendar years;

(4) Each insured member shall be eligible for election to act or serve as a delegate to such meeting;

(5) The society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the constitution or laws of the society;

(6) Such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

(7) The officers are elected either by the supreme legislative or governing body or by the board of directors; and

(8) The members, officers, representatives or delegates shall not vote by proxy.

History.—§753, ch. 59-205.
Note.—Similar provisions found in former §637.10.

632.041 Chapter exclusive; applicability of other laws.—Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

History.—§754, ch. 59-205.
Note.—Similar provisions found in former §637.11.

632.051 Exempted societies.—

(1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members, their families and descendants of members, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation and which provide for a death benefit of not more than four hundred dollars or disability benefits of not more than three hundred fifty dollars to any person in any one year, or both; or

(d) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars or for disability benefits of not more than three hundred fifty dollars to any one person in any one year, or both.

(2) Any such society or association described in (1) (c) or (d), which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in (1) (d) which has more than one thousand members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

(3) No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in (1) (b), shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

(4) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(5) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this chapter.

Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state.

History.—§755, ch. 59-205.
Note.—Similar provisions found in former §§626.22, 637.59.

632.061 License required; expiration, renewal; fee.—

(1) No fraternal benefit society shall transact business in this state unless authorized therefor under a subsisting license issued to the society by the commissioner.

(2) Societies authorized to transact business in this state as of immediately prior to the effective date of this code may continue such business until May 31 next succeeding such effective date. The authority of such societies and of all societies hereafter licensed may thereafter be continued annually so long as the society is entitled thereto, upon written request therefor filed with the commissioner on or before June 1, together with payment of the annual license tax provided for in §624.0300 (3) (filing, license and miscellaneous fees). If not so continued by the society, the license shall expire as at midnight of such June 1.

(3) A duly certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

(4) Section 626.0500 (representing or aiding unauthorized insurer prohibited), §626.0501 (penalty for representing unauthorized insurer), and §626.0502 (suits by unauthorized insurers prohibited) shall apply with respect to fraternal benefit societies not authorized or licensed to transact business in this state as required by this section; and such societies shall be deemed to be "insurers" for the purposes of such sections.

History.—§756, ch. 59-205; (2) §3, ch. 61-105; (2) §4, ch. 63-149.
Note.—Similar provisions found in former §§205.43, 637.22, 637.23, 637.24.

632.071 Foreign or alien society; admission.—

(1) No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any such society may be licensed to transact business in this state upon filing with the commissioner:

(a) A duly certified copy of its charter or articles of incorporation;

(b) A copy of its constitution and laws, certified by its secretary or corresponding officer;

(c) A power of attorney to the commissioner as prescribed in §632.501;

(d) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the commissioner;

(e) A certificate from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;

(f) Copies of its certificate forms; and

(g) Such other information as he may deem necessary; and upon showing that its assets are invested in accordance with the provisions of this chapter.

(2) Any foreign or alien society desiring admission to this state shall have the qualifications required of domestic societies organized under this chapter.

History.—§757, ch. 59-205.

Note.—Similar provisions found in former §§637.23, 637.25.

632.081 Suspension, revocation or refusal of license of foreign or alien society.—

(1) When the commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this state:

(a) Has exceeded its powers;

(b) Has failed to comply with any of the provisions of this chapter;

(c) Is not fulfilling its contracts in good faith; or

(d) Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

he shall notify the society of his findings, state in writing the reasons for his dissatisfaction and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on such date the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked or refused, he may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to him that such suspension or refusal should be withdrawn or he may revoke the authority of the society to do business in this state.

(2) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

History.—§758, ch. 59-205.

Note.—Similar provisions found in former §637.58.

632.091 Organization; incorporation.—Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer, competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(1) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(2) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this chapter, provided that any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal or religious advantages may be set forth among the purposes of the society; and

(3) The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

History.—§759, ch. 59-205.

Note.—Similar provisions found in former §637.01.

632.101 Filing articles and documents; preliminary certificate.—Such articles of incorporation, duly certified copies of the constitution, laws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to the applicants of the advanced payments if the organization is not completed within one year, shall be filed with the commissioner, who may require such further information as he deems necessary. The bond with sureties approved by the commissioner shall be in such amount, not less than five thousand dollars nor more than twenty-five thousand dollars as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

History.—§760, ch. 59-205.

Note.—Similar provisions found in former §637.02.

632.111 Time for completing organization.—No preliminary certificate granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

History.—§761, ch. 59-205.
Note.—Similar provisions found in former §637.06.

632.121 Initial solicitations and qualifications.—Upon receipt of a preliminary certificate from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any death or disability benefit to any person until:

(1) Actual bona fide applications for death benefits have been secured aggregating at least five hundred thousand dollars on not less than five hundred lives;

(2) All such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

(3) Certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

(4) Ten subordinate lodges or branches have been established into which the five hundred applicants have been admitted;

(5) There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted and premiums therefor, and

(6) It shall have been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. Such advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, as herein provided, the premiums shall be returned to the applicants.

History.—§762, ch. 59-205.
Note.—Similar provisions found in former §§637.03, 637.04.

632.131 Certificate of compliance; certified copy as evidence.—The commissioner may make such examination and require such further information as he deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to the society a certificate to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The commissioner shall cause a record of such certificate to be made. A certified copy of such record may be given in evidence with like effect as the original certificate.

History.—§763, ch. 59-205.
Note.—Similar provisions found in former §637.05.

632.141 Constitution and laws; general powers.—

(1) Every society shall have the power to adopt a constitution and laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of its members from time to time. It shall have the power to change, alter, add to or amend such constitution and laws.

(2) A society shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

History.—§764, ch. 59-205.
Note.—Similar provisions found in former §637.07.

632.151 Corporate powers retained.—Any incorporated society authorized to transact business in this state at the time this chapter becomes effective may thereafter exercise all the rights, powers and privileges prescribed in this chapter and in its charter or articles of incorporation as far as consistent with this chapter. A domestic society shall not be required to reincorporate.

History.—§765, ch. 59-205.
Note.—Similar provisions found in former §637.08.

632.161 Existing voluntary associations; may incorporate.—

(1) After one year from the effective date of this chapter, no unincorporated or voluntary association shall be permitted to transact business in this state as a fraternal benefit society.

(2) Any domestic voluntary association now authorized to transact business in this state may incorporate and shall receive from the commissioner a permanent certificate of incorporation as a fraternal benefit society when:

(a) It has completed its conversion to an incorporated society not later than one year from the effective date of this chapter;

(b) It has filed its articles of incorporation and has satisfied the other requirements described in §§632.091-632.131; and

(c) The commissioner has made such examination and procured whatever additional information he deems advisable.

(3) Every voluntary association so incorporated shall incur the obligations and enjoy the benefits thereof the same as though originally incorporated, and such corporation shall be deemed a continuation of the original voluntary association. The officers thereof shall serve through their respective terms as provided in its original articles of association, but their successors shall be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association shall not affect existing suits, claims or contracts.

History.—§766, ch. 59-205.

632.171 Articles of incorporation, constitution and laws; amendments; synopsis; certified copies as evidence.—

(1) A domestic society may amend its articles of incorporation, constitution or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, constitution or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, constitution or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission thereof, a majority of all of the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

(2) No amendment to the articles of incorporation, constitution or laws of any domestic society shall take effect unless approved by the commissioner, who shall approve such amendment if he finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects and purposes of the society. Unless the commissioner disapproves any such amendment within sixty days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case he disapproves the amendment, the reasons therefor shall be stated in the written notice.

(3) Within ninety days from the approval thereof by the commissioner, all such amendments, or a synopsis thereof, shall be furnished by the society to all members either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments of, or additions to, its articles of incorporation, constitution or laws within ninety days after the enactment of same.

(5) Printed copies of the constitution or laws as amended, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

History.—§767, ch. 59-205.

Note.—Similar provisions found in former §§637.08, 637.32.

632.181 Waiver.—The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

History.—§768, ch. 59-205.

Note.—Similar provisions found in former §637.30.

632.191 Location of office; place of meeting; records in English language.—

(1) The principal office of any domestic society shall be located in this state. The meetings of its supreme legislative or governing body may be held in any state, district, province or territory wherein such society has at least five subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state.

(2) Maintenance, treatment and proper at- supreme or governing body and of the board of directors or corresponding body of a society shall be in the English language.

History.—§769, ch. 59-205.

Note.—Similar provisions found in former §637.28.

632.201 Institutions.—

(1) It shall be lawful for a society to create, maintain and operate charitable, benevolent or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold or lease personal property or real property located within or without this state, with necessary buildings thereon. Such property shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

(2) Maintenance, treatment and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement.

(3) No society shall own or operate funeral homes or undertaking establishments.

History.—§770, ch. 59-205.

632.211 Qualifications for membership.—A society may admit to benefit membership any person not less than fifteen years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

Any person admitted prior to attaining the full age of twenty-one years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

History.—§771, ch. 59-205.
Note.—Similar provisions found in former §637.15.

632.221 Member's share of deficiency.—A society shall provide in its constitution or laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board, and that if the payment be not made it shall stand as an indebtedness against the member's certificate and draw interest not to exceed five per cent per annum compounded annually.

History.—§772, ch. 59-205.
Note.—Similar provisions found in former §637.37.

632.231 Benefits.—

(1) A society authorized to do business in this state may provide only for the payment of:

(a) Death benefits in any form;

(b) Endowment benefits;

(c) Annuity benefits;

(d) Temporary or permanent disability benefits as a result of disease or accident;

(e) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident; and

(f) Monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of three hundred dollars.

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of a member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

(3) No such benefits shall be provided in the form of group life insurance, group disability insurance, or blanket disability insurance.

History.—§773, ch. 59-205.
Note.—Similar provisions found in former §637.12.

632.241 Benefits on lives of children.—

(1) A society also may provide for benefits on the lives of children under the minimum age for adult membership but not greater than twenty-one years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of §632.231(1) and (3). A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

(2) A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith.

History.—§774, ch. 59-205.
Note.—Similar provisions found in former §637.15.

632.251 Nonforfeiture benefits; cash surrender values; certificate loans and other options.—

(1) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans and such other options as its laws may permit. As to certificates issued on and after the effective date of this chapter, a society shall grant at least one paid-up nonforfeiture benefit, except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts or contracts of term insurance of uniform amount of fifteen years or less expiring before age sixty-six.

(2) In the case of certificates other than those for which reserves are computed on the commissioners 1941 standard ordinary mortality table or the 1941 standard industrial table, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the excess, if any, of (a) over (b) as follows:

(a) The reserve under the certificate determined on the basis specified in the certificate; and

(b) The sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrender charge equal to two and one-half per cent of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

(3) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American men ultimate table of mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than one hundred thirty per cent of those shown by the mortality table specified in the certificate for the computation of the reserve.

(4) In the case of certificates for which re-

serves are computed on the commissioners 1941 standard ordinary mortality table or the 1941 standard industrial table, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurers issuing policies containing like insurance benefits based upon such tables.

History.—§775, ch. 59-205.

Note.—Similar provisions found in former §§637.13, 637.17, 637.35.

632.261 Beneficiaries.—

(1) The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, laws or rules of the society. Every society by its constitution, laws or rules may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

(2) A society may make provisions for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, but the portion so paid shall not exceed the sum of five hundred dollars.

(3) If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits are payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased member.

History.—§776, ch. 59-205.

Note.—Similar provisions found in former §637.14.

632.271 Benefits not attachable.—No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

History.—§777, ch. 59-205.

Note.—Similar provisions found in former §637.31.

632.281 No personal liability.—The officers and members of the supreme, grand or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

History.—§778, ch. 59-205.

Note.—Similar provisions found in former §637.29.

632.291 Contract.—

(1) Every society authorized to do business in this state shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

(2) All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

(3) Any changes, additions or amendments to the charter or articles of incorporation, constitution or laws duly made or enacted subsequent to the issuance of the certificate, shall bind the member and the beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the member as of the date of issuance.

(4) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

History.—§779, ch. 59-205.

Note.—Similar provisions found in former §637.16.

632.301 Standard provisions.—

(1) After one year from the effective date of this chapter, no life benefit certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner.

(2) The certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

(a) Title on the face and filing page of the certificate clearly and correctly describing its form;

(b) A provision stating the amount of rates, premiums or other required contributions, by whatever name known, which are payable by the insured under the certificate;

(c) A provision that the member is entitled to a grace period of not less than a full month (or thirty days at the option of the society) in which the payment of any premium after the first, may be made. During such grace period the certificate shall continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate;

(d) A provision that the member shall be entitled to have the certificate reinstated at

any time within three years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding six per cent per annum compounded annually;

(e) Except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of fifteen years or less expiring before age sixty-six, a provision that, in the event of default in payment of any premium after three full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the society will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member shall so elect prior to the expiration of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate;

(f) A provision that one paid-up nonforfeiture benefit as specified in the certificate shall become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than sixty days after the due date of the premium in default;

(g) A statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate, and a brief general statement of the method used in calculating such benefits;

(h) A table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first twenty certificate years or during the term of the certificate whichever is shorter;

(i) A provision that the certificate shall be incontestable after it has been in force during the lifetime of the member for a period of two years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means, may also be excepted. The certificate shall be incontestable on the ground of suicide after it has been in force during the lifetime of the member for a period of two years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society shall have the right to contest a reinstated certificate within a period of two years from date of reinstatement with the same exceptions as herein provided;

(j) A provision that in case the age or sex of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age or sex has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased according to the correct age or sex; but if the correct age or sex was not insurable under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age according to the society's promulgated rates and any extension thereof based on actuarial principles;

(k) A provision or provisions which recite fully, or which set forth the substance of, all sections of the charter, constitution, laws, rules or regulations of the society, in force at the time of issuance of the certificate, the violation of which will result in the termination of, or in the reduction of, the benefit or benefits payable under the certificate;

(l) If the constitution or laws of the society provide for expulsion or suspension of a member, any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership shall have the privilege of maintaining his insurance in force by continuing payment of the required premium; and

(3) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may, to the extent inapplicable, be omitted from the certificate.

History.—§780, ch. 59-205.

632.311 Prohibited provisions.—After one year from the effective date of this chapter, no life benefit certificate shall be delivered or issued for delivery in this state containing in substance any of the following provisions:

(1) Any provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action accrues;

(2) Any provision by which the certificate purports to be issued or to take effect more than six months before the original application for the certificate was made, except in case of

transfer from one form of certificate to another in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

(3) Any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

History.—§781, ch. 59-205.

Note.—Similar provisions found in former §637.45.

632.321 Premiums defined.—As used in this chapter "premiums" means premiums, rates, or other required contributions by whatever name known.

History.—§782, ch. 59-205.

632.331 Accident and health insurance and total and permanent disability insurance certificates; filing and approval.—

(1) No domestic, foreign or alien society authorized to do business in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner.

(2) The commissioner shall have power, from time to time, to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in such contracts, and such regulations shall conform, as far as practicable, to the provisions of part VI of chapter 627 (disability insurance policies). Where the commissioner deems inapplicable, either in part or in their entirety, the provisions of said part VI, he may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member.

(3) Any filing made hereunder shall be deemed approved unless disapproved within sixty days from the date of such filing.

History.—§783, ch. 59-205.

632.341 Reinsurance.—A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner; but no such society may reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this chapter, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

History.—§784, ch. 59-205.

632.351 Funds.—

(1) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(2) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(3) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after one year from the effective date of this chapter, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

History.—§785, ch. 59-205.

Note.—Similar provisions found in former §§637.17, 637.20, 637.36, 637.41, 637.48.

632.361 Investments.—A society shall invest its funds only in such investments as are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country or province in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds.

History.—§786, ch. 59-205.

Note.—Similar provisions found in former §637.19.

632.371 Annual statement.—Reports shall be filed and synopses of annual statements shall be published in accordance with the provisions of this section.

(1) Every society transacting business in this state shall annually, on or before the first day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay a fee of ten dollars for filing same, as provided in §624.0300(4). The statement shall be in the general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June 1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

(3) The commissioner shall deposit all fees received by him under this section to the credit of the miscellaneous service fund provided for in §624.0324 of this code.

History.—§787, ch. 59-205.

Note.—Similar provisions found in former §§637.33, 637.37.

632.381 Annual valuation of certificates.—

(1) As a part of the annual statement required under §632.371, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding provided, the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than two calendar months. Such report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to one year after the effective date of this chapter shall be determined in accordance with the provisions of law applicable prior to the effective date of this chapter and as to certificates issued on or after one year from the effective date of this chapter shall not be less than the reserves determined according to the commissioners' reserve valuation method as hereafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

(2) Reserves according to the commissioners' reserve valuation method, for life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates, over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (a) over (b), as follows:

(a) A net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due; provided however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such certificate; and

(b) A net one-year term premium for such benefits provided for in the first certificate year.

(3) Reserves according to the commissioners' reserve valuation method for

(a) Life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums,

(b) Annuity and pure endowment benefits,

(c) Disability and accidental death benefits in all certificates and contracts, and

(d) All other benefits except life insurance and endowment benefits, shall be calculated by a method consistent with the principles of subsection (2) above.

(4) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in the following subsection.

(5) Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(6) The minimum standards of valuation for certificates issued prior to one year from the effective date of this chapter shall be those provided by the law applicable immediately prior to the effective date of this chapter but not lower than the standards used in the calculating of rates for such certificates.

(7) The minimum standard of valuation for certificates issued after one year from the effective date of this chapter shall be three and one-half per cent interest and the following tables:

(a) For certificates of life insurance—American men ultimate table of mortality, with Bowerman's or Davis' extension thereof or with the consent of the commissioner, the commissioners' 1941 standard ordinary mortality table or the commissioners' 1941 standard industrial table of mortality;

(b) For annuity certificates, including life

annuities provided or available under optional modes of settlement in such certificates—the 1937 standard annuity table;

(c) For disability benefits issued in connection with life benefit certificates—Hunter's disability table, which, for active lives, shall be combined with a mortality table permitted for calculating the reserves on life insurance certificates, except that the table known as class III disability table (1926) modified to conform to the contractual waiting period, shall be used in computing reserves for disability benefits under a contract which presumes that total disability shall be considered to be permanent after a specified period;

(d) For accidental death benefits issued in connection with life benefit certificates—the intercompany double indemnity mortality table combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(e) For noncancellable accident and health benefits—the class III disability table (1926) with conference modifications or, with the consent of the commissioner tables based upon the society's own experience.

(8) The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extra hazardous lives by any society authorized to do business in this state. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of three consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

(9) Any society, with the consent of the insurance supervisory official of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any insured member shall not be affected thereby.

History.—§788, ch. 59-205.

Note.—Similar provisions found in former §§637.17, 637.18, 637.34, 637.35.

632.391 Annual statement; penalty for failure to file or to comply.—A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit $100 for each day during which such neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this state shall cease while such default continues. The commissioner shall deposit all sums collected by him under this section to the credit of the enforcement fund provided for in §624.0321.

History.—§789, ch. 59-205.

632.401 Examination of domestic societies.—(1) The commissioner, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society and he shall make such examination at least once in every three years. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society.

(2) In making any such examination the commissioner may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society.

(3) A summary of the report of the commissioner and such recommendations or statements of the commissioner as may accompany such report, shall be read at the first meeting of the board of directors or corresponding body of the society following the receipt thereof, and if directed so to do by the commissioner, shall also be read at the first meeting of the supreme legislative or governing body of the society following the receipt thereof. A copy of the report, recommendations and statements of the commissioner shall be furnished by the society to each member of such board of directors or other governing body.

(4) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

History.—§790, ch. 59-205.

Note.—Similar provisions found in former §§637.52, 637.53.

632.411 Examination of foreign and alien societies.—The commissioner, or any person whom he may appoint, may examine any foreign or alien society transacting or applying for admission to transact business in this state. He may employ assistants and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society. He may in his discretion accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province or country where such society is organized. The compensation and actual expenses of the examiners making any examination or general or special valuation shall be paid by the society examined or by the society whose certificate obligations have been valued, upon statements furnished by the commissioner.

History.—§791, ch. 59-205.

Note.—Similar provisions found in former §637.56.

632.421 No adverse publications.—Pending, during or after an examination or investigation of a society, either domestic, foreign or

alien, the commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any society, until a copy thereof shall have been served upon the society at its principal office and the society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

History.—§792, ch. 59-205.

Note.—Similar provisions found in former §637.57.

632.431 Taxation.—Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax other than taxes on real estate and office equipment, and other than the fees and licenses provided for in this chapter and the annual license tax provided for in §624.0300.

History.—§793, ch. 59-205.

Note.—Similar provisions found in former §637.60.

632.441 Licensing of agents.—

(1) Agents of societies shall be licensed as for life insurance agents in accordance with the applicable provisions of part I of chapter 626 (licensing procedures law). All sums collected by the commissioner for or in connection with such licensing shall be deposited by him in or to the credit of the same funds provided for in part IV of chapter 624, as apply in the case of similar sums collected by him under part I of chapter 626 for or in connection with the licensing of life insurance agents.

(2) The term "agent" as used in this section means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation or procurement or making of a life insurance, accident and health insurance or annuity contract; except that the term "agent" shall not include:

(a) Any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) Any agent or representative of a society who devotes, or intends to devote, less than fifty per cent of his time to the solicitation and procurement of insurance contracts for such society. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty per cent of his time to the solicitation or procurement of insurance contracts for such society.

(3) A fraternal benefit society shall be deemed to be an "insurer" within the intent of such part I of chapter 626 and for the purposes of this section.

History.—§794, ch. 59-205.

Note.—Similar provisions found in former §637.66.

632.442 Registration.—Every society shall on forms prescribed by the insurance commissioner register on or before March 1 of each year the names of and residence address of each agent or representative who devotes or intends to devote less than fifty per cent of his time to the solicitation and procurement of insurance contracts for such society, as provided in §632.441(2)(b), and shall within thirty days of termination of employment notify the insurance commissioner of such termination. Any such agent employed subsequent to March 1 filing shall be registered with the insurance commissioner within ten days of such employment.

History.—§1, ch. 63-85.

632.451 Agent license required.—

(1) Any person who in this state acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this chapter shall, except as provided in §632.441 (2), be guilty of a misdemeanor.

(2) No society doing business in this state shall pay any commission or other compensation to any person for any services in obtaining in this state any new contract of life, accident or health insurance, or any new annuity contract, except to a licensed insurance agent of such society and except an agent exempted under §632.441 (2).

History.—§795, ch. 59-205.

Note.—Similar provisions found in former §637.66.

632.461 Agent's qualifications.—The commissioner shall not issue or permit to exist a license as agent of a fraternal benefit society as to an individual not qualified therefor as follows:

(1) Must be a resident of and in this state;

(2) Must be trustworthy;

(3) Must be competent to act as an agent of such a society; and

(4) Must take and successfully pass any written examination required as a prerequisite to such licensing under §632.471 and part I of chapter 626.

History.—§796, ch. 59-205.

Note.—Similar provisions found in former §637.66.

632.471 Examination for agent's license.—

(1) Any examination for a fraternal agent's license shall include questions relative only to fraternal insurance, the types of certificates, policies, or contracts in general proposed to be solicited under the license, and the laws of this state which relate to the activities of the pro-

posed licensee as a fraternal insurance agent.

(2) No such examination for license shall be required as to any fraternal insurance agent who was duly licensed as such in this state immediately prior to the effective date of this code, and under laws then in force.

History.—§797, ch. 59-205.
Note.—Similar provisions found in former §637.66.

632.481 Misrepresentation.—No person shall cause or permit to be made, issued or circulated in any form:

(1) Any misrepresentation or false or misleading statement concerning the terms, benefits or advantages of any fraternal insurance contract now issued or to be issued in this state, or the financial condition of any society;

(2) Any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or

(3) Any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it does not compare in detail:

(a) The gross rates, and the gross rates less any dividend or other reduction allowed at the date of the comparison; and

(b) Any increase in cash values, and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured;

or if it omits from consideration:

(c) Any benefit or value provided in the contract;

(d) Any differences as to amount or period of rates; or

(e) Any differences in limitations or conditions or provisions which directly or indirectly affect the benefits.

In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

(4) Any person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation, shall upon conviction be punished by a fine not less than $100 nor more than $1,000 or by imprisonment in the county jail not less than 30 days nor more than 90 days, or both fine and imprisonment and shall in addition, be liable for a civil penalty in the amount of 3 times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice.

History.—§798, ch. 59-205.
Note.—Similar provisions found in former §637.66.

632.491 Discrimination and rebates.—

(1) No society doing business in this state shall make or permit any unfair discrimination between insured members of the same class and equal expectation of life in the premiums charged for certificates of insurance, in the dividends or other benefits payable thereon or in any other of the terms and conditions of the contracts it makes.

(2) No society, by itself, or any other party, and no agent or solicitor, personally, or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any valuable consideration or inducement to, or for insurance, on any risk authorized to be taken by such society, which is not specified in the certificate. No member shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or solicitor's commission thereon, payable on any certificate or receive or accept any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the contract of insurance.

History.—§799, ch. 59-205.

632.501 Service of process.—

(1) Every society authorized to do business in this state shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by the commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

(2) Service shall only be made upon the commissioner, or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided.

History.—§800, ch. 59-205.
Note.—Similar provisions found in former §637.27.

632.511 Consolidations and mergers.—

(1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than December 31, next preceding the date of the contract;

(c) A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme legislative or governing body of each society; and

(d) Evidence that at least sixty days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

(2) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

(3) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, he shall approve the contract and issue his certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state and a certificate of such approval filed with the commissioner or, if the laws of such state contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the insurance supervisory official of such state and a certificate of such approval filed with the commissioner.

History.—§801, ch. 59-205.

Note.—Similar provisions found in former §637.21.

632.521 Same; effect.—Upon the consolidation or merger becoming effective as provided in §632.511, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument; except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

History.—§802, ch. 59-205.

Note.—Similar provisions found in former §637.21.

632.531 Conversion into mutual life insurer.—Any domestic fraternal benefit society may be converted and licensed as a mutual life insurer by compliance with the applicable requirements of chapter 628, if such plan of conversion has been approved by the commissioner. Such plan shall be prepared in writing setting forth in full the terms and conditions thereof. The board of directors shall submit the plan to the supreme legislative or governing body of such society at any regular or special meeting thereof, by giving a full, true and complete copy of the plan with the notice of such meeting. The notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of two-thirds of all members of such body shall be necessary for the approval of the agreement. No such conversion shall take effect unless and until approved by the commissioner, who may give such approval if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

History.—§803, ch. 59-205.

Note.—Similar provisions found in former §637.65.

632.541 Injunction; liquidation; receivership of domestic society.—

(1) When the commissioner upon investigation finds that a domestic society:

(a) Has exceeded its powers;

(b) Has failed to comply with any provision of this chapter;

(c) Is not fulfilling its contracts in good faith;

(d) Has a membership of less than four hundred after an existence of one year or more; or

(e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business;

he shall notify the society of his findings, state in writing the reasons for his dissatisfaction, and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in quo warranto should not be commenced against the society.

(2) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts relating thereto to the attorney general who shall, if he deems the circumstances warrant, commence an action to enjoin the society from transacting business or in quo warranto. The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order.

(3) No society so enjoined shall have the authority to do business until:

(a) The commissioner finds that the viola-

tion complained of has been corrected;

(b) The costs of such action have been paid by the society if the court finds that the society was in default as charged;

(c) The court has dissolved its injunction; and

(d) The commissioner has reinstated the society's license.

(4) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(5) No action under this section shall be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as such receiver.

(6) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction and receivership shall be applicable to a society which voluntarily determines to discontinue business.

History.—§804, ch. 59-205.
Note.—Similar provisions found in former §§637.06, 637.54.

632.551 Injunction.—No application or petition for injunction against any domestic, foreign or alien society, or branch thereof, shall be recognized in any court of this state unless made by the attorney general upon request of the commissioner.

History.—§805, ch. 59-205.
Note.—Similar provisions found in former §637.55.

632.561 Review.—All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review by the court in accordance with the provisions of §624.0128 of this code.

History.—§806, ch. 59-205.
Note.—Similar provisions found in former §637.26.

632.571 Other provisions applicable.—In addition to the provisions heretofore contained or referred to in this chapter, other chapters and provisions of this code shall apply to fraternal benefit societies, to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof, as follows:

(1) Part I of chapter 624 (scope of code);

(2) Part II of chapter 624 (insurance commissioner);

(3) The following sections of part III of chapter 624 (authorization of insurers and general requirements);

(a) Section 624.0203 (management and affiliations);

(b) Section 624.0204 (name of insurer);

(4) Section 624.0300 (filing, license, and miscellaneous fees);

(5) Part I of chapter 626 (licensing procedures law);

(6) Part VII of chapter 626 (trade practices and frauds);

(7) Section 627.0123 (minor may give acquittance);

(8) Section 627.0127 (attorney's fee);

(9) Section 627.0228 (prohibited policy plans);

(10) Chapter 631 (rehabilitation and liquidation).

History.—§807, ch. 59-205.
Note.—Similar provisions found in former §§635.17, 635.23, 637.15, 637.58, 637.61, 637.62, 637.63, 637.64.

CHAPTER 633

STATE FIRE MARSHAL

633.01 State fire marshal; powers and duties.—The state treasurer, ex-officio insurance commissioner and hereinafter in this chapter referred to as the "insurance commissioner" shall also be designated as "state fire marshal", and shall enforce all laws and provisions of this chapter relating to:

(1) Prevention of fires,

(2) Storage, sale, and use of combustibles and explosives,

(3) Installation and maintenance of private owned automatic and fire alarm systems and fire extinguishing equipment,

(4) Construction, maintenance, and regulation of fire escapes,

(5) The means and adequacy of exits from all buildings in event of fire, and

(6) Suppression of arson, and the investigation of fires.

History.—§1, ch. 20671. 1941.

633.02 Deputy fire marshals; powers and duties; compensation.—The insurance commissioner shall appoint such assistants as may be necessary to carry out effectively the provisions of this chapter, said assistants to be known as and hereinafter referred to in this chapter as deputies, who shall be reimbursed for traveling expenses as provided in §112.061, in addition to their salary, when traveling or making investigations in the performance of their duties. Such deputies shall be at all times under the direction and control of the insurance commissioner, who shall fix their compensation and all orders shall be issued in his name and by his authority.

History.—§2, ch. 20671, 1941; §1, ch. 57-102; §19, ch. 63-400.

633.03 Investigation of fire; reports.—The insurance commissioner shall investigate the cause, origin, and circumstances of every fire occurring in this state wherein property has been damaged or destroyed where there is probable cause to believe that the fire was the result of carelessness or design. Report of all such investigations shall be made on approved forms to be furnished by the insurance commissioner.

History.—§3, ch. 20671, 1941.

633.05 Regulations concerning gunpowder, explosives, crude petroleum, etc.—

(1) The insurance commissioner shall make and promulgate regulations for the keeping, storing, use, manufacture, sale, handling, transportation or other disposition of highly flammable materials, gunpowder, explosives, carbide, crude petroleum or any of its products, and may prescribe the material or receptacles and building to be used for such purposes. The term "explosives" as used herein shall be construed to mean any mixture, compound or material capable of producing an explosion and commonly used for that purpose, and shall include but not be limited to dynamite, nitroglycerin, trinitrotoluene, blasting caps and detonators. Said regulations to be made and promulgated by the insurance commissioner shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and of persons possessing, handling and using said materials and products, and shall be in substantial conformity with generally accepted standards of safety concerning such several subject matters. In the making and promulgation of such regulations, the insurance commissioner shall give consideration to rules and standards of safety of reputable national institutes, organizations or bureaus in relation to any of said materials and products, and which rules and standards have been adopted by such organizations as result of demonstrated credible experience.

Such regulations and any addition to or amendment thereof shall be adopted, only after full public hearing, which shall be adjourned from time to time as may be necessary to permit all interested or affected parties to be heard and to file such briefs as they may desire. At least sixty days prior written notice of the commencement of such hearing shall be published twice in one newspaper of general circulation which has been designated for such purpose by the insurance commissioner. Such notice shall state the time, place, and purpose of the hearing and shall set forth in full the code, rule, or regulation to be considered or shall state where and how such full text may be obtained. A copy of such notice shall be sent at the same time to every person, firm, or corporation who shall have registered with the insurance commissioner a request to be so notified, together with the name and address to which such notice or notices shall be sent.

Such regulations or any amendment thereof shall become effective sixty days after they are adopted and filed with the secretary of state and after notice of such filing has been published and distributed in the same manner as required herein for notice of hearings.

(2) The provisions of this section are cumulative and shall not be construed as repealing or affecting any other law of this state particularly relating to the regulation of any of the materials or products described herein.

History.—§5, ch. 20671, 1941; §§1, 2, ch. 29711, 1955.

633.06 Inspection of buildings and equipment; orders concerning.—The insurance commissioner and his deputies shall, when they deem it necessary, inspect at any reasonable hour any and all buildings on premises within their jurisdiction and, if it be found that any building or structure shall for want of repairs, lack of sufficient fire escapes, alarm apparatus, fire extinguishing equipment, dilapidated condition or from any other cause be especially liable to fire, and which is situated so as to endanger life or property or whenever the insurance commissioner or his deputies shall find in any building combustible or explosive matter, or inflammable conditions dangerous to the safety of such building or to property and life, he or they may order the same removed or remedied within a reasonable length of time.

History.—§6, ch. 20671, 1941.

633.07 Review; circuit court.—Any such owner or occupant within five days from date of such order, shall be entitled to validity of the order by suit for declaration decree in the circuit court of the county in which the property is located, but such proceedings shall not operate as a supersedeas save and except for a period of fifteen days from the entry thereof, after which time the said order shall remain in full force and effect and shall be complied with unless the time be extended by order of the circuit court.

History.—§6, ch. 20671, 1941; §26, ch. 63-512.

633.08 Hearings; investigations; taking testimony, etc., by commissioner.—

(1) The insurance commissioner may in his discretion take or cause to be taken the testimony on oath of all persons whom he believes to be cognizant of any facts in relation to matters under investigation.

(2) If he shall be of the opinion that there is sufficient evidence to charge any person with an offense, he shall cause the arrest of such person and shall furnish to the prosecuting officer of any court having jurisdiction of said offense all information obtained by him, including a copy of all pertinent and material testimony taken, together with the names and addresses of all witnesses. In the conduct of such investigations, the insurance commissioner may request such assistance as may reasonably be given by such prosecuting officers and other local officials.

(3) He may summon and compel the attendance of witnesses before him to testify in relation to any matter which is, by the provisions of this chapter, a subject of inquiry and investigation, and he may require the production of any book, paper or document deemed pertinent thereto by him, and may seize furniture and other personal property, to be held for evidence.

(4) All persons so summoned and so testifying shall be entitled to the same witness fees and mileage as provided for witnesses testifying in the circuit courts of this state, and officers serving subpoenas or orders of the insurance commissioner shall be paid in like manner for like services in such courts, from the funds herein provided.

History.—§7, ch. 20671, 1941.

633.09 Commissioner to keep records of fires; reports of deputies.—The insurance commissioner shall keep in his office a record of all fires occurring in this state upon which he had caused an investigation to be made and all facts concerning the same, such as the damage caused thereby, whether such losses were covered by insurance, and to what amount. Such records shall be made daily from the reports furnished him by his deputies, or others.

History.—§8, ch. 20671, 1941.

633.11 Fire chiefs, mayor, etc., as deputy fire marshals.—Chiefs of fire departments (and mayors of municipalities having no organized fire departments) shall be ex-officio deputy fire marshals and shall make similar reports on forms to be furnished by the insurance commissioner.

History.—§9, ch. 20671, 1941.

633.13 State fire marshal; authority of deputies.—The authority given the state fire marshal under this law may be exercised by him or his deputies, either individually or in conjunction with any other state or local official charged with similar responsibilities.

History.—§1, ch. 21847, 1943.

633.14 State fire marshal; arrests, summonses, arms, etc.—The state fire marshal and his deputies shall have the same authority to serve summonses, make arrests, carry firearms and make searches and seizures, as the sheriff or his deputies, in the respective counties where such investigations, hearings or inspections may be held; and affidavits necessary to authorize any such arrests, searches or seizures may be made before any magistrate having authority under the law to issue appropriate processes.

History.—§1, ch. 21847, 1943.

633.15 State fire marshal; rules and regulations; violation.—This law, and all regulations prescribed by the state fire marshal hereunder, shall have the same force and effect in each and every incorporated town or city, as the ordinances of such respective municipalities, and shall be enforceable in the municipal courts in the same manner as such ordinances.

History.—§1, ch. 21847, 1943.

633.16 Penalty for violations of law, rules and regulations.—The violation of any provision of this law or any order or regulation of the state fire marshal issued hereunder, shall

constitute a misdemeanor under the laws of Florida or of the municipality in which the offense may be committed, and shall be punishable as such by any state, county or municipal court having jurisdiction to try misdemeanors or other offenses under state or municipal laws or ordinances.

History.—§1, ch. 21847, 1943.

633.17 State fire marshal; hearings, investigations, subpoenas, etc.—The state fire marshal, or any deputy or employee designated by him for such purposes, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, memoranda or other evidence, as may be material for the determination of any complaint or conducting any inquiry or investigation under this law. In case of disobedience to a subpoena the state fire marshal, or any of his deputies or employees, may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of accounts, records, memoranda or other evidence, and any such court may in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the state fire marshal, or his deputy or employee, or produce accounts, records, memoranda or other evidence, as so ordered, or to give evidence touching any matter pertinent to any complaint or the subject of any inquiry or investigation, and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

History.—§1, ch. 21847, 1943.

CHAPTER 634

AUTOMOBILE INSPECTION AND WARRANTY ASSOCIATIONS

634.011 Definitions.—As used in this act:

(1) "Automobile inspection and warranty association" or "association" means any corporation or any other organization (other than an authorized insurer) issuing automobile warranties as herein defined.

(2) "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

(3) "Automobile warranty" or "warranty" means any contract or agreement indemnifying the warranty holder against loss caused by wear, tear, or failure of any mechanical or other component part of the automobile due to the defect in material or workmanship arising out of the ownership, operation, and use of such automobile; provided, however, that nothing in this act shall prohibit or affect the giving of usual performance guarantees by manufacturers or dealers in connection with the sale of automobiles.

(4) "Salesman" means any person employed or otherwise retained by an insurer or an automobile inspection and warranty association for the purpose of selling or issuing automobile warranties.

(5) "Rate" means the unit charge by which the measure of exposure in a warranty is multiplied to determine the premium.

(6) "Premium" means the consideration paid, or to be paid, to an insurer, or automobile inspection and warranty association for the issuance and delivery of any binder or warranty.

(7) "Commissioner" means the duly elected and qualified state treasurer and ex officio insurance commissioner of this state.

History.—§1, ch. 59-110.

634.021 Powers of commissioner; rules.—The commissioner shall administer this act and to that end he may adopt, promulgate and enforce rules and regulations necessary and proper to effectuate any provisions of this act.

History.—§2, ch. 59-110.

634.031 License required.—

(1) No automobile inspection and warranty association shall transact, attempt to transact, or in any manner hold itself out as transacting such business in this state unless it is authorized therefor under a subsisting license issued to it by the commissioner. The association shall pay to the commissioner a license tax of one hundred dollars for such license, for each license year or part thereof the license is in force.

(2) An insurer while authorized to transact property or casualty insurance in this state may transact also an automobile inspection and warranty business without additional qualifications or authority, but otherwise subject to the applicable provisions of this act.

History.—§3, ch. 59-110.

634.041 Qualifications for license.—The commissioner shall not issue a license to any such association unless the association is qualified therefor as follows:

(1) Is a solvent corporation formed under the laws of Florida or of another state, district, territory or possession of the United States.

(2) Furnishes the commissioner with evidence satisfactory to him that the management of the association is competent and trustworthy, and can successfully manage its affairs in compliance with law.

(3) Proposes to use and uses in its business a name, together with trade mark or emblem, if any, which is distinctive and not so similar to the name of any other association, corporation, or organization already doing business in this state as likely to mislead or confuse the public.

(4) Makes the deposit or files the bond required under §634.052.

(5) Is otherwise in compliance with this act.

History.—§4, ch. 59-110.

634.052 Required deposit or bond.—

(1) To assure the faithful performance of its obligations to its members or subscribers every automobile inspection and warranty association shall, prior to issuance of its license by the commissioner, deposit with the commissioner securities of the type eligible for deposit by insurers under §625.0202 of the insurance code, and having at all times a market value of not less than fifty thousand dollars; except, that any such association doing such a business in this state on or before April 1, 1959, shall on or before October 1, 1959, so deposit such securities in the value of not less than twenty-five thousand dollars, and on or before October 1, 1961, so deposit additional such securities having a value of not less than twenty-five thousand dollars, in order to bring its total deposit of securities to a value of not less than fifty thousand dollars not later than October 1, 1961.

(2) In lieu of any deposit of securities required under subsection (1), the association may file with the commissioner a surety bond in like amount. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the commissioner's approval. No such bond shall be cancelled or subject to cancellation unless at least thirty days' advance notice thereof in writing is filed with the commissioner.

(3) The state shall be responsible for the safekeeping of all securities deposited with the commissioner under this act. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(4) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(5) Such deposit or bond shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes to the commissioner proof satisfactory to him that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the commissioner shall release the deposited securities to the parties entitled thereto, on presentation of the commissioner's receipts for such securities, or release any bond filed with him in lieu of such deposit.

History.—§5, ch. 59-110.

634.061 Application for and issuance of license.—

(1) Application for license as an automobile inspection and warranty association shall be made to and filed with the commissioner on printed forms as prescribed and furnished by him.

(2) In addition to information relative to its qualifications as called for under §634.041, the application shall show:

(a) Location of applicant's home office.

(b) Name and residence address of each director or officer of applicant.

(c) Other pertinent information as required by the commissioner.

(3) The application when filed shall be accompanied by:

(a) A copy of the applicant's articles of incorporation, certified by the public official having custody of the original and a copy of its by-laws certified by its secretary.

(b) A copy of the most recent financial statement of applicant, verified under the oath of at least two of its principal officers.

(c) License fee in the amount of one hundred dollars, as required under §634.031.

(4) Upon completion of the application for license the commissioner shall examine the same and make such further investigation of applicant as he deems advisable. If he finds that the applicant is qualified therefor under this act, he shall issue to the applicant a license as an automobile inspection and warranty association. If the commissioner does not so find, he shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor. Any such notice of refusal shall be accompanied by refund of the annual license fee theretofore tendered in connection with the application. The commissioner shall act upon any such application within a reasonable period of time after its completion.

History.—§6, ch. 59-110.

634.071 License expiration, renewal.—Each license as an automobile inspection and warranty association issued under this act shall expire on the September 30 next following date of issuance. If the association is then qualified therefor under this act, its license may be renewed annually upon its request therefor and payment to the commissioner of license tax in the amount of one hundred dollars in advance for each such license year.

History.—§7, ch. 59-110.

634.081 Suspension, revocation of license for violations and special grounds.—

(1) The commissioner may, in his discretion, suspend, revoke or refuse to renew the license of any automobile inspection and warranty association if he finds that the association has violated any lawful order of the commissioner or any provision of this act.

(2) The commissioner shall suspend or revoke an automobile inspection and warranty association's license if he finds that such association:

(a) Is in unsound condition, or in such condition, or using such methods and practices in

the conduct of its business, as to render its further transaction of warranties in this state hazardous or injurious to its warranty holders or to the public.

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

(c) Has failed to pay any final judgment rendered against it in this state within ninety days after the judgment became final.

(d) With such frequency as to indicate its general business practice in this state, has without just cause refused to pay proper claims arising under its warranties, or without just cause compels warranty holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another automobile inspection and warranty association which transacts direct warranties in this state without having a license therefor.

(3) The commissioner may, in his discretion and without advance notice or hearing thereon, immediately suspend the license of any automobile inspection and warranty association as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state.

(4) Violation of this act by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state, in accordance with procedures and conditions provided for in part III of chapter 624 of the insurance code.

History.—§8, ch. 59-110.

634.091 Procedure to suspend or revoke license.—

(1) Except where hearing is expressly not required under §634.081, no order of the commissioner suspending or revoking an association's license shall be effective unless made after a hearing of which notice and order directing the association to show cause thereat why its license should not be so suspended or revoked was mailed to the association by registered or certified mail addressed to its home office or principal place of business in the United States not less than thirty days in advance.

(2) The notice shall contain, in addition to a statement of the time and place of the hearing and the order to show cause, a concise statement of the particulars of the grounds for such proposed suspension or revocation in such details as reasonably to inform the association thereof.

(3) Except, that the association may in writing filed with the commissioner within the thirty days' period waive the hearing, and in which case the commissioner may forthwith issue his order of suspension or revocation of the license.

History.—§9, ch. 59-110.

634.101 Order, notice of suspension or revocation of license; effect; publication.—

(1) Suspension or revocation of an association's license shall be by the commissioner's order mailed to the association by registered or certified mail. The commissioner shall promptly also give notice of such suspension or revocation to the association's salesmen in this state of record in the commissioner's office. The association shall not solicit or write any new warranties in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

(2) In his discretion the commissioner may cause notice of any such revocation to be published in one or more newspapers of general circulation published in this state.

History.—§10, ch. 59-110.

634.111 Duration of suspension; association's obligations during suspension period; reinstatement.—

(1) Suspension of an association's license shall be for such period not to exceed one year, as is fixed by the commissioner in the order of suspension, unless the commissioner shortens or rescinds such suspension or the order upon which the suspension is based is modified, rescinded or reversed.

(2) During the period of suspension the association shall file its annual statement, pay fees, licenses and taxes as required under this chapter as if the license had continued in full force.

(3) Upon expiration of the suspension period (if within such period the license has not otherwise terminated) the association's license shall automatically reinstate unless the commissioner finds that the causes of the suspension have not been removed, or that the association is otherwise not in compliance with the requirements of this chapter, and of which the commissioner shall give the association notice not less than thirty days in advance of the expiration of the suspension period. If not so automatically reinstated the license shall be deemed to have expired as of the end of the suspension period or upon failure of the association to continue the license during the suspension period, whichever event first occurs.

(4) Upon reinstatement of the association license, or reinstatement of the certificate of authority of an insurer following suspension, the authority of its salesmen in this state to represent the association or insurer shall likewise reinstate. The commissioner shall promptly notify the association or insurer and its salesmen in this state of record in his office of such reinstatement.

History.—§11, ch. 59-110.

634.121 Filing, approval of forms, rate filings.—

(1) No warranty form nor related form shall be issued or used in this state unless it has been filed with and approved by the commissioner.

(2) Every such filing shall be made not less than thirty days in advance of issuance or use. At the expiration of thirty days from date of filing a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before the expiration of the initial thirty day period. At the expiration of any such period as so extended and in the absence of prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) In addition, each insurer and automobile inspection and warranty association shall file with the commissioner the rate to be charged for each warranty and the premium, including all modifications of rates and premiums, to be paid by the warranty holder. Every filing shall state the proposed effective date thereon. Such filing shall be made not less than thirty days prior to its effective date.

History.—§12, ch. 59-110.

634.131 Tax on premiums and assessments.—

(1) In addition to the license taxes provided for in this act for automobile inspection and warranty associations, and license taxes as provided in the insurance code as to insurers, each such association and insurer shall annually on or before March 1 file with the commissioner its annual statement, in form as prescribed and furnished by the commissioner, showing all warranty premiums or assessments received by it from warranty holders in this state, during the preceding calendar year, and shall pay to the state treasurer a tax in an amount equal to two per cent of the gross amount of such premiums or assessments. Provided that the same exemptions and credits as set forth in §624.0310 and §624.0312 of the insurance code allowed to insurers shall apply to insurers and automobile inspection and warranty associations under this act.

(2) All such taxes when received shall be deposited to the credit of the automobile warranty administration trust fund provided for under §634.221.

(3) Premiums and assessments received by insurers and taxed under this section shall not be subject to any premium tax provided for in the insurance code.

History.—§13, ch. 59-110; (2) a. by §2, ch. 61-119.

634.141 Examination of associations.—Automobile inspection and warranty associations licensed under this act shall be subject to periodic examination by the commissioner in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624 of the insurance code.

History.—§14, ch. 59-110.

634.151 Service of process; appointment of commissioner as process agent.—

(1) Each association applying for authority to transact business in this state, whether domestic or foreign, shall file with the commissioner its appointment of the commissioner and his successors in office, on a form as furnished by the commissioner, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the association. The appointment shall be irrevocable, shall bind the association and any successor in interest as to the assets or liabilities of the association, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the association resulting from its warranty transactions therein.

(2) At the time of such appointment of the commissioner as its process agent the association shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The association may change the designation at any time by a new filing.

History.—§15, ch. 59-110.

634.161 Serving process.—

(1) Service of process upon the commissioner as process agent of the association shall be made by serving copies in triplicate of the process upon the commissioner or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service the commissioner shall file one copy in his office, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the association to receive the same, as provided under §634.151.

(2) Process served upon the commissioner and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the association.

History.—§16, ch. 59-110.

634.171 Salesman to be registered.—

(1) Every automobile inspection and warranty association or insurer shall on forms prescribed by the commissioner register on or before October 1 of each year, the name and business office address of each salesman employed by it, and shall within thirty days after termination of the employment notify the commissioner of such termination. Any salesman employed subsequent to the October 1 filing date shall be registered with the commissioner within ten days after such employment. No employee or salesman of an automobile inspection and warranty association or insurer shall

directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the insurance code.

History.—§17, ch. 59-110.

634.181 Grounds for compulsory refusal, suspension, or revocation of registration of salesmen.—The commissioner shall deny, suspend, revoke, or refuse to renew or continue the registration of any such salesman if he finds after notice and hearing thereon as provided for in §634.201 that as to the salesman, any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation or fraud in registration.

(2) If the registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this act.

(3) Willful misrepresentation of any warranty contract or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising.

(4) If in the adjustment of claims arising out of warranties, he has materially misrepresented to a warranty holder or other interested party the terms and coverage of a contract with intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

(5) For demonstrated lack of fitness or trustworthiness to engage in the business of warranty.

(6) For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion or unlawful withholding of moneys belonging to an association, insurer, or warranty holder or to others, and received in conduct of business under the registration.

(9) For rebating, or attempt thereat, or for unlawfully dividing or offering to divide his commission with another.

(10) Willful failure to comply with, or willful violation of any proper order, rule or regulation of the commissioner, or willful violation of any provision of this act.

History.—§18, ch. 59-110.

634.191 Grounds for discretionary refusal, suspension, revocation of registration of salesmen.—The commissioner may, in his discretion, deny, suspend, revoke or refuse to renew or continue the registration of any salesman if he finds after notice and hearing thereon as provided in §634.201 that as to the salesman any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation or refusal is not mandatory under §634.181:

(1) For any cause for which granting of the registration could have been refused had it then existed and been known to the commissioner.

(2) Violation of any provision of this act or of any other law applicable to the business of warranties in the course of dealings under the registration.

(3) Has violated any lawful order or rule or regulation of the commissioner.

(4) Failure or refusal, upon demand, to pay over to any association or insurer he represents or has represented any money coming into his hands belonging to the association or insurer.

(5) If in the conduct of business under the registration he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under part VII of chapter 626 of the insurance code, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(6) Conviction of a felony.

History.—§19, ch. 59-110.

634.201 Procedure for refusal, suspension, or revocation of registration of salesmen.—

(1) If any salesman is convicted by a court of a violation of this act, the registration of such individual shall thereby be deemed to be immediately revoked, without any further procedure relative thereto by the commissioner.

(2) As to a registration denied, suspended or revoked by the commissioner the person aggrieved thereby shall have the right to a hearing thereon before the commissioner, and may have the order reviewed by certiorari by the circuit court in and for Leon county within the time and in the manner provided by the Florida appellate rules.

(3) If after an investigation, or upon other evidence, the commissioner has reason to believe that there may exist any one or more grounds for the suspension, revocation, or refusal to renew or continue the registration of any salesman, as such grounds are specified in §§634.181 and 634.191, the commissioner shall mail written notice of his intention to suspend, revoke, or refuse to renew or continue the registration, as the case may be, accompanied by a copy of the charges against the salesman, to the salesman and to the association or insurer represented by the salesman. Such notice and charges shall be mailed by registered or certified mail, addressed to the salesman at his residence or principal business address last of record with the commissioner, and to the association or insurer addressed to its last address of record with the commissioner. The notice shall be deemed given when so addressed and mailed postage prepaid at a United States post office.

(4) If within twenty days after the date of mailing the notice and charges as provided for in subsection (3), neither the salesman, nor the association or insurer, has filed with

the commissioner at his office in Tallahassee a written answer to such charges coupled with a written request for a hearing thereon, the commissioner may proceed to suspend, revoke, or refuse to renew the registration.

(5) If, within such twenty days an answer and request for hearing is so filed with the commissioner, the commissioner shall hold a hearing with respect to the charges, the hearing to be held within sixty days of the date of the mailing of the notice and charges referred to in subsection (3), unless postponed by mutual consent of the parties. The commissioner shall give the salesman and each association or insurer that has filed with him the answer to the charges and request for hearing as provided in subsection (4), written notice of the hearing and of the matters to be considered thereat not less than ten days in advance of the hearing date.

(6) All such hearings shall be public at such place in this state deemed by the commissioner to be convenient to parties and witnesses.

(7) The commissioner or an assistant, deputy, or examiner designated by him, shall preside at the hearing and shall sit in the capacity of a quasi-judicial officer.

(8) The commissioner's statement of charges, papers, documents, reports or evidence relative to the subject of a hearing under this section shall not be subject to subpoena without his consent until after the same shall have been published at the hearing, unless after notice to the commissioner and hearing, the court determines that the commissioner would not be unnecessarily hindered or embarrassed.

(9) Following the hearing the commissioner shall make his order thereon and mail a copy thereof by registered or certified mail to the address last of record in his office of each party to the hearing. If by his findings made upon the hearing the commissioner finds that one or more of the grounds therefor exist as specified in §§634.181 and 634.191, his order shall incorporate the taking of action relative to suspension, revocation, or refusal to renew or continue the registration as required under §634.181 or as authorized under §634.191.

(10) Whenever it appears that any licensed insurance agent has violated the provisions of this act, the commissioner may take such action relative thereto as is authorized by the insurance code as for a violation of the insurance code by such agent.

History.—§20, ch. 59-110; (2) §27, ch. 63-512.

634.211 Administrative fine in lieu of suspension or revocation of registration.—

(1) If, upon procedures provided for in this act, the commissioner finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, the commissioner may, in his discretion, in lieu of such suspension, revocation or refusal, on a first offense and except where such suspension, revocation or refusal is mandatory, impose upon the registrant an administrative penalty in the amount of $100, or if the commissioner has found willful misconduct or willful violation on the part of the registrant, an administrative fine of $500. The administrative penalty may, in the commissioner's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction as to which the grounds for suspension, revocation or refusal related.

(2) The commissioner may allow the registrant a reasonable period, not to exceed thirty days, within which to pay to the commissioner the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the commissioner at his office at Tallahassee within the period so allowed, the registration of the registrant shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period and without any further proceedings.

(3) The commissioner shall pay into the "enforcement fund" provided for under §624.0321 of the insurance code all such administrative penalties collected by him under this section.

History.—§21, ch. 59-110.

634.221 Automobile warranty administration trust fund.—

(1) There is created in the state treasury a fund designated the "insurance commissioner's automobile warranty administration trust fund," to which shall be credited all license taxes collected from automobile inspection and warranty associations under §634.031, all taxes on premiums and assessments collected under §634.131, and all registration fees collected under §634.171.

(2) Such fund shall be used for or toward payment of the costs of the commissioner and his office in the administration of this act.

History.—§22, ch. 59-110; (1) a. by §2, ch. 61-119.
cf.—§624.0320 Insurance commissioner's clearing account.

634.231 Insurance business not authorized.—Nothing in this act shall be deemed to authorize any automobile inspection and warranty association to transact any business other than that of automobile warranty as herein defined; or otherwise to engage in the business of insurance unless such association is authorized therefor as an insurer under a certificate of authority issued by the commissioner under the insurance code of this state.

History.—§23, ch. 59-110.

634.241 Fronting not permitted.—No authorized insurer or licensed automobile inspection and warranty association shall act as a fronting company for any unauthorized insurer or unlicensed automobile inspection and warranty association. A fronting company is an authorized insurer or licensed automobile inspection and warranty association which by reinsurance or otherwise generally transfers to one or more unauthorized insurer or unlicensed automobile

inspection and warranty associations substantially all of the risk of loss under warranties written by it in this state.

History.—§24, ch. 59-110.

634.251 Penalty for violation.—Any individual who knowingly makes a false or otherwise fraudulent application for license or registration under this act, or who knowingly violates any provision thereof, shall upon conviction thereof and in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, be punishable as for a misdemeanor by a fine of not less than $100 nor more than $1000, or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment in the discretion of the court. Each instance of violation shall be considered a separate offense.

History.—§25, ch. 59-110.

CHAPTER 635

REGULATION OF MORTGAGE GUARANTY INSURANCE

635.011 Definitions.—In this act unless the context or subject matter otherwise requires:

(1) "Mortgage guaranty insurance" means a form of casualty or surety insurance insuring real property mortgage lenders against loss by reason of nonpayment of mortgage indebtedness by the borrower.

(2) "Contingency reserve" means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles.

(3) "Commissioner" means the insurance commissioner of this state.

History.—§1, ch. 59-182.

635.021 Authority to transact business.—Mortgage guaranty insurance may be transacted by a stock casualty insurer or a stock surety insurer holding a certificate of authority for the transaction of insurance in this state.

History.—§2, ch. 59-182.

635.031 Additional limitations.—In addition to laws otherwise applicable, mortgage guaranty insurers shall be subject to the following limitations:

(1) No such insurer shall retain risk as to any one subject of insurance in any amount exceeding ten per cent of its surplus as to policyholders, provided; in determining amount of risk retained, applicable reinsurance in any assuming insurer authorized to transact insurance in this state or approved by the commissioner shall be deducted from the total direct risk insured.

(2) Mortgage guaranty insurance shall be written with respect only to mortgages covering dwellings designed for occupancy by not more than four families.

(3) Mortgage guaranty insurance shall be written with respect only to real estate loans originating or handled through a bank, savings and loan association, or an insurance company, which is supervised and regulated by a department of this state or an agency of the federal government.

History.—§3, ch. 59-182; (3) n. §1, ch. 63-428.

635.041 Contingency reserve.—

(1) Each mortgage guaranty insurer shall establish a special contingency reserve out of net premiums (gross premiums less premiums returned to policyholders) remaining after establishment of the unearned premium reserve. To such contingency reserve the insurer shall contribute an amount equal to fifty per cent of such remaining premiums.

(2) Subject to the commissioner's approval, the contingency reserve shall be available for loss payments only when the insurer's incurred losses in any one calendar year exceed the rate formula expected losses by ten per cent of the corresponding earned premiums.

(3) In event of release of the contingency reserve for payment of losses, as approved by the commissioner, the contributions required under subsection (1), shall be treated on a first-in-first-out basis.

(4) The contingency reserve pertaining to a particular insurance policy shall be maintained (subject to prior payment of losses therefrom as provided in subsection (3)) for the term of the policy.

History.—§4, ch. 59-182.

635.051 Licensing of mortgage guaranty insurance agents.—

(1) Agents of mortgage guaranty insurers shall be licensed, and be subject to the same qualifications and requirements, as apply to general lines agents under the laws of this state, except:

(a) That no particular preliminary specialized education or training shall be required of an applicant for such an agent's license if, as part of the application for license, the insurer guarantees that the applicant will receive the necessary training to enable him properly to hold himself out to the public as a mortgage guaranty insurance agent, and if the commissioner, in his discretion, accepts such guaranty;

(b) The agent's license shall be a limited license, limited to the handling of mortgage guaranty insurance only; and

(c) An examination may be required of an applicant for such a license in the discretion of the insurance commissioner.

(2) Any general lines agent shall qualify to represent a mortgage guaranty insurer without additional examination.

(3) The commissioner shall charge and collect the same applicable license taxes and fees for or in connection with such application and license as apply to general lines agents. The commissioner shall deposit such license taxes and fees in such funds and for such uses as is provided by laws applicable to like license taxes and like fees in the case of general lines agents.

History.—§5, ch. 59-182.

635.061 Premium cost.—The premium cost of mortgage guaranty insurance shall not be deemed for any purpose to constitute a part of the cost of or interest upon any mortgage loan.

History.—§6, ch. 59-182.

635.071 Filings, approval of forms, rate filings.—

(1) No policy form or related form shall be issued or used in this state unless it has been filed with and approved by the commissioner as provided by laws applicable to casualty or surety insurance.

(2) In addition, each insurer shall file with the commissioner the rate to be charged and the premium including all modifications of rates and premiums to be paid by the policyholder.

History.—§7, ch. 59-182.

635.081 Administration and enforcement.—The commissioner shall have the same powers of administration and enforcement of the provisions of this act, and to make rules and regulations for the effectuation of any provisions of this act, as he has with respect to casualty or surety insurers in general under the insurance laws of this state.

History.—§8, ch. 59-182.

CHAPTER 638

AMBULANCE SERVICE CONTRACTS

638.011 Declaration of policy.—It shall be deemed contrary to public policy if any person receives, holds, controls, or manages funds or proceeds received from the sale of or from a contract to sell pre-need ambulance service, whether the payments for same are made outright or on an installment basis, prior to the need of the service by persons so purchasing it, or for whom it is purchased, unless such person holds, controls, or manages such funds, subject to the limitations and regulations prescribed by the following sections.

History.—§1, ch. 61-387.

638.021 Definitions.—As used in this act:

(1) Ambulance service association or association means any person (other than an authorized insurer) issuing ambulance service contracts as herein defined.

(2) Insurer means any property or casualty insurer duly authorized to transact such business in this state.

(3) Ambulance service contract or pre-need ambulance service contract means any contract or agreement whereby, for an agreed premium or specified consideration paid in advance or by installments, any person undertakes to compensate or indemnify the contract or agreement holder for any type ambulance service or undertakes to provide any type ambulance service on a pre-need basis.

(4) Salesman means any person employed or otherwise retained by an insurer or ambulance service association for the purpose of selling or issuing ambulance service contracts.

(5) Commissioner means the duly elected and qualified state treasurer and ex officio insurance commissioner of this state.

(6) Person includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance, exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, solicitor, service representative, adjuster and every legal entity.

History.—§2, ch. 61-387.

638.031 Powers of commissioner; rules.—The commissioner shall administer this act and to that end he may adopt, promulgate, and enforce rules and regulations necessary and proper to effectuate any provisions of this act.

History.—§3, ch. 61-387.

638.041 Certificate of authority required.—

(1) No person shall receive, hold, control, or manage any funds tendered as payment on any ambulance service contract until such person is possessed of a certificate of authority, or renewal thereof, issued by the commissioner under the circumstances hereinafter stated. An original certificate of authority shall expire on March 1 succeeding its issuance, and annually thereafter, or before March 1, a renewal thereof shall be issued under conditions herein set forth.

(2) An insurer while authorized to transact property or casualty insurance in this state may transact an ambulance service contract business without additional qualification or authority, but otherwise subject to the applicable provisions of this act.

History.—§4, ch. 61-387.

638.051 Certificate of authority; annual statement; renewal.—

(1) An application to the commissioner for a certificate of authority shall be accompanied by the statement and other matters described below and by the deposit required by §638.071. Annually thereafter on or before March 1, such person shall file said statement, as of January 1 of the calendar year in which it is filed, and such other information and data which may be required by the commissioner.

(2) Such statement shall be in such form as shall evidence to the commissioner the following:

(a) The types of ambulance service contracts proposed to be written; and if a person is bound upon the effective date of this act by any ambulance service contract, or if the statement accompanies an application for a renewal of a certificate of authority, an itemization of all outstanding ambulance service contracts, the dates upon which such contracts were entered, the names of all parties involved in such contracts or having any right thereunder, the amount paid in on each contract, and if payments are not completed, the amounts intended to be paid on each contract.

(b) Name and address of place of business of person offering to write ambulance service contracts.

(c) That such person offering the statement had sufficient funds available during the calendar year to perform his obligations under his contracts; and that he has complied with this act and any rules and regulations of the commissioner.

(d) Such other information as may be considered necessary by the commissioner in order for him to meet his responsibilities under this act.

(3) Any statement presented shall be certified by an independent certified public accountant, except that any insurer required to file statements under chapter 624 may include therein any statement of business written under this act.

(4) The fee payable to the commissioner for issuance of the original certificate and each annual renewal thereof shall be $100.00, which sum shall accompany each application for original certificate and thereafter each annual statement.

(5) Upon the commissioner's being satisfied that the statement and matters which may accompany it meet the requirements of this act and of his rules and regulations, he shall issue to such person said certificate of authority or renewal thereof.

History.—§5, ch. 61-387.

638.061 Capital funds required.—Any person applying for its original certificate of authority in this state after the effective date of this act or continuing such original certificate of authority, shall possess and thereafter maintain unimpaired paid-in capital or paid-in capital stock (if a stock association) or unimpaired surplus (if a foreign mutual or foreign reciprocal association) or a net trust fund (if a business trust association) in amount not less than twenty-five thousand dollars, and shall possess when first so authorized such additional surplus as is required under §638.071.

History.—§6, ch. 61-387.

638.071 Special surplus requirements.—In addition to the paid-in capital funds required in §638.061, any person hereafter applying for an initial certificate of authority in this state shall possess a surplus of twenty thousand dollars, which after the issuance of its initial certificate of authority such person may use the special surplus required under this section in the normal course of business only.

History.—§7, ch. 61-387.

638.081 Required deposit or bond.—

(1) To assure the faithful performance of its obligations to its members or subscribers every ambulance service association shall prior to issuance of its license by the commissioner, deposit with the commissioner securities of the type eligible for deposit by insurers under §625.0202, of the insurance code, and having at all times a market value of not less than twenty thousand dollars; except that any such association doing such a business in this state on or before April 1, 1961, shall on or before October 1, 1961, so deposit such securities in the value of not less than ten thousand dollars, and on or before October 1, 1962, so deposit additional such securities having a value of not less than ten thousand dollars, in order to bring its total deposit of securities to a value of not less than twenty thousand dollars not later than October 1, 1962.

(2) In lieu of any deposit of securities required under subsection (1), the association may file with the commissioner a surety bond in like amount. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the commissioner's approval. No such bond shall be cancelled or subject to cancellation unless at least thirty days advance notice thereof in writing is filed with the commissioner.

(3) The state shall be responsible for the safekeeping of all securities deposited with the commissioner under this act. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(4) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(5) Such deposit or bond shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes to the commissioner proof satisfactory to him that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the commissioner shall release the deposited securities to the parties entitled thereto, on presentation of the commissioner's receipts for such securities, or release any bond filed with him in lieu of such deposit.

History.—§8, ch. 61-387.

638.091 Suspension, revocation of certificate of authority for violations and special grounds.

(1) The commissioner may, in his discretion, suspend, revoke or refuse to renew the certificate of authority of any ambulance service association if he finds that the association has violated any lawful order of the commissioner or any provision of this act.

(2) The commissioner shall suspend or revoke an ambulance service association's certificate of authority if he finds that such association:

(a) Is in unsound condition, or in such condition, or using such methods and practices in the conduct of its business, as to render its further transaction of contracts in this state hazardous or injurious to the public.

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

(c) Has failed to pay any final judgment rendered against it in this state within ninety days after the judgment became final.

(d) With such frequency as to indicate its general business practice in this state, has without just cause refused to pay proper claims arising under its contracts, or without just cause compels contract holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another ambulance service association which transacts direct contracts in this state without having a license therefor.

(3) The commissioner may, in his discretion and without advance notice or hearing thereon, immediately suspend the certificate of authority of any ambulance service association as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state.

(4) Violation of this act by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state, in accordance with procedures and conditions provided for in part III of chapter 624 of the insurance code.

History.—§9, ch. 61-387.

638.101 Procedure to suspend or revoke certificate of authority.—

(1) Except where hearing is expressly not required under §638.091, no order of the commissioner suspending or revoking an association's certificate of authority shall be effective unless made after a hearing of which notice and order directing the association to show cause thereat why its certificate of authority should not be so suspended or revoked was mailed to the association by registered or certified mail addressed to its home office or principal place of business in the United States not less than thirty days in advance.

(2) The notice shall contain, in addition to a statement of the time and place of the hearing and the order to show cause, a concise statement of the particulars of the grounds for such proposed suspension or revocation in such details as reasonably to inform the association thereof.

(3) Except, that the association may in writing filed with the commissioner within the thirty days period waive the hearing, and in which case the commissioner may forthwith issue his order of suspension or revocation of the certificate of authority.

History.—§10, ch. 61-387.

638.111 Order, notice of suspension or revocation of certificate of authority; effect; publication.—

(1) Suspension or revocation of association's certificate of authority shall be by the commissioner's order mailed to the association by registered or certified mail. The commissioner shall promptly also give notice of such suspension or revocation to the association's salesmen in this state of record in the commissioner's office. The association shall not solicit or write any new contracts in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

(2) In his discretion the commissioner may cause notice of any such revocation to be published in one or more newspapers of general circulation published in this state.

History.—§11, ch. 61-387.

638.121 Duration of suspension; association's obligations during suspension period; reinstatement.—

(1) Suspension of an association's certificate of authority shall be for such period not to exceed one year, as is fixed by the commissioner in the order of suspension, unless the commissioner shortens or rescinds such suspension or the order upon which the suspension is based is modified, rescinded or reversed.

(2) During the period of suspension the association shall file its annual statement, pay fees, licenses and taxes as required under this chapter as if the certificate of authority has continued in full force.

(3) Upon expiration of the suspension period (if within such period the certificate of authority has not otherwise terminated) the association's certificate of authority shall automatically reinstate unless the commissioner finds that the causes of the suspension have not been removed, or that the association is otherwise not in compliance with the requirements of this chapter, and of which the commissioner shall give the association notice not less than thirty days in advance of the expiration of the suspension period. If not so automatically reinstated the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon failure of the

association to continue the certificate of authority during the suspension period, whichever event first occurs.

(4) Upon reinstatement of the certificate of authority of an insurer or association following suspension, the authority of its salesmen in this state to represent the association or insurer shall likewise reinstate. The commissioner shall promptly notify the association or insurer and its salesmen in this state of record in his office of such reinstatement.

History.—§12, ch. 61-387.

638.131 Filing, approval of forms, rate filings.—

(1) No contract form nor related form shall be issued or used in this state unless it has been filed with and approved by the commissioner.

(2) Every such filing shall be made not less than thirty days in advance of issuance or use. At the expiration of thirty days from date of filing a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before the expiration of the initial thirty day period. At the expiration of any such period as so extended and in the absence of prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) In addition, each insurer or ambulance service association shall file with the commissioner the rate to be charged for each contract and the premium, including all modifications of rates and premiums, to be paid by the contract holder. Every filing shall state the proposed effective date thereon. Such filing shall be made not less than thirty days prior to its effective date.

History.—§13, ch. 61-387.

638.141 Tax on premiums and assessments.—

(1) In addition to the taxes provided for in this act for ambulance service associations, and license taxes as provided in the insurance code as to insurers, each such association and insurer shall annually on or before March 1 file with the commissioner its annual statement, in form as prescribed and furnished by the commissioner, showing all premiums or assessments received by it from contract holders in this state, during the preceding calendar year, and shall pay to the state treasurer a tax in an amount equal to two per cent of the gross amount of such premiums or assessments. Provided that the same exemptions and credits as set forth in §§624.0310 and 624.0312 of the insurance code allowed to insurers shall apply to insurers and ambulance service associations under this act.

(2) All such taxes when received shall be deposited to the credit of the ambulance service administration trust fund provided for under §638.231.

(3) Premiums and assessments received by insurers and taxed under this section shall not be subject to any premium tax provided for in the insurance code.

History.—§14, ch. 61-387.

638.151 Examination of associations.—Ambulance service associations licensed under this act shall be subject to periodic examination by the commissioner in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624 of the insurance code.

History.—§15, ch. 61-387.

638.161 Service of process; appointment of commissioner as process agent.—

(1) Each association applying for authority to transact business in this state, whether domestic or foreign, shall file with the commissioner its appointment of the commissioner and his successors in office, on a form as furnished by the commissioner, as its attorney to receive service of legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the association. The appointment shall be irrevocable, shall bind the association and any successor in interest as to the assets or liabilities of the association, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the association resulting from its contract transactions therein.

(2) At the time of such appointment of the commissioner as its process agent the association shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The association may change the designation at any time by a new filing.

History.—§16, ch. 61-387.

638.171 Serving process.—

(1) Service of process upon the commissioner as process agent of the association shall be made by serving copies in triplicate of the process upon the commissioner or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service the commissioner shall file one copy in his office, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the association to receive the same, as provided under §638.161.

(2) Process served upon the commissioner and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the association.

History.—§17, ch. 61-387.

638.181 Salesmen to be registered.—

(1) Every ambulance service association or

insurer shall on forms prescribed by the commissioner register on or before October 1 of each year, the name and business office address of each salesman employed by it, and shall within thirty days after termination of the employment notify the commissioner of such termination. Any salesman employed subsequent to the October 1 filing date shall be registered with the commissioner within ten days after such employment. No employee or salesman of an ambulance service association or insurer shall directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the insurance code.

History.—§18, ch. 61-387.

638.191 Grounds for compulsory refusal, suspension, or revocation of registration of salesmen.—The commissioner shall deny, suspend, revoke, or refuse to renew or continue the registration of any such salesman if he finds after notice and hearing thereon as provided for in §638.211 that as to the salesman, any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation or fraud in registration.

(2) If the registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this act.

(3) Willful misrepresentation or willful deception with regard to any contract, done either in person or by any form of dissemination of information or advertising.

(4) If in the adjustment of claims arising out of any contract, he has materially misrepresented to a contract holder or other interested party the terms and coverage of a contract with intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

(5) For demonstrated lack of fitness or trustworthiness to engage in the business of ambulance service contracts.

(6) For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion or unlawful withholding of moneys belonging to an association, insurer, or contract holder or to others, and received in conduct of business under the registration.

(9) For rebating, or attempt thereat, or for unlawfully dividing or offering to divide his commission with another.

(10) Willful failure to comply with, or willful violation of any proper order, rule or regulation of the commissioner, or willful violation of any provision of this act.

History.—§19, ch. 61-387.

638.201 Grounds for discretionary refusal, suspension, revocation of registration of salesmen.—The commissioner may, in his discretion, deny, suspend, revoke or refuse to renew or continue the registration of any salesman if he finds after notice and hearing thereon as provided in §638.211 that as to the salesman any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation or refusal is not mandatory under §638.191:

(1) For any cause for which granting of the registration could have been refused had it then existed and been known to the commissioner.

(2) Violation of any provision of this act or of any other law applicable to the business of ambulance service contracts in the course of dealings under the registration.

(3) Has violated any lawful order or rule or regulation of the commissioner.

(4) Failure or refusal, upon demand, to pay over to any association or insurer he represents or has represented any money coming into his hands belonging to the association or insurer.

(5) If in the conduct of business under the registration he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts or practices are or may be defined under part VII of chapter 626 of the insurance code, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(6) Conviction of a felony.

History.—§20, ch. 61-387.

638.211 Procedure for refusal, suspension or revocation of registration of salesmen.—

(1) If any salesman is convicted by a court of a violation of this act, the registration of such individual shall thereby be deemed to be immediately revoked, without any further procedure relative thereto by the commissioner.

(2) As to a registration denied, suspended or revoked by the commissioner the person aggrieved thereby shall have the right to a hearing thereon before the commissioner, and may have the adverse decision of the commissioner reviewed by certiorari by the circuit court in and for Leon county within the time and in the manner provided by the Florida appellate rules.

(3) If after an investigation, or upon other evidence, the commissioner has reason to believe that there may exist any one or more grounds for the suspension, revocation, or refusal to renew or continue the registration of any salesman, as such grounds are specified in §§638.191 and 638.201, the commissioner shall mail written notice of his intention to suspend, revoke, or refuse to renew or continue the registration, as the case may be, accompanied by a copy of the charges against the salesman, to the salesman and the association or insurer represented by the salesman. Such notice and charges shall be mailed by registered or certified mail, addressed to the salesman at his residence or principal business address

last of record with the commissioner, and to the association or insurer addressed to its last address of record with the commissioner. The notice shall be deemed given when so addressed and mailed postage prepaid at a United States post office.

(4) If within twenty days after the date of mailing the notice and charges as provided for in subsection (3) above, neither the salesman, nor the association or insurer, has filed with the commissioner at his office in Tallahassee a written answer to such charges coupled with a written request for a hearing thereon, the commissioner may proceed to suspend, revoke, or refuse to renew the registration.

(5) If, within such twenty days an answer and request for hearing is so filed with the commissioner the commissioner shall hold a hearing with respect to the charges, the hearing to be held within sixty days of the date of the mailing of the notice and charges referred to in subsection (3), above, unless postponed by mutual consent of the parties. The commissioner shall give the salesman and each association or insurer that has filed with him the answer to the charges and request for hearing as provided in subsection (4), written notice of the hearing and of the matters to be considered thereat not less than ten days in advance of the hearing date.

(6) All such hearings shall be public at such place in this state deemed by the commissioner to be convenient to parties and witnesses.

(7) The commissioner or an assistant, deputy, or examiner designated by him, shall preside at the hearing and shall sit in the capacity of a quasi-judicial officer.

(8) The commissioner's statement of charges, papers, documents, reports or evidence relative to the subject of a hearing under this section shall not be subject to subpoena without his consent until after the same shall have been published at the hearing, unless after notice to the commissioner and hearing, the court determines that the commissioner would not be unnecessarily hindered or embarrassed.

(9) Following the hearing the commissioner shall make his order thereon and mail a copy thereof by registered or certified mail to the address last of record in his office of each party to the hearing. If by his findings made upon the hearing the commissioner finds that one or more of the grounds therefor exist as specified in §§638.191 and 638.201, his order shall incorporate the taking of action relative to suspension, revocation, or refusal to renew or continue the registration as required under §638.191 or as authorized under §638.201.

(10) Whenever it appears that any licensed insurance agent has violated the provisions of this act, the commissioner may take such action relative thereto as is authorized by the insurance code as for a violation of the insurance code by such agent.

History.—§21, ch. 61-387; (2) §28, ch. 63-512.

638.221 Administrative fine in lieu of suspension or revocation of registration.—

(1) If, upon procedures provided for in this act, the commissioner finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, the commissioner may, in his discretion, in lieu of such suspension, revocation or refusal, on a first offense and except where such suspension, revocation, or refusal is mandatory, impose upon the registrant an administrative penalty in the amount of $100.00, or if the commissioner has found willful misconduct or willful violation on the part of the registrant, an administrative fine of $500.00. The administrative penalty may, in the commissioner's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction as to which the grounds for suspension, revocation or refusal related.

(2) The commissioner may allow the registrant a reasonable period, not to exceed thirty days, within which to pay to the commissioner the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the commissioner at his office at Tallahassee within the period so allowed, the registration of the registrant shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period and without any further proceedings.

(3) The commissioner shall pay into the enforcement trust fund provided for under §624.0321 all such administrative penalties collected by him under this section.

History.—§22, ch. 61-387; (3) a. by §2, ch. 61-119.

638.231 Ambulance service contract administration trust fund.—

(1) There is created in the state treasury a fund designated the insurance commissioner's ambulance service contract administration trust fund, to which shall be credited all license fees collected from ambulance service associations under this act, all taxes on premiums, assessments and all registration fees collected under this act.

(2) Such fund shall be used for or toward payments of the costs of the commissioner and his office in the administration of this act.

History.—§23, ch. 61-387.

638.241 Insurance business not authorized.—Nothing in this act shall be deemed to authorize any ambulance service association to transact any business other than that of ambulance service contracts as herein defined; or otherwise to engage in the business of insurance unless such association is authorized therefor as an insurer under a certificate of authority issued by the commissioner under the insurance code of this state.

History.—§24, ch. 61-387.

638.251 Fronting not permitted.—No authorized insurer or ambulance service associa-

tion shall act as a fronting company for any unauthorized insurer or ambulance service association. A fronting company is an authorized insurer or ambulance service association which by reinsurance or otherwise generally transfers to one or more unauthorized insurer or ambulance service associations substantially all of the risk of loss under contracts written by it in this state.

History.—§25, ch. 61-387.

638.261 Certain ambulance service associations' relations with funeral directors prohibited.—

(1) No ambulance service association shall permit any funeral director or undertaker, or any member of his immediate family, to directly or indirectly by association or incorporation to act as its representative, adjuster, claim agent, special claim agent, salesman, or agent for such association in soliciting, negotiating, or effecting ambulance service contracts on any plan or of any nature issued by such association or in collecting premiums from holders of any such contracts.

(2) No ambulance service association shall affix, or permit to be affixed, advertising matter of any kind or character of any funeral director or undertaker to any ambulance service contracts or circulate or permit to be circulated any such advertising matter with such contracts, or attempt in any manner or form to influence contract holders of the association to employ the services of any particular funeral director or undertaker.

(3) No ambulance service association shall maintain an office or place of business, or permit its agent to maintain an office or place of business, in the office, establishment or place of business of any funeral director or undertaker in this state.

History.—§26, ch. 61-387.

638.271 Penalty for violation.—Any person who knowingly makes a false or otherwise fraudulent application for certificate of authority or registration under this act, or who knowingly violates any provision of this act, shall upon conviction thereof and in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any certificate or registration, be punishable as for a misdemeanor by a fine of not less than $100.00 nor more than $1000.00 or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment in the discretion of the court. Each instance of violation shall be considered a separate offense.

History.—§27, ch. 61-387.

CHAPTER 639

BURIAL INSURANCE AND CONTRACTS

639.06 Declaration of policy. — It shall be deemed contrary to public policy if any person receives, holds, controls, or manages funds or proceeds received from the sale of or from a contract to sell, burial supplies and equipment and funeral services, or any one or combination of them, where payments for same are made either outright or on an installment basis, prior to the demise of the person or persons so purchasing them, or for whom they are purchased, unless such person holds, controls or manages such funds, subject to the limitations and regulations prescribed by § § 639.07-639.17.

History.—Comp. §2, ch. 28211, 1953.

639.07 Definitions.—As used in §§639.06-639.17:

(1) "Person" means and shall include natural persons, partnerships, firms, associations, and corporations residing in or doing business in this state.

(2) "Pre-need burial contract" means any contract, other than a contract of insurance, under which, for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish funeral services or burial supplies and equipment.

(3) "Commissioner" means the state treasurer and ex officio insurance commissioner.

History.—Comp. §1, ch. 28211, 1953.

639.08 Forms and regulations.—The administration and enforcement of the provisions of this act are vested in the commissioner who is hereby directed to prepare and furnish all forms necessary under §§639.06-639.17 including forms for applications for certificates of authority, for renewals thereof, for annual statements, for other required reports, and for pre-need burial contracts. He is directed to promulgate such regulations, within the standards of this act, considered by him to be necessary to effectuate the purposes of §§639.06-639.17.

History.—§3, ch. 28211, 1953; §24, ch. 57-1.

639.09 Certificate of authority required.— No person shall receive, hold, control, or manage any funds tendered as payment on any pre-need burial contract until such person is possessed of a certificate of authority, or renewal thereof, issued by the commissioner under the circumstances hereinafter stated. An original certificate of authority shall expire on March 1st succeeding its issuance, and annually thereafter, on or before March 1st, a renewal thereof shall be issued under conditions herein set forth.

History.—§4, ch. 28211, 1953; §24, ch. 57-1.

639.10 Certificate of authority; annual statement; renewal.—

(1) An application to the commissioner for a certificate of authority shall be accompanied by the statement and other matters described below and by the deposit required by §639.12. Annually thereafter on or before March 1st, such person shall file said statement, as of January 1st of the calendar year in which it is filed, and such other information and data which may be required by the commissioner.

(2) Such statement shall be in such form as shall evidence to the commissioner the following:

(a) The types of pre-need burial contracts proposed to be written; and, if a person is bound upon the effective date of this act by any pre-need burial contract, or if the statement accompanies an application for a renewal of a certificate of authority, an itemization of all outstanding pre-need burial contracts, the dates upon which such contracts were entered, the names of all parties involved in such contracts or having any right thereunder, the amount paid in on each contract, and if payments are not completed, the amounts intended to be paid on each contract.

(b) Name and address of place of business of person offering to write pre-need burial contracts.

(c) That person offering statement had sufficient funds available during the calendar year to perform his obligations under his contracts; and that he has maintained seventy-five per cent of the funds received under contracts issued by him as hereinafter described; and that he has complied with this act and any rules or regulations of the commissioner.

(d) Such other information as may be considered necessary by the commissioner in order for him to meet his responsibilities under this act.

(3) If such person is an individual, said statement shall be sworn by him; if a firm or association, by all members thereof; and if a corporation by the president and secretary thereof.

(4) The fee payable to the commissioner for issuance of the original certificate and each annual renewal thereof shall be twenty-

five dollars, which sum shall accompany each application for original certificate and thereafter each annual statement.

(5) Upon the commissioner's being satisfied that the statement and matters which may accompany it meet the requirements of this act and of his rules and regulations, he shall issue to such person said certificate of authority or renewal thereof.

History.—Comp. §5, ch. 28211, 1953.

639.11 Disposition of proceeds received on contracts.—

(1) Of any funds received by any person offering and writing pre-need burial contracts, seventy-five per cent of said funds shall be maintained unimpaired and shall be deposited in a state bank, savings bank, trust company, national bank, state savings and loan association, or a federal savings and loan association, or shall be invested in bonds of the United States, or any of the states of the United States, or the District of Columbia, or of the cities or counties of Florida. Such seventy-five per cent, whether invested or deposited, shall only be withdrawn when necessary to satisfy the terms of a pre-need burial contract, the requirements of this act, or the order of a court of competent jurisdiction.

(2) The remaining twenty-five per cent of said funds may be used for the current operating expenses of the person writing said pre-need burial contracts.

History.—Comp. §6, ch. 28211, 1953.

639.12 Deposit.—Any application for an original certificate of authority shall be accompanied by a deposit with the commissioner by the person making such application, of bonds of the United States, of any of the states of the United States, of the District of Columbia, or of the cities or counties of Florida, in the aggregate market value of fifty thousand dollars, which securities, if such certificate of authority is issued, shall be receipted for by the commissioner and held by him in the manner and for the purposes hereinafter mentioned. Such deposit, in said aggregate value, shall be maintained by any such person entering into pre-need burial contracts. Whenever such person ceases to engage in such business in this state, and has settled all claims arising in connection with such contracts, and has discharged all his obligations under any such contracts, upon proof of such facts to the commissioner, and delivery to the commissioner of the latter's receipt for such securities, the commissioner shall deliver said securities to such person or his assignee. During the period said securities are deposited with the commissioner, the owner of the same shall be entitled to the interest collected thereon. Such bonds so deposited shall be held by the commissioner solely for the purpose of satisfying judgments obtained against the person making the deposit for his failure to perform a pre-need burial contract, or any other contract into which such person may have entered for the furnishing of burial services and equipment to holders of pre-need burial contracts. When such a final judgment has been rendered against any person having made the deposit, he shall pay same within sixty days thereafter, provided he does not prosecute or appeal from said judgment within said period; and if an appeal is so prosecuted and on appeal the judgment is affirmed, such person shall pay same within fifteen days from the date mandate from the appellate court is filed in the cause in the trial court. Should any such person fail to pay such a judgment within the time contemplated by the immediately preceding sentence, the commissioner shall, in pursuance of order entered in the cause in the trial court, sell sufficient of the securities of such person so deposited with him to satisfy said judgment and costs, and shall pay to the person recovering such judgment the amount thereof and costs. In the event that the deposit is not promptly restored in full following a payment made from it by the commissioner, he may follow the procedure outlined in §639.16 for causing the liquidation of the business of the person failing to replenish his deposit.

History.—Comp. §7, ch. 28211, 1953.

639.13 Cancellation of contracts.—Upon the giving of five days notice any person who has procured a pre-need burial contract from a person certified under this act to have the authority to issue or write such contracts may demand a refund of the entire amount actually paid on such contract.

History.—Comp. §8, ch. 28211, 1953.

639.14 Payment of funds upon death of named beneficiary.—Upon the death of a beneficiary named in a pre-need burial contract, the person issuing such contract shall immediately release to the person who made the payments on the contract, or to the legal representative of the beneficiary under such contract, the entire amount, in cash, of the funds actually paid on the contract.

History.—Comp. §9, ch. 28211, 1953.

639.15 Examinations and investigations.—The commissioner shall have the power and is required from time to time as he may deem necessary, but at least once every three years, to examine the business of any person writing pre-need burial contracts in the same manner as is provided for examination of insurance companies. Such examinations, shall be at the expense of the person examined and shall be made by the commissioner or his designated representative or examiner. The written report of all such examinations, when completed, shall be filed in the office of the commissioner, and when so filed shall constitute public records. Any such person being examined shall produce, upon request, all records of the company. The commissioner, or his designated representative, may at any time examine into the records and

affairs of any such person, whether in connection with a formal examination or not.

History.—Comp. §10, ch. 28211, 1953.

639.16 Revocation of certificate and liquidation proceedings.—

(1) Whenever the commissioner shall determine that a person holding a certificate of authority to issue pre-need burial contracts:

(a) Has not maintained seventy-five per cent of the funds received from contracts in the unimpaired state described in §639.11, or

(b) Has failed to cancel a contract upon proper request and refund the entire amount paid on the contract as required by §639.13, or

(c) Has not released upon the death of a beneficiary the entire amount received on a contract as required by §639.14, or

(d) Has refused to produce records in connection with his business, or

(e) Has otherwise failed to comply with the provisions of §§639.06-639.17 or any regulation promulgated by the commissioners in pursuance of §§639.06-639.17;

and if such person shall omit to correct any such failure, refusal, or violation within thirty days after written notice from the commissioner to effect such correction, the commissioner may, the attorney general representing him, file complaint setting forth the relevant facts in the circuit court of the county wherein such person has his principal place of business praying for issuance of an order to show cause why the business and affairs of such person should not be liquidated and a receiver appointed by the court to accomplish such purpose.

(2) Upon application for such rule to show cause, the court may, in its discretion, issue an injunction restraining defendant from transacting further business until further order of the court.

(3) Upon return of such order to show cause, the court shall hear and try the issues forthwith. If the court shall determine that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the commissioner, the court shall dismiss such complaint. On the other hand, if the court shall determine that the charges of the commissioner are supported by the evidence, he may enter an order directing the liquidation of such business of said person and shall appoint a receiver who shall, under such conditions as may be prescribed by the court, take into his possession the assets of said person for the purpose of liquidation.

(4) In any such order of liquidation, or in any order or orders thereafter entered, the court shall provide for notice to creditors, filing of claims, and all other details necessary and essential to an estate in receivership.

History.—Comp. §11, ch. 28211, 1953.

639.17 Penalty. — Any person, as defined herein, who shall receive, hold, manage, or control any funds or proceeds realized from the writing and issuing of a pre-need burial contract, as defined herein, or any person who shall disburse such funds or proceeds in any manner other than as required by this act, shall be guilty of a felony and upon conviction shall be punished by a fine not in excess of ten thousand dollars or by imprisonment for a term not in excess of five years.

History.—Comp. §12 ch. 28211, 1953.

CHAPTER 641

HOSPITAL AND MEDICAL SERVICE PLANS

641.01 Definition or scope.—

(1) Any five or more persons wishing to form a corporation for the purpose of establishing, maintaining and operating a nonprofit medical and/or surgical and/or hospital service plan or plans in the state, whereby medical and/or surgical and/or hospital service or care may be provided in whole or in part by the said corporation, or by physicians and/or surgeons and/or hospitals participating in such service plan or plans, to such of the public as become subscribers to said plan or plans under a contract or contracts with such corporation may become incorporated under laws of Florida governing the incorporation of benevolent or charitable associations and similar corporations not for profit, and any such corporation heretofore or hereafter incorporated whose charter or certificate of incorporation has or shall have the consent or approval of the insurance commissioner of the state, shall be governed by this law and subject to regulation and supervision by the insurance commissioner of the state and all provisions of the laws of Florida applicable to health and/or sick or accident insurance, except as otherwise provided by chapter 641. The term "medical and/or surgical service plan" as used in this law, includes the contracting for the payment of fees toward, or furnishing of, professional services authorized or permitted to be furnished by a duly licensed doctor of medicine.

(2) Every corporation licensed under provisions of this law is hereby declared to be a charitable and benevolent institution.

History.—§1, ch. 22826, 1945.
Am. §1, ch. 25394, 1949.

641.02 Incorporation.—

(1) Any nonprofit medical and/or surgical and/or hospital service plan corporation shall be incorporated under the provisions of the laws of the state governing the incorporation of benevolent or charitable associations and similar corporations not for profit, except when in conflict with the provisions of this law, and every charter or certificate of such corporation shall have endorsed thereon or annexed thereto the consent of the insurance commissioner of the state.

(2) The directors of every such medical and surgical service and hospital service plan corporation and of every such hospital service plan corporation must at all times include representatives of the following groups: Licensed physicians participating in such medical and/or surgical service plan, directors, trustees, administrators or superintendents of established hospitals or corporations operating hospitals designated in §641.01; the general public, exclusive of physicians and hospital representatives.

(3) At least a majority of the directors of every such medical and surgical service plan corporation must at all times be licensed physicians and/or surgeons.

History.—§2, ch. 22826, 1945.

641.03 Contracts.—

(1) Any corporation subject to the provisions of the law may contract for or secure the rendering of service to any of its subscribers only by hospitals maintained by the state or any of its political subdivisions or by any other regularly operated and recognized hospital or by any hospital approved by the insurance commissioner and/or by licensed physicians and surgeons.

(2) The rates charged by such corporation to the subscribers for medical and/or surgical and/or hospital care shall at all times be subject to the approval of the insurance commissioner of the state.

(3) All rates of payments made by such corporation pursuant to the contracts provided for in subsection (1) of this section shall be approved by the insurance commissioner of the state.

History.—§3, ch. 22826, 1945.

641.04 License.—

(1) No corporation subject to the provisions of this law shall issue contracts to subscribers until the insurance commissioner has, by formal certificate or license, authorized it to do so. Application for such certificate of authority or license shall be made on forms to be supplied by the insurance commissioner, containing such information as he shall deem necessary.

(2) Each application for such certificate of authority or license, as a part thereof, shall be accompanied by copies of the following documents, duly certified to by at least two of the executive officers of such corporation:

(a) Charter or certificate of incorporation, with all amendments thereto.

(b) Bylaws with all amendments thereto.

(c) Proposed contracts between the corporation and any party for the furnishing of or the payment in whole or in part for medical and/or surgical services furnished the subscribers by

duly licensed physicians and/or surgeons and for the furnishing of hospital service to the subscribers.

(d) Proposed contracts to be issued to subscribers to the plan showing the benefits to which they are entitled, together with a table of the rates charged, or proposed to be charged, to subscribers for each form of such contract.

(e) Financial statement of the corporation which shall include the amounts of each contribution paid or agreed to be paid to the corporation having working capital, the name or names of each contributor and the terms of each contribution.

(f) The insurance commissioner shall issue a certificate of authority or license to each applicant upon the payment of a fee of ten dollars and upon being satisfied as to the following:

1. That the applicant has been organized bona fide for the purpose of establishing, maintaining and operating a nonprofit medical and/or surgical and/or hospital service plan.

2. That each contract executed or proposed to be executed by the applicant and the physician and/or surgeon and/or hospital obligates, or will when executed, obligate each physician and/or surgeon and/or hospital thereto, to render the service and/or accept payment for the service to which each subscriber may be entitled under the terms of the contract issued to the subscriber.

3. That each contract issued or proposed to be issued to subscribers to the plan, is in a form approved by the insurance commissioner, and that the rates charged or proposed to be charged for each form of such contract and benefits to be provided, are fair and reasonable.

4. That no contributions to the funds of the corporation for working capital are repayable by the corporation except out of earned income over and above operating expenses and medical and/or surgical and/or hospital expenses and such reserve as the insurance commissioner may deem adequate.

5. That the amount of money actually received by the applicant upon the terms specified in subparagraph 4 hereof, for working capital, is sufficient to carry all acquisition costs and operating expenses for a period of at least three months from the date of the issuance of the certificate of authority or license.

6. Such certificate of authority or license shall be effective until revoked by the insurance commissioner as hereinafter provided, and any corporation to which such certificate of authority or license has been issued, until revocation thereof, shall be authorized to issue contracts, in the form or forms filed with the insurance commissioner, to the persons who may become subscribers.

History.—§4, ch. 22826, 1945.

641.05 Charter, by-laws, contracts, rates; amendments, approval by insurance commission.—No corporation subject to the provisions of this law shall amend its charter or certificate of incorporation, its bylaws, the terms and provisions of contracts executed or to be executed with hospitals and/or physicians and/or surgeons, and the terms and provisions of contracts issued or proposed to be issued to subscribers until such proposed amendments have been first submitted to and approved by the insurance commissioner; nor shall any change be made in the table of rates charged or proposed to be charged to subscribers for any form of contract issued or to be issued until such proposed charge has been submitted to and approved by the insurance commissioner upon the adoption of any amendment or change, and following its approval by the insurance commissioner such corporation shall file a copy thereof with the insurance commissioner duly certified by at least two of the executive officers of such corporation.

History.—§5, ch. 22826, 1945.

641.06 Annual reports or statements.—Every corporation subject to the provisions of this law shall annually on or before the first day of March, file in the office of the insurance commissioner a statement verified by at least two of the principal officers of said corporation showing its condition on the 31st day of December then next preceding, which shall be in such form and shall contain such matters as the insurance commissioner shall prescribe.

History.—§6, ch. 22826, 1945.

641.07 Examination.—The insurance commissioner or any deputy or examiner of the insurance department or any other person whom the insurance commissioner shall appoint, shall have the power of visitation and examination into the affairs of any such corporation and free access to all of the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath and to examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the corporation. The corporation whose affairs are examined shall pay to the insurance commissioner the traveling and other expenses of examination pursuant to §624.0119.

History.—§7, ch. 22826, 1945; §18, ch. 63-400.

641.08 Acquisition costs.—All acquisition costs in connection with the solicitation of subscribers to such service plan or plans shall at all times be subject to the approval of the insurance commissioner.

History.—§8, ch. 22826, 1945.

641.09 Investments and funds.—The funds of any corporation subject to the provisions of this law shall be invested only in securities permitted by the laws of the state for the investment of assets of life insurance companies.

History.—§9, ch. 22826, 1945.
cf.—§340.21, Relating to investments.

641.10 Review of dispute.—

(1) Any dispute arising between a corporation subject to the provisions of this law and any hospital and/or physician and/or surgeon with whom such corporation has a contract as provided herein, may be submitted to the insurance commissioner of the state for his decision with respect thereto.

(2) All final orders of the insurance commissioner made under the provisions of this

law may be appealed to the district court of appeal, first district, in and for Leon county in the manner and within the time provided by the Florida appellate rules.

History.—§10, ch. 22826, 1945; (2) §29, ch. 63-512.

641.11 Dissolution or liquidation.—Any dissolution or liquidation of a corporation subject to the provisions of this law shall be under the supervision of the insurance commissioner, who shall have all powers with respect thereto granted to him under the laws of the state with respect to the dissolution and liquidation of life insurance companies.

History.—§11, ch. 22826, 1945.

641.12 Revocation of license.—Whenever the insurance commissioner shall have reason to believe that any corporation subject to the provisions of this law is being operated for profit or fraudulently conducted, or is not complying with the provisions of this law, he shall be authorized to suspend or revoke the certificate of authority or license theretofore granted, and may at any time thereafter institute or cause to be instituted, after due notice to the corporation, and an opportunity given to the corporation to be heard, the necessary proceedings under the laws of the state, looking to the dissolution of insurance companies, and any dissolution or liquidation of a corporation subject to the provisions of this law shall be under the supervision of the insurance commissioner.

History.—§12, ch. 22826, 1945.

641.13 Licenses and taxes.—

(1) Every corporation licensed under this law, its representatives and all of its properties and funds shall be exempt from all taxes and license fees; provided, such corporation shall be subject to the same license fees and premium receipt taxes imposed by general law upon and against and payable by fraternal benefit societies operating under the provisions of chapter 632, and with respect to the computation of such premium receipt taxes and for the purpose of this provision only, the "rates" paid by subscribers as provided herein shall be construed as "premiums" and the "contract" provided herein shall be construed as "policy."

(2) If the charter or certificate of incorporation specifies among its purposes the establishment, maintenance and operation of a medical and/or surgical and/or hospital service plan, it shall be referred to the insurance commissioner and such charter or certificate shall not be filed until the consent of the insurance commissioner shall be endorsed thereon and annexed thereto.

History.—§13, ch. 22826, 1945.

641.14 Regulation of employers or representatives.—Every representative or employee of any corporation subject to the provisions of this law, who sells or writes certificates for hospital service or contracts with hospitals for said corporation shall be registered by said corporation with the state insurance commissioner of the state. Said registration shall be on forms prescribed by the insurance commissioner and shall show such information as may be requested by the insurance commissioner. Provided, that said registration shall be made on or before the date of employment by said corporation of said representative or employee. In addition to the foregoing described registration, the corporation shall pay to the insurance commissioner a permit fee of six dollars for each such representative or employee and a like amount October 1 of each year thereafter; provided, that said permit fee shall be only three dollars in case the said representative or employee is not employed prior to April 1 of the then current year. No such permit shall be transferable from one person or corporation to another and shall be revocable by the insurance commissioner for cause, after due notice to employee or representative and corporation, followed by a hearing before the insurance commissioner or his deputy.

History.—§14, ch. 22826, 1945.

641.15 Pre-existing service plan corporations.—No nonprofit corporation organized under the laws of this state prior to the effective date of this law, to operate a medical and/or surgical and/or hospital plan or plans in the state or any of the counties thereof, whose charter or certificate of incorporation has, prior to the effective date of this law, been approved or consented to by the insurance commissioner of the state, shall be required to incorporate or reincorporate as provided herein, but every such corporation desiring to operate such a plan or plans state-wide, shall file with the insurance commissioner its acceptance of this law within six months from June 11, 1945, and every such corporation so accepting this law shall continue and shall have all the powers, authority and exemptions of this law, and be subject to all the provisions thereof; provided, however, the provisions of this law shall not apply to organized nonprofit corporations herein defined and heretofore existing whose charter and bylaws have not been filed with, or has not received a certificate of authority or license from the insurance commissioner of the state prior to the effective date of this law, nor to such corporations which are now in operation and have heretofore operated within the confines of a single county.

History.—§15, ch. 22826, 1945.

641.16 Penalties.—

(1) Any person or corporation engaging in the business of operating nonprofit medical and/or surgical and/or hospital service plan without first having procured a license from the insurance commissioner, as required by this law, and any person or corporation violating any of the provisions of this law, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than one year in the county jail, or by a fine not to exceed one thousand dollars, or both in the discretion of the court.

(2) Any person making any willfully false statements in any written documents required by any section of this law to be filed with the insurance commissioner, or any examiner at any investigation or hearing conducted by said insurance commissioner or examiner, shall be guilty of perjury and upon conviction shall be punished as provided by law for the crime of perjury.

History.—§16, ch. 22826, 1945.
cf.—§837.01, Perjury, punishment.

CHAPTER 649

AUTOMOBILE CLUBS

649.011 Definitions.—

(1) "Automobile club" shall mean a legal entity which, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use or maintenance of a motor vehicle; provided, however, that the definition of automobile clubs shall not include persons, associations, or corporations which are organized and operated solely for the purpose of conducting, sponsoring or sanctioning motor vehicle races, exhibitions or contests upon race tracks, or upon race courses established and marked as such for the duration of such particular event. The words "motor vehicles" used herein shall be the same as defined in chapter 320.

(2) "Insurance commissioner" shall mean the duly elected and qualified state treasurer and insurance commissioner of the state.

History.—Comp. §1, ch. 57-65.

649.021 License required. — No automobile club shall do, or offer to do, business in the state unless the same shall be organized as a domestic or foreign corporation and shall be licensed by the insurance commissioner.

History.—Comp. §2, ch. 57-65.

649.031 Evidence of qualification for licensing.—

(1) An applicant seeking to do business as or engage in the operation of an automobile club shall be required to furnish the commissioner with evidence of the competency and trustworthiness of its management and their professional ability to perform the services to be offered. The applicant shall pay a license fee of one hundred dollars annually. All licenses shall expire on September 30 of each year and may be renewed on application and payment of the same fee. Nothing in this act shall be construed as authorizing a licensed automobile club to provide or furnish insurance coverage unless such club shall have complied with all the laws and regulations required of insurance companies authorized to do business in this state.

(2) The actual or proposed name by which the automobile club is, or will be known, and the trademark and emblem which it is using, or proposed to use, shall be submitted to the insurance commissioner for his approval, providing such name, emblem or trademark is distinctive and not likely to mislead the public as to the nature or identity of the corporation using it, or interfere with the transactions of any other automobile club already doing business in the state, it shall be entitled to be approved.

History.—Comp. §3, ch. 57-65.

649.041 Deposit required or surety bond.—

(1) Except as provided by this act, every automobile club, to assure the faithful performance of its obligations to its members or subscribers, shall deposit with the insurance commissioner securities of the type, in which by the laws of this state an insurance company may invest its funds, the sum of fifty thousand dollars before the insurance commissioner may issue it a license to do business; or in lieu thereof such clubs may file with the commissioner a surety bond in the amount of fifty thousand dollars of a surety company authorized to do business in this state. The bond shall be approved by the commissioner and shall not be cancelled without a thirty-day notice to the commissioner.

(2) Any automobile club doing business in this state on April 1, 1957, shall, on or before October 1, 1957, deposit twenty-five thousand dollars in securities with the commissioner, as set forth in subsection (1), and on or before October 1, 1958, deposit with the commissioner an additional twenty-five thousand dollars in such securities, or in lieu thereof such clubs may file with the commissioner a surety bond in the same amounts, of a surety company authorized to do business in this state. The bond shall be approved by the commissioner and shall not be cancelled without thirty days notice to the commissioner.

(3) The state shall be responsible for the safekeeping of all securities deposited with the insurance commissioner under this act. Securities deposited with the insurance commissioner under this act shall not, on account of such securities being in the state, be subject to taxation but shall be held exclusively and solely to insure the automobile club's faithful performance of its obligations to its members or subscribers.

(4) Automobile clubs depositing securities as required in this act shall have the right to draw the interest on such securities as the same accrues; and should coupon bonds be deposited under this act, the insurance commissioner, upon demand of the automobile club shall surrender the coupons as the same shall become due from any or all such bonds deposited by the said automobile clubs.

(5) Whenever an automobile club ceases to do business in this state and has satisfactorily satisfied its obligations to its members or subscribers, securities so deposited under this act shall be delivered up to the proper parties on

presentation of the commissioner's receipt for said securities.

History.—Comp. §4, ch. 57-65.

649.051 Salesmen to be registered.—Every automobile club shall on forms prescribed by the insurance commissioner register, on or before October 1 of each year, the names of, and home office address of each salesman, and shall within thirty days of termination of employment notify the insurance commissioner of such termination. Any salesman employed subsequent to the October 1 filing shall be registered with the insurance commissioner within ten days of such employment. No employee or salesman of an automobile club shall directly or indirectly be licensed to solicit, negotiate, or hold himself out in any manner to be an insurance agent or solicitor, to effect insurance contracts unless it is in accordance with the provisions of the insurance laws.

History.—Comp. §5, ch. 57-65.

649.061 Powers of commissioner; rules.—The insurance commissioner shall have full power and authority to administer the provisions of this act and, to that end, he may adopt, promulgate and enforce rules and regulations necessary and proper to effectuate the purpose and provisions of this act.

History.—Comp. §6, ch. 57-65.

649.071 Penalty.—Any person violating the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months, or punished by both fine and imprisonment, in the discretion of the court.

History.—Comp. §7, ch. 57-65.

CHAPTER 650

SOCIAL SECURITY FOR PUBLIC EMPLOYEES

650.01 Declaration of policy.—In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors insurance system embodied in the social security act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps as are necessary be taken to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the social security act. It is also the policy of the legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History.—§1, ch. 26841, 1951; §2, ch. 29824, 1955.

650.02 **Definitions.**—For the purpose of this chapter:

(1) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal insurance contributions act, would not constitute "wages" within the meaning of that act;

(2) The term "employment" means any services performed by an employee in the employ of the state, or any political subdivision thereof, including hospital or drainage taxing districts, for such employer, except:

(a) Service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the social security act.

(b) Service which under the social security act may not be included in an agreement between this state and the secretary of health, education, and welfare entered into under this chapter. Service which under the social security act may be included in an agreement only upon certification by the governor in accordance with §218 (d) (3) of that act shall be included in the term "employment" if and when the governor issues, with respect to such services, a certificate to the secretary of health, education, and welfare, pursuant to said section.

(c) At the option of the employer, and when so provided in its agreement, any one or more of the following:

1. Service of an emergency nature.

2. Service in any class or classes of elective positions.

3. Service in any class or classes of part-time positions.

4. Service in any class or classes of positions the compensation for which is on a fee basis.

5. Service performed by individuals as members of a coverage group (as defined in §218 (b) of the social security act, as amended) in positions covered by a retirement system on the date the federal-state agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement.

6. Agricultural labor, as defined in §210 of the social security act, as amended.

7. Service performed by a student for the school in which he is enrolled.

(3) The term "employee" includes an officer of the state or political subdivision thereof;

(4) The term "state agency" means the Florida industrial commission.

(5) The term "secretary of health, education, and welfare" includes any individual to whom the secretary of health, education, and welfare has delegated any of the secretary's functions under the social security act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such function.

(6) The term "political subdivision" includes an instrumentality of the state, or of one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

(7) The term "social security act" means the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant there-

to), as such act has been and may from time to time be amended; and

(8) The term "federal insurance contributions act" means subchapter A of chapter 9 of the federal internal revenue code of 1939 and subchapters A and B of chapter 21 of the federal internal revenue code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by §1400 of such code of 1939 and §3101 of such code of 1954.

History.—§2, ch. 26841, 1951; sub. § § (3), (4), (6), am. § § 1-3, ch. 28246, 1953; sub §(2) am. §§1, 3-5, ch. 29824, 1955.

650.03 Federal-state agreement; interstate instrumentalities.—

(1) The state agency with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the federal security administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitutes "employment" as defined in §650.02. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and the secretary of health, education and welfare shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that:

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in §650.02), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act.

(c) Such agreement shall be effective with respect to services in employment covered by the agreement performed after January 1, 1951;

(d) All services which constitute employment as defined in §650.02 and are performed in the employ of the state by employees of the state, shall be covered by the agreement.

(e) All services which 1. constitute employment as defined in §650.02, 2. are performed in the employ of a political subdivision of the state, and 3. are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under §650.05, shall be covered by the agreement.

(f) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals to whom §218 (c) (3) (C) of the social security act is applicable, and shall provide for election by the employer as to whether the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system.

(g) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health, education, and welfare pursuant to §218 (d) (3) of the social security act, as amended.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states,

(a) to enter into an agreement with the secretary of health, education, and welfare whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality.

(b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under §650.04 (1) if they were covered by an agreement made pursuant to subsection (1) of this section, and

(c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) and other provisions of this chapter.

(3) Where a retirement system established by the state or any political subdivision thereof covers positions of policemen or firemen, or both, and whether or not other positions are covered by such system, there shall, for the purposes of this chapter, be deemed to be a separate retirement system with respect to the positions of policemen and a separate retirement system with respect to the positions of firemen.

(4) For the purposes of this chapter any retirement system established by the state or any political subdivision thereof, which, on, before, or after the date of enactment of this subsection is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this chapter and the other of which is composed of positions of members of such system who do not desire such coverage, shall, upon the governor's au-

thorization of a referendum for either division or part, be deemed to be a separate retirement system with respect to each such division or part. The positions of individuals who become members of such system after such coverage is extended shall be included in such division or part composed of members desiring such coverage. The position of any individual which is covered by any retirement system to which the preceding two sentences are applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this subsection or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under this chapter.

(5) For purposes of this chapter employees of the institutions of higher learning under the board of control who are covered by the teachers retirement system shall be deemed to be covered by a separate retirement system for each institution.

(6) If a retirement system covers positions of employees of a hospital which is an integral part of a municipal political subdivision, then, for the purposes of this chapter, there shall be deemed to be a separate retirement system for the employees of such hospital.

History.—§3, ch. 26841, 1951; sub §(1)(c) am. §4, ch. 28246, 1953; sub §(1) am. §§6-9, ch. 29824, 1955; (3), (4) N. by §1, ch. 57-226; (5) n. by §1, ch. 57-780; (6) n. by §1, ch. 61-138.

650.04 Contributions by state employees.—

(1) Every employee of the state whose services are covered by an agreement entered into under §650.03 shall be required to pay for the period of such coverage, into the social security contribution trust fund established by §650.06, contributions, with respect to wages as defined in §650.02, equal to the amount of the employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this chapter.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History.—§4, ch. 26841, 1951; sub §(1) am. §10, ch. 29824, 1955; (1) a. by §2, ch. 61-119.

650.05 Plans for coverage of employees of political subdivisions.—

(1) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of title II of the social security act, in conformity with the applicable provisions of such act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the state agency if it is found that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless;

(a) it is in conformity with the requirements of the social security act and with the agreement entered into under §650.03;

(b) it provides that all services which constitute employment as defined in §650.02 are performed in the employ of the political subdivisions by employees thereof, shall be covered by the plan, except such of those services set forth in §650.02(2)(c) as the political subdivision specifically elects to exclude.

(c) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(d) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(e) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports; and

(f) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provisions contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the social security act.

(2) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby. Any final decision of the state agency shall be subject to proper judicial review.

(3) (a) Each political subdivision as to which a plan has been approved under this section shall pay into the social security contribution trust fund, with respect to wages (as defined in §650.02), at such time or times as the

state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under §650.03.

(b) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages as defined in §650.02 not exceeding the amount of the employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the social security contribution trust fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (a) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(4) Delinquent payments due under subsection (3)(a) may, with interest of one-half of one percent for each calendar month or part thereof past the due date, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or shall, at the request of the state agency, be deducted from any other monies payable to such subdivision by any department or agency of the state.

(5) Each political subdivision as to which a plan has been approved shall be liable to the state agency for a proportionate part of the cost of administering this chapter. Such proportionate cost shall be computed and paid in accordance with such regulations relating thereto as may be adopted by the state agency, and shall be deposited in the social security administration trust fund, and if any such payment be not made when due, the amount thereof, with interest of one-half of one percent for each calendar month or part thereof past the due date, shall, upon request of the state agency, be deducted from any other monies payable to such political subdivision by any officer, department, or agency of the state, and forthwith paid to the state agency. Withdrawals from the social security administration trust fund shall be made solely for the payment of costs of administering this chapter, and the necessary amounts are hereby appropriated from said fund for this purpose.

History.—§5, ch. 26841, 1951; sub. § § (1)(b),(4)(5) am. § § 5-7, ch. 28246, 1953; sub. §(3)(b) am. §11, ch. 29824, 1955. (3), (5) a. by §2, ch. 61-119.

650.06 Social security contribution trust fund.—

(1) There is hereby established a special fund to be known as the social security contribution trust fund. Such fund shall consist of and there shall be deposited in such fund:

(a) all contributions, interest, and penalties collected under §§650.04 and 650.05;

(b) all monies appropriated thereto under this chapter;

(c) any property or securities and earnings thereof acquired through the use of monies belonging to the fund;

(d) interest earned upon any monies in the fund, and

(e) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other monies received for the fund from any other source. All monies in the fund shall be mingled and undivided. Subject to the provisions of this chapter, the state agency is vested with full power, authority and jurisdiction over the fund, including all monies and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter.

(2) The social security contribution trust fund shall be established and held separate and apart from any other funds or monies of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for

(a) payments of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under §650.03;

(b) payments of refunds provided for in §650.04(3); and

(c) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(3) From the social security contribution trust fund the custodian of the fund shall pay to the secretary of the treasury such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under §650.03 and the social security act.

(4) The treasurer of the state shall be ex-officio treasurer and custodian of the social security contribution trust fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency. The treasurer shall pay all warrants drawn by the comptroller and counter-signed by the governor upon the fund in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(5) There are hereby authorized to be appropriated to the social security contribution trust fund, out of the general funds of this state not otherwise appropriated, such additional sums as are found to be necessary to make the payments to the secretary of the treasury which the state is required to make pursuant to an agreement entered into under §650.03.

History.—§6, ch. 26841, 1951; §2, ch. 61-119.

650.07 Rules and regulations.—The state

agency shall make and publish such rules and regulations, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

History.—Comp. §7, ch. 26841, 1951.

650.08 Studies and reports.—The state agency shall make studies concerning the problem of old-age and survivors insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this chapter and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this chapter during the preceding calendar year, including such recommendations for amendments to this chapter as it considers proper.

History.—Comp. §8, ch. 26841, 1951.

650.09 Liberal construction.—The provisions of this chapter shall be liberally construed in order to effectively carry out the purposes of the chapter as set forth in the declaration of public policy.

History.—Comp. §9, ch. 26841, 1951.

650.10 Referenda and certification.—

(1) The governor, or an official of the state designated by him for the purpose, is empowered to authorize and supervise the conduct of employee referenda prescribed by §213(d)(3) of the social security act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by §218 (d) (3) (C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(2) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in §218 (d) (3) of the social security act have been met, the governor, or an official of the state designated by him for the purpose, shall so certify to the secretary of health, education and welfare.

History.—§12, ch. 29824, 1955; §2, ch. 61-138.

CHAPTER 651

LIFE CARE CONTRACTS

651.01 Legislative determination. — It is hereby determined by the legislature that the execution of care agreements for life or for a term of years and the business of those who engage by contract to furnish such care, are matters charged with a public interest; that heretofore abuses have been practiced in relation to the execution of said agreements, acquisition of property as consideration therefor, and the conduct of such business; that such persons presently engaged in such business in this state and those who may engage in said business, and such businesses, should be regulated, and that this chapter which regulates such persons and businesses is a valid exercise of the police power of Florida in relation thereto.

History.—Comp. §2, ch. 28190, 1953.

651.02 Definitions.—As used in this chapter:

(1) "Commissioner" means the state treasurer and ex officio insurance commissioner.

(2) "Property", unless otherwise qualified, means real or personal property, including cash.

(3) "Care" means furnishing to an individual, not related by consanguinity or affinity to a person furnishing same, shelter, food, clothing, drugs, medicine, medical attention, entertainment, or other personal advantage or attention, either one or more, for a term of years or for life.

(4) "Person" means the owner or operator, whether a natural person or a firm or corporation, of a private home, institution, building, residence or other place, whether operated for profit or not, who undertakes to provide care for a period of one or more years or for life, for a fixed fee for the period of such care, payable either in a lump sum or in installments; or the owner or operator of an establishment licensed under the provisions of Chapters 400 or 608, who undertakes to provide care for a fixed fee, for the period of such care, payable either in a lump sum or in installments.

(5) "Transferor" means the one who transfers property to a person in consideration of such person furnishing care to the one transferring the property or to another designated to receive such care and referred to herein as the "nominee" of the transferor.

History.—Comp. §1, ch. 28190, 1953.

651.03 Administration; regulations. — The administration of this chapter is vested in the commissioner, who shall:

(1) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for certificates of authority, renewals thereof, statements, examinations, and other required reports.

(2) Promulgate regulations, within the standards of this chapter, considered by him necessary to effectuate the purposes of this law; and in this connection it is provided that specific enumeration of this chapter with respect to a given phase or subject matter shall not preclude the commissioner from promulgating regulations concerning such phase or subject matter, which regulations are within the standards and purposes of the chapter.

History.—Comp. §3, ch. 28190, 1953.

651.04 Certificate of authority. — On and after July 1, 1953, no person shall receive transfers of property conditioned upon an agreement to furnish life care or care for a term of years to a transferor or his nominee, nor shall such person enter into any such agreements with a transferor or his nominee for such purpose, nor shall such a person presently engaged in the furnishing of such care continue to engage in such business, unless and until such person is possessed of a certificate of authority, or renewal thereof, issued by the commissioner under the circumstances hereinafter stated. An original certificate of authority shall expire on March 1st succeeding its issuance, and annually thereafter, on or before March 1st, a renewal thereof shall be issued under the conditions set forth, except that this provision shall not apply to any such retirement home presently or hereafter being operated under receivership or under trustees appointed by any circuit court of this state, during the period of such operation.

History.—Comp. §4, ch. 28190, 1953.

651.05 Same; application; renewals.—

(1) An application for a certificate of authority by any person to the commissioner shall be accompanied by the statement and other matters as provided in this section and by the deposit required by §651.09. Annually thereafter on or before March 1st, such person shall file said statement, as of January 1st of the calendar year in which it is filed, and such other information and data which may be required by the commissioner.

(2) If the applicant is a corporation, the original application for said certificate of authority shall also be accompanied by a copy of the charter. Thereafter, the annual statement as provided in subsection (1), shall be accompanied by a copy of any charter amendments during the period covered by said statement.

(3) Such statement shall be in the form as

the commissioner shall elect and shall evidence the following:

(a) The type of agreements for care to be entered into by such person; and if such person on July 1, 1953, is engaged in the business of furnishing care, an itemization of outstanding agreements, dates thereof, transferors or their nominees named in such agreements, consideration with respect to each agreement and conditions thereof.

(b) For use in annual statements after the issuance of an original certificate, an itemization of contracts outstanding, dates thereof, transferors or their nominees named therein, consideration with respect to each agreement and conditions thereof.

(c) Location and description of physical property or properties essential for and proposed to be used or being used, in connection with such person's agreements to furnish care.

(d) Such detailed requirements with respect to assets and liabilities as will evidence to the commissioner, 1. sufficiency of funds available or reasonably available during the calendar year in which such statement is filed for such person to perform his obligations under such agreements; 2. the "unearned reserve", as hereinafter defined; and 3. investments.

(e) Such other information as may be considered essential by the commissioner in meeting his responsibilities under this chapter.

(4) The application for original certificate of authority shall be accompanied by forms of agreements proposed to be used by such person in the furnishing of care. If the commissioner finds that such agreements comply with §651.07, he shall approve same; provided, he shall not be responsible for any other features of said agreements. Thereafter, no other form of agreement shall be used by such person until it has been submitted to and approved by the commissioner.

(5) Upon the commissioner being satisfied that such statement and other accompanying matters meet the requirements of this chapter, that there has been evidenced the information required by said statement, that such person has deposited the securities required by §651.09, and has paid the fee set forth in subsection (6) hereof, he shall issue to such person said certificate of authority; and thereafter, if the annual statement of such person shall evidence such matters, if said deposit is maintained unimpaired, and if said fee is paid, he shall issue to such person a renewal of said certificate.

(6) If such person is an individual, said statement shall be sworn to by him; if a firm or association, by all members thereof; and if a corporation, by the president and secretary thereof.

(7) The fee payable to the commissioner for issuance of the original certificate and each annual renewal thereof shall be five dollars, which sum shall accompany each application for original certificate and thereafter each annual statement.

History.—Comp. §5, ch. 28190, 1953.

651.06 Unearned reserve.—

(1) The unearned reserve with respect to any such agreement shall be that portion of the consideration paid by any transferor which has not been earned by the person agreeing to furnish care, computed on the following basis:

(a) As to an agreement for care for a term of years: The consideration paid for such agreement shall be pro-rated on an annual basis during its term depending upon the date of execution of the agreement to fix such annual periods. Upon execution of such agreement the pro rata part of such consideration for the first year thereof shall be considered earned by said person agreeing to furnish care and shall be available to said person for such year to apply to the performance of such agreement by him; and thereafter during the term of said agreement on each anniversary date thereof the pro rata amount of such consideration shall be considered earned for each said years by, and shall be available to, such person for application to performance of said agreement during said respective years. The unearned portion of said consideration, or unearned reserve, shall be that part thereof which has not been earned on the basis mentioned.

(b) As to an agreement for life care: Parts of years shall be construed as calendar years. The unearned portion of the consideration for such an agreement shall be that part thereof which at any time has not been earned by the person contracting to furnish care on the basis of the number of years which the agreement has been in force plus the number of years evidenced in the American experience table of mortality as the life expectancy of the transferor or his nominee at the attained age of such transferor or his nominee when such computation is made. Upon execution of such agreement, the pro-rata part of such consideration for that calendar year shall be considered earned by such person agreeing to furnish care and shall be available to said person for such year to apply to the performance of said agreement by him; and on January 1st of each year thereafter during the existence of said agreement, the pro rata amount of such consideration, computed as herein contemplated, shall be considered earned for each said calendar years by, and shall be available to, such person for application to the performance of said agreement during such respective calendar years.

(2) For the purpose of computing the unearned reserve with respect to a care agreement executed prior to July 1, 1953, and which provides for care for more than one transferor or nominee, the consideration set forth in such agreement shall be prorated as follows between such transferors or their nominees:

(a) As to an agreement for care for a term of years: Such consideration shall be prorated on an equal basis.

(b) As to an agreement providing for life

care: The consideration named in said agreement shall be pro rated between such transferors or their nominees on the basis of their respective life expectancies at the time of execution of such agreement as evidenced by the American experience table of mortality.

(3) Said unearned reserve with respect to all outstanding agreements for care, shall be maintained unimpaired, either in the form of money in bank, securities of the nature described in §651.09, or other admissible assets, as hereinafter mentioned. The value of the physical property or properties of a person who has agreed to furnish care essential to the performance of such agreements, shall not be considered in relation to funds required and available for the performance of such agreements or for the required unearned reserve.

History.—Comp. §6, ch. 28190, 1953.

651.07 Agreement provisions. — In addition to such other provisions as may be considered proper to effectuate the purpose of any such care agreement, each such agreement executed on and after July 1, 1953, shall comply with the following requirements:

(1) Such agreement shall provide for the care of only one transferor or his nominee and shall state in terms of money the consideration therefor.

(2) If such an agreement is entered into between a transferor or his nominee and any such person, the same shall provide whether, upon cancellation thereof, the unearned reserve with respect thereto shall be paid to the transferor or his nominee.

(3) A provision in such an agreement that the same may be cancelled on any anniversary date thereof by a transferor or his nominee, or any such person, upon the giving of notice of cancellation at least thirty days prior to said anniversary date by such person to a transferor or his nominee, or by a transferor or his nominee to said person. On or before the anniversary date on which such agreement shall stand cancelled, said person shall pay in money to the transferor or his nominee, as the agreement may provide, the unearned reserve with respect to said cancelled agreement.

(4) Such agreement may contain a provision to the effect that upon the death of a transferor or his nominee, the unearned reserve with respect to such agreement shall be considered earned by, and become the property of, the person contracting therein to furnish such care; provided, that at the time of such death, no notice of cancellation of such agreement, as provided in preceding subsection (3) has been given such person, in which latter event such reserve shall be paid to the legal representative of the transferor where the agreement is for the latter's care, or to the transferor where the agreement is for the care of a nominee.

History.—Comp. §7, ch. 28190, 1953.

651.08 Conversion of property. — When the consideration received by any such person to furnish care in pursuance of an agreement is in a form other than money or securities as described in §651.09, such person shall convert said property into money within one year of the date of such agreement unless an extension is granted by the commissioner; and during such one year period and extension, if any be granted, prior to conversion of said property into money, the value thereof as set forth in such agreement is an admissible asset of such person for the purposes of available funds or unearned reserve in relation to such agreement. Such property not converted into cash within one year, or such extended period, shall not be counted an asset in relation to such agreement for any purpose under this chapter. Provided, that as to any such property received as consideration by a person in connection with such an agreement prior to July 1, 1953, such person shall have one year from said effective date to convert said property into money.

History.—Comp. §8, ch. 28190, 1953.

651.09 Deposit. — Any application for an original certificate of authority shall be accompanied by a deposit with the commissioner by the person making such application, of bonds or revenue certificates of the United States, of any of the states of the United States, of the District of Columbia, or of the cities or counties of Florida, in the aggregate market value of seventy-five thousand dollars, which securities, if such certificate of authority is issued, shall be receipted for by the commissioner and held by him in the manner and for the purposes hereinafter mentioned. Such deposit, in said aggregate value, shall be maintained by any such person entering into care agreements. Whenever such person ceases to engage in such business in this state, and has settled all claims arising in connection with such care agreements or business in connection with performance of such care agreements, and has discharged all his obligations under any such agreements, upon proof of such facts to the commissioner, and delivery to the commissioner of the latter's receipt for such securities, the commissioner shall deliver said securities to such person or his assignee. During the period said securities are deposited with the commissioner, the owner of the same shall be entitled to the interest collected thereon. Such bonds so deposited shall be held by the commissioner solely for the purpose of satisfying judgments obtained by transferors or their nominees for breach of, or amounts adjudged to be due under, said care agreements. When such a final judgment has been rendered against any person party to such a care agreement, he shall pay same within sixty days thereafter, provided he does not prosecute or appeal from said judgment within said period; and if an appeal is so prosecuted and on the appeal the judgment is affirmed, such person shall pay same within fifteen days from the date mandate from the appellate court is filed in the cause in the trial court. Should any such person fail to pay such a judgment within the time contemplated by the immediately preceding sentence, the commission-

er shall, in pursuance of order entered in the cause in the trial court, sell sufficient of the securities of such person so deposited with him to satisfy said judgment and costs, and shall pay to the person recovering such judgment the amount thereof and costs.

History.—Comp. §9, ch. 28190, 1953.

651.10 Examinations. — The commissioner shall have power, and is required from time to time as he may deem necessary, to examine the business of any person engaged in the execution of care agreements or engaged in the performance of obligations under such agreements, in the same manner as is provided for examination by insurance companies. Such examinations shall be made by the commissioner or his designated representative or examiner, whose compensation shall be fixed by the commissioner. The written report of all such examinations, when completed, shall be filed in the office of the commissioner, and when so filed shall constitute public records. Any such person being examined shall produce, upon request, all records of the company. The commissioner, or his designated representative, may at any time examine into the records and affairs and inspect the physical property of any such person, whether in connection with a formal examination or not.

History.—Comp. §10, ch. 28190, 1953.

651.11 Liquidation proceedings.—

(1) Whenever the commissioner shall determine that any such person so engaged in the entering into said care agreements and/or the business of the performance of obligations under such agreements so entered into:

(a) Has not the necessary physical property or properties to perform the obligations assumed under such agreement; or

(b) Has not available sufficient current funds to perform the obligations assumed under such agreement; or

(c) Has not maintained the unearned reserve with respect to any such agreements; or

(d) Has failed to maintain with the commissioner the deposit in the amount of seventy-five thousand dollars required by §651.09; or

(e) Has refused to produce papers or other books and records in connection with such person's said business for examination or inspection by the commissioner or his representative; or

(f) Has otherwise failed to comply with the provisions of this chapter or any regulation promulgated by the commissioner in pursuance of this law; and if any such person shall omit to correct any such failure, refusal or violation within thirty days after written notice from the commissioner to effect such correction, the commissioner may, the attorney general representing him, file complaint setting forth the relevant facts in the circuit court of the county wherein the business of such person is located, praying for issuance of an order directed to such person to show cause why the business and affairs of such person should not be liquidated and a receiver appointed by the court to accomplish such purpose.

(2) Upon application for such rule to show cause, or at any time thereafter, the court may, in its discretion, issue an injunction restraining the defendant from the further transaction of business, or disposition of the defendant's property, until the further order of the court.

(3) Upon return of such order to show cause, the court shall hear and try the issues forthwith. If the court shall determine that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the commissioner, the court shall dismiss such complaint. On the other hand, if the court shall determine that the charges of the commissioner are sufficiently supported by the evidence, he may enter an order directing the liquidation of such business of said person and shall appoint a receiver who shall, under such conditions as may be prescribed by the court, take into his possession the assets of said person for the purpose of liquidation.

(4) In any such order of liquidation, or in order or orders thereafter entered, the court shall provide for notice to creditors, filing of claims and all other details necessary and essential to an estate in receivership. The court shall retain jurisdiction until the receiver is finally discharged.

History.—Comp. §11, ch. 28190, 1953; (3) by §24, ch. 57-1.

651.12 Penalties. — Any person who maintains, enters into, or, as manager, officer or in any other administrative capacity, assists in entering into, maintaining or performing any such care agreement provided for in this chapter without doing so in pursuance of a valid certificate of authority, or renewal thereof, as contemplated by or provided in this chapter, or who otherwise violates any provision of this chapter or regulation promulgated in pursuance of this chapter, shall, upon conviction, be punished by imprisonment for not more than one year in the state prison, or by fine not in excess of two thousand dollars, or both, in the discretion of the court.

History.—Comp. §13, ch. 28190, 1953.

TITLE XXXVI

BANKS AND BANKING

CHAPTER 654

SAVINGS BANKS

654.001 Incorporation under general banking laws.—Savings banks shall be incorporated in accordance with the general laws of this state prescribing the manner and regulating the incorporation of banks and trust companies.

History.—Comp. §1, ch. 28012, 1953.
cf.—§659.01 Creation of banking or trust corporation.

654.01 Limitation of deposits by one individual.—Every savings bank may receive deposits from any person until the same amounts to two thousand dollars, and may allow interest upon such deposits, and upon the interest accumulated thereon, until the principal with accrued interest amounts to three thousand dollars, but the limitation contained in this section shall not apply to deposits by religious and charitable associations or corporations.

History.—§40, ch. 3864, 1889; RS 2197; §1, ch. 4427, 1895; GS 2729; RGS 4175; CGL 6116.

654.02 Notice of withdrawal of deposits.—No savings bank or institution for savings organized under this chapter shall be required to pay any deposit with such company until the depositor shall have first given it sixty days' notice that he intends to require payment of such deposits.

History.—§45, ch. 3864, 1889; RS 2198; GS 2730; RGS 4176; CGL 6117.

654.03 Withdrawal of deposit by married woman or infant.—Every person, not under guardianship, who may make a deposit personally in any savings bank or institution for savings may control, transfer or withdraw the money so deposited and the dividends or interest that have accrued or may accrue thereon, notwithstanding such person at the time of exercising such control or of making transfer or withdrawal may be a married woman or minor.

History.—§47, ch. 3864, 1889; RS 2199; GS 2731; RGS 4177; CGL 6118.

654.04 Withdrawal of deposit of deceased person.—Every savings bank or institution for savings organized under this chapter having money on deposit belonging to the estate of any deceased person whose residence at the time of his decease was in another state shall pay the same at any time after six months from the decease of the depositor, if within that time administration of his estate shall not have been granted or applied for within this state, to the administrator or executor of such deceased person, duly appointed in the state where such deceased person last resided, and the payment to such executor or administrator shall be a valid discharge for money so deposited.

History.—§46, ch. 3864, 1889; RS 2200; GS 2732; RGS 4178; CGL 6119.

654.05 Investment of funds.—The capital and deposits and the income derived therefrom shall be invested only as follows:

(1) On the first mortgages of real estate situated in this state to an amount not to exceed sixty per cent of the valuation of such real estate, but not exceeding seventy-five per cent of the whole amount of deposits shall be so invested; and no loan on mortgage shall be made except upon the report of not less than two members of the board of investment, who shall certify to the value of the premises to be mortgaged, according to their best judgment, and such report shall be filed and preserved with the records of the corporation.

(2) In the public funds of the United States, or bonds of any of the United States, or in the bonds or notes of any city, county or town of the United States whose actual indebtedness does not exceed five per cent of the last preceding valuation of the property therein for the assessment of taxes, or in the notes of any citizen of this state with a pledge of any of the aforesaid securities at no more than the par value thereof.

(3) In the first mortgage bonds of any railroad company incorporated under authority of any of the United States, and whose road is located wholly in the same, and which is in

possession of and operating its own road, and has earned and paid regular dividends for the two years next preceding such investment; or in the first mortgage bonds guaranteed by any such railroad company of any railroad company so incorporated whose road is thus located; or in the bonds or notes of any railroad company incorporated under the laws of this state which is unencumbered by mortgage, and which has paid a dividend of not less than five per cent per annum for the two years next preceding such investment; or in the notes of any citizen of this state, with a pledge as collateral of any of the aforesaid securities at no more than eighty per cent of the par value thereof.

(4) In the stock of any bank incorporated under the authority of this state, or the stock of any banking association incorporated under the authority of the United States, or in the notes of any citizen of this state with a pledge as collateral of any of the aforesaid securities at no more than eighty per cent of the market value and not exceeding the par value thereof.

Savings banks may deposit sums not exceeding thirty per cent of the amount of their deposits on call in such banks, banking associations or in any trust company incorporated under the laws of this state or the United States, and may receive interest for the same.

(5) In loans upon the personal notes of the depositors of the company, but not exceeding three-fourths of the amount of his deposit to a depositor, and in each such case the deposit and the book of the depositor shall be held by the company as collateral security for the payment of such loan.

(6) If such deposits and income cannot be conveniently invested in the mode hereinbefore prescribed, not exceeding one-third part thereof may be invested in bonds or other personal security, payable at a time not exceeding one year, with at least two sureties, if the principal and sureties are all citizens of this state and resident therein.

(7) Ten per cent of the deposits of any such corporation, but not exceeding twenty-five thousand dollars, may be invested in the purchase of a suitable site and the erection or preparation of a suitable building for the convenient transaction of its business.

History.—§41, ch. 3864, 1889; RS 2201; GS 2733; RGS 4179; CGL 6120.
cf.—§665.46, Savings banks authorized to invest in stock of federal savings and loan associations.

654.06 Application for loan.—All applications for loans shall be made in writing to the treasurer of the corporation, who shall keep a record thereof, showing date, name of applicant, amount asked for and the security offered, and he shall cause the same to be presented to the board of investment.

History.—§44, ch. 3864, 1989; RS 2202; GS 2734; RGS 4180; CGL 6121.

654.07 Certain officers prohibited from borrowing, etc.—No member of a committee or board of investment, or officer of such company, charged with the duty of investing its funds, shall borrow or use any portion thereof, be surety for loans to others, or in any manner, directly or indirectly, be an obligor for money borrowed from the company, and if such member or officer becomes the owner of real estate upon which a mortgage is held by the company, his office shall become vacant at the expiration of sixty days thereafter, unless he has ceased to be the owner thereof or has caused said mortgage to be discharged. Only one of the persons holding offices of president, vice-president and treasurer shall at the time be a member of the investment committee.

History.—§42, ch. 3864. 1889; RS 2203; GS 2735; RGS 4181; CGL 6122.

654.08 Company or agent not to receive commission for loan; penalty.—No such company, nor any person acting in its behalf, shall negotiate, take or receive a fee, brokerage commission, gift or other consideration for or on account of a loan made by or on behalf of such corporation, other than appears on the face of the note or contract by which such loan purports to be made; but nothing herein contained shall apply to any reasonable charge for services in the examination of title and preparation of conveyances to such corporation as security for its loans. Whoever violates provisions of this section shall be subject to a penalty of not less than one hundred nor more than one thousand dollars, to be recovered by the state in any court of competent jurisdiction.

History.—§43, ch. 3864, 1889; RS 2204; GS 2736; RGS 4182; CGL 6123.

654.09 Banking commissioner's supervision and control. — The commissioner of banking shall make examinations at least once each year of each savings bank, at which time he will satisfy himself that the bank is in a solvent condition and is complying with the requirements of this chapter. In order to enforce his actions in this connection, the said commissioner is vested with the same supervision and control in his examination of savings banks as he now has under the statutes of this state regarding the examination and regulation of state banks, and should the commissioner find the capital stock of any such savings bank impaired, he may give notice of such impairment to the directors of such bank, and if such impairment is not made good to the satisfaction of the commissioner within a reasonable period of time, as may be determined by the commissioner, the said commissioner may proceed with the appointment of a liquidator in the same manner as liquidators are provided by state banks.

The cost of examination shall be borne by the bank at the rate which is now charged for the examination of state banks.

History.—Comp. §2, ch. 28012, 1953.
cf.—§658.08 Examination fees.

CHAPTER 656

INDUSTRIAL SAVINGS BANKS*

656.011 Definitions.—As used in this chapter:

(1) "Industrial savings bank" means an industrial savings bank or Morris plan bank or similar plan bank meeting all the requirements of this chapter and operating hereunder provided that the corporate name shall be so qualified and limited that such bank will be distinguished from commercial banks under Florida laws.

(2) "Commissioner" means the state commissioner of banking.

(3) "Community" means a city, town or incorporated village, or, where not within any of the foregoing, a trade area.

(4) "Court" means a court of competent jurisdiction.

(5) "Item" means an instrument for the payment of money even though not negotiable, but does not include money.

(6) "Officer" when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant cashier, assistant comptroller, or any person who performs the duties appropriate to those offices.

(7) "Person" means an individual, corporation, partnership, joint venture, trust estate, business trust, or unincorporated association.

History.—Comp. §1, ch. 57-351.

656.021 Creation of an industrial savings bank.—When authorized by the commissioner, as provided herein, a corporation may be formed under the laws of the state by five or more persons for the purpose of conducting an industrial savings banking business.

History.—Comp. §2, ch. 57-351.

656.031 Application for authority to organize an industrial savings bank.—

(1) A written application for authority to establish a corporation, as provided in §656.021, shall be filed with the commissioner, and shall include:

(a) The name, residence and occupation of each incorporator and stock subscriber and the amount of stock subscribed for by each, together with a statement under oath of each subscriber that he subscribes in good faith in his

*Chapter 656 was completely revised and 39 new sections added by ch. 57-351.

own right and not as agent or attorney for any undisclosed person.

(b) The proposed name.

(c) The total capital, the number of shares of each class, and the par value of the shares of each class.

(d) The community, including the street and number, if known, and if not known, the area within the community where the proposed bank is to be located.

(2) Said application shall be in such form and contain such additional information as the commissioner shall reasonably require, and shall be accompanied by a fee of two hundred fifty dollars.

History.—Comp. §3, ch. 57-351.

cf.—§656.011(1) Industrial savings bank defined.

656.041 Investigation by commissioner.—

(1) Upon the filing of an application, the commissioner shall make an investigation of:

(a) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed bank.

(b) The need for banking facilities or additional banking facilities, as the case may be, in the community where the proposed bank is to be located, giving particular consideration to the adequacy of existing banking facilities and the need for further banking facilities in the locality.

(c) The present and future ability of the community to support the proposed bank and all other existing banking facilities in the community.

(d) The character, financial responsibility, banking experience and business qualifications of the proposed officers.

(e) The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

(2) The commissioner shall approve or disapprove the application, in his discretion, but he shall not approve such application until, in his opinion:

(a) Public convenience and advantage will be promoted by the establishment of the proposed bank.

(b) Local conditions assure reasonable promise of successful operation for the proposed bank and those banks already established in the community.

(c) The proposed capital structure is adequate.

(d) The proposed officers and directors have sufficient banking experience, ability and standing to assure reasonable promise of successful operation.

(e) The name of the proposed bank is not so similar as to cause confusion with the name of an existing bank.

(f) Provision has been made for suitable banking house quarters in the area specified in the application.

History.—Comp. §4, ch. 57-351.

656.051 Capital structure.—

(1) The capital stock of an industrial savings bank hereafter organized shall be in such amount as the commissioner shall deem adequate, but not less than the following aggregate amounts, based upon population of the community in which the bank will be located according to the latest official census:

(a) Twenty-five thousand dollars, if the population of the community in which the bank will be located does not exceed five thousand and fifty thousand dollars if the population of the community in which the bank will be located does not exceed ten thousand.

(b) One hundred thousand dollars if the population of the community in which the bank will be located exceeds ten thousand, but does not exceed fifty thousand.

(c) Two hundred thousand dollars if the population of the community in which the bank will be located exceeds fifty thousand, but does not exceed two hundred thousand.

(d) Three hundred thousand dollars if the population of the community in which the bank will be located exceeds two hundred thousand.

(2) Every bank hereafter organized shall, upon its organization, establish, in addition to the capital required by subsection (1), a paid-in surplus equal in amount to not less than twenty per cent of its paid-up capital, and a fund to be designated as undivided profits equal to five per cent of its paid-up capital.

(3) Each subscriber at the time he subscribes to the stock of a proposed bank shall pay an additional sum at least equal to five per cent of the par value of such stock into a fund to be used to defray the expenses of organization, such additional sum to be paid in cash. No organizational expense shall be paid out of any other funds of the bank. Upon the granting of a charter, any unexpended balance in such fund shall be transferred to undivided profits. If the application has been finally denied during said period, such balance shall be distributed among the contributors in proportion to their respective payments. The commissioner may require an accounting of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organizational expenses.

(4) No bank shall apply any part of the funds collected under this section for the payment of commissions or fees for obtaining subscriptions or selling shares or to the payment of compensation for services in connection with the organization of a proposed bank, or in connection with securing authority to transact business, other than the payment of fees for legal services and of other usual and ordinary expenses incidental and necessary for the organization of a bank.

History.—Comp. §5, ch. 57-351.

656.061 Authorization to engage in industrial savings banking business.—

(1) Upon approval of the application for

authority to organize by the commissioner, the proposed articles of incorporation shall be submitted to the commissioner for his written approval before filing pursuant to chapter 608. After such approval and certification by the commissioner, the proposed bank shall:

(a) File with the commissioner a copy of its articles of incorporation duly certified by the secretary of state.

(b) File with the commissioner a statement in such form and with such supporting data and proof as he may require, showing that the entire capital, surplus and undivided profits have been fully paid in lawful money unconditionally and that the funds representing such capital, surplus and undivided profits, less sums spent with the approval of the commissioner for land, building, supplies, fixtures and equipment, are on hand.

(2) If the commissioner finds that the proposed bank has in good faith complied with all the requirements of law, he shall within thirty days after the filing of the statement specified in subsection (1)(b), issue, in duplicate, under his official seal, a certificate of authorization to transact an industrial banking business, transmitting one copy to the bank and placing one copy in the department file. Said certificate shall state that the corporation named therein is authorized to transact an industrial savings banking business, and the bank shall cause said certificate to be published one time in some newspaper of general circulation published in the city or county where the bank is located.

(3) No bank shall, until it has received its certificates of authorization:

(a) Transact any banking business.

(b) Incur any indebtedness except that allowed under subsection (1)(b).

(4) Upon the failure to comply with subsection (1) (a) and (b) within six months after the approval of the application for authority to organize, such right shall automatically terminate and the charter be revoked. The commissioner, however, for good cause, on written application filed before the expiration of said six months period, may extend the time within which the bank may be organized for a period not exceeding six months.

(5) Upon the failure to open for business within thirty days after the issuance of the certificate of authorization, the right to transact business shall automatically terminate and the charter be revoked.

History.—Comp. §6, ch. 57-351.

656.071 Place of transacting business; drive-in facilities. —

(1) Any bank shall have only one place of doing business, which shall be located in the community specified in its original articles of incorporation, and the business of the bank shall be transacted at its banking house so located in said community specified, and not elsewhere. A bank may, however, change the location of its banking house within the community shown in its articles of incorporation with the written approval of the commissioner. Application for such approval shall be in such form and contain such information as the commissioner may require.

(2) A bank may operate a drive-in facility, providing one or more tellers to serve patrons in motor vehicles in the following manner:

(a) The facility will be a part of or adjacent to the main banking room.

(b) There will be a physical connection of the main banking room and the facility.

(c) There will be a private connecting doorway or private enclosed secure passageway connecting the main banking room and the facility enabling tellers to pass between the facility and main banking room without coming in contact with the public. The operation of any drive-in facility not complying with these requirements shall constitute a violation of subsection (1).

History.—Comp. §7, ch. 57-351.

656.081 Changes in articles of incorporation.—A bank shall not amend its articles of incorporation without the written approval of the commissioner, and if any amendment requests a change in name of the bank, the commissioner shall not approve such change if the new name is so similar as to cause confusion with the name of an existing bank.

History.—Comp. §8, ch. 57-351.

656.091 Shares of stock.—

(1) A bank shall issue its capital stock with par value of not less than ten dollars nor more than one hundred dollars per share.

(2) No bank hereafter shall issue any shares before they are fully paid for.

(3) A bank pursuant to action taken by its board of directors, and after obtaining the written approval of the commissioner and the approval of stockholders holding a majority of the voting stock of the bank evidenced either in a writing signed by the stockholders or by a vote at a stockholders' meeting called for such stated purpose after giving ten days' notice by registered mail, may issue preferred stock of one or more classes in an amount and with a par value as approved by the commissioner and may make amendments to its articles of incorporation which may be necessary to accomplish this purpose. The holders of the preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of the bank and shall not be liable for assessment.

History.—Comp. §9, ch. 57-351.

656.101 Dividends and surplus.—The directors of any bank, after charging off bad debts, depreciation and other worthless assets if any, may quarter-annually, semi-annually, or annually, declare a dividend of so much of the net profits of the bank as they shall judge expedient, but each bank shall, before the declaration of a dividend on its common stock carry ten per cent of its net profits for such preceding period as is covered by the dividend

to its surplus fund, until the same shall at least equal the amount of its common and preferred stock. Whenever the surplus becomes impaired or reduced below the aggregate amount of common and preferred stock, it shall be reimbursed in the manner provided for its accumulation.

History.—Comp. §10, ch. 57-351.

656.111 Changes in capital.—

(1) No bank shall reduce its outstanding capital stock without first obtaining the consent of the commissioner, and such consent shall be withheld if the reduction will cause the outstanding capital stock to be less than the minimum required hereunder.

(2) Any bank, may with the approval of the commissioner, provide for an increase in its capital as may be deemed expedient.

History.—Comp. §11, ch. 57-351.

656.121 Directors, number, qualifications, oath, officers.—

(1) The board of directors of the bank shall consist of not less than five nor more than twenty-five directors, and shall be elected at the annual meeting of stockholders.

(2) Every director must during his whole term of service be a citizen of the United States, and at least three-fifths of the directors must have resided in this state for at least one year preceding their election, and must be residents therein during their continuance in office. Every director of a bank hereafter chartered must own in his own right, free of lien, encumbrance, option or pledge agreement, voting common stock of the bank of which he is a director of not less than one thousand dollars par value; any director who ceases to be the owner of such amount of voting common stock, or who becomes in any other manner disqualified, shall thereby vacate his place as such director; provided that as to those banks having an authorized capital of twenty-five thousand dollars or less, such director must own in his own right capital stock in such bank of not less than five hundred dollars par value in the manner above provided for other banks.

(3) Each director, upon assuming office, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such bank and will not knowingly violate, or willfully permit to be violated, any of the provisions of this chapter, and that he is the owner in good faith and in his own right of shares of voting common stock in the amount required by subsection (2) subscribed by him or standing in his name on the books of the bank and that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be immediately filed with the commissioner.

(4) The board of directors of each bank shall manage the affairs of the bank and hold a meeting at least once every two months at the banking house of the bank.

History.—Comp. §12, ch. 57-351.

656.131 Deposit insurance; membership in federal reserve system.—A bank is authorized to do any act necessary to obtain insurance of its deposits by the United States, or any agency thereof, and to acquire and hold membership in the federal reserve system.

History.—Comp. §13, ch. 57-351.

656.141 Liability of stockholders.—Holders of voting common stock of banks shall be held individually responsible equally and ratable and not for one another for all contracts, debts, and engagements of such banks to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares. Persons holding stock as executors, administrators, guardians or trustees shall not be personally subject to any liability as stockholders, but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in trust funds would be, if living and competent to hold the stock in his own name. Such stockholders who have transferred their shares or registered the transfer thereof within six months next before the date of the failure of such bank to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such stockholders might otherwise have against those in whose names such shares are registered at the time of such failure, provided that this section shall not apply to stockholders in a bank which is a member of the federal deposit insurance corporation, a corporation under the laws of the United States, or which has an unimpaired surplus equalling the amount of its capital stock.

History.—Comp. §14, ch. 57-351.

656.15 Acquisition of majority stock in existing bank.—In any case where a person, a group of persons, or a corporation proposes to purchase or acquire the majority of the outstanding capital stock of any bank and thereby to change the control of said bank, such person, shall first make application to the commissioner for a certificate of approval of such proposed change of control of said bank and said application shall contain the name and address of the proposed new owner or owners of the controlling stock and the said commissioner shall issue said certificate of approval only after he has become satisfied that the proposed new owner or owners of the controlling stock is qualified by character, experience and financial responsibility to control and operate the said bank in a legal and proper manner, and that the interests of the stockholders, depositors and creditors of the bank and the interest of the public generally will not be jeopardized by the proposed change in ownership and management.

History.—Comp. §15, ch. 57-351.

656.16 Cash reserves.—

(1) Every bank shall at all times have available in cash an amount equal to at least fifteen per cent of the aggregate amount of its deposits. Such portion of said reserve as the bank may desire may be invested in bonds and securities of the United States and bonds and securities guaranteed as to principal and interest by the United States, owned and unpledged by the bank, or which are in excess of the total deposits which they are pledged to secure, and balances payable on demand, due to the company from banks with whom such company may keep in current account.

(2) Whenever the lawful reserve of any such bank as defined in subsection (1) shall be below the amount of fifteen per cent of its deposits, such bank shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing of bills of exchange payable at sight, nor making any dividends of its profits until the required proportion between its deposits and its lawful money of the United States has been restored. The commissioner may notify any bank whose lawful money reserves shall be below the amount above required to be maintained to make good such reserve, and if such bank shall fail in thirty days thereafter so to make good its reserve of lawful money, the commissioner may appoint a liquidator to wind up the business of the bank as provided in §661.10.

History.—Comp. §16, ch. 57-351.

656.17 Special powers.—Industrial savings banks in addition to the general and usual powers incidental to ordinary corporations for profit in this state, which are not specifically restricted in this law, shall have the following special powers, to-wit:

(1) LOANS; SECURITY REQUIRED, INTEREST AND CHARGES.—The right to lend money upon the security of comakers, personal chattels or other property; and to take, receive, reserve and charge for such loans or discounts made or upon any notes, bills of exchange, or other evidences of debt, a discount not to exceed eight per cent per annum plus an additional charge not to exceed two per cent of the principal amount of any loan, which additional charge shall be for investigating the character of the individual applying for the loan, the security submitted and all other costs in connection with the making of such loans, all which charges and discounts may be collected at the time the loan is made. No other charge of any kind or nature whatsoever, by whatsoever purpose or name designated, shall be made; provided, however, that when a loan is of such character as to necessitate the filing or recording of a legal instrument, an additional charge may be made for such filing or recording, providing such charge is actually paid to the proper public officials; also borrower may be required to pay abstract costs, reasonable attorney's fees, documentary stamp taxes, other taxes, premiums on insurance, and other similar charges, if the bank deems the same necessary for the protection and security of said loan.

(2) COLLECTION OF CHARGES.—The right to require payment of the discount and charges permitted in subsection (1) above at the time the loan is made.

(3) ACCEPT DEPOSITS AND ISSUE INVESTMENT CERTIFICATES, CONTRACTS, ETC.—The right to accept deposits and issue as evidence therefor investment certificates, contracts or agreements, under any descriptive name which may bear such interest, if any, as their terms may provide and which may require the payment to the bank of such amounts from time to time as their terms may provide, and permit the withdrawal or cancellation of amounts paid upon the same in whole or in part from time to time and the credit of amounts thereon upon such condition as may be set forth therein.

(4) PLANS ON WHICH LOANS MAY BE MADE.—The right to lend money on any combination of any of the foregoing plans or the elements thereof, including the right to lend money upon the collateral deposits of and the compliance of the borrowers with the terms of any deposit, investment certificate, contract or agreement issued under subsection (3) above.

(5) LATE CHARGES.—To impose a late charge of five cents for each default in the payment of one dollar or a fraction thereof at the time any periodical installment upon a certificate assigned as collateral security for the payment of a loan made pursuant to subsection (1) of this section becomes due; provided, however, that such late charges shall not be cumulative.

History.—Comp. §17, ch. 57-351.

656.18 Prohibited powers.—No industrial savings bank may, however, do any of the following, to-wit:

(1) CARRY COMMERCIAL OR DEMAND ACCOUNTS.—Carry commercial or demand banking accounts.

(2) UNSECURED LOANS, EXCESSIVE AMOUNTS.—

(a) Unsecured loans exceeding ten per cent of the aggregate unimpaired capital and surplus shall not be made to any person; however, when approved by the board of directors, or an authorized committee therefrom, said ten per cent limitation may be increased to twenty-five per cent of the aggregate unimpaired capital and surplus when such loans are amply and entirely secured.

(b) No bank shall lend directly or indirectly an amount exceeding ten per cent of the aggregate unimpaired capital and surplus of said bank to any director or officer of said bank, individually or to any copartnership or incorporated company in which a director or officer may be directly or indirectly interested. No such loans shall be made unless the same shall be first approved by the board of directors of such bank.

(c) No loan or discount shall be made by an industrial savings bank on the security of the shares of its own capital stock.

(3) ACCEPT TRUSTS, ETC.—Accept trusts or act as guardian, administrator or judicial trustee in any form.

(4) DEPOSIT FUNDS IN OTHER BANKS.—Deposit any of its funds in any banking corporation, unless such corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance.

History.—Comp. §18, ch. 57-351.

656.19 Powers of commissioner.—In addition to other powers conferred by this act, the commissioner shall have power to:

(1) Implement by regulation any provision of this chapter. Notice and hearing shall be provided by the commissioner in advance of the effective date of any regulations promulgated under the provisions of this subsection and upon the adoption of any such regulations, same shall be immediately disseminated to all banks and trust companies concerned by such regulations. In matters involving extraordinary circumstances requiring immediate action, the commissioner may take such action, but shall promptly afford a subsequent hearing upon application of any interested bank or party to rescind the action taken.

(2) Restrict the withdrawal of deposits from all or one or more industrial banks where the commissioner finds that extraordinary circumstances make such restriction necessary for the proper protection of depositors in the affected institutions.

(3) The commissioner may from time to time formulate and promulgate reasonable rules and regulations governing the conduct of industrial banks doing business in this state which shall have the force of law and he shall have the power to enforce the same.

History.—Comp. §19, ch. 57-351.

656.20 Liability when acting upon commissioner's order or regulation.—No person shall be subject to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order or regulation issued by the commissioner notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the order or regulation.

History.—Comp. §20, ch. 57-351.

656.21 Examinations and reports.—The commissioner shall examine the condition of each bank at least twice in each calendar year. The commissioner may accept a federal deposit insurance corporation or federal reserve examination in lieu of one of said bank examinations, and may furnish to the federal deposit insurance corporation or its representatives a copy of all examinations made of such banks. He shall require each bank to submit a report of its condition as of such date as he may fix at least twice in each calendar year, or as often as ordered by the commissioner, verified by the oaths or affirmations of the president, or the vice-president and treasurer, secretary or cashier of such corporation and within ten days after such report shall have been called for, and to publish in a newspaper published in the county in which said bank is located a statement of its assets and liabilities of the date of said report, and a copy of said publication, with an affidavit of the publication shall be filed with the commissioner and a copy of said publication filed also with the county tax assessor. Every such bank which fails to transmit any report required under this section shall be subject to a penalty of $100.00 for each day of delinquency after the due date of the reports.

History.—Comp. §21, ch. 57-351.

656.22 Examination fees.—Each bank shall pay an examination fee computed in accordance with the following schedule:

With resources up to $ 150,000.00	$ 40.00
With resources up to $ 250,000.00	$ 50.00
With resources up to $ 400,000.00	$ 75.00
With resources up to $ 500,000.00	$ 90.00
With resources up to $ 750,000.00	$120.00
With resources up to $1,000,000.00	$150.00

and for additional million dollars, or major part thereof forty dollars per million dollars. Examination fees shall in all cases be paid by the bank direct to the state treasurer to be credited to the general revenue fund.

History.—§22, ch. 57-351; §1, ch. 63-254.

656.23 Destruction of certain bank records.—

(1) Banks shall not be required to preserve or keep their records or files or photographic or microphotographic copies thereof for a longer period than ten years next after the first day of January of the year following the time of the making or filing of such records or files, provided, however, that ledger sheets shall not be destroyed unless photographic copies of such ledger sheets are retained.

(2) No liability shall accrue against any bank destroying any such records after the expiration of the period provided in subsection (1), and any cause or proceedings in which any such records or files may be called in question or be demanded of the bank or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section shall be a sufficient excuse for the failure to produce them.

(3) Any bank may photograph, microphotograph, or reproduce on film in such manner that each page is exposed in its entirety any or all of its journals, ledgers, statements, account books, or other books, or any or all of its internal records of every description, made or received in the regular course of its business, and the photographs, microphotographs, or repro-

ductions on film or in the form of film or prints, or enlarged prints, or any duly certified or authenticated copy or reproduction thereof, duly certified or authenticated by a responsible officer of the bank under whose supervision the records are kept, shall in all cases, and in all courts and places, be admitted and received as evidence with a like force and effect as the original general ledger, voucher, statement, account book, or other record.

History.—Comp. §23, ch. 57-351.

656.24 **Investments.**—No bank shall, directly or indirectly, invest any of its funds:

(1) In the stock of any incorporated company except the stock of the federal reserve bank of this district, and the stock of the federal national mortgage association, in connection with the sale of the mortgages to said association, or any successor thereof, and except that a bank may purchase shares of stock in small business investment companies as defined in and organized pursuant to public law 85-699 of the act of congress of August 21, 1958 (15 U. S. code, section 681 et seq.) in an aggregate amount not exceeding one per cent of the unimpaired capital and surplus of such bank.

(2) In bonds or securities except as provided in this subsection:

(a) United States obligations, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States government or any agency hereof.

(b) General obligations of states, counties, municipal or county districts, for schools, roads, hospitals or other public purposes.

(c) Refunding bonds and gasoline or other fuel tax anticipation certificates issued by the state board of administration under §16, Art. IX of the state constitution, or by the Florida development* commission, or

(d) County and municipal warrants, or

(e) Not more than ten per cent of its unimpaired capital and surplus in industrial bonds or first mortgage bonds of railroad and public service corporations or any solvent corporation.

(f) Not more than ten per cent of its unimpaired capital and surplus in federal intermediate credit bank consolidated trust debentures, federal home loan bank consolidated notes, central bank for cooperatives, or federal land bank bonds.

(g) Not more than twenty-five per cent of its unimpaired capital and surplus in any single issue of revenue certificates or revenue bonds of any political subdivision or municipality of any state or the Florida development* commission.

(3) None of the investment securities provided in this paragraph shall be eligible for investment, if they have been in default either as to principal or interest within five years prior to the date of purchase.

(4) In real estate, except:

(a) Such as may be necessary for its accommodation in the transaction of its business provided the amount of such investments does not exceed forty per cent of its unimpaired capital and surplus; or, in lieu thereof, and anything elsewhere in this section to the contrary notwithstanding, with prior approval of the commissioner a bank may invest in the stock of an incorporated company organized and operated for the sole purpose of owning and operating such building and premises as may be necessary for the accommodation of such bank in the transaction of its business, provided the investment in such stock shall not exceed forty per cent of the unimpaired capital and surplus of such bank.

(5) A bank may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith and such property shall be held and disposed of subject to the following conditions and limitations:

(a) Stock shall be sold within six months or such additional period as the commissioner may prescribe, unless the same is charged off.

(b) Real estate may be retained for use in the banking business subject to the conditions prescribed in this section for property purchased for such use, or may be rented. Real estate may be improved to facilitate its sale. Unless used in the banking business, it shall be sold within five years or such longer periods as the commissioner may allow unless it is written down on the books of said bank to one dollar.

(c) Other property, the acquisition of which is not otherwise authorized by this act, shall be sold within six months or such longer period as the commissioner may allow.

(d) Property shall be entered on the books at cost or fair value, whichever is less, and property which the bank is not otherwise authorized to acquire shall be charged off at a rate of not less than ten per cent per annum for real estate and twenty per cent per annum for other property, or at such lower rate not less than five and ten per cent, respectively, as the commissioner may allow.

(6) Any officer or director of any bank willfully violating any of the provisions of this section or §656.16 shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment in the state prison not exceeding five years.

In addition thereto, such officer or director shall in the event of such violation be subject to summary removal from office by the commissioner and shall not be eligible to re-election to such position or to any other official position in any bank doing business in this state for a period of five years from the date of such removal.

History.—§24, ch. 57-351; (1) by §1, ch. 59-86; (4) (a) by §1, ch. 59-85.

*Florida improvement commission changed to Florida development commission, §288.11.

656.25 Security of deposits.—Notwithstanding any provisions of law of this state or any political subdivision thereof requiring security of deposits in the form of collateral, surety bond, or in any other form, security for such deposits shall not be required to the extent that said deposits are insured under the provisions of section 12-B of the federal reserve act as amended, or any amendments thereto.

History.—Comp. §25, ch. 57-351.

656.26 Sale of assets in ordinary course.—A bank may sell any asset in the ordinary course of business or with the approval of the commissioner in any other circumstances.

History.—Comp. §26, ch. 57-351.

656.27 Borrowing.—A bank may borrow money and issue evidences of indebtedness for a loan for temporary purposes in the usual course of its business.

History.—Comp. §27, ch. 57-351.

656.28 Depositories of public moneys and pledge of assets.—

(1) Banks shall be depositories of public moneys under such regulations as may be prescribed by the commissioner and they may also be employed as financial agents of the state and they shall perform such reasonable duties as depositories of public moneys and financial agents of the state as may be required of them. The commissioner shall require banks so designated to give satisfactory security by the deposit of bonds of the United States, the state or political subdivisions or other satisfactory security for the safekeeping and prompt payment of the public moneys deposited with them and for the faithful performance of their duties as financial agents of the state. A bank or trust company may also pledge its assets to:

(a) Enable it to act as agent for the sale of obligations of the United States.

(b) Secure borrowed funds.

(c) Secure deposits when the depositor is required to obtain such security by the laws of the United States or the laws of this state.

(2) Notwithstanding any provisions of law of this state or any political subdivision thereof requiring security of deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent that such deposits are insured under the provisions of federal deposit insurance, as amended, or any amendments thereto.

History.—Comp. §28, ch. 57-351.

656.29 Rights of minority stockholders.—No bank and no director, officer or employee thereof, shall permit any stockholder other than a qualified director, officer or employee thereof to have access to or to examine or inspect any of the books or records of such bank other than its general statement book showing its general assets and liabilities.

History.—Comp. §29, ch. 57-351.

656.30 Transactions outside of regular banking hours or on holidays.—

(1) No other law shall affect the validity of, or render void or voidable, the acceptance of deposits, or any other transaction by a bank because done or performed on any holiday, or half-holiday, or during any time other than regular banking hours; provided that nothing herein shall be construed to compel any bank which by law or custom closes at its usual designated time on any Saturday or for the whole, or any part of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour, or on any legal holiday, except at its own option.

(2) Any bank may be closed for a period of not more than forty-eight consecutive hours, excluding other legal holidays, whenever in the judgment of the directors, the president, or other officers in charge, the lives, safety or property of the institution's employees, or the institution itself would be endangered or placed in jeopardy by an impending or existing hurricane, or other catastrophe, including, but not limited to fire and civil disturbances. The period during which a banking institution is closed pursuant to this subsection shall be a legal holiday as regards banking transactions.

History.—Comp. §30, ch. 57-351.

656.31 Permissive legal holidays; Saturdays or Wednesdays.—Any bank lawfully doing business in the state may be closed on any one or more Saturdays or Wednesdays upon the adoption of a resolution to such effect by a majority vote of the board of directors thereof. Any one or more of such Saturdays or Wednesdays shall with respect to any such bank, which shall be closed thereon in accordance with the provisions of this section, constitute a holiday for all purposes whatsoever as regards banking business of whatsoever character.

History.—Comp. §31, ch. 57-351.

656.32 Deposit of minors.—Bank deposits by a minor or made in his name, other than by a court appointed guardian, may be withdrawn by the minor in the absence of an agreement to the contrary made between the bank and the depositor at the time the account is opened, and in case of any such agreement, such moneys, until the minor's disabilities are removed, may be withdrawn by the person or persons designated in such agreement.

History.—Comp. §32, ch. 57-351.

656.33 Deposits in two or more names.—Banks deposits, or any part thereof, or any interest therein made in the names of two or more persons, payable to either, or payable to either or the survivor, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.

History.—Comp. §33, ch. 57-351.

656.34 Deposits in trust.—Bank deposits made by any person describing himself and making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to such bank, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the interest thereon may be paid to the person for whom the deposit was thus stated to have been made.

History.—Comp. §34, ch. 57-351.

656.35 Adverse claim to bank deposit.—Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant unless said adverse claimant shall also either:

(1) Procure a restraining order, injunction or other appropriate process against said bank from a court in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with process, or

(2) Execute to said bank in form and with sureties acceptable to it, a bond, indemnifying said bank from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank.

History.—Comp §35, ch. 57-351.

656.36 Death or incompetency of depositor.—Any bank may pay any item made, drawn or accepted by a person who has funds on deposit to meet the same, notwithstanding the death or incompetency of the drawer, if presentation is made within thirty days after receipt of notice of the death or adjudication of incompetency of said depositor, and at any time if the bank has not received the written notice of the death or adjudication of incompetency of said depositor. No bank shall be liable for damages, or penalty, by reason of any payment made pursuant to this section.

History.—Comp. §36, ch. 57-351.

656.37 Powers of attorney.—

(1) A bank may continue to recognize the authority of an attorney authorized in writing to operate, in whole or in part, the account of a depositor, until it receives written notice of the revocation of his authority.

(2) Written notice of the death or adjudication of incompetency of such depositor shall constitute written notice of revocation of the authority of his attorney; provided, however, bank may, until thirty days after receipt of such notice, pay any item made, drawn, accepted or endorsed by such attorney prior to such death or incompetency, provided that such item is otherwise properly payable.

History.—Comp. §37, ch. 57-351.

656.38 Definitions, §§656.38-656.46.—As used in §§656.38 through 656.46:

(1) "Lessee" means a person contracting with a lessor for the use of a safe deposit box.

(2) "Lessor" means a bank renting safe deposit facilities.

(3) "Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

History.—Comp. §38, ch. 57-351.

656.39 Authority to engage in leasing safe deposit facilities.—An industrial savings bank may maintain and lease safe deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories it issues a receipt therefor.

History.—Comp. §39, ch. 57-351.

656.40 Access by fiduciaries.—Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as executors or administrators.

(2) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting.

(3) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

History.—Comp. §40, ch. 57-351.

656.41 Effect of lessee's death or incompetence.—Where a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee, deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

History.—Comp. §41, ch. 57-351.

656.42 Search procedure on death of lessee.—Provided satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will procured by him, to open and examine the contents of a safe deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor if so requested by such person, must deliver:

(1) Any writing purporting to be a will of the decedent to the court having probate jurisdiction in the county wherein the bank is located.

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

(3) Any document purporting to be an in-

surance policy on the life of the decedent to contents shall be removed pursuant to this section.
the beneficiary named therein; but no other

History.—Comp. §42, ch. 57-351.

656.43 Lease to minor.—A bank may lease a safe deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

History.—Comp. §43, ch. 57-351.

656.44 Delivery of safe deposit box contents or property held in safekeeping to personal representative.—

(1) The lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant him access to any safe deposit box in the decedent's name and permit him to remove from such box any part or all of the contents thereof.

(2) After three months from the death of a lessee, if a personal foreign representative of such lessee has been appointed by a court of any other state and the lessor has not received written notice of the appointment of a personal representative in this state, a lessor may, in its discretion, deliver to a foreign personal representative all properties deposited with it for safekeeping and the contents of any safe deposit box in the name of the decedent. Such a foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state, and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

(3) No lessor shall be liable for damages or penalty by reason of any delivery made pursuant to this section.

History.—Comp. §44, ch. 57-351.

656.45 Access to safe deposit boxes leased in two or more names.—

(1) When specifically provided in the lease or rental agreement covering safe deposit boxes heretofore or hereafter rented or leased in the names of two or more persons that access to said safe deposit box shall be granted to either lessee or to either or the survivor, access to said safe deposit box shall be granted by lessor to either of said persons, whether the other person or persons be living or not, and the receipt or acquittance of such person so granted access shall be a valid and sufficient release and discharge to the lessor for granting access thereto.

(2) No lessor shall be liable for damages or penalty by reason of any delivery made pursuant to this section.

History.—Comp. §45, ch. 57-351.

656.46 Adverse claims to contents of safe deposit box.—

(1) An adverse claim to the contents of a safe deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe deposit box is leased or the property held; or

(b) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

(2) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

History.—Comp. §46, ch. 57-351.

656.47 Special remedies for nonpayment of rent.—

(1) If the rental due on a safe deposit box has not been paid for six months, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(2) If the contents of the safe deposit box have not been claimed within one year of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within thirty days, the contents of the box will be sold at public auction at a specified time and place, or in the case of securities listed on a stock exchange, will be

sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice.

The balance of the proceeds, after deducting accumulated charges, including the expenses of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank operating the safe deposit facility, and shall be identified on the books of the bank as arising from the sale of contents of a safe deposit box.

(3) Any documents or writings of a private nature, and having little or no apparent value need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed contents, after which they may be destroyed.

(4) The remedies provided for in this section shall apply to rental accrued or contents of safe deposit boxes held by banks prior to the enactment of chapter 28016 of the laws of 1953, chs. 656-661, Florida Statutes.

History.—Comp. §47, ch. 57-351.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

656.48 Miscellaneous offenses.—

(1) Any director, officer or employee of a bank who asks for or receives, consents or agrees to receive any commission, emolument or gratuity or any money property or things of value for his own personal benefit, or of personal advantage for procuring or endeavoring to procure for any person any loan from such bank or the purchase or discount of any note, draft, check, bill of exchange or other obligation by such bank or for permitting any person to overdraw any account with such bank shall be guilty of a felony.

(2) Any director, officer, agent or employee of any bank who knowingly receives or possesses himself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts, or concurs in omitting to make any material entry thereof, shall be guilty of a felony.

(3) Any director, officer, agent or employee of a bank who without authority from the board of directors of such bank, (a) makes, draws, issues, puts forth or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, or mortgage, judgment or decree, or, (b) makes any false entry in any book, report or statement of such bank with intent to defraud such bank or any other person, firm, or corporation, or to deceive any officer of such bank, or the commissioner or any examiner appointed to examine the affairs of such bank shall be guilty of a felony.

(4) No bank shall purchase any real property or any contract arising from the sale of real property, or any note or bond in which any director, officer, or controlling stockholders of such bank, is personally or financially interested, directly or indirectly for his own account, for himself, or as a partner or agent of others without first obtaining the approval of the majority of the board of directors, excluding his own vote.

(5) No officer or director without prior approval of the board of a bank shall purchase directly or indirectly or be interested in the purchase of any of the bank's assets.

History.—Comp. §48, ch. 57-351.

656.49 Unlawful service as an officer.—It shall be unlawful for any person to serve as an officer or director of a bank who:

(1) Has been convicted of an offense constituting a violation of the banking laws, involving moral turpitude, or a breach of trust.

(2) Is indebted to the bank for more than thirty days upon a judgment that has become final.

(3) Has any interest adverse to the bank unless such interest is promptly and fully disclosed in writing to the board of directors of the bank.

History.—Comp. §49, ch. 57-351.

656.50 Criminal penalties.—Any person responsible for an act or omission expressly declared to be unlawful, or a criminal offense by this chapter upon conviction shall be guilty:

(1) Of a misdemeanor punishable by imprisonment for a term not exceeding 1 year or a fine not exceeding $1,000.00, or both; or

(2) If the act or omission was intended to defraud, of a felony punishable by imprisonment not exceeding 5 years, or a fine not exceeding $10,000.00, or both.

History.—Comp. §50, ch. 57-351.

656.51 Injunction.—Whenever a violation of this chapter is threatened or impending, and will cause substantial injury to a bank or to the depositors, creditors, or stockholders thereof, the circuit court is hereby granted jurisdiction to hear any complaint filed by the commissioner or any interested party, and, upon proper showing, to issue an injunction restraining such violation or granting such other appropriate relief.

History.—Comp. §51, ch. 57-351.

656.52 Fictitious or fraudulent assets; past due paper.—

(1) Any bank shall not carry as an asset of said company any note, obligation or security which it does not own absolutely or which is known by the bank to be fraudulent or otherwise worthless, and no bank shall carry as an asset in any report to the commissioner or any

published report any note or other obligation which is past due or upon which no interest has been paid for one year or longer, provided, however, that such past due paper may be carried to the extent of the reasonable value of any lien or other collateral given to secure such obligation; and provided further that if suit has been filed to enforce the collection of any such past due obligation, it may be carried at its reasonable value as determined by the board of directors. The commissioner may after investigation order the revision of any value so determined hereunder.

(2) Any officer of a bank who knowingly places among the assets of said bank any note, obligation or security which it does not own or which to his knowledge is fraudulent or otherwise worthless or who represents to the commissioner or an examiner that any note, obligation or security carried or an asset of such bank is the property of the bank and is genuine when it is known to such officers that such representation is false or that such note, obligation or security is fraudulent or otherwise worthless, such officer shall be guilty of a felony.

History.—Comp. §52, ch. 57-351.

656.53 Applicability of chapter 661.—All provisions of chapter 661 shall be applicable to industrial savings banks operating under this chapter.

History.—Comp. §53, ch. 57-351.

CHAPTER 657

CREDIT UNIONS

657.01 Organization and definition.—Any seven resident persons of the state may apply to the comptroller of the state for permission to organize a credit union.

A credit union is a cooperative society, incorporated for the two-fold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident purposes.

A credit union is organized in the following manner:

(1) The applicants execute in duplicate a certificate of organization by the terms of which they agree to be be bound. The certificate shall state:

(a) The name and location of the proposed credit union.

(b) The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.

(c) The par value of the shares of the credit union which shall not exceed ten dollars each.

(2) They next prepare and adopt by-laws for the general goverance of the credit union consistent with the provisions of this chapter, and execute the same in duplicate.

(3) The certificate and the by-laws, both executed in duplicate, are forwarded to the comptroller with a filing fee of five dollars and an investigation fee of fifteen dollars for the use of the state.

(4) The comptroller shall, within thirty days of the receipt of the certificate and by-laws, determine whether they conform with the provisions of this chapter, and whether or not the organization of the credit union in question would benefit the members of it and be consistent with the purposes of this chapter.

(5) Thereupon the comptroller shall notify the applicants of his decision. If it is favorable he shall issue a certificate of approval, attached to the duplicate certificate of organization and return the same, together with the duplicate by-laws, to the applicants.

(6) The applicants shall thereupon file the duplicate of the certificate of organization, with the certificate of approval attached thereto, with the clerk of the circuit court of the county within which the credit union is to do business, who shall make a record of the certificate and return it, with his certificate of record attached thereto, to the comptroller for permanent record.

(7) Thereupon the applicants shall become and be a credit union, incorporated in accordance with the provisions of this chapter.

In order to simplify the organization of credit unions the comptroller shall cause to be prepared an approved form of certificate of organization and a form of by-laws, consistent with this chapter which may be used by credit union incorporators for their guidance, and on written application of any seven resident persons of the state, shall supply them without charge with a blank certificate of organization and a copy of said form of suggested by-laws.

History.—§1, ch. 14499, 1929; CGL 1936 Supp. 6494(1); (3) by §1, ch. 59-56.

657.02 Amendments.—Any and all amendments to the by-laws must be approved by the comptroller before they become operative.

History.—§2, ch. 14499, 1929; CGL 1936 Supp. 6494(2).

657.03 Use of name "credit union."—It shall be a misdemeanor for any person, association, copartnership or corporation (except corporations organized in accordance with the provisions of this chapter) to use the words "credit union" in their name or title. Associations organized under the provisions of this chapter shall include in its corporate name or title the words "credit union."

History.—§3, ch. 14499, 1929; CGL 1936 Supp. 6494(3), 7977(1).

Cf.—§775.07 Misdemeanors, punishment.

657.04 Powers.—A credit union shall have the following powers:

(1) To receive the savings of its members either as payment on shares or as deposits (including the right to conduct Christmas clubs, vacation clubs and other such thrift organizations within the membership.)

(2) To make loans to members for provident or productive purposes.

(3) To make loans to a cooperative society or other organization having membership in the credit union.

(4) To deposit its funds in state and national banks.

(5) To invest its funds as hereinafter in this chapter provided.

(6) To borrow money as hereinafter in this chapter indicated.

(7) To make contracts, to sue and be sued, to incur and pay such operating expenses as are necessary or incidental to the operation thereof, including such membership fees in organizations of credit unions as may be unanimously approved by the board of directors; such expenses to be borne by the credit union from current earnings and unallocated surplus.

History.—§4, ch. 14499, 1929; CGL 1936 Supp. 6494(4).

Sub §§(4), (5) Am. §1, ch. 29739, 1955; (7) N. by §2, ch. 59-56.

cf.—See §665.48 as to loans insured or guaranteed by the United States.

§654.05 Investment of funds.

657.05 Membership.—Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least one share, pay the initial installment thereon, and the entrance fee. Organizations (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union organization shall be limited to groups (of both large and small membership) having a common bond of occupation, or association or to groups within a well-defined neighborhood, community or rural district.

History.—§5, ch. 14499, 1929; CGL 1936 Supp. 6494(5).

657.06 Reports to comptroller; examinations; fees; revocation of certificate of approval.—Credit unions shall be under the supervision of the state comptroller. They shall report to him at least annually on or before January 31 on blanks supplied by the said comptroller for that purpose. Additional reports may be required. For failure to file reports when due, unless excused for cause, the credit union shall pay to the treasurer of the state five dollars for each day of its delinquency. If the said comptroller determines that the credit union is violating the provisions of this chapter, or is insolvent, the said comptroller may suspend the operation of said credit union or may serve notice on the credit union of his intention to revoke the certificate of approval. If, for a period of fifteen days after said notice, said violation continues, the said comptroller may revoke said certificate and take possession of the business and property of said credit union, and maintain possession until such time as he shall permit it to continue business, or its affairs are finally liquidated, in the same manner as state banks are liquidated. He may take similar action if said report remains in arrears for more than fifteen days.

Credit unions shall be examined at least annually by the said comptroller or his agent, except that, if a credit union has assets of less than twenty-five thousand dollars, he may accept the audit of a practicing public accountant in place of such examination. The board of directors and supervisory committee shall review the examination report, and the recommendations to the board to eliminate violations or exceptions noted therein, shall be enforced by the board. An examination fee shall be paid to the comptroller for the use of the state, based on the total amount of resources held by the credit union as follows:

With resources up to $ 10,000 ..... $ 15.00
With resources up to $ 15,000 ..... $ 30.00
With resources up to $ 25,000 ..... $ 45.00
With resources up to $ 50,000 ..... $ 75.00
With resources up to $ 75,000 ..... $115.00
With resources up to $100,000 ..... $140.00
With resources over $100,000 ..... $140.00, plus $30 for each additional $100,000 or fractional part thereof.

The comptroller shall from time to time formulate and promulgate reasonable rules and regulations governing the conduct of state credit unions doing business in this state.

History.—§6, ch. 14499, 1929; CGL 6494(6); §1, ch. 20312, 1941; §1, ch. 23662, 1947; §1, ch. 28232, 1953; §3, ch. 59-56; §1, ch. 63-289.

657.07 Fiscal year; meetings.—The financial year of all credit unions shall end December 31st. Special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote whatever his share holdings. To amend the by-laws, the proposed amendment must be contained in the call for the meeting and it must be approved by three-fourths of the members then present (which number must constitute a quorum) and by the said comptroller. There shall be no voting by proxy, a member other than a natural person casting a single vote through a delegated agent.

History.—§7, ch. 14499, 1929; CGL 6494(7); §2, ch. 20312, 1941.

657.08 Board of directors and committees to be elected.—At the annual meeting (the organization meeting shall be the first annual meeting) the credit union shall elect a board of directors of not less than five members, a credit committee of not less than three members and a supervisory committee of three members, all to hold office for such terms respectively as the by-laws provide and until successors qualify. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the comptroller within ten days of their election.

History.—§8, ch. 14499, 1929; CGL 1936 Supp. 6494(8).

657.09 Election of officers; duties of directors.—At their first meeting the directors shall elect from their own number a president, vice president, treasurer and clerk, of whom the last two named may be the same individual. The directors shall have general management of the affairs of the credit union, particularly:

(1) To act upon all applications for membership, except to the extent that it may have authorized the approval of such applications by an executive committee or by a membership officer.

(2) To determine interest rates on loans and on deposits.

(3) To fix the amount of the surety bond which shall be required of all officers, directors, committeemen and employees handling or hav-

ing access to money, bank accounts or securities owned by or pledged with the credit union, or having power to disburse, or, power to authorize disbursement of funds of the credit union; such bond for each such officer, director, committeeman and employee, or blanket bond for all such officers, directors, committeemen and employees, shall not be less than that shown in the following schedule, based upon the assets of the credit union:

With assets	up to	$	5,000	bond of	$	1,000
"	"	"	10,000	"	"	2,000
"	"	"	20,000	"	"	4.000
with assets	up to	$	35,000	bond of	$	7,000
"	"	"	50,000	"	"	10,000
"	"	"	75,000	"	"	15,000
"	"	"	100,000	"	"	20,000
"	"	"	150,000	"	"	30,000
"	"	"	200,000	"	"	40,000
"	"	"	300,000	"	"	60,000
"	"	"	500,000	"	"	80,000
"	"	"	750,000	"	"	90,000
"	"	"	1,000,000	"	"	100,000
"	"	" over	1,000,000	"	"	100,000

plus

$10,000 for each additional $100,000 of assets.

(4) To declare dividends, as provided under §657.18, and to transmit to the members recommended amendments to the by-laws.

(5) To fill vacancies in the board and in the credit committee until successors are chosen and qualify.

(6) To determine the maximum individual share holdings and the maximum individual loan which can be made with and without security.

(7) To have charge of investments other than loans to members.

The duties of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager. No member of the board or of either committee shall, as such, be compensated.

(8) The board may appoint an executive committee of not less than three directors to act for it in the purchase and sale of securities or the making of loans to other credit unions, or both.

History.—§9, ch. 14499, 1929; CGL 1936 Supp. 6494(9); §2, ch. 28232, 1953; (4) §3, ch. 29739, 1955; (3), (4) §4, ch. 59-56; (1) §2, (8) n. §3, ch. 63-289.

657.10 Credit committee.—The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form prepared by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and approval must be unanimous. The credit committee shall meet as often as may be necessary after due notice to each member.

The credit committee may appoint one or more loan officers and delegate to him or them the power to approve loans up to the unsecured limit, or in excess of such limit if excess is fully secured by unpledged shares. Each loan officer shall furnish the credit committee a record of each loan approved or not approved within seven days after the filing of the application therefor. All loans not acted upon by the loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one member of the credit committee may be appointed a loan officer.

History.—§10, ch. 14499, 1929; CGL 1936 Supp. 6494(10); §4, ch. 63-289.

657.11 Supervisory committee.—The supervisory committee shall—

(1) Make an examination of the affairs of the credit union at least quarterly, including an audit of its books and, in the event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.

(2) Make an annual audit and report and submit the same at the annual meeting of the members; such audits shall include verification of accounts of members from time to time and not less than every two years.

(3) By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director or member of the committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote the supervisory committee may call a special meeting of the members to consider any matter submitted to it by said committee. The said committee shall fill vacancies in its own membership.

History.—§11, ch. 14499, 1929; CGL 1936 Supp. 6494(11); (2) §5, ch. 63-289.

657.12 Capital.—The capital of a credit union shall consist of the payments that have been made to it by several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee as may be provided by the by-laws.

History.—§12, ch. 14499, 1929; CGL 1936 Supp. 6494(12).

657.13 Minors.—Shares may be issued and deposits received in the name of a minor or in trust in such manner as the by-laws may provide. The name of the beneficiary must be disclosed to the credit union.

History.—§13, ch. 14499, 1929; CGL 1936 Supp. 6494(13).

657.14 Interest rates.—Interest rates on loans made by a credit union shall not exceed one per cent a month on unpaid balances.

History.—§14, ch. 14499, 1929; CGL 1936 Supp. 6494(14). cf.—§687.01, Interest and usury.

657.15 Borrowing power.—A credit union may borrow from any source in total a sum not exceeding fifty per cent of its unimpaired capital.

History.—§15, ch. 14499, 1929; CGL 1936 Supp. 6494(15); §4, ch. 29737, 1955; §6, ch. 63-289.

657.16 Loans.—A credit union may loan to members. Loans must be for a provident or productive purpose and are made subject to the conditions contained in the by-laws. Liens on unimproved real estate and liens other than first liens on improved real estate shall not be construed as security within the meaning of this section. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business. No director, officer or member of the committee may borrow from the credit union in which he holds office beyond the amount of his holdings in it in shares and deposits, nor may he endorse for borrowers. If a director, officer or member of a committee resigns and subsequently receives a loan exceeding his holdings in shares, he shall not be eligible for re-election pending payment of the loan, or for one year, whichever comes first.

History.—§16, ch. 14499, 1929; CGL 1936 Supp. 6494(16); §7, ch. 63-289.

cf.—See §665.48 as to loans insured or guaranteed by the United States.

657.161 Investments.—A credit union, after taking care of the provident and productive borrowing needs of its members, may invest its surplus funds in only the following:

(1)(a) Obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States;

(b) In loans to other credit unions in the state provided that no such loan may exceed twenty-five per cent of the unimpaired capital of the lending credit union nor be made for a period in excess of one year.

(2) General obligations of states and general obligations of counties, municipalities or county road, school, hospital and other public purpose districts of the state; provided, that such securities shall not be eligible for investment if they have been in default either as to principal or interest within five years prior to date of purchase.

(3) First mortgage bonds of railroad and public service corporations; provided, that the investment in bonds of any such corporation shall not exceed ten thousand dollars and provided further that such securities shall not be eligible for investment if they have been in default either as to principal or interest within five years prior to date of purchase.

(4) Shares of building and loan associations, savings and loan associations and other credit unions; provided, that the investment in any credit union shall not exceed ten thousand dollars and that the aggregate of all such investments shall not exceed twenty-five per cent of the unimpaired capital of the investing credit union.

(5) Real estate and improvements thereon that may be required for its accommodation in the transaction of its business; provided, that before any such investment is made, the proposal to make it shall be submitted to the comptroller and his approval obtained and, provided further that he shall not grant such approval until he is satisfied that the proposed investment is necessary, that the amount thereof is commensurate with the size and needs of the credit union and that it will be beneficial to the members.

(6) Furniture, fixtures and equipment that may be required in the transaction of its business.

History.—§5, ch. 29739, 1955; (1)(b) n. §1, ch. 57-346; (1)(b), (4) §§8, 9, ch. 63-289.

657.17 Reserves.—All entrance fees, (which may be provided by the by-laws), and each year, before the declaration of a dividend, twenty per cent of the net earnings shall be set aside as a reserve fund, which reservation of earnings shall continue until the reserve fund equals twenty per cent of the total of the capital and deposits of the credit union. Moneys acquired through the building up of this reserve fund may be invested under the terms of §657.04. The reserve fund herein provided for shall be held by the corporation as a reserve against bad debts of any nature owing to it; and said fund shall not be distributed or reduced except in cases of liquidation of the credit union or for the charging out of bad debts, and any such charge to this account must be first approved by the board of directors.

History.—§17, ch. 14499, 1929; CGL 1936 Supp. 6494(17); §3, ch. 20312, 1941; am. §3, ch. 28232, 1953.

657.18 Dividends.—The directors of any credit union, after provision has been made for transfers to the reserve fund in accordance with the provisions of §657.17, may declare an annual or a semi-annual dividend from net earnings not to exceed six per cent for annual dividend or three per cent for semi-annual dividend, which dividend shall be paid on all shares outstanding at the end of the period covered by such dividend; shares which become fully paid up during the period covered by such dividend shall be entitled to a proportional part of such dividend calculated from the first day of the month following such payments in full or, if the by-laws so provide, dividends may be calculated from the first day of the month during which they are paid in full on or before the tenth of such month.

History.—§18, ch. 14499, 1929; CGL 1936 Supp. 6494(18). Am. §4, ch. 28232, 1953; §6, ch. 29739, 1955; §2, ch. 57-346.

657.19 Expulsion; withdrawal.—A member may be expelled by a two-thirds' vote of the members present at a special meeting called to consider the matter but only after a hearing. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. If funds are not then

available, sums due expelled or withdrawing member shall be paid in the order filed out of one-half of receipts. The credit union may require sixty days' notice of intention to withdraw shares and thirty days' notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

History.—§19, ch. 14499, 1929; CGL 1936 Supp. 6494(19).

657.20 Dissolution.—The process of voluntary dissolution shall be as follows:

(1) At a meeting called for the purpose (notice of which purpose must be contained in the call) a majority of the entire membership of the credit union may vote to dissolve the credit union.

(2) Thereupon they file with the comptroller a statement of their consent to dissolution, attested by a majority of the officers and including the names and addresses of the officers and directors.

(3) The comptroller determines whether or not the credit union is solvent. If such is the fact he issues in duplicate a certificate to the effect that this section has been complied with.

(4) The certificate is filed with the clerk of the circuit court of the county in which the credit union is located, whereupon the credit union is dissolved and shall cease to carry on business except for the purposes of liquidation.

(5) The credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up, for three years.

History.—§20, ch. 14499, 1929; CGL 1936 Supp. 6494(20); am. §1, ch. 23013, 1945.

657.21 Place of business.—A credit union may change its place of business on written notice to the comptroller.

History.—§21, ch. 14499, 1929; CGL 1936 Supp. 6494(21).

657.22 Authority to destroy records or files after ten years; liability.—

(1) Credit unions shall not be required to preserve or keep their records or files for a longer period than ten years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that all ledger and journal sheets showing unpaid balances in favor of shareholders and depositors of such credit union shall not be destroyed unless photographic copies of such ledger and journal sheets are retained.

(2) No liability shall accrue against any credit union destroying any such records after the expiration of the period provided in subsection (1), and in any cause or proceedings in which any of such records or files may be called in question or be demanded of the credit union, or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this act shall be sufficient excuse for the failure to produce them.

(3) This section shall, so far as applicable, apply to the records of federal credit unions operating in this state.

History.—Comp. §5, ch. 28232, 1953.

657.23 Conversion of credit unions from state to federal and vice versa.—Any state chartered credit union operating in the state may convert into a federal chartered credit union and any federal chartered credit union may convert into a state chartered credit union upon approval of the authority under whose supervision the converted credit union will operate and upon compliance with applicable federal laws as to a converted federal credit union, and upon compliance with applicable state laws as to a converted state credit union. The procedure for obtaining such approval and effecting the conversion shall be as follows:

(1) A meeting of the board of directors, either regular or special, shall be called for the purpose of voting on converting from a federal credit union to a state credit union, or from a state credit union to a federal credit union. A majority of the board of directors shall adopt a resolution approving the contemplated conversion.

(2) A meeting either regular, or special, of the shareholders shall then be called for voting on the proposed conversion. Notice of said meeting shall be given in the manner prescribed in the by-laws, and it shall be given not more than thirty days nor less than ten days prior to the date of the meeting. Proof of giving of the notice shall be by the affidavit of the president of the credit union. A majority of the members present at this meeting shall then approve the proposed conversion.

(3) The credit union shall then obtain, in writing, the approval of a majority of the shareholders on record as of the date of the resolution by the board of directors.

(4) Within ten days after the approval of the conversion by the majority of the shareholders, as provided in subsection (3), the president or vice-president and treasurer shall file a verified copy of the resolution adopted by the board of directors with the state or federal authority, under whose supervision the converting credit union is to operate.

(5) Upon the filing of the articles of incorporation with the proper state or federal authorities; and with the written approval of the state authorities for credit unions applying for conversion to state credit unions; and with the written approval of the federal authorities for credit unions applying for conversion to federal credit unions, the converting credit union shall, upon compliance with all other applicable state or federal laws, become a credit union under the laws of this state or the United States, as the case may be; and thereupon all assets shall become the property of the new state or federal

credit union, as the case may be, subject to all existing liabilities against the credit union, and every person who was a shareholder, or member of the converting credit union, shall be a shareholder in the new state or federal chartered credit union in like amount.

(6) In consummation of the conversion, the old credit union may execute, acknowledge and deliver to the newly chartered credit union, instruments of transfer necessary to accomplish the transfer of any property and all right, title or interest therein.

History.—Comp. §1, ch. 57-413.

CHAPTER 658

BANKING CODE, FIRST PART

658.01 Short title. — Chapters 658-661 may be cited as the "Florida banking code".

History.—Comp. §1, ch. 28016, 1953.

658.02 Definitions. — As used in chapters 658-661:

(1) "Bank" means any person doing a banking business whether subject to the laws of this or any other jurisdiction other than industrial or Morris plan banks operating under the provisions of chapter 656, and savings banks operating under the provisions of chapter 654.

(2) "State bank" means any state bank chartered by this state.

(3) "Commercial bank" means any state bank chartered to do a general commercial banking business.

(4) "Action" in the sense of a judicial proceeding includes, but is not limited to, recoupment, counter-claim, set-off, suit in equity and any other proceedings in which rights are determined.

(5) "Commissioner" means the state commissioner of banking.

(6) "Community" means a city, town or incorporated village, or, where not within any of the foregoing, a trade area.

(7) "Court" means a court of competent jurisdiction.

(8) "Department" means the state department of banking.

(9) "Fiduciary" means trustee, agent, executor, administrator, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(10) "Item" means any instrument for the payment of money even though not negotiable, but does not include money.

(11) "Officer", when referring to a bank, means any person designated as such in the by-laws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant cashier, assistant comptroller, or any person who performs the duties appropriate to those offices.

(12) "Person" means an individual, corporation, partnership, joint venture, trust estate, business trust, or unincorporated association.

(13) "Trust business" means the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository or trustee under the appointment of any court, or by authority of any law of this or any other state or of the United States, or as trustee for any purpose permitted by law.

(14) "Trust company" means a corporation or the trust department of a bank which is authorized to engage in the trust business.

History.—Comp. §1, ch. 28016, 1953; provisions contained herein formerly §652.27.

658.03 Effect on existing banks.—The charters of state banks and trust companies existing at the time of the adoption of chapters 658-661 shall continue in full force and effect, but all state banks and trust companies and, to the extent applicable, all banks, shall hereafter be operated in accordance with the provisions of chapters 658-661.

History.—Comp. §1, ch. 28016, 1953; provisions contained herein formerly §652.23.

658.04 Banking department; establishment.

(1) There is hereby established a state department of banking which shall be a separate department charged with supervision of the activities in this state of banks and trust companies as provided in this code and in other legislation conferring jurisdiction upon the department.

(2) The comptroller shall be ex officio the state commissioner of banking, who shall receive no additional compensation for the performance of the duties as said commissioner.

History.—Comp. §1, ch. 28016, 1953.

658.05 Powers of commissioner. — In addition to other powers conferred by this act, the commissioner shall have power to:

(1) Implement by regulation any provision of this code. Notice and hearing shall be provided by the commissioner in advance of the effective date of any regulations promulgated under the provisions of this subsection and upon the adoption of any such regulations, same shall be immediately disseminated to all banks and trust companies concerned by such regulations. In matters involving extraordinary circumstances requiring immediate action, the commissioner may take such action, but shall promptly afford a subsequent hearing upon application of any interested bank or party to rescind the action taken.

(2) Restrict the withdrawal of deposits from all or one or more state banks where the commissioner finds that extraordinary circumstances make such restriction necessary for the proper protection of depositors in the affected institution.

(3) Employ a chief deputy commissioner and such deputy commissioners, examiners or other employees necessary to operate the department and fix their compensation.

(4) The commissioner may from time to time formulate and promulgate reasonable rules and regulations governing the conduct of state banks and trust companies doing business in this state which shall have the force of law and he shall have the power to enforce the same.

History.—Comp. §1, ch. 28016, 1953; parts of the material contained herein were formerly covered by §§653.35, 653.36 and 653.42.

658.06 Liability when acting upon commissioner's order or regulation.—No person shall be subject to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order or regulation issued by the commissioner notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the order or regulation.

History.—Comp. §1, ch. 28016, 1953.

658.07 Examinations and reports. — The commissioner shall examine the condition of each state bank at least two times in each calendar year and each trust company at least once in each calendar year. The commissioner may accept a federal deposit insurance corporation or federal reserve examination in lieu of one of said bank examinations, and may furnish to the federal deposit insurance corporation or its representatives a copy of all examinations made of such banks. He shall require each bank or trust company to submit a report of its condition as of such date as he may fix at least twice in each calendar year, or as often as ordered by the commissioner, verified by the oaths or affirmations of the president or the vice-president and treasurer, secretary or cashier of such corporation and within ten days after such report shall have been called for, shall publish in a newspaper published in the county in which said bank is located a statement of its assets and liabilities of the date of said report, and a copy of said publication, with an affidavit of the publication shall be filed with the commissioner, and a copy of said publication filed also with the county tax assessor. Every such bank or trust company which fails to transmit any report required under this section shall be subject to a penalty of one hundred dollars for each day of delinquency after the due date of the reports. The provisions of this section shall not apply to national banks and trust departments of national banks.

History.—Comp. §1, ch. 28016, 1953; material contained herein formerly covered by §§653.28, 653.44 and 655.19.

658.08 Examination fees.—Each state bank or trust company shall pay an examination fee computed in accordance with the following schedule:

With resources up to $ 150,000.00 ____ $ 40.00
With resources up to $ 250,000.00 ____ $ 50.00
With resources up to $ 400,000.00 ____ $ 75.00
With resources up to $ 500,000.00 ____ $ 90.00
With resources up to $ 750,000.00 ____ $120.00
With resources up to $1,000,000.00 ____ $150.00

and for additional million dollars, or major part thereof forty dollars per million dollars. Examination fees shall in all cases be paid by the bank or trust company direct to the state treasurer to be credited to the general revenue fund.

History.—§1, ch. 28016, 1953; §1, ch. 63-182.
Note.—Formerly §653.44.
cf.—§654.09 Savings banks.

658.09 Annual report to governor. — The commissioner shall submit an annual report to the governor, which shall include:

(1) The text of all regulations of the department of general application adopted or altered since his last previous report.

(2) A statement of the general condition and affairs of existing state banks.

(3) A statement of the status and remaining assets and liabilities of all banking or trust organizations in the possession of the commissioner for liquidation.

(4) A summary of all changes occurring since his last previous report by reason of the opening of new state banks or trust companies, mergers and conversions, increases and decreases in capital, and the like.

History.—Comp. §1, ch. 28016, 1953.

658.10 Department records.—

(1) Information from the records of the department shall be revealed only with the consent of the commissioner, but shall be subject to subpoena.

(2) Reports of examinations made by the department or a photographic copy shall be retained for a period of ten years.

(3) A copy of any document on file with the department which is certified by the commissioner, as being a true copy, may be introduced in evidence as if it were the original. The commissioner shall establish a schedule of fees for preparing copies of documents.

History.—Comp. §1, ch. 28016, 1953.

658.11 Destruction of certain bank and trust company records.—

(1) Banks or trust companies shall not be required to preserve or keep their records of files or photographic or microphotographic copies thereof for a longer period than ten years next after the first day of January of the year following the time of the making or filing of such records or files, provided, however, that ledger sheets shall not be destroyed unless photographic copies of such ledger sheets are retained.

(2) No liability shall accrue against any bank or trust company destroying any such records after the expiration of the period provided in subsection (1), and any cause or proceedings in which any such records or files may be called in question or be demanded of

the bank or trust company or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section shall be a sufficient excuse for the failure to produce them.

(3) Any bank, or trust company, may photograph, microphotograph, or reproduce on film in such manner that each page is exposed in its entirety any or all of its journals, ledgers, statements, account books, or other books, or any or all of its internal records of every description, made or received in the regular course of its business, and the photographs, microphotographs, or reproductions on film in the form of film or prints, or enlarged prints, or any duly certified or authenticated copy or reproduction thereof, duly certified or authenticated by a responsible officer of the bank under whose supervision the records are kept, shall in all cases, and in all courts and places, be admitted and received as evidence with a like force and effect as the original general ledger, voucher, statement, account book, or other record.

History.—Comp. §1, ch. 28016, 1953; provisions contained herein formerly § § 653.90 and 92.34.

CHAPTER 659

BANKING CODE, SECOND PART

659.01 Creation of banking or trust corporation.—When authorized by the commissioner, as provided herein, a corporation may be formed under the laws of the state by five or more persons for the purpose of conducting a general banking or trust business.

History.—Comp. §2, ch. 28016, 1953; provisions hereof formerly § § 652.01, 655.01, 655.02.

659.02 Application for authority to organize bank.—

(1) A written application for authority to establish a corporation, as provided in §659.01, shall be filed with the commissioner, and shall include:

(a) The name, residence and occupation of each incorporator and stock subscriber and the amount of stock subscribed for by each, together with a statement under oath of each subscriber that he subscribes in good faith in his own right and not as agent or attorney for any undisclosed person.

(b) The proposed name.

(c) The total capital, the number of shares of each class, and the par value of the shares of each class.

(d) The community, including the street and number, if known, and if not known, the area within the community where the proposed bank or trust company is to be located.

(e) Request for trust powers, if desired.

(2) Said application shall be in such form and contain such additional information as the commissioner shall reasonably require, and shall be accompanied by a fee of five hundred dollars.

History.—§2, ch. 28016, 1953; (2) §1, ch. 63-181.
Note.—Formerly §§652.13, 652.15, 655.02.
cf.—§661.08 Conversion from state bank to national bank and reverse.

659.03 Investigation by commissioner.—

(1) Upon the filing of an application, the commissioner shall make an investigation of:

(a) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed bank or trust company.

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, in the community where the proposed bank is to be located, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities in the locality.

(c) The present and future ability of the community to support the proposed bank or trust company and all other existing banking or trust facilities in the community.

(d) The character, financial responsibility, banking experience and business qualifications of the proposed officers.

(e) The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

(2) The commissioner shall approve or disapprove the application, in his discretion, but he shall not approve such application until, in his opinion:

(a) Public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) Local conditions assure reasonable promise of successful operation for the proposed bank or trust company and those banks or trust companies already established in the community.

(c) The proposed capital structure is adequate.

(d) The proposed officers and directors have sufficient banking or trust experience, ability and standing to assure reasonable promise of successful operation.

(e) The name of the proposed bank or trust company is not so similar as to cause confusion with the name of an existing bank.

(f) Provision has been made for suitable banking house quarters in the area specified in the application.

History.—Comp. §2, ch. 28016, 1953; provisions hereof formerly covered by §§652.05, 652.06, 652.15, 655.02.
cf.—§661.08 Conversion from state banks to national bank and reverse.

659.04 Capital structure.—

(1) The capital stock of a state bank or trust company shall be in such amount as the commissioner shall deem adequate, but not less than the following aggregate amounts, based upon population of the community in which the bank or trust company will be located according to the latest official census:

(a) Twenty-five thousand dollars, if the population of the community in which the bank or trust company will be located does not exceed five thousand and fifty thousand dollars if the population of the community in which the bank will be located does not exceed ten thousand.

(b) One hundred thousand dollars if the population of the community in which the bank or trust company will be located exceeds ten thousand, but does not exceed fifty thousand.

(c) Two hundred thousand dollars if the population of the community in which the bank or trust company will be located exceeds fifty thousand, but does not exceed two hundred thousand.

(d) Three hundred thousand dollars if the population of the community in which the bank or trust company will be located exceeds two hundred thousand.

(2) Every state bank or trust company hereafter organized shall, upon its organization, establish, in addition to the capital required by subsection (1), a paid-in surplus equal in amount to not less than twenty per cent of its paid-up capital, and a fund to be designated as undivided profits equal to five per cent of its paid-up capital.

(3) Each subscriber at the time he subscribes to the stock of a proposed state bank or trust company shall pay an additional sum at least equal to five per cent of the par value of such stock into a fund to be used to defray the expenses of organization, such additional sum to be paid in cash. No organizational expense shall be paid out of any other funds of the bank. Upon the granting of a charter, any unexpended balance in such fund shall be transferred to undivided profits. If the application has been finally denied during said period, such balance shall be distributed among the contributors in proportion to their respective payments. The commissioner may require an accounting of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organizational expenses.

(4) No bank or trust company shall apply any part of the funds collected under this section for the payment of commissions or fees for obtaining subscriptions or selling shares or to the payment of compensation for services in connection with the organization of a proposed bank, or in connection with securing authority to transact business, other than the payment of fees for legal services and of other usual and ordinary expenses incidental and necessary for the organization of a bank or trust company.

History.—Comp. §2, ch. 28016, 1953.
Note: See former § § 652.06, 653.05, 655.01, 655.14.

659.05 Authorization to engage in banking or trust business.—

(1) Upon approval of the application for authority to organize by the commissioner, the

proposed articles of incorporation shall be submitted to the commissioner for his written approval before filing pursuant to chapter 608. After such approval and certification by the commissioner, the proposed bank or trust company shall:

(a) File with the commissioner a copy of its articles of incorporation duly certified by the secretary of state.

(b) File with the commissioner a statement in such form and with such supporting data and proof as he may require, showing that the entire capital, surplus and undivided profits have been fully paid in lawful money unconditionally, and that the funds representing such capital, surplus and undivided profits, less sums spent with the approval of the commissioner for land, building, supplies, fixtures and equipment, are on hand.

(2) If the commissioner finds that the proposed bank or trust company has in good faith complied with all the requirements of law, he shall within thirty days after the filing of the statement specified in subsection (1) (b), issue, in duplicate, under his official seal, a certificate of authorization to transact a general banking or trust business, transmitting one copy to the bank or trust company and placing one copy in the department file. Said certificate shall state that the corporation named therein is authorized to transact a general banking or trust business, and the bank or trust company shall cause said certificate to be published one time in some newspaper of general circulation published in the city or county where the bank or trust company is located.

(3) No bank or trust company shall, until it has received its certificates of authorization:

(a) Transact any banking or trust business.

(b) Incur any indebtedness except that allowed under subsection (1) (b).

(4) Upon the failure to comply with subsection (1) (a) and (b) within six months after the approval of the application for authority to organize, such right shall automatically terminate and the charter be revoked. The commissioner, however, for good cause, on written application filed before the expiration of said six months' period, may extend the time within which the bank may be organized for a period not exceeding six months.

(5) Upon the failure to open for business within thirty days after the issuance of the certificate of authorization, the right to transact business shall automatically terminate and the charter be revoked.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §§652.04, 652.07, 652.13-652.16.

659.06 Place of transacting business; school savings; drive in facilities.—

(1) (a) Any bank or trust company shall have only one place of doing business, which shall be located in the community specified in its original articles of incorporation, and the business of the bank or trust company shall be transacted at its banking house so located in said community specified, and not elsewhere. A bank or trust company may, however, change the location of its banking house within the community shown in its articles of incorporation with the written approval of the commissioner. Application for such approval shall be in such form and contain such information as the commissioner may require.

(b) A bank may contract with proper authorities of any elementary or secondary school or institution caring for minors for the participation by the bank in any school or institutional thrift or savings plan, and it may accept deposits at such school or institution, either by its own collector or by any representative of the school or institution who becomes the agent of the bank for such purposes. Withdrawal from any account carried with the bank by any such school or institution shall be made only at the banking house of said bank.

(2) A bank may operate a drive-in facility, providing one or more tellers to serve patrons in motor vehicles in the following manner:

(a) The facilities will be a part of or adjacent to the main banking room.

(b) There will be a physical connection of the main banking room and the facility.

(c) There will be a private connecting doorway or private enclosed secure passageway connecting the main banking room and the facility enabling tellers to pass between the facility and main banking room without coming in contact with the public.

The operation of any drive-in facility not complying with these requirements shall constitute a violation of subsection (1); provided however, subsection (2) shall not apply to drive-in facilities existing on or prior to May 25, 1950.

History.—§2, ch. 28016, 1953; (1) (b) N. by §1, ch. 57-77.
Note: See former §653.01, comptroller's rule No. 9.

659.07 Changes in articles of incorporation.—A bank or trust company shall not amend its articles of incorporation without the written approval of the commissioner, and if any amendment requests a change in name of the bank or trust company, the commissioner shall not approve such change if the new name is so similar as to cause confusion with the name of an existing bank.

History.—Comp. §2, ch. 28016, 1953; provisions contained herein formerly §653.05.

659.08 Shares of stock.—

(1) A state bank or trust company shall issue its capital stock with par value of not less than ten dollars nor more than one hundred dollars per share.

(2) No bank or trust company hereafter shall issue any shares before they are fully paid for.

(3) A bank or trust company pursuant to action taken by its board of directors, and after obtaining the written approval of the commissioner and the approval of stockholders holding a majority of the voting stock of the

bank or trust company evidenced either in a writing signed by the stockholders or by a vote at a stockholders' meeting called for such stated purpose after giving ten days' notice by registered mail, may issue preferred stock of one or more classes in an amount and with a par value as approved by the commissioner and may make amendments to its articles of incorporation which may be necessary to accomplish this purpose. The holders of the preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of the bank or trust company, and shall not be liable for assessment.

History.—Comp. §2, ch. 28016, 1953.
Note: See former § § 652.06, 652.07, 652.09, 652.10.

659.09 Dividends and surplus.—The directors of any bank or trust company, after charging off bad debts, depreciation and other worthless assets if any, may quarter-annually, semi-annually, or annually, declare a dividend of so much of the net profits of the company as they shall judge expedient, but each company shall, before the declaration of a dividend on its common stock carry twenty per cent of its net profits for such preceding period as is covered by the dividend to its surplus fund, until the same shall at least equal the amount of its common and preferred stock. Whenever the surplus becomes impaired or reduced below the aggregate amount of common and preferred stock, it shall be reimbursed in the manner provided for its accumulation.

History.—Comp. §2, ch. 28016, 1953.
Note: See former § § 653.05, 655.14.

659.10 Changes in capital.—

(1) No state bank or trust company shall reduce its outstanding capital stock without first obtaining the consent of the commissioner, and such consent shall be withheld if the reduction will cause the outstanding capital stock to be less than the minimum required hereunder.

(2) Any state bank or trust company, may with the approval of the commissioner, provide for an increase in its capital as may be deemed expedient.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §652.22.

659.11 Directors, number, qualifications, oath, officers.—

(1) The board of directors of the state bank or trust company shall consist of not less than five nor more than twenty-five directors, and shall be elected at the annual meeting of stockholders.

(2) Every director must during his whole term of service be a citizen of the United States, and at least three-fifths of the directors must have resided in this state for at least one year preceding their election, and must be residents therein during their continuance in office. Every director of a bank or trust company hereafter chartered must own in his own right, free of lien, encumbrance, option or pledge agreement, voting common stock of the bank of which he is a director of not less than one thousand dollars par value; any director who ceases to be the owner of such amount of voting common stock, or who becomes in any other manner disqualified, shall thereby vacate his place as such director; provided that as to those banks having an authorized capital of twenty-five thousand dollars or less, such directors must own in his own right capital stock in such bank of not less than five hundred dollars par value in the manner above provided for other banks.

(3) Each director, upon assuming office, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such bank or trust company and will not knowingly violate, or willfully permit to be violated, any of the provisions of this chapter, and that he is the owner in good faith and in his own right of shares of voting common stock in the amount required by subsection (2) subscribed by him or standing in his name on the books of the bank or trust company and that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be immediately filed with the commissioner.

(4) The board of directors of each state bank or trust company shall manage the affairs of the bank or trust company and hold a meeting at least once every two months at the banking house of the bank or trust company.

History.—Comp. §2, ch. 28016, 1953.
Note: See former § § 652.03, 652.17-652.19, 655.13.

659.12 Deposit insurance; membership in federal reserve system.—A state bank or trust company is authorized to do any act necessary to obtain insurance of its deposits by the United States, or any agency thereof, and to acquire and hold membership in the federal reserve system.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §653.13.

659.13 Liability of stockholders. — Holders of voting common stock of state banks or trust companies shall be held individually responsible equally and ratable and not for one another for all contracts, debts, and engagements of such banks or trust companies to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares. Persons holding stock as executors, administrators, guardians or trustees shall not be personally subject to any liability as stockholders, but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in trust funds would be, if living and competent to hold the stock in his own name. Such stockholders who have transferred their shares or registered the transfer thereof within six months next before the date of the failure of such bank or trust company to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent

transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such stockholders might otherwise have against those in whose names such shares are registered at the time of such failure, provided that this section shall not apply to stockholders in a banking, savings or trust company which is a member of the federal deposit insurance corporation, a corporation under the laws of the United States, or which has an unimpaired surplus equalling the amount of its capital stock.

History.—Comp. §2, ch. 28016, 1953.
Note: See former § § 652.08, 655.12.

659.14 Acquisition of majority stock in existing bank or trust company. — In any case where a person, a group of persons, or a corporation proposes to purchase or acquire the majority of the outstanding capital stock of any state bank or trust company and thereby to change the control of said bank or trust company, such person, shall first make application to the commissioner for a certificate of approval of such proposed change of control of said bank or trust company and said application shall contain the name and address of the proposed new owner or owners of the controlling stock and the said commissioner shall issue said certificate or approval only after he has become satisfied that the proposed new owner or owners of the controlling stock is qualified by character, experience and financial responsibility to control and operate the said bank or trust company in a legal and proper manner, and that the interests of the stockholders, depositors and creditors of the bank or trust company and the interests of the public generally will not be jeopardized by the proposed change in ownership and management.

History.—Comp. §2, ch. 28016, 1953.
Note: See comptroller's former Rule No. 8.

659.15 Filing fees.—On filing any charters or other papers relative to banks or trust companies with the secretary of state, fees as prescribed in §608.05 shall be paid to the secretary of state for the use of the state.

History.—§2, ch. 28016, 1953; §1, ch. 57-23.
Note: See former §655.25.

659.16 Cash reserves.—

(1) Every bank shall at all times have available in cash an amount equal to at least twenty per cent of the aggregate amount of its deposits. Such portion of said reserve as the bank may desire may be invested in bonds and securities of the United States and bonds and securities guaranteed as to principal and interest by the United States, owned and unpledged by the bank, or which are in excess of the total deposits which they are pledged to secure, and balances payable on demand, due to the company from banks with whom such company may keep its current account.

(2) Whenever the lawful reserve of any such bank as defined in subsection (1) shall be below the amount of twenty per cent of its deposits, such bank shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing of bills of exchange payable at sight, nor making any dividends of its profits until the required proportion between its deposits and its lawful money of the United States has been restored. The commissioner may notify any bank whose lawful money reserves shall be below the amount above required to be maintained to make good such reserve, and if such bank shall fail in thirty days thereafter so to make good its reserve of lawful money, the commissioner may appoint a liquidator to wind up the business of the bank as provided in §661.10.

History.—Comp. §2, ch. 28016, 1953.
Note: See former § § 653.02, 655.22.

659.17 Loans.—A state bank may make loans with or without security subject to the following limitations:

(1) No bank shall lend directly or indirectly an amount exceeding ten per cent of the aggregate unimpaired capital and surplus of said bank to any director or officer of said bank, individually or to any copartnership or incorporated company in which a director or officer may be directly or indirectly interested. No such loans shall be made unless the same shall be first approved by the board of directors of such bank or unless the same shall be made pursuant to a line or lines of credit theretofore approved by the board of directors of such bank and if made pursuant to such line or lines of credit, each such line of credit must be approved by said board of directors not less often than once each year; provided, however, that nothing contained in this sentence shall be construed as enlarging the limitations of this section on amounts of loans.

(2) (a) Unsecured loans exceeding ten per cent of the aggregate unimpaired capital and surplus shall not be made to any person; however, when approved by the board of directors, or an authorized committee therefrom, said ten per cent limitation may be increased to twenty-five per cent of the aggregate unimpaired capital and surplus, provided all loans of said person are amply and entirely secured.

(b) The limitations contained in this subsection shall not apply to trust companies which do not accept deposits, nor to loans made by banks or trust companies to county boards of public instruction when said loans are secured by the assignment of revenues reasonably expected to be received from the state and evidenced by a certificate of estimation executed by the state superintendent of public instruction, as provided for in §237.26; nor to any loan or loans, or portions thereof, to the extent that they are secured or covered by guarantees, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States; nor loans fully secured by bonds, certificates or other evidences of indebtedness

issued by or fully guaranteed by the United States government, or loans secured by assignment or a savings pass book or certificate of deposit of the lending bank.

(c) In computing the total liabilities of any individual to a bank or trust company, there shall be included all liabilities to the bank of any copartnership or any unincorporated association of which he is a member, any loans made for his benefit or for the benefit of such copartnership or unincorporated association, and any loans made to, or for the benefit of, a corporation of which he owns fifty per cent or more of the capital.

(d) In computing the total liabilities of any co-partnership or unincorporated association to a bank or trust company, there shall be included all liabilities of its individual members to such bank or trust company, loans made for the benefit of such co-partnership or unincorporated association; or any member thereof, and any loan made to, or for the benefit of, any corporation of which any member owns fifty per cent or more of the capital.

(e) In computing the total liabilities of any corporation to a bank or trust company, there shall be included all loans made for the benefit of the corporation, and all loans to, or for the benefit of, any copartnership or unincorporated association, or any member thereof, who owns fifty per cent or more of the capital of such corporation.

(3) Officers and directors shall be personally liable, jointly or severally, for any loss that may be occasioned by any wilfull violation of this §659.17.

(4) (a) No loan or discount shall be made by a bank or trust company on the security of the shares of its own capital stock nor may a bank or trust company be the purchaser of any of such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall within six months from the time of its purchase be sold or disposed of at public or private sale.

(b) No bank or trust company shall lend in excess of ten per cent of its aggregate unimpaired capital and surplus upon the security of the capital stock of another bank or trust company and no such loan may be made in any amount unless such bank or trust company has been in existence at least two years and has earned and paid a dividend on its capital stock nor shall it make a loan on the security of the capital stock of another bank if by the making of such loan the capital stock of such other bank owned or held as collateral by all departments of the lending bank will exceed in the aggregate twenty-five per cent of the stock of such other bank.

(c) Loans made by a bank or trust company on the security of the shares of stock, bonds or other obligations of a corporation together with all loans made by the bank or trust company on the direct obligation of said corporation shall not exceed in the aggregate at any one time twenty-five per cent of the unimpaired capital and surplus of the bank or trust company granting the loan or discount unless such securities are dealt in on a recognized stock exchange.

(5) No bank or trust company shall carry in its assets real estate mortgages other than first mortgages on real property except that secondary liens may be so taken and carried to further secure any debt previously contracted in good faith and owing to said bank or trust company, or as additional security to loans made under the provisions of title I of the federal housing administration. Secondary liens made under the provisions of the servicemen's readjustment act of 1944, as amended, when fully guaranteed under the provisions of and meeting the requirements of said act, will not be considered secondary liens subject to the prohibitions of this section, but as acceptable assets for banks and trust companies. Secondary liens may also be taken at any time to further secure a loan if the loan is otherwise adequately secured.

History.—§2, ch. 28016, 1953; (1) (b) §1, ch. 57-42; (1) §1, ch. 63-322.

Note.—See former §§653.04, 653.18, 655.17, 655.20, comptroller's Rule No. 7.

659.18 Loans by banks where not in excess of $5,000.00.—

(1) Any bank shall have power in addition to such other powers as it may have to make loans to any person, firm or corporation in an amount not exceeding five thousand dollars, and to deduct in advance from the proceeds of such loan interest or discount computed at a rate of not exceeding six per cent per annum upon the total amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in installments, or notwithstanding the loan is secured by mortgage, pledge, or other collateral or secured by a deposit account opened by the maker or makers concurrently with the making of the loan and assigned as collateral security therefor, which deposit account may evidence deposits made, or require deposits substantially uniform in amount, to be made periodically, with or without interest, throughout the term for which the note evidencing such loans runs. If such loan be payable in periodic installments the interest or discount thereon for the entire term of the loan may be added to the principal and the aggregate amount divided into installments as nearly equal as may be done during the term of such loan.

(2) No further interest or discount charge, nor any other charge whatsoever, shall be made directly or indirectly on any such loan or discount of such note by such bank, trust company or national bank in addition to the charges herein expressly provided for, except that there may be charged to the borrower

(a) A penalty not exceeding five per cent of the amount of any principal payment or payments in default.

(b) The premium on any group insurance

policy on the life of the borrower, in an amount not to exceed the full amount of the loan, in case such bank, trust company or national bank insures the life of the borrower under a group insurance policy, and

(c) The actual cost of reasonable and necessary credit investigation or appraisal of the security offered as collateral, provided such cost shall not exceed two per cent of the principal amount of the loan.

(d) Provided, however, that such banks may make a minimum interest or discount charge of three dollars on any single payment loan, or five dollars on any installment loan, notwithstanding such sum shall exceed the contract rate otherwise fixed by law.

(e) The rates, penalties, premiums, costs, charges and minimum charge, authorized under this section, shall be construed as exceptions to the laws of Florida governing interest and usury and the penalties of such laws shall apply in all cases where the limitations or requirements of this section are exceeded or violated.

(f) The privileges conferred by subsection (1) shall not extend to any lending institution which, either 1. refuses or neglects to rebate to the borrower any unearned interest or discount when the borrower shall repay the loan in full before the due date of the last and final installment, or 2. misrepresents the interest or discount rates or charges or the conditions of making loans in any form of advertisement or notice to the public or to potential customers.

(g) It shall be the duty of the commissioner to enforce the provisions of this section and to make such investigations and initiate such actions in court, or otherwise, as may insure its enforcements.

History.—§2, ch. 28016, 1953; (1) by §1, ch. 57-132.
Note: See former §653.81.

659.19 Banks authorized to make commodity loans.—Banks may make loans known and described as "commodity loans" on the obligations of any person, firm, co-partnership, association or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable non-perishable staples when such property is fully covered by insurance if it is customary to insure such staples in the following percentages of the bank's capital and surplus:

(1) Twenty-five per cent when the market value of such staples securing such obligation is not at any time less than one hundred fifteen per cent of the face amount of such obligation.

(2) Thirty per cent when the market value of such staples securing such obligation is not at any time less than one hundred twenty per cent of the face amount of such obligation.

(3) Thirty-five per cent when the market value of such staples securing such obligation is not at any time less than one hundred twenty-five per cent of the face amount of such obligation.

(4) Forty per cent when the market value of such staples securing such obligation is not at any time less than one hundred thirty per cent of the face amount of such obligation.

(5) Forty-five per cent when the market value of such staples securing such obligation is not at any time less than one hundred thirty-five per cent of the face amount of such obligation.

(6) Fifty per cent when the market value of such staples securing such obligation is not at any time less than one hundred forty per cent of the face amount of such obligation.

The increased loan limitation provided by this section shall not apply to obligations of any one person, firm, copartnership, association or corporation arising from the same transaction and/or secured upon the identical staples for more than ten months.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §653.87.

659.20 Investments.—

(1) No bank or trust company shall, directly or indirectly, invest any of its funds in the stock of any incorporated company except the stock of the federal reserve bank of this district, and the stock of the federal national mortgage association, in connection with the sale of the mortgages to said association, or any successor thereof, and except that a bank or trust company may purchase shares of stock in small business investment companies as defined in and organized pursuant to public law 85-699 of the act of congress of August 21, 1958 (15 U. S. code, section 681 et seq.) in an aggregate amount not exceeding one per cent of the unimpaired capital and surplus of such bank or trust company.

(2) A bank or trust company may invest without limitation in marketable bonds or securities with investment characteristics as defined by the commissioner as follows:

(a) United States obligations, including bonds and securities upon which the payment of principal and interest is fully guaranteed by the United States government.

(b) New public housing authority obligations.

(c) General obligations of states, counties, and of political subdivisions thereof.

(d) Refunding bonds and gasoline or fuel tax anticipation certificates issued by the state board of administration, under §16, Art. IX of the state constitution, or by the Florida improvement commission.

(e) Tax anticipation certificates or warrants of counties or municipalities with maturities not exceeding one year.

(3) A bank or trust company may invest in other marketable bonds or securities with investment characteristics as defined by the commissioner as follows:

(a) Not more than twenty-five per cent of its unimpaired capital and surplus in obligations issued by the following United States government agencies:

1. Commodity credit corporation;

2. Federal intermediate credit banks, or any of such banks;

3. Federal land banks, or any of said banks;

4. Central banks for cooperatives and regional banks for cooperatives, or any of such banks;

5. Federal home loan banks or any of said banks;

6. Federal national mortgage association.

(b) Not more than twenty-five per cent of its unimpaired capital and surplus in any single issue of revenue certificates or revenue bonds of any political subdivision or municipality of any state, or the Florida improvement commission.

(c) Not more than ten per cent of its unimpaired capital and surplus in corporate obligations of any one obligor or maker.

(4) None of the investment securities provided in this subsection shall be eligible for investment, if they have been in default either as to principal or interest within five years prior to the date of purchase.

(5) In real estate, except:

(a) Such as may be necessary for its accommodation in the transaction of its business provided the amount of such investments does not exceed forty per cent of its unimpaired capital and surplus; or, in lieu thereof, and anything elsewhere in this section to the contrary notwithstanding, with prior approval of the commissioner a bank may invest in the stock of an incorporated company organized and operated for the sole purpose of owning and operating such building and premises as may be necessary for the accommodation of such bank in the transaction of its business, provided the investment in such stock shall not exceed forty per cent of the unimpaired capital and surplus of such bank.

(6) A bank or trust company may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith and such property shall be held and disposed of subject to the following conditions and limitations:

(a) Stock shall be sold within six months or such additional period as the commissioner may prescribe, unless the same is charged off.

(b) Real estate may be retained for use in the banking business subject to the conditions prescribed in this section for property purchased for such use, or may be rented. Real estate may be improved to facilitate its sale. Unless used in the banking business, it shall be sold within five years or such longer periods as the commissioner may allow unless it is written down on the books of said bank or trust company to one dollar.

(c) Other property, the acquisition of which is not otherwise authorized by this act, shall be sold within six months or such longer period as the commissioner may allow.

(d) Property shall be entered on the books at cost or fair value, whichever is less, and property which the bank is not otherwise authorized to acquire shall be charged off at a rate of not less than ten per cent per annum for real estate and twenty per cent per annum for other property, or at such lower rate not less than five and ten per cent, respectively, as the commissioner may allow.

(7) Any officer or director of any bank or trust company willfully violating any of the provisions of this section or §659.17 shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment in the state prison not exceeding five years.

In addition thereto, such officer or director shall in the event of such violation be subject to summary removal from office by the commissioner and shall not be eligible to re-election to such position or to any other official position in any bank or trust company doing business in this state for a period of five years from the date of such removal.

History.—§2, ch. 28016, 1953; §1, ch. 57-24; (1) by §1, ch. 59-24; (5) (a) by §1, ch. 59-22.
cf.—§288.11, abolition of Florida state improvement commission. §665.45 Authorized investment in federal and Florida savings and loan assn.
Note: See former §§652.21, 653.21, 653.19, 653.27, 655.03.

659.21 Security of deposits.—Notwithstanding any provisions of law of this state or any political subdivision thereof requiring security of deposits in the form of collateral, surety bond, or in any other form, security for such deposit shall not be required to the extent that said deposits are insured under the provisions of §12-B of the federal reserve act as amended, or any amendments thereto.

History.—Comp. §2, ch. 28016, 1953; provisions contained herein formerly §655.03.
cf.—§136.02 Banks qualification as depositories.

659.22 Sale of assets in ordinary course.—A bank or trust company may sell any asset in the ordinary course of business or with the approval of the commissioner in any other circumstances.

History.—Comp. §2, ch. 28016, 1953.

659.23 Borrowing.—A bank or trust company may borrow money and issue evidences of indebtedness for a loan for temporary purposes in the usual course of its business.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §653.03.

659.24 Depositories of public moneys and pledge of assets.—

(1) Banks shall be depositories of public moneys under such regulations as may be prescribed by the commissioner and they may also be employed as financial agents of the state and they shall perform such reasonable duties as depositories of public moneys and financial agents of the state as may be required of them. The commissioner shall require banks so designated to give satisfactory security by the deposit of bonds of the United States, the state or political subdivisions or other satisfactory security for the safekeeping and prompt payment of the public moneys deposited with them and for the faithful performance of their duties as financial agents of the state. A bank or

trust company may also pledge its assets to:

(a) Enable it to act as agent for the sale of obligations of the United States.

(b) Secure borrowed funds.

(c) Secure deposits when the depositor is required to obtain such security by the laws of the United States or the laws of this state.

(2) Notwithstanding any provisions of law of this state or any political subdivision thereof requiring security of deposits in the form of collateral surety bond or in any other form, security for such deposits shall not be required to the extent that such deposits are insured under the provisions of federal deposit insurance, as amended, or any amendments thereto.

History.—Comp. §2, ch. 28016, 1953.
cf.—§659.21 Security of deposits.
Note: See former § § 653.10, 653.12.

659.25 Rights of minority stockholders.—No bank or trust company and no director, officer or employee thereof, shall permit any stockholder other than a qualified director, officer or employee thereof to have access to or to examine or inspect any of the books or records of such bank or trust company other than its general statement book showing its general assets and liabilities.

History.—Comp. §2, ch. 28016, 1953.

659.26 Payment of items.—So long as the balance in any account subject to withdrawal by or upon the order of a depositor shall equal or exceed the amount of any one item presented for payment, a bank may select from items which in the aggregate exceed the balance, the item or items to be paid in any order convenient to the bank.

History.—Comp. §2, ch. 28016, 1953.

659.27 Transactions outside of regular banking hours or on holidays.—

(1) No other law shall affect the validity of, or render void or voidable, the acceptance of deposits, the payment, certification, or acceptance of a check or other negotiable instrument, or any other transaction by a bank or trust company because done or performed on any holiday, or half-holiday, or during any time other than regular banking hours; provided that nothing herein shall be construed to compel any bank or trust company which by law or custom closes at its usual designated time on any Saturday or for the whole, or any part of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour, or on any legal holiday, except at its own option.

(2) Any bank or trust company may be closed for a period of not more than forty-eight consecutive hours, excluding other legal holidays, whenever in the judgment of the directors, the president, or other officers in charge, the lives, safety or property of the institution's employees, or the institution itself would be endangered or placed in jeopardy by an impending or existing hurricane, or other catastrophe, including, but not limited to fire and civil disturbances. The period during which a banking or trust institution is closed pursuant to this subsection shall be a legal holiday as regards banking transactions.

History.—Comp. §2, ch. 28016, 1953.
Note: See former § § 653.83, 653.89.

659.271 Permissive legal holidays; Wednesdays, Thursdays or Saturdays.—

(1) Any bank or trust company lawfully doing business in the state may be closed on any one or more Wednesdays, Thursdays or Saturdays upon the adoption of a resolution to such effect by a majority vote of the board of directors, or the board of trustees thereof. Any one or more of such Wednesdays, Thursdays or Saturdays shall with respect to any such bank or trust company, which shall be closed thereon in accordance with the provisions of this section, constitute a holiday for all purposes whatsoever, as regards the time payable, the presenting for payment, or acceptance, and of the protesting and giving notice of a protest and notice of dishonor of bills of exchange, bank checks and promissory notes drawn on and payable at such bank or trust company, so closed and any other banking business of whatsoever character. All such bills of exchange, checks and notes otherwise presentable for acceptance or payment at any such bank on any Wednesdays, Thursdays or Saturdays when such bank shall in accordance with the provisions hereof be closed, shall be deemed to be payable and presentable for acceptance or payment on the next succeeding business day.

(2) For the purpose of this section the term "bank" shall include any banking organization as defined in the banking law whether chartered under state or federal statutes, any national bank or federal reserve bank. The term "trust company" shall mean any company authorized by federal or state law to carry on a trust business as defined in the statutes of the state.

History.—§§1, 2, ch. 29847, 1955; (1) by §1, ch. 57-394.

659.28 Deposit of minors.—Bank or trust company deposits by a minor or made in his name, other than by a court appointed guardian, may be withdrawn by the minor in the absence of an agreement to the contrary made between the bank and the depositor at the time the account is opened, and in case of any such agreement, such moneys, until the minor's disabilities are removed, may be withdrawn by the person or persons designated in such agreement.

History.—§2, ch. 28016, 1953; §1, ch. 29939, 1955.
Note: See former § § 653.171, 655.21.

659.29 Deposits in two or more names.—Bank or trust company deposits, or any part thereof, or any interest therein made in the names of two or more persons, payable to either, or payable to either or the survivor, and deposits made to an account standing in the names of two or more persons payable as hereinabove mentioned, may be paid to, or pursuant to the order of, either or any of said persons or to, or pursuant to the order of, the guardian of

the property of any such person who is incompetent, whether the other or others be living or not and whether the other or others be competent or not; and the check or other order for payment of any such person, or the receipt or acquittance of the person so paid, shall be a valid and sufficient release and discharge to the bank or trust company for any payment so made.

History.—§2, ch. 28016, 1953; §2, ch. 29939, 1955; §1, ch. 63-472.
Note: See former § § 653.16, 655.21.

659.30 Deposits in trust.—Bank or trust company deposits made by any person describing himself and making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to such bank, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the dividends or interest thereon may be paid to the person for whom the deposit was thus stated to have been made.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §653.17.

659.31 Payment of stale check.—Where a check or other instrument payable on demand at any bank or trust company is presented for payment more than six months from its date, such bank or trust company may, at its option, unless expressly instructed in writing by the drawer or maker to pay the same, refuse payment thereof and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §676.54.

659.32 Revocation, countermand or stop-payment orders.—No revocation, countermand or stop-payment order relating to the payment of any check or draft against a bank account shall be effective unless given in writing and served upon and received by an officer of the bank at the banking house during regular banking hours. No bank or trust company shall be responsible or liable for failure to comply with any such revocation, countermand or stop-payment order on the day the same is served upon or received by such bank or trust company or officer thereof unless such omission or failure of such bank or trust company to comply with the same on the day received result from the willful and intentional disregard of such revocation, countermand or stop-payment order. Said revocation, countermand or stop-payment order shall not be effective for more than six months after the date of service thereof on the bank unless the same be renewed in writing which renewals may be made from time to time for additional six months periods. None of the provisions of this section shall be construed as creating or imposing any liability which otherwise would not have been imposed or existed.

History.—§2, ch. 28016, 1953; §1, ch. 61-287.
Note.—See former §653.41.

659.33 Non-payment of check through error.—No bank or trust company shall be liable to a depositor because of the non-payment through mistake or error and without malice of an item which should have been paid unless the depositor shall allege and prove actual damage by reason of such non-payment and in such event the liability shall not exceed the amount of damage so proved.

History.—Comp. §2, ch. 28016, 1953.

659.34 Rights on improper payment of item.—

(1) To prevent unjust enrichment, a bank or trust company which has paid an item which it may not charge to a depositor's account may in an action

(a) against the drawer, maker or acceptor, recover any part of the payment which would have been due from him had the payment been refused; and

(b) against a prior holder receiving the payment, recover any part thereof due the drawer, maker or acceptor or any other prior party in respect of the transaction in which the item was issued or sold.

(2) The bank or trust company shall have no right to charge the costs of such action to the depositor. The bank or trust company may maintain either or both such actions, but may have only one satisfaction, and any right to consequential or punitive damages remains with the depositor or holder.

(3) In any case in which a bank or trust company has paid an item which may be charged to a depositor's account, a bank or trust company may waive such right and proceed in accordance with this section.

(4) A defense of change of position in reliance upon receipt of payment shall not be effective against the bank or trust company unless it would be effective in a suit between the original parties.

History.—Comp. §2, ch. 28016, 1953.

659.35 Limitations; statements as correct.—

(1) Unless written objection thereto shall have been theretofore delivered by the depositor to the bank, a statement of account rendered by any bank or trust company in this state to a depositor, accompanied by vouchers which are the basis of debit entries in such account, shall, after the expiration of three years from the date rendered, be conclusively presumed to be correct and the depositor shall thereafter be barred from questioning same.

(2) In the absence of written contract between a bank and a depositor providing otherwise, a statement of account of a depositor, with accompanying vouchers, shall be deemed to have been rendered to the depositor within the meaning of this section when prepared and lodged by the bank at its statement window or other customary place for delivery to the depositor. Any such statement and vouchers, either or both, which are not demanded by the depositor within three years may be destroyed

by the bank without accountability or liability therefor to anyone.

(3) Nothing herein contained shall be construed to relieve a depositor from any duty or obligation imposed by law or by contract heretofore or hereafter made to examine such account and vouchers and to report any errors or irregularities within a shorter period of time than herein mentioned, nor from the legal consequences of the depositor's failure to perform any such duty or obligation.

History.—Comp. §2, ch. 28016, 1953.
Note.—See former §653.85.

659.36 Issuance of post-dated checks. — It shall be the duty of the person drawing a post-dated check to notify, in writing, the bank or trust company upon which such check is drawn, giving a complete description thereof, including the name of the payee, the date, the number and amount thereof, otherwise the bank or trust company shall not be liable for erroneously paying such check.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §653.88.

659.37 Liability of bank for amount paid on forged or raised checks or endorsements.—No bank or trust company, which has paid and charged to the account of a depositor any money on a forged or raised check issued in the name of said depositor, or on a check issued by said depositor bearing a forged endorsement, shall be liable to said depositor for the amount paid thereon, unless said depositor shall notify the bank or trust company that the check so paid is forged or raised, or that the endorsement thereon is forged, either:

(1) Within one year after notice to said depositor that the vouchers representing payments charged to his account for the period during which such payment was made, are ready for delivery, or

(2) If no such notice has been given to the depositor, then within one year after the return to said depositor of the voucher representing such payment, or

(3) Within six months after the next succeeding date upon which interest shall have been paid by the bank on said depositor's account, in the case of a savings account.

The notice to the depositor hereinabove referred to, shall be given by registered or certified mail with return receipt demanded, to said depositor at his last known address, with postage prepaid.

History.—§2, ch. 28016, 1953; §1, ch. 61-144.
Note: See former §674.26.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

659.38 Adverse claim to bank or trust company deposit.—Notice to any bank or trust company of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either:

(1) Procure a restraining order, injunction or other appropriate process against said bank or trust company from a court in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with process, or

(2) Execute to said bank or trust company in form and with sureties acceptable to it, a bond, indemnifying said bank or trust company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company.

History.—Comp. §2, ch. 28016, 1953.

659.39 Death or incompetency of depositor.—Any bank or trust company may pay any item made, drawn or accepted by a person who has funds on deposit to meet the same, notwithstanding the death or incompetency of the drawer, if presentation is made within thirty days after receipt of notice of the death or adjudication of incompetency of said depositor, and at any time if the bank or trust company has not received the written notice of the death or adjudication of incompetency of said depositor. No bank or trust company shall be liable for damages, or penalty, by reason of any payment made pursuant to this section.

History.—Comp. §2, ch. 28016, 1953; provisions contained herein formerly §676.53.

659.40 Powers of attorney.—

(1) A bank or trust company may continue to recognize the authority of an attorney authorized in writing to operate, in whole or in part, the account of a depositor, until it receives written notice of the revocation of his authority.

(2) Written notice of the death or adjudication of incompetency of such depositor shall constitute written notice of revocation of the authority of his attorney; provided, however, bank or trust company may, until thirty days after receipt of such notice, pay any item made, drawn, accepted or endorsed by such attorney prior to such death or incompetency, provided that such item is otherwise properly payable.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §676.53.

659.41 Transmitting money; foreign exchange.—

(1) A bank may accept money for transmission and may transmit money.

(2) A bank may buy and sell foreign exchange to the extent necessary to meet the needs of customers.

History.—Comp. §2, ch. 28016, 1953.

659.411 Exchange rates.—Banks may charge for exchange not exceeding one-eighth of one per cent when paying or remitting for checks drawn upon them; whenever a check or checks are forwarded or presented to a bank for a payment, except when presented by the payee in person, the paying bank or remitting bank may pay or remit the same, at its option, either in money, or in exchange drawn on its reserve agent or agents in the city of New York or in any reserve city within the sixth federal reserve district; and, at its option, it may charge

for such exchange not exceeding one-eighth of one per cent of the aggregate amount of the checks so presented and paid; provided, that a minimum charge of twenty-five cents may be made; provided further, that the provisions of this section and §659.412 shall not apply to foreign bills of exchange.

History.—§2, ch. 28016, 1953; §3, ch. 29939, 1955.
Note: See former §653.32.

659.412 Exchange collection not ground for protest.—It is unlawful for any person or notary public, or other official in this state, knowingly, to protest any check for nonpayment, when payment is declined solely on the ground that the paying bank exercises its option to collect exchange on such check, not exceeding one-eighth of one per cent of the amount of such check, or the minimum charge of not less than ten cents, as set forth in §659.411 and any person, notary public, or other official knowingly violating this section shall be responsible for all damages to all interested persons or corporations and his official bond shall be liable therefor.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §653.33.

659.42 Definitions for §§659.43-659.51.—As used in §§659.43 through 659.51:

(1) "Lessee" means a person contracting with a lessor for the use of a safe deposit box.

(2) "Lessor" means a bank or trust company, renting safe deposit facilities.

(3) "Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

History.—Comp. §2, ch. 28016, 1953.

659.43 Authority to engage in leasing safe deposit facilities.—A state bank or trust company may maintain and lease safe deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

History.—Comp. §2, ch. 28016, 1953.

659.44 Access by fiduciaries.—Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as executors or administrators.

(2) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting.

(3) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

History.—Comp. §2, ch. 28016, 1953.

659.45 Effect of lessee's death or incompetence.—Where a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee, deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

History.—Comp. §2, ch. 28016, 1953.

659.46 Search procedure on death of lessee.—Provided satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, must deliver:

(1) Any writing purporting to be a will of the decedent to the court having probate jurisdiction in the county wherein the bank is located.

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein; but no other contents shall be removed pursuant to this section.

History.—Comp. §2, ch. 28016, 1953.

659.47 Lease to minor.—A bank may lease a safe deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

History.—Comp. §2, ch. 28016, 1953.

659.48 Delivery of safe deposit box contents or property held in safekeeping to personal representative.—

(1) The lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant him access to any safe deposit box in the decedent's name and permit him to remove from such box any part or all of the contents thereof.

(2) After three months from the death of a lessee, if a personal foreign representative of such lessee has been appointed by a court of any other state and the lessor has not received written notice of the appointment of a personal representative in this state, a lessor may, in its discretion, deliver to a foreign personal representative all properties deposited with it for safekeeping and the contents of any safe deposit box in the name of the decedent. Such a foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state, and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his letters of authority. A

lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

(3) No lessor shall be liable for damages or penalty by reason of any delivery made pursuant to this section.

History.—Comp. §2, ch. 28016, 1953.

659.49 Access to safe deposit boxes leased in two or more names.—

(1) When specifically provided in the lease or rental agreement covering safe deposit boxes heretofore or hereafter rented or leased in the names of two or more lessees, that access to said safe deposit box shall be granted to either lessee, or to either or the survivor, access to said safe deposit box shall be granted to:

(a) Either or any of said lessees, regardless of whether or not the other lessee or lessees or any of them be living or be competent, or

(b) The executor or administrator of the estate of either or any of said lessees who is deceased, or the guardian of the property of either or any of said lessees who is incompetent, and in either such case, the provisions of §659.44, shall apply, and the signature on the safe deposit entry or access record (or the receipt or acquittance, in the case of property or documents otherwise held for safekeeping) shall be a valid and sufficient release and discharge to the lessor for granting access to such safe deposit box, or for the delivery of such property or documents otherwise held for safekeeping.

(2) No lessor shall be held liable for damages or penalty by reason of any access granted or delivery made pursuant to this section.

History.—§2, ch. 28016, 1953; §1, ch. 63-110.
Note: See former §653.82.

659.50 Adverse claims to contents of safe deposit box.—

(1) An adverse claim to the contents of a safe deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe deposit box is leased or the property held; or

(b) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

(2) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

History.—Comp. §2, ch. 28016, 1953.

659.51 Special remedies for nonpayment of rent.—

(1) If the rental due on a safe deposit box has not been paid for six months, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(2) If the contents of the safe deposit box have not been claimed within one year of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within thirty days, the contents of the box will be sold at public auction at a specified time and place, or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice.

The balance of the proceeds, after reducting accumulated charges, including the expenses of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank or trust company operating the safe deposit facility, and shall be identified on the books of the bank as arising from the sale of contents of a safe deposit box.

(3) Any documents or writings of a private nature, and having little or no apparent value need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed contents, after which they may be destroyed.

(4) The remedies provided for in this section shall apply to rental accrued or contents of safe deposit boxes held by banks prior to the

enactment of chapter 28016 of the laws of 1953, chs. 658-661, Florida Statutes.

History.—§2, ch. 28016, 1953; sub. §(4) comp. §4, ch. 29939, 1955.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

659.52 Banking business by unauthorized persons.—

(1) No person other than banks shall:

(a) Solicit or receive deposits, issue certificates of deposit, with or without provision for interest, make payments on check, issue or sell travelers checks, or money orders, or transact business in the way or manner of a commercial bank or trust company; provided, however, that the provisions of this paragraph prohibiting persons other than banks from issuing or selling travelers checks and money orders shall not apply to the travelers checks or money orders issued by any person who, for five or more years prior to the passage of this act has been continually engaged in the state in the business of issuing and selling travelers checks and money orders, provided further that such issuing person can demonstrate to the satisfaction of the commissioner that its assets exceed all of its liabilities by at least one million dollars, and upon such satisfactory showing by such issuing person the travelers checks and money orders of such issuing person may be sold by the issuer or persons other than the issuer without other limitation hereunder.

(b) Advertise that it is accepting deposits and issuing notes or certificates therefor, or making use of any office sign at the place where its business is transacted having thereon any artificial or corporate name or other words indicating that such place or office is the place or office of a bank or trust company, that deposits are received there or payments made on checks or any other form of banking business transacted, nor shall any such persons make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates or circulars, or any written or printed paper whatever having thereon any article or corporate name or other words indicating that such business is the business of a bank, commercial bank or trust company, or transact business in such a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this code.

(c) Transact business under any name or title which contains the word "bank", "banker", "banking" or "trust company", or which indicates that such business is the business of a bank or trust company. Any building and loan association, or savings and loan association, having in its corporate name words not clearly indicating the nature of its business shall state in or on all signs, letterheads and advertising, "This is a building and loan association", or "This is a savings and loan association", or words to that effect. This paragraph as amended by ch. 61-164 shall not apply to any corporation or business presently using such words as herein defined.

(d) This subsection shall in nowise restrict or impair any right, authority or power granted savings banks, morris plan or industrial banks or credit unions organized and operated under the laws of the state.

(2) Any building and loan association may issue shares and investment certificates and do such other business as may be authorized by the laws of the state relating to building and loan associations, but no building and loan association shall advertise or hold itself out to the public as a bank.

(3) Any person, firm or corporation violating the provisions of this section shall be liable for a fine in the amount of one hundred dollars per day, or part thereof, during which such violation continues. Any court, in a proceeding brought by the commissioner or any interested person affected thereby, may enjoin any person from using words in violation of the provisions of this section, or from transacting business in violation of this code, or in such a way or manner as to lead the public to believe that its business is that of a bank, commercial bank or trust company.

History.—§2, ch. 28016, 1953; (1) (a) by §1, ch. 59-129; (1) (c) a. by §§1, 2, ch. 61-164.
Note: See former §652.24.

659.53 Miscellaneous offenses.—

(1) Any director, officer or employee of a bank or trust company who asks for or receives, consents or agrees to receive any commission, emolument or gratuity or any money, property or things of value for his own personal benefit, or of personal advantage for procuring or endeavoring to procure for any person any loan from such bank or trust company or the purchase or discount of any note, draft, check, bill of exchange or other obligation by such bank or trust company, or for permitting any person to overdraw any account with such bank shall be guilty of a felony.

(2) Any director, officer, agent or employee of any bank or trust company who knowingly receives or possesses himself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts, or concurs in omitting to make any material entry thereof, shall be guilty of a felony.

(3) Any director, officer, agent or employee of a bank or trust company who without authority from the board of directors of such bank, (a) makes, draws, issues, puts forth or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, or mortgage, judgment or decree, or, (b) makes any false entry in any book, report or statement of such bank or trust company with intent to defraud such bank, or any other person, firm, or corporation, or to deceive any officer of such bank, or the commissioner or any examiner appointed to examine the affairs of such bank or trust company, shall be guilty of a felony.

(4) No bank or trust company shall purchase any real property or any contract arising from the sale of real property, or any note or bond in which any director, officer, or controlling stockholders of such bank, is personally or financially interested, directly or indirectly for his own account, for himself, or as a partner or agent of others without first obtaining the approval of the majority of the board of directors, excluding his own vote.

(5) No officer or director without prior approval of the board of a bank or trust company shall purchase directly or indirectly or be interested in the purchase of any of the bank's assets.

History.—Comp. §2, ch. 28016, 1953.

659.54 Unlawful service as an officer.—It shall be unlawful for any person to serve as an officer or director of a bank who:

(1) Has been convicted of an offense constituting a violation of the banking laws, involving moral turpitude, or a breach of trust.

(2) Is indebted to the bank for more than thirty days upon a judgment that has become final.

(3) Has any interest adverse to the bank unless such interest is promptly and fully disclosed in writing to the board of directors of the bank.

History.—Comp. §2, ch. 28016, 1953.

659.55 Criminal penalties.—Any person responsible for an act or omission expressly declared to be unlawful, or a criminal offense by this code upon conviction shall be guilty:

(1) Of a misdemeanor punishable by imprisonment for a term not exceeding one year or a fine not exceeding one thousand dollars, or both; or

(2) If the act or omission was intended to defraud, of a felony punishable by imprisonment not exceeding five years, or a fine not exceeding ten thousand dollars, or both.

History.—Comp. §2, ch. 28016, 1953.

659.56 Injunction.—Whenever a violation of this code is threatened or impending, and will cause substantial injury to a bank or trust company or to the depositors, creditors, or stockholders thereof, the circuit court is hereby granted jurisdiction to hear any complaint filed by the commissioner or any interested party, and, upon proper showing, to issue an injunction restraining such violation or granting such ther appropriate relief.

History.—Comp. §2, ch. 28016, 1953.

659.57 Transaction of business by out-of-state banking corporations; exempt transactions in banking code.—Nothing in this code shall be construed to prohibit a foreign bank from (1) contracting in this state with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan; (2) servicing directly or entering into servicing contracts with persons, and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside of this state or in the transaction of any business authorized by this section; (3) acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise, protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section. No such foreign bank shall be deemed to be transacting business in this state, or be required to qualify so to do, solely by reason of the performance of any of the acts or business hereinbefore authorized in this section. Nothing in this section shall be construed as authorizing or permitting any foreign bank to maintain an office within the state.

History.—Comp. §2, ch. 28016, 1953.

659.58 Fictitious or fraudulent assets; past due paper.—

(1) Any bank or trust company shall not carry as an asset of said company any note, obligation or security which it does not own absolutely or which is known by the bank or trust company to be fraudulent or otherwise worthless, and no bank or trust company shall carry as an asset in any report to the commissioner or any published report any note or other obligation which is past due or upon which no interest has been paid for one year or longer, provided, however, that such past due paper may be carried to the extent of the reasonable value of any lien or other collateral given to secure such obligation; and provided further that if suit has been filed to enforce the collection of any such past due obligation, it may be carried at its reasonable value as determined by the board of directors. The commissioner may after investigation order the revision of any value so determined hereunder.

(2) Any officer of a bank or trust company who knowingly places among the assets of said bank or trust company any note, obligation or security which it does not own or which to his knowledge is fraudulent or otherwise worthless or who represents to the commissioner or an examiner that any note, obligation or security carried or an asset of such bank or trust company is the property of the bank and is genuine when it is known to such officer that such representation is false or that such note, obligation or security is fraudulent or otherwise worthless, such officer shall be guilty of a felony.

History.—Comp. §2, ch. 28016, 1953.
Note: See former §653.26.

659.59 Short title.—This law may be cited as the Florida bank service corporation act.

History.—§1, ch. 63-113.

659.60 Definitions.—As used in §§659.59-659.66:

(1) Bank means any person, whether subject to the laws of this or any other jurisdiction, authorized to engage in the business of banking, or authorized to engage in the trust business, including the trust department of a bank.

(2) Bank services means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

(3) Bank service corporation means a corporation organized to perform bank services for two or more banks, each of which owns part of the capital stock of such corporation.

(4) The words and terms commissioner, person, and trust business, shall have the meaning ascribed to said words and terms, respectively, in §658.02.

(5) Invest includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

(6) State bank means a bank, as defined in subsection (1), chartered by this state.

History.—§2, ch. 63-113.

659.61 Banks authorized to invest.—

(1) No limitation or prohibition otherwise imposed by any provision of the laws of this state exclusively relating to banks or any kind or class of banks shall prevent any two or more banks from investing not more than ten per cent of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation; and each of any two or more banks may invest not more than ten per cent of its paid-in and unimpaired capital and unimpaired surplus in a bank service corporation.

(2) If stock in a bank service corporation has been held by two or more banks, and one or more banks ceases to utilize the services of the bank service corporation and ceases to hold stock in it, and leaves only one bank as the sole stockholding bank, the bank service corporation may nevertheless continue to function as such and the sole remaining stockholding bank may continue to hold stock in it.

History.—§2, ch. 63-113.

659.62 Banks authorized to use services.—No limitation or prohibition otherwise imposed by any provision of the laws of this state, other than §§659.59-659.66, exclusively relating to banks or any kind or class of banks or exclusively relating to persons performing services for banks or any kind or class of banks, shall prevent:

(1) Any bank from causing bank services to be performed for itself at or away from its banking house or on or off its premises; and a bank may cause to be performed, by contract or otherwise, any bank services for itself, either at or away from its banking house or on or off its premises;

(2) Any bank from providing space and facilities, or either, in its banking house or on its premises for a bank service corporation or for a person performing bank services for such bank.

History.—§3, ch. 63-113.

659.63. Requirement to furnish services.—Whenever a state bank, referred to in this section as an applying bank, applies for a type of bank services for itself from a bank service corporation which supplies the same type of bank services to another bank, and the applying bank is competitive with any bank, referred to in this section as a stockholding bank, which holds stock in such corporation, the bank service corporation must offer to supply such services by either:

(1) Issuing stock to the applying bank and furnishing bank services to it on the same basis as to the other banks holding stock in the bank service corporation, or

(2) Furnishing bank services to the applying bank at rates no higher than necessary to fairly reflect the cost of such services, including the reasonable cost of the capital provided to the bank service corporation by its stockholders, at the option of the bank service corporation, unless comparable services at competitive overall cost are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank would be beyond the practical capacity of the bank service corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service corporation to show such availability.

History.—§4, ch. 63-113.

659.64 Prohibited activities.—No bank service corporation may engage in any activity other than the performance of bank services for banks and the furnishing of goods and materials incidental thereto.

History.—§5, ch. 63-113.

659.65 Retention of supervision by commissioner.—No state bank may cause to be performed, by contract or otherwise, any bank services for itself, whether at or away from its banking house or on or off its premises, unless assurances satisfactory to the commissioner are furnished to the commissioner by both the state bank and the person performing such services that the performance thereof will be subject to regulation and examination by the commissioner to the same extent as if such services were being performed by the bank itself on its own premises.

History.—§6, ch. 63-113.

659.66 Legislative intent.—In enacting §§659.59-659.66, the legislature of Florida takes cognizance of the enactment by the congress of the United States of public law 87-856, 87th congress, H.R. 8874, approved October 23, 1962

(76 Stat. 1132), entitled "An act to authorize certain banks to invest in corporations whose purpose is to provide clerical services for them, and for other purposes," and the legislature takes cognizance of the legislative history of said act of congress (house report 2062, 87th congress on H.R. 8874, July 30, 1962; senate report 2105, 87th congress on H.R. 8874, September 18, 1962), and it is intended that banks in this state shall have the authority to enjoy the benefits made available by said act of congress; and by the enactment of §§659.59-659.66 it is not intended to regulate services performed for state banks such as legal services, services of independent accountants, public relations and advertising, armored car and other transportation services, guard services, mechanical services in connection with the operation of equipment in buildings, or other services of similar nature, the bank services to which the regulatory requirements of §§659.59-659.66 relate being intended to be limited to banking functions as such.

History.—§7, ch. 63-113.

CHAPTER 660

BANKING CODE, THIRD PART

660.01 Trust powers enumerated. — Trust companies or banks heretofore or hereafter granted trust powers shall have power:

(1) To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

(2) To transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

(3) To receive deposits of trust moneys, securities or other personal property from any person or corporation.

(4) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

(5) To accept trusts from and execute trusts for married women in respect to their separate equitable property, and to be their agent in the management of such property, or to transact any business in relation thereto.

(6) To act under the order or appointment of any court of record, as guardian, receiver or trustee of the estate of any minor, and as depository of any moneys paid into court, whether for the benefit of any such minor or other person, corporation or party.

(7) To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(8) To take, accept and execute any and all trusts and powers of whatever nature or description that may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority by grant, assignment, transfer, devise, bequest, or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, or any probate court, and to receive, take and hold any property or estate, real or personal, which may be the subject of any such trust.

(9) To be appointed and accept the appointment of assignee or trustee under any assignment for the benefit of creditors of any debtor made pursuant to any statute or otherwise.

(10) To act under the order of the appointment of any court or otherwise as receiver or trustee of the estate or property of any person, firm, association or corporation.

(11) To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator, with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the curator or guardian of the property of any minor, habitual drunkard, or person judicially declared physically or mentally incompetent.

(12) To collect coupons on or interest upon all manner of securities when authorized so to do by the parties depositing the same.

(13) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between said corporations and those dealing with it.

(14) Generally to execute trusts of every description and to act and serve in any and all fiduciary capacities not inconsistent with the laws of this state or of the United States.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.03.

660.02 Securities described for investment of trust funds.—No trust company shall have power to invest funds derived under subsections (5), (6) and (11) of §660.01, except only as provided by chapter 518 and chapter 691.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.04.

660.03 Trust funds separate and not liable. —No money, property or securities held or received by any trust company, in its capacity as assignee, receiver, executor, administrator, guardian or trustee shall be mingled with the investments of the capital stock or other moneys or property belonging to or deposited with such corporation or shall be liable for the debts or obligations of such corporations.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.05.

660.04 Security required before trust company may deposit uninvested trust funds in its banking department or any other bank.—It is unlawful for any officer, director or employee of any trust company doing business in this state to deposit the uninvested funds belonging to any particular trust, for which said trust company shall be trustee, in the banking department of the trust company itself, or with any other bank or trust company, without first taking full and adequate security therefor in one or more of the securities which are at that time legal investments of funds held by executors, administrators, trustees and guardians. No security shall be required, however, to the extent that any such deposit is insured by the federal deposit insurance corporation.

History.—§3, ch. 28016, 1953; §1, ch. 29871, 1955.
Note: See former §655.06.

660.05 Disposition of security required for trust funds.—When the uninvested funds of a particular trust are deposited in the banking side of the trust company acting as trustee, such trust company shall set aside, under proper resolution of the board of directors, securities of the class mentioned in §660.04, and hold the same in trust as security for the benefit of the uninvested funds mentioned. Security to be given as aforesaid, for uninvested funds of trusts that may be deposited in the banking side of the trust company acting as trustee, need not be segregated as to each particular trust for which uninvested funds are deposited but may be held in bulk for all of the trust funds so deposited.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.07.

660.06 Penalty for violation of §§660.04 and 660.05.—Any officer, director or employee of any trust company violating the provisions of § § 660.04 and 660.05 shall be deemed guilty of a felony and upon conviction thereof shall be sentenced to not more than twelve months in the state prison or fined in a sum not exceeding five thousand dollars.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.08.

660.07 Trust company not required to give security as trustee, etc.—No trust company of this state having deposited securities with the state treasurer as provided in §660.08, and authorized to act as assignee, receiver, administrator, guardian or trustee, shall be required by any officer or court of this state to give security upon appointment to, or acceptance of, any office of trust which it is by law authorized to execute.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.09.

660.08 Deposit of securities with state treasurer.—Every trust company shall deposit with the state treasurer a sum equal to twenty-five per cent of its paid-in capital stock; provided, that in no event shall such deposit be less than twenty-five thousand dollars, such deposits to be in cash or bonds, stocks or other securities of equal market value, which shall include approved mortgages or deeds of trust of real estate to be kept by the state treasurer in trust for said company, and for which he shall issue his official receipt or receipts, which receipt or receipts shall show the par value of securities so deposited, and the treasurer shall not be required to embrace in one receipt all of such securities so deposited by a trust company; provided, the values of such securities shall be fixed by the treasurer, attorney general, and comptroller at the time such securities are so deposited; and provided, further, that in lieu of the actual depositing of such securities with the state treasurer by any such trust company, the state treasurer may accept a safekeeping receipt or safekeeping receipts therefor, issued by any federal reserve bank or national or state bank; provided, such national or state bank shall have been previously approved for such purposes by the attorney general, comptroller and treasurer, such safekeeping receipt to substantially comply with the form and provisions of the safekeeping receipt provided for and set forth in §18.11. Said securities shall be held subject to the payment of any judgment or decree which may be rendered against said company. Should the aggregate market value of the securities so held, at any time, exceed in value the said sum required to be deposited, said company may withdraw with the consent of the commissioner such excess, and should the aggregate market value of such securities fall below said sum required to be deposited, said company shall within thirty days thereafter, deliver to the state treasurer additional securities sufficient to make good said sum. The state treasurer shall at all times keep prepared and ready for inspection a record of securities so held by him, and he shall allow said records to be, at all reasonable times, inspected by any person to whom said company is liable absolutely or conditionally, or by any court or officer who shall have appointed said company to any still existing obligation upon which said company is surety. Said company may at any time withdraw any part of the securities in the hands of the state treasurer, but before doing so must, except in cases of excess, as hereinbefore provided, deliver to said state treasurer other securities of equal market value to those to be withdrawn. The comptroller, treasurer and attorney general shall determine the value of all such substituted securities.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.10.

660.09 Corporation officers authorized to make oath as trustee, etc.—In all cases where any corporation of this state authorized by its charter to act as trustee, executor, administrator or guardian, shall be appointed executor, administrator or trustee of any estate or guardian of any infant, the president, or vice president, or trust officer, or assistant trust officer or cashier, or secretary or treasurer, of such corporation shall make and subscribe, for such

corporation any and all oaths or affirmations required to be taken or subscribed by such executor, administrator, trustee or guardian.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.11.

660.10 Trust powers and duties.—All corporations except banks and trust companies incorporated under the laws of this state and having trust powers and except national banking associations located in this state and having trust powers, are prohibited from exercising any of the powers or duties and from acting in any of the capacities, within this state, as follows:

(1) As executor or administrator of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent be original or ancillary; provided, that if the executor or administrator of the estate of a nonresident decedent be a corporation duly authorized, qualified and acting as such executor or administrator in the jurisdiction of the domicile of the decedent, it may, as a foreign executor or administrator perform such duties and exercise such powers and privileges as are required, authorized or permitted by §734.30.

(2) As guardian of any infant, insane person or person physically or mentally incompetent whether domiciled in this state or not.

(3) As trustee under any will or other testamentary instrument, provided that any corporation which is authorized to act as such trustee under the laws of the place where it has its principal place of business may receive bequests to it as trustee of money or intangible personal property.

(4) As trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others.

(5) As trustee under any deed of trust or other instrument executed after June 10, 1937, conveying or encumbering any real or tangible personal property in this state given to secure bonds or other evidence of indebtedness unless in such deed of trust or other instrument a trust company or bank having trust powers and located in this state or an individual residing in this state shall be named as cotrustee; and no suit shall be brought to foreclose any such deed of trust or other instrument unless such cotrustee or successor cotrustees of like qualifications be a party plaintiff.

(6) As receiver or trustee under appointment of any court in this state.

(7) As assignee, receiver or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.

(8) As fiscal agent, transfer agent or registrar of any municipal or private corporation, provided that this prohibition shall not be so construed as to prevent banks and trust companies not located in this state from acting within the state where located as fiscal agent, transfer agent or registrar of municipal or private corporations of this state; provided further, however, that nothing herein shall prevent any Florida corporation not a bank or trust company and not having trust powers from being its own fiscal agent, transfer agent or registrar concerning its own affairs, stock or securities. Provided, however, that nothing in this section or in any other law of this state shall be construed to prohibit a foreign bank or foreign trust company as trustee of any charitable foundation or endowment, employees' pension, retirement or profit-sharing trust, alone or together with a co-trustee from: (a) Contracting in this state or elsewhere with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan; (b) servicing directly or entering into servicing contracts with persons, and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside of this state or in the transaction of any business authorized or permitted hereby; (c) acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise, protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized or permitted hereby; provided, further, that no such foreign bank or trust company shall be deemed to be transacting business in this state, or be required to qualify so to do, or to be unlawfully exercising powers or duties or acting in an unlawful or prohibited capacity or to be violating any of the provisions of this section or of any other law of this state, solely by reason of the performance of any of the acts or business hereinbefore permitted or authorized hereby; and provided, further, that nothing herein shall be construed as authorizing or permitting any foreign bank or trust company to maintain an office within this state.

History.—§3, ch. 28016, 1953; (8) by §1, ch. 57-409.
Note: See former §655.27.

660.11 Establishment of common trust funds.—Any bank or trust company qualified to act as fiduciary in this state may establish one or more common trust funds for the exclusive purpose of furnishing investments to itself as fiduciary, including estates, guardianships and all other fiduciary relationships, now in existence or hereafter created, requiring or authorizing investment of trust funds, or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment,

decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment, which consent such cofiduciary is hereby authorized to grant; but the full management of the fund shall at all times be in full charge of such bank and trust company, and any cofiduciary or cotrustee shall not have any right to interfere in the management of such common trust funds.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.29.

660.12 Common trust fund investments.—No investment of a common trust fund shall be made in mortgages, the bank or trust company shall not mingle its own funds with such common trust funds, and every investment of a common trust fund shall, at all times, be such as would be a proper investment for each trust, estate or account owning an interest in such common trust fund.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.30.

660.13 Common trust fund to be audited annually.—A bank administering a common trust fund shall keep proper records, which in addition to all other necessary and proper matters shall show at all times the proportionate interest of each trust in the common trust fund, and at least once during each period of twelve months, cause an audit to be made of the common trust fund by auditors responsible only to the board of directors of the bank. The report of such audit shall include a list of the investments comprising the common trust fund at the time of the audit, which shall show the valuation placed on each item on such list by the trust investment committee of the bank as of the date of the audit, a statement of purchases, sales and any other investment changes, and of income and disbursements since the last audit, and appropriate comments as to any investment in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the common trust fund. The bank shall manage such common trust funds without charge, save necessary expenses, and shall send a copy of the latest report of such audit annually to each person to whom a regular periodic accounting of the trusts participating in the common trust fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.31.

660.14 Common trust fund court accountings.—Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the circuit court, secure approval of such an accounting after such notice, and on such conditions as the court may establish.

History.—Comp. §3, ch. 28016, 1953.
Note: See former §655.32.

CHAPTER 661

BANKING CODE, FOURTH PART

661.01 Definitions for §§661.01-661.09.—As used in § § 661.01-661.09:

(1) "Constituent bank" means a party to a merger.

(2) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(3) "Converted bank" means the same bank after the conversion.

(4) "Merger" includes consolidation.

(5) "Resulting bank" means the combined banks and trust companies carrying on business upon completion of a merger.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §§652.27, 653.27.

661.02 Merger; with resulting state or national bank.—

(1) Upon approval of the commissioner banks may be merged with a resulting state bank as hereafter prescribed, except that the action by a constituent national bank shall be taken in the manner prescribed by and shall be subject to any limitations or requirements imposed by any law of the United States which shall also govern the rights of its dissenting shareholders.

(2) Nothing in the law of this state shall restrict the right of a state bank to merge with a resulting national bank. The action to be taken by a constituent state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the applicable law of the United States and not by the law of this state.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.28.
cf.—§659.02 Application to organize bank.
§659.03 Investigation by commissioner.
§659.15 Filing fees.

661.03 Merger agreement.—Where there is to be a resulting state bank, the board of directors of each constituent state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(1) The name of each constituent bank and the location of each office.

(2) With respect to the resulting bank: (a) the name and the location of the proposed office; (b) the name and residence of each director to serve until the next annual meeting of the stockholders; (c) the name and residence of each officer; (d) the amount of capital, the number of shares and the par value of each share; (e) whether preferred stock is to be issued and the amount, terms and preferences; (f) the amendments to the charter and by-laws.

(3) The terms for the exchange of shares of the constituent banks for those of the resulting bank.

(4) A statement that the agreement is subject to approval by the commissioner and by the stockholders of each constituent bank.

(5) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of constituent banks.

(6) Such other provisions as the commissioner requires to enable it to discharge its duties with respect to the merger.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.29.

661.04 Approval by commissioner; valuation of assets.—

(1) After approval by the board of directors of each constituent bank, the merger agreement shall be submitted to the commissioner for approval, together with certified copies of the authorizing resolutions of the several boards of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any constituent national bank.

(2) Without approval by the commissioner no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of the constituent bank at the time of the last examination by a state or national bank examiner before the effective date of the merger.

(3) Within thirty days after receipt by the commissioner of the papers specified in subsection (1), the commissioner shall approve or disapprove the merger agreement. The commissioner shall approve the agreement if it appears that:

(a) The resulting state bank meets all the requirements of state law as to the formation of a new state bank.

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

(c) The agreement is fair.

(d) The merger is not contrary to the public interest. If the commissioner disapproves an agreement, he shall state his objections and give an opportunity to the constituent banks to amend the merger agreement to obviate such objections.

(4) Where the resulting state bank is not to exercise trust powers, the commissioner shall not approve a merger until satisfied that adequate provision has been made for successors to fiduciary positions held by constituent banks.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.30.

661.05 Approval by stockholders; rights of dissenters.—

(1) To be effective, a merger must be approved by the stockholders of each constituent state bank by a vote of two-thirds of the outstanding voting stock at a meeting called to consider such action, which vote shall constitute the adoption of the charter and by-laws of the resulting state bank, including the amendments set forth in the merger agreement.

(2) The notice of the meeting of the stockholders shall state that dissenting stockholders will be entitled to a payment of the value of only those shares which are voted against approval of the plan.

(3) The owner of shares which were voted against the approval of the merger shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand, made to the resulting state bank at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of such shares shall be determined as of the date of the shareholders' meeting approving the merger by three appraisers, one to be selected by the owners of two-thirds of the shares involved, one by the board of directors of the resulting state bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the commissioner shall cause an appraisal to be made.

(4) The expenses of appraisal shall be paid by the resulting state bank.

(5) The resulting state bank may fix an amount which it considers to be not more than the fair market value of the shares of a constituent bank at the time of the stockholders' meeting approving the merger, which it will pay dissenting shareholders of that constituent bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state bank.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.31.

661.06 Effective date of merger; filing of approved agreement; certificate of merger as evidence.—

(1) A merger shall, unless a later date is specified in the agreement, become effective upon the filing with the commissioner of the executed agreement together with copies of the resolutions of the stockholders of each constituent bank approving it, certified by such bank's president or vice-president and a secretary. The charters of the constituent banks, other than the resulting bank shall thereupon be deemed surrendered.

(2) The commissioner shall thereupon issue to the resulting bank a certificate of merger

setting forth the name of each constituent bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the constituent bank is held.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.32.

661.07 Continuation of corporate entity; use of old names.—

(1) The resulting state bank shall be considered the same business and corporate entity as each constituent bank with all of the rights, powers, and duties of each constituent bank except as limited by the charter and by-laws of the resulting state bank.

(2) The resulting state bank shall have the right to use the name of any constituent bank whenever it can do any act under such name more conveniently.

(3) Any reference to any constituent bank in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the resulting state bank if not inconsistent with the other provisions of such writing.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.33.

661.08 Conversion from state bank to national bank and the reverse.—

(1) Nothing in the law of this state shall restrict the right of a state bank to convert into a national bank upon compliance with the laws of the United States, and upon completion of such conversion it shall surrender its charter as a state bank.

(2) A national bank located in this state which follows the procedure prescribed by federal law to convert into a state bank, may be granted a state charter if it meets the requirements for the incorporation of a state bank. Any requirement of state law that shares must be paid for in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at not more than their fair cash market value. The procedure for incorporation of a state bank may be modified to the extent made necessary by the difference between an ordinary incorporation and a conversion.

(3) The converted bank shall be considered the same business and corporate entity as the converting bank with all of the rights, powers and duties of the converting bank except as limited by the charter and by-laws of the resulting bank. It may use the name of the converting bank whenever it can do any act under such name more conveniently.

(4) Any reference to the converting bank in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the converted bank if not inconsistent with the other provisions of such writing.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.34.

661.09 Non-conforming assets of business.— If a constituent bank has assets which do not conform to the requirements of state law for the resulting bank or if a converting national bank has assets which do not conform to the requirements of state law for the converted state bank, or in either case there are business activities which are not permitted for the resulting or converted state bank, the commissioner may permit a reasonable time to conform with state law.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §652.35.

661.10 Insolvency; appointment of liquidator.—On becoming satisfied from the reports furnished to him by a state bank examiner, or upon other satisfactory evidence thereof, that any state bank or trust company has become insolvent and is in default, or that the affairs of any bank or trust company chartered under the laws of this state are in an unsound condition, or threatened with insolvency because of illegal or unsafe investments, or that its liabilities exceed its assets, or that it is transacting business without authority of law, or in violation of law, or if the directors of any bank or trust company chartered under the laws of this state shall knowingly violate or knowingly permit any of its officers, agents or servants to violate any of the provisions of law relative to such bank or trust company, the rights, privileges and franchises shall be subject to be forfeited, and the commissioner may, in his discretion, forthwith designate and appoint a liquidator to take charge of the assets and affairs of such bank, and require of him such bond and security as the commissioner deems proper, not exceeding double the amount that may come into his hands, and such liquidator shall be subject to dismissal by the commissioner whenever in his judgment such dismissal is deemed necessary or advisable. When one liquidator is dismissed, another may be duly designated and appointed.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.45.

661.11 Liquidation procedure.— Such liquidator, under the direction and supervision of the commissioner, shall take possession of the books, records and assets of every description of such bank or trust company, and in his name shall sue for and collect all debts, dues and claims belonging to it, and upon the order of a court may sell or compound all bad or doubtful debts and, on a like order, may sell all the real and personal property of such bank or trust company on such terms as the court shall direct, and may, if necessary to pay the debts of such bank or trust company, sue for and enforce the individual liability of the stockholders. Such

liquidator shall pay all money received by him to the state treasurer to be held as a special deposit for the use and benefit of the creditors subject to the order of the commissioner, and shall also make quarterly reports, or when called upon, to the commissioner of all of his acts and proceedings. The commissioner immediately, upon appointing such liquidator, shall serve notice upon the president, or upon any vice president or cashier, or upon any director, or other person having the charge or management of any such bank or trust company, informing him or them in such notice of his action in appointing such liquidator, and notifying him or them, or it, that he would apply on a date therein named not to exceed ten days from the date of service of such notice to some circuit judge having jurisdiction over the same for an order confirming his action, and the appointment of a liquidator for such banking institution or trust company; and such bank or trust company, at such hearing, may contest before such circuit judge the rightfulness and legality of such action of the commissioner in appointing such liquidator; provided that this section shall not apply to stockholders in a bank or trust company which is a member of the federal deposit insurance corporation, a corporation under the laws of the United States, or which has an unimpaired surplus equalling the amount of its capital stock.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.45.

661.12 General liquidator. — The commissioner may provide for the administration of the affairs of institutions under § § 661.11 and 661.12 by one general liquidator, who shall be designated by the commissioner as a general liquidator for the administration of the affairs of several or all of the institutions in liquidation, whose compensation shall be paid by the commissioner to be paid in such proportions out of the assets of the institution whose affairs are being administered as the commissioner may determine, not exceeding in the aggregate seven thousand five hundred dollars per annum. The commissioner may provide for the transfer at any time to the general liquidator of the affairs of any institution for which a particular liquidator, or receiver, has been heretofore, or shall hereafter, be designated, and the general liquidator shall thereupon be vested with all the rights conferred by law on such general liquidator as if he had been designated in the first instance to act as such.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.46.

661.13 Federal deposit insurance corporation, as liquidator.—The federal deposit insurance corporation, created under the federal deposit insurance act, upon appointment by the commissioner, may be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors. The commissioner may, in his discretion, in the event of such closing, tender to said corporation the appointment as receiver or liquidator of such banking institution, and if the corporation accepts said appointment, the corporation shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator respectively, of a banking institution, its depositors and other creditors.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.47.

661.14 Federal deposit insurance corporation, subrogated.—Whenever any bank or trust company shall have been closed on account of inability to meet the demands of its depositors and said federal deposit insurance corporation shall pay, or make available for payment, the insured deposit liabilities of such closed institution, said corporation, whether or not it shall have become receiver or liquidator of such closed bank or trust company, as provided in §661.13, shall be and become subrogated by operation of law to all rights against such closed bank or trust company, of each owner of a claim for deposit to the extent now or hereafter necessary to enable the said federal deposit insurance corporation, under federal law, to make insurance payments available to depositors of closed insured banks or trust companies.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.48.

661.15 Commissioner's procedure as to unsound banks.—If, from any examination made by the commissioner or any state bank examiner acting under his authority, of any bank or trust company, the commissioner shall have reason to conclude that any such bank or trust company is in an unsound or unsafe condition, he shall forthwith take possession of the property and business of such bank or trust company, and retain such possession until its affairs are placed in a sound and safe condition, or until a receiver or liquidator is appointed, as provided by law, and pending such possession by the commissioner, all the remedies at law or in equity of any creditor or stockholder against any such bank or trust company shall be suspended; provided, however, that the commissioner may, upon conditions as may be approved by him, surrender possession of such bank or trust company for the purpose of permitting such bank or trust company to resume business, and the commissioner shall have authority to authorize a reduction of capital in such suspended bank or trust company if found necessary for the resumption of business, and provided further, that upon consent in writing of the representatives of an amount of the deposits of any such bank or trust company, aggregating seventy-five per cent or more, of the total deposits of such bank or trust company the commissioner shall by order, freeze all de-

posits of such bank or trust company upon such reasonable terms and conditions as he may fix, as one of the terms of such resumption of business, and that the public officers of any town, city, county, state, special road and bridge district, special school district, or other municipal corporation of the state having control over any unsecured public moneys on deposit with any such bank or trust company, may sign and execute such consent to the freezing of such deposits of public money for the purpose herein contemplated, for and in behalf of the municipality, state, county, special road and bridge district, or special school district represented. Provided further, that before such freezing order shall become effective, the commissioner shall give ten days' notice by publication of his intention to apply to the circuit court where the bank is located, or of Leon county, to have such order confirmed, at which time any person interested may appear and present objections why such order should not be confirmed.

History.—§4, ch. 28016, 1953; §24, ch. 57-1.
Note: See former §653.55.

661.16 Transfer of non-liquid assets.—In all cases where any bank or trust company has resumed or continued business under the provisions of §661.15 and a "freezing" order obtained as to all deposits, such bank or trust company may set aside, transfer and convey to a trustee, corporation or liquidating agent, by and with the consent of the commissioner, a part or all of the non-liquidating assets of said bank or trust company and held by such bank or trust company at the time of such "freezing" order, and responsible for the payment of all deposits included within such "freezing" order, for and in consideration of the surrender to such bank or trust company of all of the special certificates of deposit issued pursuant to the freezing order theretofore obtained; provided, however, that the consent in writing of the representatives of an amount of such frozen deposits representing seventy-five per cent or more of the total unpaid frozen deposits shall first be had and obtained.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.56.

661.17 Issue of stock certificates for pro rata share in frozen assets.—When the representatives of an amount of the frozen or unpaid deposits representing seventy-five per cent, or more, of the total unpaid or frozen deposits, shall have agreed in writing to the setting aside, transferring or conveying to a trustee, corporation or other liquidating agent selected by the creditors, the frozen assets of such bank, or trust company, then such trustee, corporation or other liquidating agent may issue to the holder or holders of such certificates of deposit, or other evidence of indebtedness, who have not consented in writing to such transfer, a stock certificate or other evidence showing the pro rata interest of the holder of such certificate of deposit or other evidence of indebtedness in the frozen assets so set aside, transferred or conveyed, as above set out, and such trustee, corporation or other liquidating agent so selected by seventy-five per cent, or more, of the creditors shall be responsible for the pro rata and equal distribution of such unpaid or frozen assets among all holders of such certificates of deposit or other evidence of indebtedness; provided that any such plan of settlement with the frozen certificate of deposit holders shall be confirmed by the circuit court.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.57.

661.18 Notice of publication of commissioner's approval of segregation and settlement plan, and date set for court confirmation.—Upon becoming satisfied that the plan of segregation is just and fair, and for the best interest of the bank and creditors, the commissioner may give his approval to the plan and shall give ten days' notice by publication in a newspaper located in the county in which the bank is located, and if there is no newspaper published in the county, said notice shall be caused to appear in a newspaper published in an adjoining county, and said publication shall give notice of the commissioner's action in approving the plan of segregation, and shall designate a certain date for appearing before the court to ask for confirmation of his action in approving the said plan of segregation and settlement.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.58.

661.19 Liability after transfer of certificates of deposit.—Any bank or trust company, upon the setting aside, transferring and conveying of the assets of such bank or trust company, as provided herein, and upon the surrender to such bank or trust company, or other liquidating agent, of the certificates of deposit, or other evidence of indebtedness issued by such bank or trust company, or liquidating agent, aggregating seventy-five per cent, or more, of the total unpaid deposits, such bank or trust company, or liquidating agent, shall thereupon cancel all such certificates of deposit, or other evidences of indebtedness, and such bank or trust company, or liquidating agent, appointed by, acting under the authority of the commissioner, shall thereafter be relieved and discharged from any and all liability for the payment of any money to the holder of such certificates of deposit or other evidences of indebtedness.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.59.

661.20 Transfers, etc., void after act of insolvency.—Any and all transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any bank or trust company, or of deposits to its credit, all assignments of mortgages, securities or real estate, or of any judgments or decrees in its favor, all deposits of money, bullion or other valuable thing for

its use, or for the use of any of its stockholders or creditors, and all payments of money to either, made after the commission of an act of insolvency or in contemplation thereof made with a view to the preference of one creditor to another, shall be utterly null and void.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.60.

661.21 Notice to present claims.—The commissioner shall, upon appointing a liquidator, cause notice to be given by advertisement in a newspaper of general circulation in the county where the bank is located once each week for nine consecutive weeks, calling on all persons, firms, or corporations who may have claims against such bank or trust company, to present the same and to make legal proof thereof.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.49.

661.22 Claims, unclaimed dividends and undistributed funds.—All claims of every kind and nature against a state bank or trust company which has been placed in the hands of a liquidator must be properly sworn to and filed with the liquidator thereof within one year from the date of the qualification of the liquidator thereof of the bank or trust company, and no claim not so filed within one year from the date of the qualification of the liquidator thereof or prior to the expiration of any additional period for which the time for filing claims may be extended by the commissioner shall be included by the liquidator or commissioner in the distribution of the assets. The commissioner may, in his discretion, extend the time for filing claims for an additional period not exceeding one year, and may, for good cause shown, permit a claim to be filed after the time for filing same has elapsed. Any secured claim filed within the said one year or such time as the time for the filing of claims has been extended, may be amended at any time prior to the final distribution of the assets in the hands of the liquidator. The liquidator, with the approval of the commissioner and the circuit court, may value any security held by a claimant and allow as a common claim any balance of the claim remaining beyond such value of the security, and it shall not be necessary for such claimant to liquidate such security prior to such valuation, nor shall such valuation in anywise affect or impair the right of such claimant to liquidate such security. Any dividend check not called for within two years after the same is issued shall be cancelled, and the money represented thereby shall be put back into the general account for distribution to depositors and creditors who may have claimed their dividends; provided, however, that before the cancellation of any such dividend warrant the commissioner shall give notice of his intention so to do in a newspaper published in the county in which the insolvent bank is located and if no newspaper is located within said county, then the notice shall be run in a newspaper of general circulation in an adjoining county, and for good cause shown the commissioner may issue to a claimant a dividend check representing any prior dividend checks cancelled. Whenever the depositors and other creditors of any such bank or trust company have been paid dividends representing one hundred per cent of all claims which have been duly proved against any such bank or trust company, the undistributed funds then on hand for the account of such bank or trust company not represented by dividend warrants shall be paid to such bank or trust company at the expiration of a period of two years from the time of the closing out of any such receivership.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.50.

661.23 Disposition of unclaimed dividend checks.—Whenever dividends representing one hundred per cent of all claims which have been duly proved against any state bank or trust company which has heretofore been placed or will hereafter be placed in the hands of a receiver or liquidator, or the liquidation of the assets of which has been handled under the supervision of the commissioner have been declared and there is any dividend check or warrant not called for within two years after the final dividend, making the total of one hundred per cent of dividends, is declared, any such dividend check or warrant, final or otherwise, shall be cancelled and the moneys represented thereby shall be paid to the state bank or trust company upon whose account such dividend check or warrant was issued. Undistributed funds on hand at the time of closing out any such receivership or liquidation not represented by dividend checks or warrants shall be paid to such state bank or trust company at the expiration of a period of two years from the time of such closing out of any such receivership or liquidation.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.51.

661.24 Expenses and compensation of liquidators; disposition of remainder of proceeds after payment of all claims.—All expenses of any liquidator shall be paid out of the assets of such bank, or trust company, before distribution of the proceeds thereof. The compensation of the liquidator shall be fixed by the commissioner, and shall be based upon the amount of work actually necessary and performed, and shall in no case exceed five per cent of the cash collections. From time to time, after full provisions having first been made for the expenses of the liquidating agency, and the payment of liens for taxes and preferred claims, the commissioner shall make ratable dividend of the money in the hands of the state treasurer on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and as the proceeds of the assets of such bank, or trust company, are

paid over to the liquidator, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, after all claims have been paid, shall be paid over to the shareholders of such bank, or trust company, or their legal representatives, in proportion to the stock by them respectively held, or their interest therein as appearing.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.52.

661.25 Purchase of property by commissioner to protect liquidator's trust.—Whenever any liquidator, duly appointed by the commissioner, and who shall have qualified and entered upon the discharge of his trust, shall find it in his opinion necessary to fully protect and benefit his said trust, to the extent that said trust may have in any property, real or personal, by reason of any bond, mortgage, lien, assignment, equity or other proper legal claim attaching thereto, and which said property is to be sold under execution, decree of foreclosure, or any proper order of any court of competent jurisdiction, or reclaimed or repossessed by any person having title opposed to such equity of his trust, he may certify the facts in the case, together with his opinion as to the value of the property, and the value of the equity his trust may have in same, and the amount that may be necessary to purchase such property, to the commissioner, and if the commissioner shall, in his judgment, deem it to the best interest of the said trust, he may draw upon the funds to the credit of said trust in the hands of the state treasurer to the amount necessary for the purchase of said property for the said trust.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.53.

661.26 Receivers under supervision of commissioner.—The provisions of this chapter shall apply to all receivers of any bank, or trust company, heretofore appointed by the order of any circuit court, and all such receivers, both those hereunder and those hereafter appointed by the circuit court, shall at all times be under the supervision and control of the commissioner, and subject at all times to summary discharge and dismissal by him, and any vacancy in such receivership may be filled by the commissioner at any time.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.54.

661.27 Liquidator may borrow money and pledge securities with the approval of commissioner; fees.—Any liquidator or receiver of an insolvent bank or trust company and any conservator appointed for any bank or trust company may borrow money from any person, and pledge or mortgage any part or all of the assets of such insolvent bank or trust company in conservatorship to secure the payment of such moneys borrowed, upon such terms and conditions as the commissioner may approve, and such conditions may, in addition to any other terms and conditions, also include restriction, either in whole or in part, of the payment of any money to depositors or other creditors of insolvent banks and trust companies until the money so borrowed shall have been repaid in full, provided that any such pledge or mortgage shall be confirmed by the circuit court. The holder of any such pledge or mortgage shall have the right to enforce such pledge or mortgage as any other pledgee or mortgagee, and may exercise any rights given by such agreement or pledge or mortgage, providing further that a conservator may renew and extend notes or other obligations held by the bank in his custody from time to time, and may offer as substitution to the pledgee such renewed obligations. No commissions or fees shall be paid to any liquidator or receiver on account of any money received by him through the pledge of any assets of any bank or trust company provided for herein.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.64.

661.28 Commissioner may conserve assets by appointment of conservator; duties, rights, powers, expenses and salary. — Whenever the commissioner shall deem it necessary, in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such bank or trust company, and require of him such bond and security as the commissioner deems proper. The conservator, under the directions of the commissioner, shall take possession of the books, records and assets of every description of such bank and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business, as provided by law. Such conservator shall have all the rights, powers and privileges now possessed by or hereafter given receivers or liquidators of insolvent state banks, and shall be subject to the obligations and penalties not inconsistent with the provisions of this article, to which the receivers or liquidators are now and may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this article, be the same as if a receiver or liquidator had been appointed therefor. All expenses of any such conservator shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other liens provided by this law, or otherwise. The conservator shall receive as salary an amount to be fixed by the state commissioner, but in no case greater than that paid to liquidators performing a similar service.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.65.

661.29 Examiner's report to commissioner.—The commissioner shall cause to be made such examinations of the affairs of such bank or trust company as shall be necessary to inform

him as to the financial condition of such bank or trust company, and the examiner designated for this purpose shall make a report thereon to the commissioner at the earliest practicable date.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.66.

661.30 Termination of conservatorship.—After the commissioner becomes satisfied that it may be safely done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms and conditions, restrictions and limitations as he may prescribe.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.67.

661.31 Banking business of bank in hands of a conservator.—While a bank is in the hands of a conservator appointed by the commissioner, the commissioner may require the conservator to set aside and make available for withdrawal by depositors in payment to such other creditors, on a ratable basis, such amounts as in the opinion of the said commissioner may safely be used for the purpose and the commissioner may, in his discretion, permit the conservator to receive deposits but deposits received by the bank in the hands of the conservator shall not be subject to any limitations as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank or trust company existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand, in cash, invested in the direct obligations of the United States or deposited with the correspondent bank to be selected by the conservator and subject to his withdrawal.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.68.

661.32 Reorganization.—Any reorganization of any bank or trust company shall be effective only after "creditors", which term shall include depositors representing seventy-five per cent or more of the institution's debts in aggregate amount, have agreed to such plan of reorganization, only after such plan has been approved by the commissioner and confirmed by a judge of a circuit court within whose jurisdiction said bank is located. When the required number of creditors have signified their willingness to enter into the plan of reorganization, said fact shall be made known to the commissioner who shall thereupon give ten days' notice by publication in a newspaper located in the city or county in which the institution to be reorganized is situated, and if there is no newspaper within said city or county, publication may be made in such newspaper as shall be designated by the commissioner; such notice of publication to state the exact date that the matter will be presented to the court for confirmation. When such confirmaion has been given by a court, all depositors and creditors not a party to said agreement shall be bound by and made a party to the said plan of reorganization, and shall be treated in all respects as though they had joined in said agreement; provided, however, that claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank or trust company in determining the seventy-five per cent thereof, as hereinabove provided. When such reorganization becomes effective by confirmation of the court, as provided herein, the affairs of the bank or trust company shall be conducted by its board of directors in the manner provided by the plan under the conditions, restrictions and limitations which may have been prescribed by the commissioner.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.69.

661.33 Notice of publication of conservator's return of banking business to board of directors.—Within fifteen days after the date that such bank or trust company has been turned back to its board of directors by the conservator, such bank or trust company shall give notice, by registered letter, to each such depositor having made deposits under the provisions of §661.31, and such conservator, upon the termination of his conservatorship and turning the affairs of such bank or trust company back to its board of directors shall cause to be published in a newspaper in the city or town or county in which such bank is located, and if no newspaper is published in such city, town or county, then in a newspaper in an adjoining county to be selected by the commissioner, the notice to be in form approved by the commissioner stating the date on which the affairs of the bank were returned to its board of directors, and that the said provisions of §661.31 will not be effective after fifteen days from the date of such notice.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.70.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

661.34 Penalty for embezzlement of funds by conservator; removal.—Any conservator appointed under the provisions of this law for any bank or trust company who embezzles, abstracts or willfully misapplies any moneys, funds or credits coming into his hands as such conservator shall be guilty of a felony and upon such conviction shall be imprisoned in the state penitentiary for not more than ten years at the discretion of the court. Any person selected as conservator by the commissioner shall be subject to removal at any time. Any vacancy in such conservatorship by removal or resignation may be filled by the commissioner,

as provided for the appointment of a conservator in the first instance.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.71.

661.35 Powers of commissioner unimpaired.—Nothing in § § 661.28 to 661.34 shall be construed to impair in any manner any powers now vested in the commissioner in the supervision of banking institutions operating under a state charter.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.72.

661.36 Preservation of records of insolvent banks.—The general ledger of any insolvent bank in use at the time of its failure, any subsequent general ledger used in the course of its liquidation, and the records of claims as filed with the liquidator, shall be preserved by the commissioner.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.74.

661.37 Destruction of records of insolvent bank by liquidator.—The liquidator of any insolvent state bank in liquidation under the laws of the state, with the consent of the commissioner, in writing, and upon court order, may destroy or cause to be destroyed such records other than those mentioned in §661.39 of any solvent state bank in liquidation or which may hereafter be in liquidation under the laws of the state, as in the judgment of the commissioner and the court are not necessary to the liquidation of said insolvent state bank.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.75.

661.38 Prima facie evidence.—The general ledger, list of claimants, examiner's final report made at the time of the failure of the bank and such other records of the commissioner's office relating to any closed bank, or any duly authenticated copy thereof, shall be prima facie evidence of the subject matter therein set forth.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.77.

661.39 Voluntary liquidation.—Any bank or trust company may go into liquidation and be closed by a vote of its stockholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation, the board of directors shall cause this fact to be certified to the commissioner and publication thereof to be made for a period of two months in a newspaper of general circulation located in the county in which the bank is closing up its affairs and notifying its creditors to present their claims against the bank for payment.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.61.

661.40 Procedure in voluntary liquidation.—When a bank or trust company decides to go into voluntary liquidation, the president and cashier, or other appropriate officers, shall, before beginning publication of the notice required by law furnish the commissioner with a full and complete detailed statement of the affairs of the bank or trust company, and shall thereafter forward to the commissioner on the first Monday in each month a like detailed statement until all of the liabilities of the bank or trust company shall have been settled in full, provided that if the commissioner is not satisfied with the report of any bank or trust company intending to go into voluntary liquidation, or if at any time he is not satisfied with the progress of such liquidation, he shall have full authority to proceed under §661.29, or otherwise, as the law directs.

History.—Comp. §4. ch. 28016, 1953.

Note: See former §653.62.

661.41 Commissioner may direct examination.—When it shall appear to the commissioner that it is necessary or advisable to do so, he shall direct the person employed under this act to make a thorough examination, reporting to him the condition of the business of the bank or trust company, and the directors shall make good any losses or irregularities to the satisfaction of the commissioner, and if not done at once, a liquidator may be appointed.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.63.

661.42 Disposition of unclaimed funds of bank in voluntary liquidation.—In all cases of voluntary liquidation of any bank or trust company, when after three years from the notice of liquidation duly given or published, there are any unclaimed funds due to the depositors of said bank or trust company that cannot be distributed by reason of the inability to find claimants, or by reason of there being no claimants, and after all other depositors who have filed claims or presented demands for payment have been fully paid, then such funds shall inure to and for the benefit of the stockholders of said bank or trust company. Said bank or trust company shall certify to the commissioner of the state in a list of such unclaimed funds showing the amount of same and the name or names of the person or persons in which said deposits were made, or for whose benefit said funds appear, as shown by the books and records of said bank or trust company. The commissioner, if he shall be satisfied that the matters so certified are true and correct and that the requirements of this section have been complied with, shall thereupon certify his approval for the distribution of such unclaimed funds for the benefit of the stockholders of said bank or trust company, and thereafter all such claims shall be forever barred.

History.—Comp. §4, ch. 28016, 1953.
Note: See former §653.78.

661.43 County, municipality, board of public instruction, drainage district, etc., authorized

to settle, compromise or adjust frozen deposits.—Any county, municipality, board of public instruction, drainage district, or other taxing district or public body corporate, or any division of same, existing under the laws of the state having deposits of money which said deposits are frozen in any banking institution in the state, or having deposits in any banking institution in said state, which banking institution is in the hands of a liquidator, conservator or receiver, may compromise, settle and adjust such deposits by accepting as satisfaction thereof any real or personal property or monetary consideration, provided that such settlement, compromise or adjustment shall be approved in writing by the judge of the circuit court having jurisdiction. The compromise settlement or adjustment of deposits shall be made by the governing board as constituted under the laws of Florida having custody and control of such deposits, and upon the making of such settlement, compromise or adjustment, the governing board making the same shall be authorized to surrender to the banking institution having such deposit, or to the person in charge thereof, any certificate of deposit or other evidence of such deposit. The provisions of this section shall not apply to any deposits which are liquid and subject to withdrawal or which are fully secured by collateral.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.79.

661.44 Unclaimed dividends; disposition.—(1) Whenever there are any dividend checks or warrants which have been issued under the provisions of § § 661.15 to 661.17, inclusive, and which have not been called for or delivered within two years from the date such dividend distribution, such dividend checks or warrants shall be cancelled and the moneys represented thereby shall be put back into the general account and redistributed to those depositors and claimants who have claimed their dividends; provided, that where dividends or distribution to depositors or claimants have equaled one hundred per cent of their original claim, or will by this distribution equal one hundred per cent of their original claim, then all funds in excess of one hundred per cent of the original claim shall be paid to the bank or trust company; provided, further, that before the cancellation of any such dividend checks or warrants, thirty days' notice of intention so to do shall be published in the county in which the bank or trust company is or was located, and if no newspaper is located within said county, then the notice shall be published in a newspaper of general circulation in an adjoining county, and before such cancellation an order from the circuit court shall be obtained approving the disposition of the unclaimed dividends.

(2) Whenever there are any redistributed dividend checks or warrants which have been issued under subsection (1) hereof, and which have not been called for or delivered within two years from such redistribution, such redistributed dividend checks or warrants shall be cancelled, and the moneys represented thereby shall be paid into the general revenue fund of the state, provided that before the cancellation of any such redistributed dividend checks or warrants thirty days' notice of intention so to do shall be published in the county in which the bank or trust company is or was located, and if no newspaper is located within said county, then the notice shall be published in a newspaper of general circulation in an adjoining county and before such cancellation an order from the circuit court shall be obtained approving the disposition of the unclaimed redistributed dividends.

History.—Comp. §4, ch. 28016, 1953.

Note: See former §653.84.

TITLE XXXVII

BUILDING AND LOAN ASSOCIATIONS

CHAPTER 665

INCORPORATION AND OPERATION OF DOMESTIC BUILDING AND LOAN ASSOCIATIONS

665.01 Associations affected; "domestic" and "foreign" associations.—Every association heretofore or hereafter incorporated under any law providing for the incorporation of building, loan fund and saving associations, and every association heretofore or hereafter incorporated under any law for the purpose of accumulating funds for the use and benefit of its members, and of assisting them to accumulate money and to invest their funds and savings by cash or periodical payments on its stock or otherwise, to be loaned among its members, shall be known in this chapter as a building and loan association, and shall be subject to the provision of this chapter, except as stipulated in §665.33. Associations organized under the laws of this state shall be known as "domestic" associations, and those organized under the laws of any other state, territory, or nation, shall be known as "foreign" associations. Such "domestic" associations may carry out their purposes, and may be organized in part or wholly under the general laws of Florida relating to corporations, except as otherwise provided in this chapter.

History.—§1, ch. 10028, 1925; §1, ch. 11865, 1927; CGL 6151.
cf.—Ch. 668, Foreign building and loan associations.

665.02 Organization requirements for "domestic" association.—Any number of persons, not less than nine, nor more than twenty-one, three-fourths of whom shall be residents of this state, may associate themselves together for the purpose of organizing a domestic building and loan association, and for that purpose they shall make, sign and acknowledge, before some person authorized by the laws of this state to take acknowledgments of deeds, articles of incorporation which shall state:

(1) The corporate name adopted by said association which shall not be the same as, nor similar to the name of any other association incorporated in this state, may be any name desired ending with "building and loan association" or "savings and loan association," but shall not contain any of the words "bank," "banking," or "trust." Unless organized under the provisions of the law relating to building and loan associations, no corporation hereafter organized shall be entitled to use, as a part of its title or name; the word "savings"; the word "association" or "society" in any combination with either of the words "building" or "loan"; the word "company" or "association" or "society" in any combination with both of the words "building" and "loan"; provided, however, that the foregoing restrictions shall not prohibit the use of the word "savings" by a corporation organized under the laws relating to banks and banking.

(2) The general nature of the business to be transacted, and its place of business.

(3) The amount of capital stock authorized, the number and par value of the shares into which it shall be divided and in general, the terms and conditions on which it shall be paid in.

(4) The term for which it is to exist.

(5) By what officers it is to be conducted, the times at which they are to be elected, and the names of the officers who are to conduct the business until those elected at the first election shall be qualified.

(6) The names and residences of the subscribers, the amount of stock subscribed by each, the total amount subscribed.

History.—§2, ch. 10028, 1925; §2, ch. 11865, 1927; CGL 6152; (1) by §1, ch. 59-51.
cf.—§90.01 Acknowledgment.
§117.03 Notary publics may administer oaths.
§118.01 Commissioner of deeds acknowledgments.

665.03 Publication of notice of intention to apply for letters patent on proposed charter.—When made and executed as aforesaid, said articles of incorporation, being the charter proposed for the association, together with notice of intention to apply to the governor for letters patent thereon, shall be published one time in a newspaper published in the county where the place of business is to be located, which notice shall be signed with the names of at least five of the subscribers. The proposed charter shall be on file in the secretary of state's office during publication.

History.—§3, ch. 10028, 1925; §3, ch. 11865, 1927; CGL 6153.

665.04 Minimum capital.—No building and loan association shall be organized with an authorized capital of less than one hundred thousand dollars.

History.—§4, ch. 10028, 1925; CGL 6154.

665.05 Conditions under which the comptroller shall issue authority to commence business.—At least ten per cent of the authorized capital stock of each building and loan association must be paid in lawful money of the United States before the comptroller shall issue authority to such association to commence business; provided, however, that this section shall not apply in cases where the principal place of business of the association is located or to be located in cities having a population of less than twenty-five thousand according to the last federal census.

History.—§5, ch. 10028, 1925; CGL 6155, §2, ch. 15908, 1933.

665.06 Prohibited from beginning business before authorized by comptroller; stockholders personally liable for violation.—No building and loan association shall transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the comptroller to begin the business of a building and loan association, and if such company shall begin business in violation of this section, its stock holders shall be personally liable for all its debts as if they were members of a general partnership, and not stockholders of a corporation.

History.—§6, ch. 10028, 1925; CGL 6156.

665.07 Prohibited from beginning business before complying fully with state laws.—No corporation organized to conduct the business of a building and loan association, or any part of such business, shall engage in the business of a building and loan association, or any part thereof unless and until such corporation shall have complied fully with the laws of this state pertaining to building and loan associations, and shall have been authorized by the comptroller of the state in the manner provided by law to engage in such business in this state.

History.—§7, ch. 10028, 1925; §4, ch. 11865, 1927; CGL 6157.

665.071 Place of doing business; branch offices prohibited.—

(1) (a) Any building and loan association incorporated under and operating pursuant to chapter 665, shall have only one place of doing business, which shall be located in the community specified in its articles of incorporation, and the business of the association shall be transacted at such place of business so located in said community specified and not elsewhere, and such associations are prohibited from establishing and operating branches or branch offices of any kind. Any association may, however, apply to the comptroller for permission to change the location of its place of business within the community shown in its articles of incorporation and the comptroller may for cause, refuse such application; provided, that prior to such refusal the comptroller shall give the applicant a written statement for such cause for refusal and a fair hearing, if the applicant demands, in writing, such hearing within ten days after receipt of said written statement from the comptroller. Application for such approval shall be in such form and contain such information as the comptroller may require. Nothing contained herein shall be construed in any wise to apply to any association holding a charter under the laws of the United States.

(b) Any association operating under the provisions of this section shall have power to contract with the proper authorities of any elementary or secondary school or institution caring for minors for the participation and implementation by the association in any school or institutional thrift or savings plan, and it may accept savings accounts at such a school or institution, either by its own collector or any representative of the school or institution which becomes the agent of the association for such purposes. Withdrawal from any account created under the provisions of this section shall be made only at the office of such association.

History.—§1, ch. 28308, 1953; §1, ch. 59-47.

665.072 Saturday closing. — Any building and loan association or savings and loan association lawfully doing business in the state, whether chartered under state or federal statutes, may be closed on any one or more Saturdays upon the adoption of a resolution to such effect by a majority vote of the board of directors. Any one or more of such Saturdays shall, with respect to any such building and loan association or savings and loan association which shall be closed thereon in accordance with the provisions of this section, constitute a legal holiday for all purposes whatsoever.

History.—§1, ch. 59-49.

665.08 Procedure before authority issues to begin business.—Before applying for letters patent for or receiving subscriptions to the stock of any building and loan association with the intention of doing business in the state, notice of intention to form or establish such building and loan association must be given to the state comptroller and a copy of the proposed charter filed with said comptroller and certificate of approval received from him, which said certificate shall only be issued when in the judgment of the comptroller the conditions warrant the establishment of a building and loan association in the place and at the time it is proposed to establish such building and loan association; and whenever any building and loan association notifies the comptroller that ten per cent of its authorized stock has been duly paid in cash, and that it has complied with all the provisions which the law requires before a building and loan association can be authorized to begin busi-

ness, the comptroller shall examine into the condition of such association, ascertain that ten per cent of its stock has been fully paid in lawful money of the United States, the name and place of residence of each of its directors and the amount of capital stock of which each is the owner in good faith, and, generally, whether such association has complied with all of the provisions of law required to entitle it to engage in the business of a building and loan association, shall cause to be made and attested by the oaths of a majority of the directors, by the president, secretary or treasurer of the association, a statement of all the facts necessary to enable the comptroller to determine whether the association is lawfully entitled to begin the business of a building and loan association.

If upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the comptroller, whether by means of a special commissioner appointed by him for the purpose of such inquiring into the condition of the association or otherwise, it appears that such association is lawfully entitled to begin the business of a building and loan association, the comptroller shall give to such association a certificate under his hand and official seal that it has complied with the provisions required to be complied with before beginning the business of a building and loan association, and that it is authorized to commence such business; provided, that the comptroller may withhold from an association the said certificate whenever it shall be satisfactorily shown to him by proof that the stockholders have formed the same for any other than the legitimate object contemplated by the law relative to building and loan associations, or when, in his judgment, the conditions do not warrant the issue of such authority.

History.—§8, ch. 10028, 1925; §5, ch. 11865, 1927; CGL 6158.

665.09 Publication of comptroller's certificate.—The association shall cause the certificate issued under §665.08 to be published one time in a newspaper published in the city or county where the association is located.

History.—§9, ch. 10028, 1925; §6, ch. 11865, 1927; CGL 6159.

665.10 Recording of letters patent and certified copy of charter; secretary of state's fee for filing articles of incorporation and certificate of increase of stock; may amend articles of incorporation.—Upon the issuing of the letters patent thereon, the association so chartered shall at once have its letters patent, together with a certified copy of its charter, recorded in the office of the clerk of the circuit court of the county wherein its place of business is to be located. Domestic building and loan associations upon the payment to the secretary of state of the fees hereinafter named, and upon the recording of such certified copy of its charter as aforesaid, the persons named in the articles of incorporation, their associates and successors, shall be and become a body corporate, and in their corporate name, may contract, sue, and be sued, and shall have and exercise such powers as are herein granted, and such others as are necessary and proper to enable such association to carry out the purposes of their organization not inconsistent with the provisions of law, and may enter upon the transactions of all their business as such corporations. The secretary of state shall collect for the benefit of the state, in lieu of all other charter fees, for filing the articles of incorporation of any such association, or any certificate of increase of stock, the sum of five dollars for each fifty thousand dollars of capital stock or fractional parts thereof. And any such association may amend its articles of incorporation as provided by law.

History.—§10, ch. 10028, 1925; §7, ch. 11865, 1927; CGL 6160.

665.11 Board of directors; by-laws; voting in stockholders' meeting.—The business of the association shall be managed by a board of directors of not less than nine members, who shall be stockholders, and a majority of them residents of the county wherein is located its place of business, and shall be elected by the stockholders. Notice of such election shall be given at least ten days previous thereto, by publication in some newspaper of general circulation published in the town or city where such association is located, or if no such newspaper is published, then in some newspaper within the county, or the one nearest said location. Directors shall be elected for terms not exceeding three years, and in case the term is longer than one year, then an equal number, as near as may be, shall be elected each year after the first election. Each association shall adopt by-laws for the regulation and management of its business, which shall include provisions for periodical meetings of the stockholders and directors, the number, function and qualifications of the officers of any such association, their terms of office and time and mode of their election, and of the election of directors, the manner of voting and qualifications of the electors, the number of shares to be voted by each member in person or by proxy, the kind of stock to be issued, the terms and conditions on which stock shall be issued and paid for, loans made and repaid, withdrawals allowed, and the manner of conducting the business of such association, all of which shall be determined by the by-laws, subject to its charter and the laws of the state; provided, that at any stockholder's meeting, no stockholder shall vote more than twenty-five shares of stock in his own right.

History.—§11, ch. 10028, 1925; §8, ch. 11865, 1927; CGL 6161.

665.12 Surety bonds required of certain officers.—The secretary and treasurer and any other officer or agent having custody or charge of money or securities belonging to the association, before entering upon their duties, shall give bonds in suitable amounts issued by a

good, solvent surety company, to be approved by the board of directors and filed with the state comptroller; said board shall annually pass on the sufficiency of the same, and may require new or additional bonds at any time.

History.—§12, ch. 10028, 1925; §9, ch. 11865, 1927; CGL 6162.

665.13 **Directors and officers continue in office until successors qualified.**—No building and loan association shall cease or expire from neglect on the part of the corporation to elect directors or officers at the time mentioned in the by-laws, and all directors and officers, elected by such corporation shall continue in office until their successors are duly elected and qualified.

History.—§13, ch. 10028, 1925; CGL 6163.

665.14 **Capital stock.**—The capital stock of any association may be fixed originally in any sum not less than one hundred thousand dollars but any association may at any time issue shares in addition to those originally authorized without action of its stockholders or without approval by any governmental agency and without the payment of any fees or other charges on account of such increase but same shall be approved by resolution of the board of directors. The capital stock shall be divided into shares of such denomination, not exceeding five hundred dollars each, as the by-laws shall prescribe, and may be issued in series, if the by-laws so provide, or otherwise, and may be fully or partially paid in advance, or may be paid in installments, either or both, as the by-laws may provide except that no stock may be authorized or issued which is preferred as to dividends or principal or both. No periodical payment of installments of stock shall be required exceeding fifty cents per week on each one hundred dollars of stock. Every share of stock shall be subject to a lien for the payment of unpaid installments and other charges incurred therein under the constitution and by-laws, and the by-laws shall prescribe the manner of enforcing such lien. New shares may be issued in lieu of any shares withdrawn, redeemed or canceled.

History.—§14, ch. 10028, 1925; §10, ch. 11865, 1927: CGL 6164; §1, ch. 20253, 1941.

665.15 **Accounts in the names of two or more persons.**—When a stock account, savings share account, or investment share account has been made, or shall hereafter be made, in any building and loan association or federal savings and loan association transacting business in the state, in the name of two or more persons, payable to either or both, or payable to either or the survivor, such account, or any part thereof, or any dividend thereon, may be paid to either of said persons whether the other or others be living or not, or in the event of a declaration by a court of competent jurisdiction that one or more of the cotenants of such account is incompetent, either to the guardian of the property of such incompetent or incompetents, or the remaining cotenant or cotenants and the release or quittance of the persons so paid shall be a valid and sufficient release and discharge to the building and loan association or federal savings and loan association for any payment so made.

History.—§11, ch. 15908, 1933; CGL 1936 Supp. 6183(10); §1, ch. 19098, 1939; §19, ch. 57-1; §1, ch. 61-136.

665.16 **Bidding for loans.**—Any association may provide in its by-laws for loans to its members who shall bid the highest premiums for priority in loans, or a given premium may be agreed upon in writing with the borrower, without bidding, in addition to interest, which premium may be payable at one time or part in installments and part in advance, or as shall be provided for in the by-laws.

History.—§15, ch. 10028, 1925; §11, ch. 11865, 1927; CGL 6165.

665.161 **Collection of fines, interest or premiums on loans made by building and loan associations.**—No fines, interest or premiums paid on loans made by any building and loan association shall be deemed usurious, and the same may be collected as debts of like amount are now collected by law in this state, and according to the terms and stipulations of the agreement between the association and the borrower.

History.—§8, ch. 4158, 1893; GS 2755; RGS 4242; CGL 6192; §2, ch. 63-318.
Note.—Tr. from §668.09.
cf.—Ch. 687, Interest and usury.

665.17 **Expenses; premium on stock; disbursement of all moneys received.**—The expenses of all building and loan associations shall be paid from the earnings only. Stock may be issued upon which a premium in addition to or above the par value of the stock may be charged, provided, when stock is sold at a premium all such premium shall be placed in a surplus fund of the association and used toward payment of the expenses of the association, including the sale of stock. No premium or fee in excess of one dollar may be charged for each one hundred dollars of stock. The premium on stock shall not be withdrawable.

All money received from whatever source shall be paid into the treasury of the association and disbursed by the proper officers, as provided by the by-laws.

History.—§16, ch. 10028, 1925; §12, ch. 11865, 1927; CGL 6166.

665.18 **Fees, fines, premiums and interest charged members.**—The by-laws may also provide for fines or interest for nonpayment of dues, premiums or interest, which shall not exceed five cents per share for each weekly delinquency, or ten cents per share for each monthly delinquency. It is, however, unlawful for any association doing business in this state to charge or collect from any of its members, on any stocks or shares of stock therein, any money or moneys other than loan fees, dues on stock, premiums, interest and fines. All such fees, fines, premiums and interest shall be provided for in the by-laws, and shall be credited to earnings, out of which expenses and dividends shall be paid, and

no such charges or payments shall be deemed usurious, even if in some cases exceeding the legal rate of interest, and the same may be collected by law as other debts of like amount are now collected in this state, or as provided by the by-laws.

History.—§17, ch. 10028, 1925; §13, ch. 11865, 1927; CGL 6167.

665.19 Withdrawing stockholder procedure. (1) Any investing stockholder in any building and loan association or the legal representative of any deceased investing stockholder, whose stock is not pledged for a loan, wishing to withdraw from the association shall be entitled to receive the full amount of dues paid in upon the stock so withdrawn, together with all declared unpaid dividends thereon, less all fines and other charges including a pro rata share of the losses, if any, real or contingent, provided;

(a) The withdrawing stockholder shall give ninety days' notice in writing to the association of his intention to withdraw, unless such notice is expressly waived in the by-laws or by resolution of the board of directors. If the stock certificate of any stockholder provides a specified date for withdrawal then the said notice of withdrawal shall be deemed given the ninetieth day preceding such fixed time; in all other respects such stockholder shall be held to be a withdrawing stockholder.

(b) In the event any association is not able to pay all withdrawing stockholders at the expiration of said ninety day period, then such association shall make no further payment to any withdrawing stockholder regardless of priority of notice, except upon the following conditions and in the following manner, to-wit: Such association shall first pay the matured claims of all its general creditors and set aside sufficient funds to completely finance all loans approved at the time the applications of withdrawing stockholders could no longer be met, and thereafter such association shall impound one-half of all money received by it from the following sources: Payments on shares of stock, payments of principal on loans made to its members, net income received by it from the lease or rental of its property or other assets after paying all fixed charges and expenses, and money derived by it as principal from the sale of assets; and such money so impounded shall be distributed ratably at the beginning of each quarter of the calendar year to those stockholders who have given notice of their intention to withdraw, and whose notices were received by the association not less than ten days previous to such distribution; provided, however, that no distribution except final payment shall be made unless the sum accumulated is sufficient to pay at least one per cent of the amount due each withdrawing stockholder, and provided further that all accounts which do not exceed five dollars may in the discretion of the board of directors be paid to the respective stockholders in full in order to save clerical and other expenses, and, provided, further, that the provisions of this subsection (b) shall not apply to mortgages or securities now pledged or which may hereafter be pledged to any Federal home loan bank.

(2) All money received by the association and not impounded as hereinbefore provided may in the discretion of the board of directors be used by the association for the payment of its operating or other expenses and for the protection and conservation of its assets by payment of taxes and other assessments levied thereon, insuring the same, making repairs or otherwise, and for the making of new loans as allowed by law.

(3) In the event the money which may be retained by the association is not sufficient to pay its operating and other expenses and protect and conserve its assets, then no new loans shall be contracted or made, and before making any payment or distribution to withdrawing stockholders the association shall deduct from the funds impounded such sum or sums as may be necessary to pay its operating and other expenses, and to pay all taxes, liens, assessments, insurance premiums, costs of repairs and other expenses necessary for the protection and conservation of its assets and shall pay the same or set aside a cash reserve for such purposes.

(4) Whenever the capital of any association is impaired to the extent of thirty per cent, it shall allow no withdrawing stockholder or stockholders any priority in cash withdrawals over the remaining stockholders, but shall make a quarterly distribution of the net cash received by it after payment of expenses and charges as provided in the preceding paragraph to all stockholders on the same percentage basis as if each stockholder had filed a written notice of intention to withdraw and such distribution shall be continued until the association is finally liquidated, or until the losses are adjusted by a pro rata charge to the account of each stockholder, or until the earnings restore the stock to par. After obtaining the consent and approval of the comptroller, losses may be adjusted pro rata by the segregation of the assets into groups represented by different series of stock.

Previous stock may be canceled and new stock in various series issued in its place for each group of assets of old stock or for new investment. When assets are segregated to it, each series shall hold and own such assets independently of other series and have no interest in nor obligation for the assets, debts, burdens, nor obligations of other series. Mutuality of like interests shall be maintained.

(5) Any payments, credits, dividends or earnings upon any shares of stock of a building and loan association, which shares have been pledged or assigned to it as security, for loans made by it, at the option of such association, may be applied by it directly to and credited upon the mortgage indebtedness or loan, or the interest thereon, or to any charges, costs or expenses which may accrue under the terms of

any pledge of such shares or any mortgage securing such indebtedness or loan; and such payments, credits, dividends or earnings may be so applied as and when they may be made or may have accrued, or at other times, or from time to time at the discretion of such association; and the time of reducing the amount of the principal of such mortgage indebtedness or loan by reason of such application or payments, credits, dividends or earnings, for the purpose of calculating interest thereon, shall be fixed by the by-laws of the association, or by resolution of the board of directors.

(6) In the event any association is compelled to or does reduce the dividends upon its stock below three per cent per annum, then all payments on and all dividends or earnings credited to stock pledged in connection with loans shall be applied directly upon the respective loan for which such stock was pledged, provided, however, that the association shall not be required to make such application unless and until the credits upon all of the stock pledged to secure the particular loan equal the sum of one hundred dollars, or such other sum less than one hundred dollars, as fixed by the by-laws or the contract with the borrower; and provided, also, that the time of reducing the amount of the principal of such loan, by reason of such application of payments, for the purpose of calculating interest thereon, shall be fixed by the by-laws of the association, or by resolution of the board of directors. In the event of liquidation of any association, whether voluntary or involuntary, all credits on stock pledged as security for loans shall be applied upon the particular loan for which such stock was pledged, and all further payments on loans shall be applied in direct reduction of the unpaid principal with interest at the rate fixed by law where no special contract exists.

History.—§18, ch. 10028, 1925; §14, ch. 11865, 1927; §5, ch. 15605, 1931; §1, ch. 15908, 1933; CGL 1936 Supp. 6183(1); §1, ch. 19119, 1939.

665.20 Withdrawal fee prohibited on stock not pledged for loan.—It is unlawful for any building and loan association to charge any withdrawal fee on stock not pledged for any loan.

History.—§19, ch. 10028, 1925; CGL 6169.

665.21 Regulation of loans to stockholders, etc.—

(1) Any association shall have power to loan or advance to stockholders or members thereof money of the association, including money paid for capital stock as provided in §665.05, and to secure payment of such money and the performance of all of the conditions upon which the loans are made by pledge of shares in said association, or by note, or bond, and mortgage on real estate situated in the state, owned in fee or leased for a period extending or renewable automatically for at least ten years beyond the date specified for the final principal payment of the loan obligation, by the borrower, which mortgage shall be a first lien thereon, except taxes and special assessments, and except the prior liens held and owned by said association, provided, however, that nothing herein shall be construed to prohibit any association from accepting additional collateral of any character as additional security for the payment of a loan previously consummated; to loan funds of the association (except that portion of its authorized capital stock specified in §665.05), upon the pledge of the shares only of such association, provided, that loans on stock shall not exceed one hundred per cent of the withdrawal value of stock at the time it is pledged. All notes, bonds and other obligations bearing date prior to January 1, 1942, which are held by savings, building and loan associations having their principal place of business in the state, and which are secured by mortgage, deed of trust or other lien upon real property situated in Florida shall be exempt from the provisions of chapters 199 and 201, and any law superseding same or amendatory thereof.

(2) **The by-laws of each association shall prescribe the manner of awarding loans, the rate of interest and the premium to be charged and the time and manner in which the interest and premium, if any, shall be paid.** No such association is required to maintain uniformity among loans made by it with respect to rates of interest, maturity of principal, plan of repayment, amount and time of payment of installments upon principal, and other terms, provisions and conditions of such loans and the contract evidencing them, but may, when authorized by its by-laws, make loans with differences between them with respect to rates of interest, maturity of principal, plan of repayment, amount and time of payment of installments upon principal, and other terms, provisions and conditions of such loans and the contracts evidencing them, and is authorized to make loans at such rate of interest and with such maturity of principal, such plan of repayment, such amount and time of payment of installments upon principal, and such other terms, provisions and conditions of such loans and the contracts evidencing them, as its by-laws may prescribe, provided, all loans shall conform to all requirements of law with respect to the character, extent and value of the security therefor.

(3) No building and loan association shall make any loan either directly or indirectly to any of its officers, directors or employees, **provided, however, that loans may be made to an officer, director or employee if secured by a mortgage upon his home or by an assignment of the stock owned by him in the association. Loans made to officers, directors or employees, secured by assignment of stock, shall not exceed ninety per cent of the withdrawal value of the stock at the time the loan is made.**

(4) Building and loan associations shall lend their funds only on the security of their own shares or on the security of first liens upon homes or combination homes and business property in accordance with rules and regulations promulgated by the comptroller, except that not exceeding twenty per cent of the assets of

such association may be loaned on other improved real estate without regard to said ninety per cent limit, but secured by first lien thereon.

(5) In case there is not sufficient demand for loans on the part of stockholders on real estate mortgages or the stock of the association, which are acceptable to the board of directors, any association shall have the power to lend its funds upon or purchase first mortgages upon improved real estate, provided, the loans secured by the mortgage purchased or accepted as collateral does not exceed seventy per cent of the fair value of the real estate mortgaged, and also to lend its funds upon or invest in the obligations of the United States, Florida, any county or municipality of the state, any federal home loan bank or the home owners loan corporation, and also to lend its funds upon or purchase the stock or promissory notes of any other domestic building and loan association, or invest in the savings shares or investment shares of federal savings and loan association, doing buisness in the state.

(6) Upon the approval of the state comptroller any building and loan association may subscribe and pay for shares of stock in any federal home loan bank or other federal or reserve corporation, created or authorized by the laws of the United States or this state, to lend money to building and loan association or any federal savings and loan association and may purchase, sell or hypothecate the securities, bonds, notes or debentures issued by any such federal home loan bank or other federal or reserve corporation or federal savings and loan association and payment for such stock, securities, bonds, notes, or debentures may be made from any funds which the association may have on hand or by the transfer of any other assets. All subscriptions to or purchase of any stock, securities, bonds, notes or debentures heretofore made by an association are hereby validated, confirmed and made legal.

(7) The provisions of §665.25(3) prohibiting the assignment or transfer of evidences of indebtedness or mortgages securing the same taken by any building and loan association for the payment of any loan shall not apply to:

(a) The investments permitted by this section, or to notes and mortgages received by the association to evidence and secure the balance of the sale price of any real estate sold by it, provided such latter notes are not secured by the assignment of shares of stock in the association; or,

(b) The sale of any loan by a domestic association at any time if the total dollar amount of loans sold, including such sale, within the calendar year beginning January 1 immediately preceding the date of such sale, does not exceed a sum equivalent to twenty per cent of the dollar amount of all loans held by such domestic association at the beginning of such calendar year. The limitation upon the sale of loans may be adjusted in the case of any domestic association upon application to and approval by the state comptroller. All loans sold shall be sold without recourse, and if under a contract to service the same, then on a basis to provide sufficient compensation to the domestic association to reimburse it for expenses incurred under its service contract.

(8) Without regard to any other provision of this section any domestic association whose general reserves, surplus and undivided profits aggregate a sum in excess five per cent of its withdrawable accounts is authorized to invest an amount not exceeding at any one time five per cent of such withdrawable accounts in loans to finance the development of land or the acquisition and development of land for primarily residential usage, subject to such rules and regulations as the comptroller may prescribe; provided, however, that no such loan shall exceed sixty per cent of the appraised value of the property to be developed.

History.—§20, ch. 10028, 1925; §15, ch. 11865, 1927; §3, ch. 15908, 1933; §1, ch. 16842, 1935; §1, ch. 16844, 1935; §1, ch. 19110, 1939; CGL 1936 Supp. 6183(2); §1, ch. 20931, 1941; §7, ch. 22858, 1945; §1, ch. 23949, 1947; (7) §1, ch. 59-241; (1), (8) n. §1, ch. 61-137; (4) §1, ch. 63-206.

665.211 Participation loans; limitation.—

(1) Any domestic association may participate with other lenders in making loans of any type that such an association may otherwise make, provided that:

(a) The real estate security is located within such association's regular lending area;

(b) Each of the other participants is either an instrumentality of the United States government or is insured by the federal savings and loan insurance corporation or by the federal deposit insurance corporation, or has the exemption from taxation provided by §501(a) of the internal revenue code of the United States as now or hereafter in effect or if there is, with respect to any of the shares, deposits, or investments in the purchaser, any insurance or guarantee by an institution which has said exemption.

(2) In addition to its authority under subsection (1) and without regard to any other limitations of §665.21 any domestic association may participate in making a loan secured by first lien on real property located beyond the association's regular lending area provided:

(a) Each of the other lenders is an institution the accounts of which are insured by the federal savings and loan insurance corporation or by the federal deposit insurance corporation or has the exemption from taxation provided by §501(a) of the internal revenue code of the United States as now or hereafter in effect or if there is, with respect to any of the shares, deposits, or investments in the purchaser, any insurance or guarantee by an institution which has said exemption.

(b) The property securing the loan is located within fifty miles from the principal office of the other participating lender; and

(c) No domestic association shall participate in the making of a loan or purchase a participation in a loan under the provisions of this paragraph unless another lender participates to the extent of at least twenty-five per cent in the making of such loan or retains at

least a twenty-five per cent interest in such loan at the close of the sale. Any domestic association may sell to any such institution without regard to the provision of §665.21(7) or §665.25(3), a participating interest in any loan and such sale shall not be regarded as a sale of a loan within the meaning of §665.21(7) or §665.25(3).

History.—§2, ch. 59-241; §1, ch. 61-126.

665.212 Unsecured loans; limitations.—(1) Without regard to the provisions of §665.21(4), any domestic association may, upon the adoption of such a plan by its board of directors, make or purchase:

(a) Any unsecured loan at least twenty per cent of which is guaranteed under the provisions of the servicemen's readjustment act of 1944, as now or hereafter amended:

(b) Simple-interest, discount, or gross-charge loans for property alterations, repair, or improvement without the security of a lien upon such property provided that:

1. The net proceeds of any such loan do not exceed three thousand five hundred dollars;
2. The property is located in such association's regular lending area;
3. Each such loan is evidenced by one or more negotiable notes, bonds, or other written evidences of debt;
4. The resulting aggregate amount of all such loans does not exceed an amount equal to fifteen per cent of such association's assets;
5. Each such loan is repayable in regular monthly installments within a period of five years.

Provided further, that any such loan for property alteration, repair, or improvement that is accepted for insurance under the provisions of the national housing act, as now or hereafter amended, or for insurance or guarantee under the provisions of the servicemen's readjustment act of 1944, as now or hereafter amended, may be made for such amount and repayable upon such terms and within such periods as are acceptable to the insuring or guaranteeing agency; provided, that no domestic association may make any unsecured loan to a director, officer, or employee of the association, or to any person or firm regularly serving the association in the capacity of attorney at law, except for the alteration, repair, or improvement of the home or combination of home and business property owned and occupied by such borrowing director, officer, employee, attorney, or firm.

History.—§3, ch. 59-241.

665.213 Exemption of out of state savings and loan associations.—An out of state savings and loan association shall not be prohibited from:

(1) Contracting in this state with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan;

(2) Servicing directly or entering into servicing contracts with persons, and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside of this state or in the transaction of any business authorized by this section;

(3) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise, protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section.

No such out of state savings and loan association shall be deemed to be transacting business in this state, or be required to qualify so to do, solely by reason of the performance of any of the acts or business hereinbefore authorized in this section. Nothing in this section shall be construed as authorizing or permitting any out of state savings and loan association to maintain an office within the state.

History.—§1, ch. 59-48; §3, ch. 63-318.
Note. Tr. from §668.11.

665.22 Payment of loan and withdrawal of holder of pledged stock.—Any borrower may repay his loan at any time, and may at the same time withdraw from the association, and for that purpose, he shall pay to the association the full face amount of principal of his loan, with all interest, fines, penalty for prepayment and other charges accrued thereon under the by-laws or the terms of any note, bond, mortgage or other evidence of indebtedness given for said loan, deducting therefrom the withdrawal value of his stock pledged to secure such loan, as provided in the case of withdrawals of unpledged stock; provided, however, no borrower shall be required to pay any penalty for prepayment (a) in an amount in excess of an amount equivalent to six months interest on the original principal of the loan nor (b) where any service charge has been paid for making the loan nor (c) unless such prepayment is made within eighteen months from the date the loan was made. On such payment being made the stock held by such person upon which his loan was made, shall be surrendered to the association and cancelled, and thereupon the association shall deliver to such borrower his note, or bond and mortgage, or other evidence of loan, and shall execute and deliver to him a full satisfaction of such mortgage.

History.—§21, ch. 10028, 1925; §16, ch. 11865, 1927; CGL 6171; am. §1, ch. 23947, 1947.

665.23 Regulation of real estate holdings, etc.—(1) Any association may purchase at any sale, public or private, any real estate, or interest therein, upon which it may have or hold a mortgage, lien or other encumbrance, or in which it has an interest; it may also acquire

and own real estate for the purpose of occupying the same with its own business building, and the real estate so purchased and any other real estate that such association may hold or hereafter acquire, it may sell, convey, exchange, lease or mortgage at pleasure, to any person or persons whomsoever. No association shall invest more than one-half of its reserve for contingencies in the building it occupies as its offices except with the consent of the comptroller.

(2) Real estate or other assets owned by building and loan associations which are subject to sale, assignment or transfer, may be sold, assigned or transferred and, at the option of the board of directors, the purchase price may be paid in whole or in part by the surrender and cancellation of shares of stock in such association. Such real estate or other assets shall be sold, assigned or transferred at the fair value thereof as fixed by the board of directors. In all cases where the association is willing to sell or exchange real estate or other assets for the withdrawal value of shares of stock, the board of directors shall adopt a resolution authorizing the sale or exchange and fixing the valuation at which shares will be accepted, which valuation shall not exceed the withdrawal value of the shares, and such resolution shall describe the real estate or other assets so to be sold and shall set forth the day on which the sale is to be held. Notice of such resolution and sale shall be given by posting a copy of the resolution in a conspicuous place in the principal office of the association during a period of not less than ten days prior to the date of such sale; on or after the day of sale the highest and best offer made may be accepted by the association in payment or part payment, of the real estate or other assets, or any part thereof, described in the resolution without regard to the priority, maturity or listing of the notice of intention to withdraw the stock offered, and regardless of whether or not any notice of intention to withdraw has been given or listed; provided, however, that the board of directors may in its discretion refuse any and all bids offered; and provided further, that if any particular real estate or other assets have been included and described in one resolution of the board of directors which resolution has been posted as herein provided, it shall not be necessary to adopt or post any further or other resolution or notice concerning the sale of such real estate or other assets, but such real estate and assets may be sold at any time after the expiration of said ten day period. After the expiration of said ten day period such resolution may be removed but the association shall post in its stead a list of the assets covered by the resolution and any prior resolutions. The recital, in any deed, assignment or transfer by the association that this section has been complied with, shall be conclusive in favor of the grantee or purchaser against all persons.

History.—§22, ch. 10028, 1925; §17, ch. 11865, 1927; §4, ch. 15908, 1933; CGL 1936 Supp. 6183(3); am. §7, ch. 22858, 1945.

665.24 Borrowing power.—Any association may borrow money for any of its corporate purposes and issue its evidences of indebtedness therefor, to an amount not exceeding twenty-five per cent of its share capital provided that upon application to and approval by the state comptroller any association which is a member of the federal home loan bank system may borrow money under the provisions of this section up to an amount not exceeding fifty per cent of its total share capital.

History.—§23, ch. 10028, 1925; §18, ch. 11865, 1927; CGL 6173; §4, ch. 59-241.

665.25 Borrowing from federal or reserve corporations; evidences of indebtedness made by members nonnegotiable.—

(1) Any building and loan association shall have the right and power to borrow money from any federal home loan bank or other federal or reserve corporation created under the laws of the United States or this state, for the purpose of lending money to building and loan associations or any federal savings and loan association and in order to secure such loans or advances shall have the power to mortgage, pledge, assign, deposit, transfer or hypothecate as collateral, its real estate, mortgages, securities, or other assets or any part thereof, to or with the lending agency. The right to pledge shall include the right to repledge the shares of stock held by the association as collateral, without securing the consent of the owner thereof. All loans heretofore obtained by any association from any federal savings and loan association are validated, confirmed and made legal.

(2) The provisions of §665.24, or any other law limiting the amount of money which building and loan associations may borrow shall not be applicable to loans made or obtained hereunder.

(3) Evidences of indebtedness taken by any building and loan association for any loan made by it to its members shall not be negotiable in form, and whatever be its form such indebtedness shall be non-negotiable in law and no such debt or evidences shall be assignable or transferable in any manner, except as otherwise provided in this section; and except that the provisions of this subsection (3) with respect to negotiability of loans made by building and loan associations and to the form of evidences of indebtedness taken for such loans and to the assignability and transferability of such debts and evidences of indebtedness shall not apply to any loan made by any such association, secured or unsecured, which is insured or guaranteed in any manner, in part or in full, by the United States or any instrumentality thereof or for which there is a commitment to so insure or guarantee or for which a conditional guarantee has been issued and every such loan and the evidence thereof and any mortgage or other lien securing it shall be transferable or assignable.

History.—§6, ch. 15908, 1933; §4, ch. 16842, §2, ch. 16844, 1935; CGL 1936 Supp. 6183(5); am. §1, ch. 23946, 1947.

665.26 Minors and married women as stockholders.—Minors and married women may become stockholders in any association the same as others, and as such stockholders shall be subject to the same duties and liabilities as respects their stock as other members. Any receipt, release, acquittance, or discharge given to the association by such stockholders shall be binding upon them to the same extent as upon other stockholders. Married women may procure loans upon the security of their separate real estate by uniting with their husbands in executing mortgages thereon to secure their loans.

History.—§24, ch. 10028, 1925; §19, ch. 11865, 1927; CGL 6174; am. §7, ch. 22858, 1945.

665.261 Minors; savings share accounts.—Any federal savings and loan association and any state building and loan association transacting business in the state may issue savings share accounts to any minor as the sole and absolute owner of such account and pay the withdrawal value of such to a minor. Any payment or delivery of rights to a minor or a release or acquittance signed by a minor, who holds a savings share account, shall be a valid and sufficient release and discharge of such association for any payment so made. The receipt, acquittance or other action required by the association to be taken by the minor shall be binding upon such minor with like effect as if he were of full age and legal capacity. In the event of the death of such minor the receipt or acquittance of either parent or of a person standing in loco parentis to such minor shall be a valid and sufficient discharge of such association unless the minor shall have given written notice to the association not to accept the signature of such parent or person.

History.—§1, ch. 59-52.

665.27 Procedures in default of borrowers. (1) In case any borrower shall fail or neglect to pay dues on stock, interest, premiums or fines as provided by the by-laws or the terms of his note, bond or mortgage, or other evidence of indebtedness for the period of thirty days, or shall be in default in the performance of any of the obligations imposed on him thereby, and such default shall continue for the period of thirty days, then the whole of said indebtedness shall become and be immediately due and payable at the option of the association, and payment thereof may be enforced by proceeding against his securities according to law. Should the security for any mortgage loan deteriorate or lessen in value, any association, at the option of the board of directors, may accept any of its unpledged shares of stock at not exceeding par to reduce such mortgage loan to a fair amount based on the value of the security at the time in lieu of foreclosing or requiring additional collateral, or if any mortgage loan in the opinion of the board of directors be uncollectible and the value of the security less than the amount of the loan, then the association, may, in lieu of foreclosing, accept in payment of said mortgage, stock at its withdrawal value in an amount equal to the fair value of the security, or compromise such mortgage loan by reducing the unpaid balance to the fair value of the security as determined by the board of directors and a certified list of such compromised mortgages with full details shall be furnished quarterly to the comptroller of the state.

(2) The association shall have the option of settling any loan by accepting a conveyance of the security for the loan, provided, however, that the options and powers conferred by this section shall be exercised by the board of directors of the association solely in its discretion.

History.—§25, ch. 10028, 1925; §20, ch. 11865, 1927; §5, ch. 15908, 1933; CGL 1936 Supp. 6183(4); am. §7, ch. 22858, 1945.

665.28 Reserve.—Every association shall set aside from its gross profits at least four per cent thereof each year after the second as a reserve for contingencies against which losses may be charged, whether resulting from depreciation or otherwise, until the total amount of such fund shall equal ten per cent of the assets of such association, and such reserve may be loaned as provided for other loans under this chapter. Any association which is an insured institution under title IV of the national housing act shall be required to set aside annually as a reserve for contingencies under this section only the excess of said four per cent of its gross profits over the amount credited by it during such year to its federal insurance reserve account in accordance with the rules and regulations for insurance of accounts under said title IV; and as to any such association the total amount required to be set aside under this section shall be only the excess of said ten per cent of its assets over the total credit to said federal insurance reserve account. Any excess of undivided profits, over four per cent after the declaration of dividends and deduction of all expenses, shall also be carried to such reserve until the ten per cent reserve for contingencies herein provided for is accumulated; but the requirements of this sentence shall not be applicable to any association which is an insured institution under title IV of the national housing act.

History.—§27, ch. 10028, 1925; §21, ch. 11865, 1927; §7, ch. 15908, 1933; CGL 1936 Supp. 6183 (6); am. §1, ch. 23945, 1947.

665.29 Dividends. — Dividends declared shall be ratably credited or paid on the stock at such intervals not longer than one year as the by-laws may provide, but no dividends shall be declared, credited or paid after the second year by any association except out of net profits, after deducting from the earnings all expenses of operations including losses (after exhaustion of all accumulated surplus). Members or stockholders who have given written notices of withdrawal shall receive no dividends nor shall they participate in the management of the association after filing such notice; provided, however, that where a member's stock certificate fixes a definite time of withdrawal the provisions of this sentence

shall not apply until the maturity date fixed by such stock certificate.

History.—§28, ch. 10028, 1925; §22, ch. 11865, 1927; §8, ch. 15908, 1933; CGL 1936 Supp. 6183(7).

665.30 Books of accounts; semiannual statement.—Every association shall keep full and correct books of accounts showing its operations, from which its secretary shall prepare a semiannual statement, showing the financial condition of the association on the last days of June and December in each year, or semiannually at such other times as the by-laws shall provide, which statements shall show separately the amounts received and paid out during each six months' period, on the different classes of stocks and loans, expenses, dividends, cash on hand, and such other items as may seem pertinent, which shall include a statement of the assets and liabilities of the association on the above named dates. Such statements shall be prepared within thirty days after said dates and thereafter a copy thereof, written or printed, shall be filed with the state comptroller and shall be furnished to every shareholder applying therefor at the office of the association.

History.—§29, ch. 10028, 1925; §23, ch. 11865, 1927; CGL 6179.

665.31 Examination by comptroller; examiners, powers, duties, compensation and traveling expenses; examination fees.—The state comptroller in the supervision of building and loan associations may employ not more than two discreet and competent persons to examine into the affairs of every building and loan association doing business in the state, and the persons so employed shall have power to make a thorough examination into all the affairs of each and every building and loan association at any time, and in doing so shall have access to all the books, papers, records, securities and assets of all kinds, and shall be authorized to examine any of the officers, directors, agents or employees of any building and loan association under oath, and such examiners shall make a full and detailed report to the comptroller of the condition of each building and loan association so examined; provided that no person connected with any building and loan association either as an officer, director, agent or employee shall be so employed.

Such building and loan association examiners shall each receive the same compensation as bank examiners of the state and shall be reimbursed for traveling expenses as provided in §112.061 while engaged in the performance of their duties, which sums shall be included in the biennial appropriations act.

Every building and loan association doing business in the state shall be examined at least once each year by the state comptroller or his representative, and more often if necessary, and the fees for examination shall be the same as those provided by statute for the examination of banks, except where the fees are based upon the amount of capital stock the same shall be charged on the amount of capital stock actually paid in, and not on the amount of capital stock authorized.

History.—§30, ch. 10028, 1925; §24, ch. 11865, 1927; CGL 6180; §143, ch. 26869, 1951; §19, ch. 63-400.
cf.—§658.08 Examination fees.

665.32 Losses; procedure for reduction of liability to stockholders to distribute losses on pro rata basis.—Whenever the losses of any association resulting from a depreciation in the value of its assets or otherwise, reduces the value of its assets so they are worth less than its obligations to creditors and stockholders, then at the option of the board of directors and with the written consent of the state comptroller, which consent shall be attached to and made a part of the petition hereinafter referred to, the association may present to the circuit court of the circuit in which the association is located a petition setting forth a true and complete statement of its condition and such circuit court may order a reduction of its liability to stockholders in such manner as to distribute the loss on a pro rata basis, among the stockholders and create a reserve for contingencies in such amount as the comptroller may recommend, not to exceed an amount equal to ten per cent of the assets of the association, based upon an appraisal of such assets, made not more than three months previous to the presentation of said petition. The order of reduction may be based upon the statement of the condition of the association as set forth in the petition without regard to any change that may have occurred in such condition. The order of court shall be binding upon all stockholders in the association. If, thereafter, such association shall realize from the assets owned by it at the time of the entry of said order a greater amount than was fixed in the order, such excess shall be distributed ratably among the holders of outstanding stock which was so reduced, but to the extent of such reduction only; provided, however, no such distribution shall be made if it reduces the reserve for contingencies to less than ten per cent of the assets. Whenever the losses reduce the value of the assets of any association so that they are worth less than seventy per cent of the association's obligations to creditors and stockholders, then the board of directors must present such petition to the circuit court and invoke the provisions of this section.

History.—§9, ch. 15908, 1933; §5, ch. 16842, 1935; §3, ch. 16844, 1935; CGL 1936 Supp. 6183(8).

665.33 Procedure for reincorporation under this chapter; amendment of certificate of incorporation.—Any building and loan association organized and existing under the laws of this state on May 7, 1927, may reincorporate under this chapter either under the same or a different name by filing with the secretary of state a certificate executed by its president and attested by its secretary under the corporate seal and duly authorized by a meeting of the stockholders called for that purpose, setting forth the statements required in an original certificate by §665.02, and in addition surren-

dering the existing charter or certificate of incorporation of the corporation. Upon filing thereof said corporation shall be deemed to be incorporated hereunder and shall be entitled to and be possessed of all the privileges, franchises and powers as if originally incorporated under this chapter; and all the properties, rights and privileges theretofore belonging to said corporation, which were acquired by gift, grant, conveyance, assignment or otherwise shall be and the same are hereby ratified, approved and confirmed and assured to said corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter; provided, however, that any corporation thus reincorporated hereunder shall be subject to all the contracts, duties and obligations heretofore resting upon the corporation whose charter or certificate of incorporation is thus surrendered or to which said corporation shall then be in any way liable but shall not be subject to the payment of an additional charter tax for such reincorporation.

Any building and loan association may from time to time when and as desired amend its certificate of incorporation in any respect, provided that only such provisions shall be inserted by amendment as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment.

History.—§32, ch. 10028, 1925; §26, ch. 11865, 1927; CGL 6182; am. §7, ch. 22858, 1945.
cf.—§665.01, Associations affected.

665.34 Penalty for violation of provisions of this chapter. — Should any director, officer or employee in charge of the management and affairs of any building and loan association operating under the provisions of this chapter, make any loan of the funds or assets of the building and loan association for which they are acting, in a sum greater than fifty per cent of the withdrawal value of the stock at the time of making said loan to any director, officer, or employee; or should any director, officer, or employee in any other manner operate or use the association, its funds or assets in such a manner as to profit or benefit such officer, director or employee to the injury of said association and to the advantage of such officer, director, or employee other than as otherwise contemplated in the terms of employment of such officer, director, or employee, any and all such officers, directors, or employees thus violating the provisions of this chapter, shall be guilty of a felony and upon conviction thereof shall be fined not in excess of five thousand dollars or imprisoned in the penitentiary of the state for a period of not greater than two years—either the fine or the imprisonment to be imposed at the discretion of the trial court.

History.—§11-A, ch. 15908, 1933; CGL 1936 Supp. 7977(5).
cf.—§775.06, Alternative punishment.

665.35 Associations in process of liquidation on June 1, 1933.—Building and loan associations which were, on June 1, 1933, in the hands of the comptroller or a liquidator or receiver appointed by the comptroller or any circuit court, shall be governed by the provisions of the law applicable at that time, provided that should any such association be reorganized at the sole discretion of and by the state comptroller such association shall thereafter be governed by the provisions of this chapter.

History.—§12-A, ch. 15908, 1933; CGL 1936 Supp. 6183(11).

665.36 Converting into federal savings and loan association.—Any building and loan association eligible to become a federal savings and loan association, after first having obtained approval of the state comptroller, may convert itself into a federal savings and loan association by following the procedure outlined in §§665.37-665.39.

History.—§1, ch. 16843, 1935; CGL 1936 Supp. 6183(16).

665.37 Stockholders may declare by resolution determination to convert.—At any regular meeting of the shareholders of such association or at any special meeting of the stockholders of such association, in either case called to consider such action, and held in accordance with the laws and by-laws governing such association, the shareholders by affirmative vote of the holders of a majority of all outstanding stock may declare by resolution the determination to convert said association into a federal savings and loan association. At such meeting each stockholder shall be entitled to one vote for each share of stock held by him and any limitation now imposed by law, charter or by-laws upon the amount of stock that may be voted by any one stockholder, shall not apply to action hereunder.

History.—§2, ch. 16843, 1935; CGL 1936 Supp. 6183(17).

665.38 Minutes of shareholders' meeting filed with comptroller; presumptive evidence; immediate consideration.—A copy of the minutes of such meeting of the shareholders, verified by the affidavit of the president or vice-president and secretary of the association, shall be filed in the office of the comptroller of the state within ten days after such meeting; such copy of the minutes of the meeting when so filed, shall be presumptive evidence of the lawful holding of the meeting and the legality of the action taken thereat. The comptroller shall give immediate consideration to such minutes and approve or disapprove the conversion as determined by said resolution.

History.—§3, ch. 16843, 1935; CGL 1936 Supp. 6183(18).

665.39 Certified copy of federal charter filed with comptroller.—Within a reasonable time, and without any unnecessary delay after the adjournment of such meeting and the comptroller's approval the association shall take such action as may be necessary to become a federal savings and loan association and within ten days after receipt of the federal charter, a copy of such charter certified by the proper officer of the issuing authority shall be filed

in the office of the comptroller of the state. Upon the filing of such copy the association shall cease to be a state association or corporation under the laws of Florida and shall thereafter be a federal savings and loan association.

History.—§4, ch. 16843, 1935; CGL 1936 Supp. 6183(19).

665.40 Conversion effective; rights and responsibilities under new name; tax exemptions.—At the time such conversion becomes effective, the association shall cease to be supervised by this state and immediately all of the property of the association of every nature whatsoever shall become vested in said association under its new name and style, as a federal savings and loan association by operation of law, without any conveyance or transfer whatsoever, and without any further action, and said federal savings and loan association shall have, hold and enjoy such property in its own right as fully and to the same extent as was possessed, held and enjoyed by it as a state association and such federal savings and loan association at the time the conversion becomes effective, shall become and continue to be responsible for all of the obligations of the state association to the same extent as though no conversion had taken place, it being expressly declared that such federal savings and loan association shall be merely a continuation of the state association under the new name, charter and jurisdiction. Federal savings and loan associations and stockholders therein shall be entitled to the same exemptions from taxation or otherwise that are now provided by law or which may hereafter be provided by law for Florida building and loan associations and all laws now existing, providing any such exemptions are hereby made applicable to federal savings and loan associations and stockholders therein.

History.—§5, ch. 16843, 1935; CGL 1936 Supp. 6183(20).

665.41 Conversions prior to May 25, 1935, validated.—All conversions of building and loan associations into federal savings and loan associations which may have occurred prior to May 25, 1935, are validated and made legal, as if the conversion of the same had in all respects complied with the provisions of this chapter.

History.—§6, ch. 16843, 1935; CGL 1936 Supp. 6183(21).

665.42 Shareholder opposing conversion allowed ten days to file demand for purchase of his shares; procedure.—Any shareholder who voted against such conversion may within ten days after such conversion has been voted, file with the secretary of the association his written demand for the purchase of his shares and the association thereupon shall become legally liable to purchase and shall purchase and pay for the shares of such shareholder the full amount of all dues paid in thereon, together with any declared and unpaid dividends, less all fines and other indebtedness to the association and payment shall be made in the method or manner provided by the federal charter for the repurchase of shares. After said ten-day period has expired the shareholders not having filed such demand shall be bound by such decision to convert into a federal savings and loan association.

History.—§7, ch. 16843, 1935; CGL 1936 Supp. 6183(22).

665.43 Cities and towns authorized to invest in share accounts of federal savings and loan associations and Florida building and loan associations which are members of federal home loan bank system.—Any and all officials by whatever name known of any city, town or municipality in the state whether created under the general or special act or acts, having the custody, control, supervision, management, or authority to invest any fund or funds of any such city, town or municipality, is hereby authorized and empowered to invest said fund or funds in investment share accounts of any federal savings and loan association chartered under the laws of the United States, and doing business in the state, and in the shares of any Florida building and loan association, which is a member of the federal home loan bank system, provided that the investments authorized in this section are limited to the extent that the same are insured by the federal government or an instrumentality thereof.

History.—§§1-3, ch. 17905, 1937; CGL 1940 Supp. 7100(5); §1, ch. 63-163.

665.44 Political subdivisions authorized to invest in share accounts of federal savings and loan associations and Florida building and loan associations which are members of federal home loan bank systems.—Any and all boards of county commissioners, trustees for county bonds, trustees of county bonds, county boards of public instruction, road trustees for special tax road districts, bond trustees for special road and bridge districts, bond trustees for special road, bridge and ferry districts, bond trustees for superspecial road and bridge districts, bond trustees for special drainage districts, boards of supervisors for drainage districts, boards of trustees for public hospitals and all other county and other taxing unit officers and officials, by whatever name known, having the custody, control, supervision, management or authority to invest any fund or funds, of any county, school district, special tax school district, special tax road district, special road and bridge district, special road, bridge and ferry district, superspecial road and bridge district, special drainage district, drainage district, county commissioners district, other taxing unit, by whatever name known, may invest any such fund or funds in investment share accounts of any federal savings and loan association chartered under the laws of the United States, and doing business in the state, and in the shares of any Florida building and loan association, which is a member of the federal home loan bank system, provided that the investments authorized in this section are limited to the extent that the same are insured by the federal government or an instrumentality thereof.

History.—§§1-3, ch. 17906, 1937; CGL 1940 Supp. 7100(6); §1, ch. 63-162.

665.45 Insurance companies authorized to invest in share accounts of federal savings and loan associations and Florida building and loan associations which are members of federal home loan bank system.—Any and all life insurance companies, assessment life associations, fraternal benefit societies, fraternal benefit associations, sick and funeral benefit insurance associations, fire insurance companies, corporations or associations, surety companies, casualty companies, accident insurance companies and all other insurance companies, corporations or associations organized under the laws of the state, whether under the general laws or by special act are hereby authorized and empowered to invest its funds in investment share accounts of any federal savings and loan association chartered under the laws of the United States, and doing business in the state, and in the shares of any Florida building and loan association, which is a member of the federal home loan bank system.

History.—§§1-3, ch. 17907, 1937; CGL 1940 Supp. 7100(7).

665.46 Banks authorized to invest ten per cent of capital and surplus in share accounts of federal savings and loan associations and Florida building and loan associations which are members of federal home loan bank system.—Any and all banks, savings banks, Morris plan banks, trust companies, or other financial institutions now or hereafter chartered under the laws of the state, whether under the general laws or special act, may invest its funds in investment share accounts of any federal savings and loan association chartered under the laws of the United States, and doing business in the state and in the shares of any Florida building and loan association, which is a member of the federal home loan bank system, provided, that the total investment by any one bank, savings bank, Morris plan bank or trust company shall not exceed ten per cent of the capital and surplus of the investing or purchasing institution.

History.—§§1-3, ch. 17908, 1937; CGL 1940 Supp. 7100(8). Am. §1, ch. 57-328.
cf.—§659.20, Loans by banks.

665.47 Investments otherwise authorized by law for cities and towns, political subdivisions, insurance companies and banks.—The investments authorized in §§665.43-665.46 shall in no way limit the investments otherwise authorized by law, but shall be cumulative of and in addition to said investments.

History.—§2, ch. 17905, 1937; §2, ch. 17906, 1937; §2, 17907, 1937; §2, ch. 17908, 1937; CGL 1940 Supp. 7100(8).

665.48 Building and loan associations and savings and loan associations authorized to make loans insured or guaranteed by the United States.—Without regard to any other provision of law, savings and loan associations and building and loan associations of this state are authorized to make, or buy and sell, any loan secured or unsecured, which is insured or guaranteed in any manner, in part or in full, by the United States or any instrumentality thereof, or for which there is a commitment to so insure or guarantee or for which a conditional guarantee has been issued.

History.—§1, ch. 22981, 1945.

665.49 Building and loan associations authorized to provide for retirement, disability, and death benefits.—Building and loan associations of this state are authorized to contribute to a fund or funds to provide pensions, retirement benefits, disability benefits and death benefits for their officers and employees and to participate in and become a member institution of the retirement fund of the federal home loan bank system and to assent to the agreement and declaration of trust of said retirement fund and to assent to and become a party to the rules and regulations for the establishment and administration of said retirement fund and from time to time to make the contributions required by such rules and regulations or as may be determined by the board of directors of the association. All such contributions shall be paid from the earnings of the association as an expense of its operation or from undivided profits as the board of directors may determine.

History.—§1, ch. 23944, 1947.

665.50 Reduction in amount of payments on principal.—Any building and loan association may, when authorized by its by-laws, reduce the amount of the installment payments on the principal of any loan by an agreement in writing with the borrower and such reduction shall not affect the validity or the priority of the lien of the mortgage securing such loan.

History.—§1, ch. 23948, 1947.

665.51 Savings and loan associations authorized to microphotograph records.—Any savings and loan association organized under the laws of this state, or under the laws of the United States, may photograph, microphotograph or reproduce on film in such manner that each page is exposed in its entirety, any or all of its journals, ledgers, statements, account books, or other books, or any or all of its internal records of every kind, nature and description, made or received in the regular course of its business, including promissory notes and mortgages upon real property, and the photographs, microphotographs or reproductions on film in the form of film or prints, or enlarged prints, or any duly certified or authenticated copy or reproduction thereof, duly certified or authenticated by a responsible officer of the association under whose supervision the records are kept, shall in all cases, and in all courts, and places be admitted and received as evidence with a like force and effect as the original general ledger, voucher, statement, account book, document or other record.

History.—Comp. §1, ch. 28108, 1953.

665.52 Trusts; payment.—Any investment or interest in a savings and loan association holding a state or federal charter acquired by a person describing himself as trustee for another, in the absence of further notice of the

existence and terms of a legal and valid trust, the said investment or interest, or any part thereof, together with dividends or returns thereupon may be paid, in the event of the death of the person so described as trustee, to the person for whom the investment was originally stated to have been made.

History.—§1, ch. 29775, 1955; transferred from §654.041, 1959.

CHAPTER 666

VOLUNTARY DISSOLUTION OF BUILDING AND LOAN ASSOCIATIONS

666.01 Procedure required in voluntary dissolution.—Whenever the holders of the majority of the outstanding stock of any building and loan association organized under the laws of this state and doing business in this state, shall determine at a meeting duly called for such purpose to discontinue business and settle the affairs of the association, it is lawful for the board of directors to file with the state comptroller a certificate in writing, setting forth such determination, and containing a complete statement of assets and liabilities of the association. The comptroller shall be furnished with a certified copy of the resolution of the stockholders consenting to such voluntary dissolution. The comptroller, after determining the status of the association and the equity of the proposed plan of voluntary liquidation as it relates to the outstanding obligations to creditors and stockholders, may give his consent and approval in writing to such voluntary dissolution, and upon the approval of the state comptroller the association shall be deemed to have surrendered to the state its corporate franchise, privileges and powers, and shall be deemed and taken to be dissolved, except for the purpose of distributing its assets and otherwise settling its affairs, but nevertheless, after the surrender of its corporate franchise, privileges and powers, such association shall be continued a body corporate for the entire period of time necessary to distribute its assets and otherwise settle its affairs and for the purpose of prosecuting and defending suits by or against it and for the purpose of holding title to all assets of said association, but for no other purposes whatsoever.

History.—§1, ch. 16841, 1935; CGL 1936 Supp. 6183(13); §1, ch. 19545, 1939.

666.02 Stockholders may take voluntary dissolution action at regular or special meeting.—The action of the stockholders as provided for in §666.01 may be taken at any regular or special meeting. If such action be taken at a regular meeting the meeting shall be called and held in accordance with the by-laws of the association, and if the action be taken at a special meeting of the stockholders, the meeting shall not be held until two weeks' written notice of such meeting has been mailed by the association to the last known address of each stockholder except that special meetings may be held and the business of such special meetings will be lawful in every respect if eighty per cent or more of the shares outstanding are represented in person, or by proxy, at the meeting and sign a written waiver of notice for the calling and holding of such special meeting, and such written waiver shall be entered in the minutes of the meeting.

History.—§2, ch. 16841, 1935; CGL 1936 Supp. 6183(14); §2, ch. 19545, 1939.

666.03 Liquidation by trustees.—When any association goes into voluntary dissolution, the board of directors shall appoint a committee of three of its members to act as trustees for the purpose of closing out the affairs of the association, and the trustees shall elect a chairman and a secretary to hold office until their successors are named and the secretary shall certify the results of such election to the comptroller, and the trustees shall furnish the comptroller with a written statement of the resources and liabilities of the association properly attested by a majority of the trustees, on the second Monday in each month, or oftener upon call by the state comptroller, until such time as the affairs of the association have been completely settled, and should the state comptroller not be satisfied with the report of any such association in voluntary liquidation, he shall have full authority to proceed to the appointment of a liquidator as provided for by the building and loan statutes of the state. In the event any trustee shall die or otherwise become incapable of discharging the duties of a trustee under this act the two remaining trustees shall, by written resolution, appoint a suitable person as successor trustee. A certified copy of such resolution shall be transmitted to the comptroller for his written approval, which shall be necessary to duly qualify such person as such successor trustee. The association on receiving notice from the state comptroller that it may go into voluntary dissolution shall publish a statement once each week for eight consecutive weeks in a newspaper published in the town or county in which the association is located, and such notice shall set forth the fact that the association plans to voluntarily close out its affairs, and call on all creditors and stockholders to present their claims. All claims of every nature whatsoever, including claims of stockholders, must be properly sworn to and filed with the trustees within one year from the date of the first publication of such notice. Any creditor or stockholder may file his claim after the expiration

of such period upon making satisfactory showing to the trustees that he received no actual notice of the liquidation of the association within said twelve month period; provided, however, that any claim filed after the expiration of such period shall be entitled to share only in such assets as remain at the time the claim is filed and shall have no right, title, interest or claim to, in or upon assets previously distributed.

History.—§3, ch. 16841, 1935; CGL 1936 Supp. 6183(15); §3, ch. 19545, 1939.

666.04 Process against association in voluntary dissolution may be served upon chairman of trustees.—In all actions against an association operating under this law, it shall be sufficient to issue a summons to the proper officer, commanding him to summons the association by its corporate name to appear and answer the action on the proper return day, which summons shall be returnable in the manner and subject to the same rules and regulations as other process. Process against such association may be served upon the chairman of the trustees, or in his absence upon any other trustee.

History.—§4, ch. 19545, 1939; CGL 1940 Supp. 6183(15a).

666.05 Assets may be sold, released or compromised upon approval of comptroller and signatures of all three trustees.—The association may divest itself of title to any of its assets by the signatures of all three trustees. If all three trustees shall resolve that any asset of the association should be sold, released or compromised for a lesser sum of money than is due upon same a copy of such resolution shall be certified to the comptroller together with the reasons for such decision and if the comptroller, in writing, shall approve such decision the trustees may thereupon sell, release or compromise such asset in accordance with such resolution and they shall not be personally liable for such action unless they have fraudulently certified untrue information to the comptroller.

History.—§5, ch. 19545, 1939; CGL 1940 Supp. 6183(15b).

666.06 Requirements of associations liquidating under other state law to continue under this chapter.—The provisions of this chapter shall apply to associations that shall hereafter avail themselves of such provisions and to associations which were liquidating under chapter 16841, acts of 1935, on June 12, 1939, providing the trustees of such an association shall resolve to continue the liquidation of such association under the provisions of this chapter, in which event a copy of such resolution shall be published in the town or county in which the association is located once a week for four consecutive weeks and a certified copy of such resolution, together with proof of publication thereof, shall be filed with the comptroller. Upon the filing thereof and upon certificate by the comptroller that the provisions of this chapter have been complied with, which certificate shall declare that by virtue of such compliance and the issuance of the certificate the provisions of this law have become effective, such association shall be deemed to be liquidating and dissolving hereunder and shall be entitled to and be possessed of all the privileges, franchises and powers set forth herein.

History.—§6, ch. 19545, 1939; CGL 1940 Supp. 6183(15c).

CHAPTER 667

INSOLVENCY OF BUILDING AND LOAN ASSOCIATIONS

667.081 When insolvent.—Any building and loan association shall be deemed to be insolvent when the aggregate of its assets shall be insufficient to pay all legal claims against it other than to its own shareholders, who shall not be considered creditors in their membership relation to the association.

History.—Comp. §1, ch. 25247, 1949.

667.082 When conservator may be appointed to take charge of assets; removal.—

(1) Upon determining that any building and loan association: (a) is insolvent; or (b) is pursuing a course which threatens to result in insolvency; or (c) is substantially violating any valid and applicable law, regulation, or order; or (d) is concealing any of its assets, books, or records; or (e) is in such financial condition that its liabilities, including shareholders' accounts, exceed its assets, the comptroller of the state (hereinafter called the comptroller) may appoint a conservator for such building and loan association (hereinafter called the association), for a period of six months, which time may be extended to twelve months, if in the opinion of the comptroller such extension is to the best interest of the association and its creditors, or upon the written agreement of the officers of the association or upon the written agreement of the majority of the shareholders of the association and upon approval of such extension of time by the circuit court. The comptroller shall require the conservator to give bond in an amount as may be determined necessary to protect the assets of the association. The conservator, under the direction of the comptroller, shall immediately take possession of the books, records, and assets of every kind and description of such association, and he shall take such action as may be necessary to conserve the assets of the association, pending further disposition thereof as provided by law.

(2) The comptroller, immediately upon appointing such conservator, shall serve notice upon the president or upon any vice-president, manager, or cashier, or upon any director, or other person having charge of the management of such association, informing him or them in such notice of his action in appointing such conservator and notify him or them that he will apply on a date therein named, not to exceed fifteen days from the date of service of such notice, to a circuit judge having jurisdiction over the same, for an order confirming his action in appointing the conservator for such association. At such hearing the association, its officers, or directors may contest before the circuit judge the rightfulness and legality of the action of the comptroller in appointing the conservator.

(3) The comptroller may remove a conservator of an association and a conservator so removed shall forthwith deliver to the comptroller or to the successor conservator, as the comptroller may direct, all assets of the association. A successor conservator shall give such bond as may be required by the comptroller and he shall have the same powers and duties as the conservator, whom he succeeds, had except that it shall not be necessary for the court to confirm his appointment.

History.—Comp. §2, ch. 25247, 1949.

667.083 Officers may seek removal of conservator.—The officers of such association shall have the right at all times to apply to the circuit court for an order removing the conservator and requiring him to return the books, records, and assets of the association to its officers. The court, upon reasonable notice to the conservator, shall herein determine such application.

History.—Comp. §3, ch. 25247, 1949.

667.084 Conservator to possess all powers of directors, officers, and members.—Any conservator appointed shall have all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association. He shall have full power and authority to execute and deliver in the name of and on behalf of the association all deeds, contracts, satisfactions of mortgages and judgments, assignments, and other legal documents

which may be necessary in conducting and carrying on the business of the association and in performing his duties as conservator.

History.—Comp. §4, ch. 25247, 1949.

667.085 **Conservator, with approval of comptroller, may remove any officer or director.**—The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee, provided the order of removal of a director or officer shall be approved in writing by the comptroller.

History.—Comp. §5, ch. 25247, 1949.

667.086 **Under conservator, association may be operated as a "going concern."**—The conservator may, upon order of the comptroller, operate such association as a going concern and in the absence of such an order from the comptroller, he shall confine his activities to that of conserving the assets of the association. While the association is in the hands of a conservator, members of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, in his discretion, may permit shareholders to withdraw their accounts from the association pursuant to the provisions of §§667.081-667.089 or under and subject to such rules and regulations as the comptroller may prescribe. The conservator shall have power to accept payments on accounts, but any payments upon such accounts received by the conservator may be segregated if the comptroller shall so order in writing; if so ordered, such payments shall not be subject to offset and shall not be used to liquidate any indebtedness of such association existing at the time the conservator was appointed for it or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of any such association existing at the time such conservator was appointed.

History.—Comp. §6, ch. 25247, 1949.

667.087 **Compensation of conservator; expenses of conservatorship.**—The conservator shall receive reasonable compensation for his services, which shall be fixed by the comptroller and shall be based upon the work actually necessary and performed. All expenses of the conservatorship shall be paid out of the assets of the association and shall be a first lien, prior in dignity to all other liens, upon the assets of the association.

History.—Comp. §7, ch. 25247, 1949.

667.088 **End of conservatorship; return of association to its officers; appointment of liquidator.**—At the conclusion of the conservatorship, the conservator shall, upon order of the comptroller, return the books, records, and assets of the association to its officers or deliver the same to the liquidator, if one be appointed.

If at the end of the six-months period for which the conservator was appointed, or at the end of any extension of such time, as herein provided, the comptroller deems it to the best interest of the creditors and shareholders of the association, he may appoint a liquidator to take charge of the assets and affairs of such association, and require of him such bond and security as the comptroller deems proper, not exceeding double the amount that may come into his hands, and such liquidator shall be subject to dismissal by the comptroller whenever in his judgment such dismissal is deemed necessary or advisable; when one liquidator is dismissed, another may be duly designated and appointed. Such liquidator under the direction and supervision of the comptroller, shall take possession of the books, records and assets of every description belonging to the association, and in his name shall sue for and collect all debts, dues and claims belonging to it, and upon the order of the circuit court of the circuit in which the association is located may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association on such terms as the court shall direct. Such liquidator shall pay all money received by him to the state treasurer to be held as a special deposit for the use and benefit of the creditors, subject to the order of the comptroller, and shall also make reports quarterly, or when called upon, to the comptroller of all of his acts and proceedings The comptroller, immediately upon appointing such liquidator, shall serve notice upon the president, any vice-president, secretary, director or other person having charge or management of such association, informing him or them in such notice of his action in appointing such liquidator, and notifying him or them or it that he will apply on a date therein named, not exceeding ten days from the date of service of such notice, to the judge of the circuit court of the circuit in which the association is located, for an order confirming his action and the appointment of such liquidator and the association may, at such hearing, contest before such circuit judge the rightfulness and legality of the action of the comptroller in appointing such liquidator.

History.—Comp. §8, ch. 25247 ,1949.

667.089 **Voluntary liquidation.**—The provisions of §§667.081-667.089 shall apply to all building and loan associations now or hereafter in voluntary liquidation.

History.—Comp. §9, ch. 25247, 1949.

667.09 **Publication of notice calling for proof of claims against association.**—The comptroller shall, after the confirmation of the appointment of such liquidator, cause notice to be given by advertisement in a newspaper in the county where the association is located, once each week for nine consecutive weeks, calling on all persons who may have claims against such association to present the same and to make legal proof thereof.

History.—§10, sub-§9, ch. 15908, 1933; CGL 1936 Supp. 6183(9).

667.10 **Claims filed with liquidator.**—All claims of every kind and nature, including

claims of stockholders, must be properly sworn to and filed with the liquidator within one year from the date of the qualification of the liquidator and no claims not so filed within one year from the date of the qualification of the liquidator shall be included in the distribution of the assets which have already been distributed, but any claim which may be filed thereafter with a showing satisfactory to the liquidator that the claimant received no notice provided for in §667.09 prior to the expiration of the twelve months' period, he shall be entitled to share in such disbursement or distribution of assets as may be made after due proof of his claim. The claims of stockholders, based on their stock, shall in all respects be inferior to the claims of creditors.

History.—§10, sub-§10, ch. 15908, 1933; CGL 1936 Supp. 6183(9).

667.11 Liquidator's expenses and compensation; comptroller makes ratable dividend on claims proved or adjudicated.—All expenses of the liquidator shall be paid out of the assets of the association before distribution of the proceeds of liquidation. The compensation of the liquidator shall be fixed by the comptroller, and shall be based upon the amount of work actually necessary and performed, and shall in no case exceed five per cent of the cash collections. From time to time, after full provisions having first been made for the expenses of the liquidation, and the payment of liens for taxes and preferred claims, the comptroller shall make ratable dividend of the money in the hands of the state treasurer on all claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and as the proceeds of the assets of such association are paid over to the liquidator, shall make further dividends on all claims previously proved or adjudicated.

History.—§10, sub-§11, ch. 15908, 1933; CGL 1936 Supp. 6183(9).

667.12 Purchase of property for protection and benefit of liquidator's trust.—Whenever any liquidator, duly appointed by the comptroller, and who shall have qualified and entered upon the discharge of his trust, shall find it in his opinion necessary to fully protect and benefit his said trust, to the extent that said trust may have in any property, real or personal, by reason of any bond, mortgage, lien, assignment, equity or other proper legal claim attaching thereto, which said property is to be sold under execution, decree or foreclosure, or any proper order of any court of competent jurisdiction, or reclaimed or repossessed by any person having title opposed to such equity of his trust, he may certify the facts in the case, together with his opinion as to the value of the property, and the value of the equity his trust may have in same, and the amount that may be necessary to purchase such property, to the comptroller, and if the comptroller shall in his judgment deem it to the best interest of the trust, he may draw upon the funds to the credit of said trust in the hands of the state treasurer to the amount necessary for the purchase of said property for the said trust.

History.—§10, sub-§12, ch. 15908, 1933; CGL 1936 Supp. 6183(9).

667.13 Federal savings and loan insurance corporation as liquidator.—The Federal savings and loan insurance corporation, created by title IV by an act of congress entitled "National housing act," approved June 27, 1934, as now or hereafter amended, upon appointment of the comptroller may be and act without bond as receiver or liquidator of any building and loan association or federal savings and loan association, the shares, saving shares or investment shares which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its members or shareholders. The state comptroller may in his discretion, in the event of such closing, tender to said corporation the appointment as receiver or liquidator of such building and loan association or federal savings and loan association, and if the corporation accepts such appointment, the corporation shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator respectively of a building and loan association or federal savings and loan association, its members, shareholders and other creditors.

History.—§1, ch. 19111, 1939; CGL 1940 Supp. 6183(23).

667.14 Federal savings and loan insurance corporation subrogated to rights against closed association.—Whenever any building and loan association or federal savings and loan association shall have been closed as aforesaid, and said federal savings and loan insurance corporation shall pay or make available for payment the insured shares, saving shares or investment shares, said corporation, whether or not it shall become receiver or liquidator of such closed building and loan association or federal savings and loan association, as provided in §667.13, shall be and become subrogated by operation of law to all rights against such closed building and loan association or federal savings and loan association of each owner of the claim for shares, saving shares or investment shares to the extent now or hereafter necessary to enable the said federal savings and loan insurance corporation, under federal law to make insurance payments available to the members or shareholders of a closed insured building and loan association or federal savings and loan association.

History.—§2, ch. 19111, 1939; CGL 1940 Supp. 6183(24).

TITLE XXXVIII

COMMERCIAL RELATIONS

CHAPTER 673

UNIFORM TRUST RECEIPTS LAW

673.01 Definitions.—In this chapter, unless the context or subject matter otherwise requires:

(1) "Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy the goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, or mortgagee, a lienor, or a transferee in bulk.

(2) "Document" means any document of title to goods.

(3) "Entruster" means the person who has or directly or by agent takes a security interest in goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

(4) "Goods" means any personal chattels other than: money, things in action, or things so affixed to land as to become a part thereof.

(5) "Instrument" means:

(a) Any negotiable instrument as defined in the uniform negotiable instruments law and amendments thereto, or,

(b) Any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) Any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business or finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and the face of the instrument to be the owner. "Instrument" does not include any document of title to goods.

(6) "Lien creditor" means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

(7) "New value" includes new advances or loans made, or new obligation incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under §673.10; but "new value" shall not be construed to include extensions or renewals of existing obligations of the trustee, nor obligations substituted for such existing obligations.

(8) "Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust, or other association, and two or more persons having a joint or common interest.

(9) "Possession," as used in this chapter with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the

case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

(10) "Purchase" means taking by sale, conditional sale, lease, mortgage, or pledge, legal or equitable.

(11) "Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, insofar as concerns his specific security, a purchaser and not a creditor.

(12) "Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

(13) "Transferee in bulk" means a mortgagee or a pledgee or a buyer of the trustee's business substantially as a whole.

(14) "Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this chapter.

(15) "Value" means any consideration sufficient to support a simple contract. An antecedent or preexisting claim, whether for money or not, and whether against the transferor or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

History.—Comp. §1, ch. 26730, 1951.

673.02 What constitutes trust receipt transaction and trust receipt.—

(1) A trust receipt transaction within the meaning of this chapter is any transaction to which an entruster and a trustee are parties for one of the purposes set forth in subsection (3), whereby

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster 1. prior to the transaction has, or for new value 2. by the transaction acquires or 3. as the result thereof is to acquire promptly, a security interest; or

(b) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but, possession of which is retained by the trustee; or

(c) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in goods or documents whether or not such goods or documents are owned or possessed by the trustee prior or subsequent to the execution of the trust receipt and whether or not such goods are thereafter retained in the trustee's possession;

provided, that the delivery under paragraph (a) or the giving of new value under paragraph (b) or (c) either:

1. Be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains in or will remain in, or has passed to or will pass to, the entruster, or

2. Be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing. The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

If the trustee's rights in the goods, documents or instruments are subject to a prior trust receipt transaction or to a prior equitable pledge, §§673.09 and 673.03, respectively, determine the priorities.

(2) A writing such as is described in Subsection (1), paragraph 1., signed by the trustee, and given in or pursuant to such a transaction, is designated in this chapter as a "trust receipt." No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

(3) A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) In the case of goods, documents or instruments, for the purpose of selling or exchanging them or of procuring their sale or exchange; or

(b) In the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transshipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) In the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for consummation of some transaction involving delivery to a depositary or registrar, or for their presentation, collection, or renewal.

History.—Comp. §2, ch. 26730, 1951.

673.03 Attempted creation or continuance of pledge without delivery or retention of possession.—

(1) An attempted pledge or agreement to

pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) To the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) To the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in §673.08, only as of the time the pledgee takes possession, and without relation back.

(2) Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

(3) Where, under circumstances not constituting a trust receipt transaction, a person, for a temporary and limited purpose, delivers goods, documents, or instruments, in which he holds a pledgee's or other security interest, to the person holding the beneficial interest therein, the transaction has like effect with a purported pledge for new value under this section.

History.—Comp. §3, ch. 26730, 1951.

673.04 Contract to give trust receipt.—

(1) A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract, be equivalent in all respects to a trust receipt.

(2) Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this chapter.

History.—Comp. §4, ch. 26730, 1951.

673.05 Validity between the parties.—Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this chapter, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in Subsection (5) of §673.06.

History.—Comp. §5, ch. 26730, 1951.

673.06 Repossession and entruster's rights on default.—

(1) The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default, and as may be otherwise specified in the trust receipt.

(2) An entruster entitled to possession under the terms of the trust receipt or of Subsection (1) may take such possession without legal process, whenever that is possible without breach of the peace.

(3) (a) After possession is taken, the entruster shall, subject to paragraph (b) and subsection (5), hold such goods, documents or instruments with the rights and duties of a pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than ten days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account, at public or private sale, and may at a public sale himself become a purchaser. The proceeds of any such sale, whether public or private, shall be applied 1. to the payment of the expenses thereof 2. to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments, 3. to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either 1. personally served on the trustee, or 2. sent by postpaid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

(4) Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

(5) As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; provided that in the case of the original maturity of such an indebtedness there must be cancelled not less than eighty percent of the purchase price to the trustee, or of the original indebtedness, whichever is greater; or, in the case of a first renewal, not less than seventy percent, or, in the case of a second or further renewal, not less than sixty percent.

History.—Comp. §6, ch. 26730, 1951.

673.07 General effect of entruster's filing or taking possession.—

(1) (a) If the entruster within the period of thirty days specified in Subsection (1) of §673.08 files as in this chapter provided, such filing shall be effective to preserve his security interest in documents or goods against all persons, save as otherwise provided by §§673.08-673.11, 673.14 and 673.15.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in subsection (2) (b) of §673.09, the entruster's security interest shall be deemed

to be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

(2) The taking of possession by the entruster shall, so long as such possession is retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons, in the case of instruments.

History.—Comp. §7, ch. 26730, 1951.

673.08 Validity against creditors.—

(1) The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this chapter otherwise provided.

But where the trustee at the time of the trust receipt transaction has and retains instruments, the thirty days shall be reckoned from the time such instruments are actually shown to the entruster, or from the time that the entruster gives new value under the transaction, whichever is prior.

(2) Save as provided in Subsection (1), the entruster's security interest shall be void as against lien creditors who become such after such thirty day period and without notice of such interest and before filing.

(a) Where a creditor secures the issuance of process which within a reasonable time after such issuance results in attachment of or levy on the goods, he is deemed to have become a lien creditor as of the date of the issuance of the process.

(b) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, 1. an assignee for the benefit of creditors, from the time of assignment, or 2. a receiver in equity from the time of his appointment, or 3. a trustee in bankruptcy or judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee, shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

History.—Comp. §8, ch. 26730, 1951.

673.09 Limitations on entruster's protection against purchasers.—

(1) (a) Nothing in this chapter shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner instruments in such form as are by common practice purchased and sold as if negotiable, shall hold such instruments free of the entruster's interest; and filing under this chapter shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents or instruments by an entruster to a trustee, under a trust receipt transaction or a transaction falling within §673.03 of this chapter, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

(2) Where a purchaser from the trustee is not protected under subsection (1) hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade.

1. Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the thirty day period specified in subsection 1 of §673.08, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

2. No limitation placed by the entruster on the liberty of sale granted to the trustee shall effect a buyer in the ordinary course of trade, unless the limitation is actually known to the buyer.

(b) Purchasers other than buyers in the ordinary course of trade. In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either 1. gives new value before the expiration of the thirty day period specified in subsection (1) of §673.08, or 2. gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under 2. of this paragraph (b).

(c) Liberty of sale.

If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sales or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

(3) As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for

new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

History.—Comp. §9, ch. 26730, 1951.

673.10 Entruster's right to proceeds.—Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled, to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

(a) To the debts described in §673.09 (3); and also

(b) To any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) To any other proceeds of the goods, documents or instruments which are identifiable, unless the provision for accounting has been waived by the entruster by words or conduct; and knowledge by the entruster of the existence of proceeds, without demand for accounting made within ten days from such knowledge, shall be deemed such a waiver.

History.—Comp. §10, ch. 26730, 1951.

673.11 Liens in course of business good against entruster.—Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this chapter; but this section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

History.—Comp. §11, ch. 26730, 1951.

673.12 Entruster not responsible on sale by trustee.—An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee.

History.—Comp. §12, ch. 26730, 1951.

673.13 Filing and refiling concerning trust receipt transactions covering documents or goods.—

(1) Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the secretary of state a statement, signed by the entruster and the trustee, containing:

(a) A designation of the entruster and the trustee, and of the chief place of business of each within this state, if any; and if the entruster has no place of business within the state, a designation of his chief place of business outside the state; and

(b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and

(c) A description of the kind or kinds of goods covered or to be covered by such financing.

(2) The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purpose of this chapter:

"Statement of Trust Receipt Financing

"The entruster, _____, whose chief place of business within this state is at _____ (or who has no place of business within this state and whose chief place of business outside this state is at _____), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee, _____, whose chief place of business within this state is at _____ of goods of the following description: (coffee, silk, automobiles, or the like)

(Signed)_____Entruster

(Signed)_____Trustee."

(3) It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be two dollars.

(4) Presentation for filing of the statement described in subsection (1), and payment of the filing fee, shall constitute filing under this chapter in favor of the entruster, as to any documents or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within thirty days previous to such filing, the subject-matter of a trust re-

ceipt transaction between the entruster and the trustee.

(5) At any time before expiration of the validity of the filing, as specified in subsection (4), a like statement, or an affidavit by the entruster alone, setting out the information required by subsection (1), may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original.

History.—§13, ch. 26730, 1951; (3) by §1, ch. 57-11.

673.14 Limitations on extent of obligation secured.—As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction; but not, otherwise, to secure past indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

History.—Comp. §14, ch. 26730, 1951.

673.15 Act not applicable to certain transactions.—This chapter shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involve constructive delivery, or delivery and redelivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

History.—Comp. §15, ch. 26730, 1951.

673.16 Election among filing statutes.—As to any transaction falling within the provision both of this chapter and of any other law requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the law complied with; except that buyers in the ordinary course of trade as described in subsection (2) of §673.09, and lienors as described in §673.11, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another law.

History.—Comp. §16, ch. 26730, 1951.

673.17 Cases not provided for.—In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

History.—Comp. §17, ch. 26730, 1951.

673.18 Short title.—This chapter may be cited as the uniform trust receipts act.

History.—Comp. §19, ch. 26730, 1951.

CHAPTER 674

NEGOTIABLE INSTRUMENTS; FORM AND INTERPRETATION, ETC.

674.01 General provisions. — Chapters 674-676 shall be known as the negotiable instruments law.

In chapters 674-676, inclusive, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder," means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the in-

strument, complete in form to a person who takes it as a holder.

"Person" includes a body of persons whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed and "writing" includes print.

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instrument, and the facts of the particular case.

Where a day or the last day for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

In any case not provided for in chapters 674-676, inclusive, the rules of the law merchant shall govern.

History.—Ch. 4524, 1897; GS 2934; RGS 4674; CGL 6760. cf.—§1.01 for general definitions.

674.02 Form.—An instrument to be negotiable must conform to the following requirements:

(1) It must be in writing and signed by the maker or drawer.

(2) Must contain an unconditional promise or order to pay a certain sum in money.

(3) Must be payable on demand, or at a fixed or determinable future time.

(4) Must be payable to order or to bearer; and,

(5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

History.—§1, ch. 4524, 1897; GS 2935; RGS 4675; CGL 6761.

674.03 Sum certain.—The sum payable is a sum certain within the meaning of this law, although it is to be paid:

(1) With interest; or

(2) By stated installments; or

(3) By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or

(4) With exchange, whether at a fixed rate or at the current rate; or

(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

History.—§2, ch. 4524, 1897; GS 2936; RGS 4676; CGL 6762.

674.04 Unconditional order or promise.—An unqualified order or promise to pay is unconditional within the meaning of this law, though coupled with:

(1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

History.—§3, ch. 4524, 1897; GS 2937; RGS 4677; CGL 6763.

674.05 Determinable future time.—An instrument is payable at a determinable future time, within the meaning of this law, which is expressed to be payable:

(1) At a fixed period after date, or sight; or

(2) On or before a fixed or determinable future time specified therein; or

(3) On or at a fixed period after the occurrence of a specified event which is certain to happen though the time of happening be uncertain.

History.—§4, ch. 4524, 1897; GS 2938; RGS 4678; CGL 6764; am. §7, ch. 22858, 1945.

674.06 Effect of certain provisions on negotiability.—An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) Authorize a confession of judgment if the instrument be not paid at maturity; or

(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or

(4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

History.—§§4, 5, ch. 4524, 1897; GS 2939; RGS 4679; CGL 6765.

674.07 Matters which do not affect validity and negotiability.—The validity and negotiable character of an instrument are not affected by the fact that:

(1) It is not dated; or

(2) Does not specify the value given, or that any value has been given, therefor; or

(3) Does not specify the place where it is drawn or the place where it is payable; or

(4) Bears a seal; or

(5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

History.—§6, ch. 4524, 1897; GS 2940; RGS 4680; CGL 6766.

674.08 Provisions for attorneys' fees.—No provision for the payment of attorneys' fees,

or similar charges, or charges for exchange in any instrument otherwise valid and negotiable shall affect the validity or negotiability of such instrument, but the same shall in all respects be as valid and negotiable as if such provisions were not therein contained.

History.—§1, ch. 4374, 1895; GS 3099; RGS 4843; CGL 6929.

674.09 When payable on demand.—An instrument is payable on demand:

(1) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2) In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

History.—§7, ch. 4524, 1897; GS 2941; RGS 4681; CGL 6767.

674.10 When payable to order.—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

(1) A payee who is not maker, drawer or drawee; or,

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or some of several payees; or

(6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

History.—§8, ch. 4524, 1897; GS 2942; RGS 4682; CGL 6768.

674.11 When payable to bearer.—The instrument is payable to bearer:

(1) When it is expressed to be so payable; or

(2) When it is payable to a person named therein or bearer; or

(3) When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable or known to his employee, or other agent who supplies a name of such payee; or

(4) When the name of the payee does not purport to be the name of any person; or

(5) When the only or last indorsement is an indorsement in blank.

History.—§9, ch. 4524, 1897; GS 2943; RGS 4683; CGL 6769; §1, ch. 29875, 1955.

674.12 Not required to follow language of the law.—The instrument need not follow the language of this law, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

History.—§10, ch. 4524, 1897; GS 2944; RGS 4684; CGL 6770.

674.13 Date of instrument.—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement as the case may be.

History.—§11, ch. 4524, 1897; GS 2945; RGS 4685; CGL 6771.

674.14 Antedated or postdated instrument.—The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

History.—§12, ch. 4524, 1897; GS 2946; RGS 4686; CGL 6772; am. §7, ch. 22858, 1945.

674.15 Undated instruments.—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

History.—§13, ch. 4524, 1897; GS 2947; RGS 4687; CGL 6773.

674.16 Uncompleted instruments. — Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

History.—§14, ch. 4524, 1897; GS 2948; RGS 4688; CGL 6774.

674.17 Incomplete instrument not valid.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

History.—§15, ch. 4524, 1897; GS 2949; RGS 4689; CGL 6775.

674.18 When incomplete and revocable. — Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery in order to be ef-

fectual must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

History.—§16, ch. 4524, 1897; GS 2950; RGS 4690; CGL 6776.

674.19 Ambiguous language and omissions.—Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount.

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail.

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

(7) Where an instrument containing the words, "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

History.—§17, ch. 4524, 1897; GS 2951; RGS 4691; CGL 6777; am. §7, ch. 22858, 1945.

674.20 Who not liable.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

History.—§18, ch. 4524, 1897; GS 2952; RGS 4692; CGL 6778.

674.21 Signature of agent.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

History.—§19, ch. 4524, 1897; GS 2953; RGS 4693; CGL 6779.

674.22 Signing in behalf of principal.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal does not exempt him from personal liability.

History.—§20, ch. 4524, 1897; GS 2954; RGS 4694; CGL 6780.

674.23 Signature by procuration.—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

History.—§21, ch. 4524, 1897; GS 2955; RGS 4695; CGL 6781.

674.24 Indorsement by corporation or infant.—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

History.—§22, ch. 4524, 1897; GS 2956; RGS 4696; CGL 6782.

674.25 Forged signature.—Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

History.—§23, ch. 4524, 1897; GS 2957; RGS 4697; CGL 6783.

674.27 Consideration presumed.—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

History.—§24, ch. 4524, 1897; GS 2958; RGS 4698; CGL 6784.

674.28 What constitutes value.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

History.—§25, ch. 4524, 1897; GS 2959; RGS 4699; CGL 6785.

674.29 Where value has been given.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

History.—§26, ch. 4524, 1897; GS 2960; RGS 4700; CGL 6786.

674.30 Lien on instrument. — Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

History.—§27, ch. 4524, 1897; GS 2961; RGS 4701; CGL 6787.

674.31 Failure of consideration. — Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto whether the failure is an ascertained and liquidated amount or otherwise.

History.—§28, ch. 4524, 1897; GS 2962; RGS 4702; CGL 6788.

674.32 Accommodation party. — An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

History.—§29, ch. 4524, 1897; GS 2963; RGS 4703; CGL 6789.

674.33 When negotiated.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

History.—§30, ch. 4524, 1897; GS 2964; RGS 4704; CGL 6790.

674.34 Indorsement.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

History.—§31, ch. 4524, 1897; GS 2965; RGS 4705; CGL 6791.

674.35 Indorsement must be of entire instrument.—The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

History.—§32, ch. 4524, 1897; GS 2966; RGS 4706; CGL 6792.

674.36 Special, restrictive or qualified indorsements.—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

History.—§33, ch. 4524, 1897; GS 2967; RGS 4707; CGL 6793.

674.37 What is special indorsement and blank indorsement. — A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

History.—§34, ch. 4524, 1897; GS 2968; RGS 4708; CGL 6794.

674.38 Converting blank into special indorsement.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

History.—§35, ch. 4524, 1897; GS 2969; RGS 4709; CGL 6795.

674.39 Restrictive indorsements. — An indorsement is restrictive, which either:

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

History.—§36, ch. 4524, 1897; GS 2970; RGS 4710; CGL 6796.

674.40 Rights of restrictive indorsee. — A restrictive indorsement confers upon the indorsee the right:

(1) To receive payment of the instrument;

(2) To bring any action thereon that the indorser could bring;

(3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

History.—§37, ch. 4524, 1897; GS 2971; RGS 4711; CGL 6797.

674.41 Qualified indorsement.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the word "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

History.—§38, ch. 4524, 1897; GS 2972; RGS 4712; CGL 6798.

674.42 Conditional indorsement.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

History.—§39, ch. 4524, 1897; GS 2973; RGS 4713; CGL 6799.

674.43 Specially indorsed "bearer" instruments.—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person

indorsing specially is liable as indorser to only such holders as make title through his indorsement.

History.—§40, ch. 4524, 1897; GS 2974; RGS 4714; CGL 6800.

674.44 Payable to order of two or more.—When an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

History.—§41, ch. 4524, 1897; GS 2975; RGS 4715; CGL 6801.

674.45 Indorsed to "cashier," etc. — Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

History.—§42, ch. 4524, 1897; GS 2976; RGS 4716; CGL 6802.

674.46 Wrong name of indorsee. — Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

History.—§43, ch. 4524, 1897; GS 2977; RGS 4717; CGL 6803; am. §7, ch. 22858, 1945.

674.47 Indorsing in representative capacity.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

History.—§44, ch. 4524, 1897; GS 2978; RGS 4718; CGL 6804.

674.48 Certain things presumed. — Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

History.—§§45, 46, ch. 4524, 1897; GS 2979; RGS 4719; CGL 6805.

674.49 Continuation of negotiability. — An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed, or discharged by payment or otherwise.

History.—§47, ch. 4524, 1897; GS 2890; RGS 4720; CGL 6806.

674.50 Striking out indorsements by holder.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

History.—§48, ch. 4524, 1897; GS 2981; RGS 4721; CGL 6807.

674.51 Transferring instrument. — Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course the negotiation takes effect as of the time when the indorsement is actually made.

History.—§49, ch. 4524, 1897; GS 2982; RGS 4722; CGL 6808.

674.52 Negotiating instrument back to prior party.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this law, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

History.—§50, ch. 4524, 1897; GS 2983; RGS 4723; CGL 6809.

674.53 Holder may sue in his own name.—The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

History.—§51, ch. 4524, 1897; GS 2984; RGS 4724; CGL 6810.

674.54 Who is holder in due course. — A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face;

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) That he took it in good faith and for value;

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

History.—§52, ch. 4524, 1897; GS 2985; RGS 4725; CGL 6811.

674.55 Who is not holder in due course.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue the holder is not deemed a holder in due course.

History.—§53, ch. 4524, 1897; GC 2986; RGS 4726; CGL 6812.

674.56 Effect of part payment before notice.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

History.—§54, ch. 4524, 1897; GSC 2987; RGS 4727; CGL 6813.

674.57 What constitutes defective title.—The title of a person who negotiates an instrument is defective within the meaning of this law when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

History.—§55, ch. 4524, 1897; GS 2988; RGS 4728; CGL 6814.

674.58 What constitutes notice of defect or

infirmity.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

History.—§56, ch. 4524, 1897; GS 2989; RGS 4729; CGL 6815.

674.59 Holder in due course may enforce payment.—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

History.—§57, ch. 4524, 1897; GS 2990; RGS 4730; CGL 6816.

674.60 Instrument held by other than holder in due course.—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

History.—§58, ch. 4524, 1897; GS 2991; RGS 4731; CGL 6817.

674.61 Holder presumed to be holder in due course.—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

History.—§59, ch. 4524, 1897; GS 2992; RGS 4732; CGL 6818.

674.62 Admission of maker.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

History.—§60, ch. 4524, 1897; GS 2993; RGS 4736; CGL 6822.

674.63 Admission of drawer.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

History.—§61, ch. 4524, 1897; GS 2994; RGS 4737; CGL 6823.

674.64 Admission of acceptor.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to indorse.

History.—§62, ch. 4524, 1897; GS 2995; RGS 4738; CGL 6824.

674.65 Who deemed an indorser.—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

History.—§63, ch. 4524, 1897; GS 2996; RGS 4739; CGL 6825.

674.66 Placing signature in blank.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of payee, he is liable to all parties subsequent to the payee.

History.—§64, ch. 4524, 1897; GS 2997; RGS 4740; CGL 6826.

674.67 Negotiating an instrument.—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

History.—§65, ch. 4524, 1897; GS 2998; RGS 4741; CGL 6827.

674.68 Indorsing without qualification. — Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivisions one, two and three of the next preceding section; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor and that if it be dishonored and the necessary pro-

ceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

History.—§66, ch. 4524, 1897; GS 2999; RGS 4742; CGL 6828.

674.69 Liabilities of indorser. — Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

History.—§67, ch. 4524, 1897; GS 3000; RGS 4743; CGL 6829.

674.70 Order of liability of indorsers.—As respects one another, indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally.

History.—§68, ch. 4524, 18997; GS 3001; RGS 4744; CGL 6830.

674.71 Negotiation without indorsement by broker or agent.—Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed for a person negotiating an instrument by delivery or by a qualified indorsement, unless he discloses the name of his principal and the fact that he is acting only as agent.

History.—§69, ch. 4524, 1897; GS 3002; RGS 4745; CGL 6831.

674.72 When presentment for payment necessary.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it thereat maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

History.—§70, ch. 4524, 1897; GS 3003; RGS 4746; CGL 6832.

674.73 Time of presentment for payment.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

History.—§71, ch. 4524, 1897; GS 3004; RGS 4747; CGL 6833.

674.74 "Due diligence" by bank.—When a check, draft, note or other negotiable instrument is deposited in a bank for credit, or for collection, it shall be considered due diligence on the part of the bank in the collection of any check, draft, note or other negotiable instrument so deposited, to forward en route the same without delay in the usual commercial way in use according to the regular course of business of banks, and the maker, endorser, guarantor or surety of any check, draft, note or other negotiable instrument, so deposited, shall be liable to the bank until actual final payment is received. When a bank receives for collection any check, draft, note or other negotiable instrument and forwards the same for collection, as herein provided, it shall only be liable after actual final payment is received by it, except in case of want of due diligence on its part as aforesaid.

History.—§1, ch. 5951, 1909; RGS 4748; CGL 6834.

674.75 What is sufficient presentment. — Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf.

(2) At a reasonable hour on a business day.

(3) At a proper place as herein defined.

(4) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

History.—§72, ch. 4524, 1897; GS 3005; RGS 4749; CGL 6835.
cf.—Ch. 683. Legal holidays.

674.76 Place of presentment.—Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) Where the instrument is drawn upon or payable at a bank which is a member of a clearing house in the same city where said bank is located and the instrument is presented by another bank at such clearing house;

(5) Where the instrument is drawn upon or payable at a bank and the instrument is presented by another bank at a place specified or requested by the drawee or payor bank;

(6) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

History.—§73, ch. 4524, 1897; GS 3006; RGS 4750; CGL 6836; §1, ch. 63-109.
cf.—§46.05, Venue of action upon promissory notes, etc.

674.77 Exhibit and delivery of instrument. —The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

History.—§74, ch. 4524, 1897; GS 3007; RGS 4751; CGL 6837.

674.78 Instruments payable at a bank.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank closed on that day is sufficient.

History.—§75, ch. 4524, 1897; GS 3008; RGS 4752; CGL 6838.

674.79 Presentment to representative of deceased.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if with the exercise of reasonable diligence, he can be found.

History.—§76, ch. 4524, 1897; GS 3009; RGS 4753; CGL 6839.

674.80 Presentment where persons liable are partners.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

History.—§77, ch. 4524, 1897; GS 3010; RGS 4754; CGL 6840.

674.81 Where several persons, not partners, are liable.—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

History.—§78, ch. 4524, 1897; GS 3011; RGS 4755; CGL 6841.

674.82 When presentment not required. — Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

History.—§§79, 80, ch. 4524, 1897; GS 3012; RGS 4756; CGL 6842.

674.83 Delay in making presentment.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

History.—§81, ch. 4524, 1897; GS 3013; RGS 4757; CGL 6843.

674.84 When presentment dispensed with.—Presentment for payment is dispensed with:

(1) Where after the exercise of reasonable diligence presentment as required by this law cannot be made.

(2) Where the drawee is a fictitious person.

(3) By waiver of presentment, express or implied.

History.—§82, ch. 4524, 1897; GS 3014; RGS 4758; CGL 6844.

CHAPTER 675

NEGOTIABLE INSTRUMENTS; DISHONOR AND DISCHARGE

675.01 Dishonored for nonpayment. — The instrument is dishonored by nonpayment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

History.—§83, ch. 4524, 1897; GS 3015; RGS 4759; CGL 6845.

675.02 Recourse to parties secondarily liable.—Subject to the provisions of this law, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

History.—§84, ch. 4524, 1897; GS 3016; RGS 4760; CGL 6846.

675.03 Time instrument is payable.—Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock noon on Saturday when that entire day is not a holiday.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

History.—§§85, 86, ch. 4524, 1897; GS 3017; RGS 4761; CGL 6847.

675.04 Instruments payable at bank. — Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

History.—§87, ch. 4524, 1897; GS 3018; RGS 4762; CGL 6848.

675.05 When payment is made in due course. —Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

History.—§88, ch. 4524, 1897; GS 3019; RGS 4763; CGL 6849.

675.06 Notice of dishonor must be given.— Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

History.—§89, ch. 4524, 1897; GS 3020; RGS 4764; CGL 6850.

675.07 How notice given.—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

History.—§90, ch. 4524, 1897; GS 3021; RGS 4765; CGL 6851.

675.08 May be given by agent.—Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

History.—§91, ch. 4524, 1897; GS 3022; RGS 4766; CGL 6852.

675.09 Notice given on behalf of holder.— Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

History.—§92, ch. 4524, 1897; GS 3023; RGS 4767; CGL 6853.

675.10 Notice given on behalf of party entitled to give notice.—Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all

parties subsequent to the party to whom notice is given.

History.—§93, ch. 4524, 1897; GS 3024; RGS 4768; CGL 6854.

675.11 Dishonored in hands of agent.—Where an instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

History.—§94, ch. 4524, 1897; GS 3025; RGS 4769; CGL 6855.

675.12 Written notice.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

History.—§95, ch. 4524, 1897; GS 3026; RGS 4770; CGL 6856.

675.13 May be oral and to either party or his agent.—The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

Notice of dishonor may be given either to the party himself or to his agent in that behalf.

History.—§§96, 97, ch. 4524, 1897; GS 3027; RGS 4771; CGL 6857.

675.14 Notice where party is dead.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

History.—§98, ch. 4524, 1897; GS 3028; RGS 4772; CGL 6858.

675.15 Notice to partners and joint parties who are not partners.—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

History.—§99, 100, ch. 4524, 1897; GS 3029; RGS 4773; CGL 6859.

675.16 Notice to bankrupts.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice must be given either to the party himself or to his trustee or assignee.

History.—§101, ch. 4524, 1897; GS 3030; RGS 4774; CGL 6860.

675.17 Time notice may be given.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as herein provided, must be given within the times fixed by this law.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

(2) If given at his residence, it must be given before the usual hours of rest on the day following.

(3) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

History.—§§102, 103, ch. 4524, 1897; GS 3031; RGS 4775; CGL 6861.
cf.—Ch. 683, Legal holidays.

675.18 Time of notice where persons residing in different places.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

(2) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

History.—§104, ch. 4524, 1897; GS 3032; RGS 4776; CGL 6862.

675.19 Giving notice by mail.—Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the post office department.

History.—§§105, 106, ch. 4524, 1897; GS 3033; RGS 4777; CGL 6863.

675.20 Giving notice to antecedent parties.—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

History.—§107, ch. 4524, 1897; GS 3034; RGS 4778; CGL 6864.

675.21 Where notice of dishonor to be sent.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the post office nearest to his place of residence or to the post office where he is accustomed to receive his letters; or

(2) If he lives in one place and has his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this law, it will be sufficient, though not sent in accordance with the requirements of this section.

History.—§108, ch. 4524, 1897; GS 3035; RGS 4779; CGL 6865.

675.22 Notice of dishonor waived.—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver, not only of a formal protest but also of presentment and notice of dishonor.

History.—§§109-111, ch. 4524, 1897; GS 3036; RGS 4780; CGL 6866.

675.23 When dispensed with.—Notice of dishonor is dispensed with when after the exercise of reasonable diligence it cannot be given to or does not reach the parties sought to be charged.

History.—§112, ch. 4524, 1897; GS 3037; RGS 4781; CGL 6867.

675.24 When delay excused.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

History.—§113, ch. 4524, 1897; GS 3038; RGS 4782; CGL 6868.

675.25 Where notice of dishonor not required.—(1) Notice of dishonor is not required to be given to the drawer in either of the following cases:

(a) Where the drawer and drawee are the same person.

(b) Where the drawee is a fictitious person or a person not having capacity to contract.

(c) Where the drawer is the person to whom the instrument is presented for payment.

(d) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

(e) Where the drawer has countermanded payment.

(2) Notice of dishonor is not required to be given to an indorser in either of the following cases:

(a) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument.

(b) Where the indorser is the person to whom the instrument is presented for payment.

(c) Where the instrument was made or accepted for his accommodation.

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

History.—§§114-116, ch. 4524, 1897; GS 3039; RGS 4783; CGL 6869.

675.26 Omission to give notice of dishonor by nonacceptance.—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

History.—§117, ch. 4524, 1897; GS 3040; RGS 4784; CGL 6870; §1, ch. 19162, 1939.

675.27 Protesting for nonacceptance. — Where any negotiable instrument has been dishonored, it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

History.—§118, ch. 4524, 1897; GS 3041; RGS 4785; CGL 6871.

675.28 How negotiable instruments discharged.—(1) A negotiable instrument is discharged:

(a) By payment in due course by or on behalf of the principal debtor.

(b) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

(c) By the intentional cancellation thereof by the holder.

(d) By any other act which will discharge a simple contract for the payment of money.

(e) When the principal debtor becomes the holder of the instrument at or after maturity, in his own right.

(2) A person secondarily liable on the instrument is discharged:

(a) By any act which discharges the instrument.

(b) By the intentional cancellation of his signature by the holder.

(c) By the discharge of a prior party.

(d) By a valid tender of payment made by a prior party.

(e) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

(f) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

History.—§§119, 120, ch. 4524, 1897; GS 3042; RGS 4786; CGL 6872; §2, ch. 19162, 1939.

675.29 When not discharged.—When the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

(1) Where it is payable to the order of a

third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

History.—§121, ch. 4524, 1897; GS 3045; RGS 4787; CGL 6873.

675.30 **Renouncing rights.**—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor, made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

History.—§122, ch. 4524, 1897; GS 3044; RGS 4788; CGL 6874.

675.31 **Unintentional cancellation.**—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument, or any signature thereon, appears to have been canceled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

History.—§123, ch. 4524, 1897; GS 3045; RGS 4789; CGL 6875.

675.32 **Materially altering instrument.** — Where a negotiable instrument is materially altered without the assent of all parties liable thereto, it is voided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Any alteration which changes:

(1) The date:

(2) The sum payable, either for principal or interest;

(3) The time or place of payment;

(4) The number or the relations of the parties;

(5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

History.—§§124, 125, ch. 4524, 1897; GS 3046; RGS 4790; CGL 6876.

CHAPTER 676

NEGOTIABLE INSTRUMENTS; BILLS, NOTES, CHECKS, ACCEPTANCE, PROTEST, PAYMENT

676.01 Bills of exchange. — A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

History.—§§126-128, ch. 4524, 1897; GS 3047; RGS 4791; CGL 6877.

676.02 Inland and foreign bills of exchange.—

(1) An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the United States. Any other bill is a foreign bill.

(2) For the purposes of subsection (1), "United States" means the states, territories, dependencies and possessions of the United States, the district of Columbia, and Puerto Rico.

(3) Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

History.—§129, ch. 4524, 1897; GS 3048; RGS 4792; CGL 6878; §1, ch. 61-73.

676.03 Drawer and drawee same person.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

History.—§130, ch. 4524, 1897; GS 3049; RGS 4793; CGL 6879.

676.04 Referee.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need—that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

History.—§131, ch. 4524, 1897; GS 3050; RGS 4794; CGL 6880.

676.05 Acceptance of bill.—The acceptance of a bill is the signification by the drawee or his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it is shown, and who, on the faith thereof, receives the bill for value.

History.—§§132-134, ch. 4524, 1897; GS 3051; RGS 4795; CGL 6881.

676.06 Unconditional promise is acceptance.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

History.—§135, ch. 4524, 1897; GS 3052; RGS 4796; CGL 6882.

676.07 Time allowed to accept.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

History.—§136, ch. 4524, 1897; GS 3053; RGS 4797; CGL 6883.

676.08 Drawee destroying bill.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or nonaccepted, to the holder, he will be deemed to have accepted the same.

History.—§137, ch. 4524, 1897; GS 3054; RGS 4798; CGL 6884.

676.09 When bill may be accepted.—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

History.—§138, ch. 4524, 1897; GS 3055; RGS 4799; CGL 6885.

676.10 General and qualified acceptance.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

An acceptance is qualified which is:

(1) Conditional—that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

(2) Partial—that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

(3) Local—that is to say, an acceptance to pay only at a particular place.

(4) Qualified as to time.

(5) The acceptance of some one or more of the drawees, but not of all.

History.—§§139-141, ch. 4524, 1897; GS 3056; RGS 4800; CGL 6886.

676.11 Effect of qualified acceptance.—The holder may refuse to take a qualified acceptance; and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

History.—§142, ch. 4524, 1897; GS 3057; RGS 4801; CGL 6887.

676.12 When presentment for acceptance must be made.—Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

History.—§143, ch. 4524, 1897; GS 3058; RGS 4802; CGL 6888.

676.13 When drawer and indorser discharged.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

History.—§144, ch. 4524, 1897; GS 3059; RGS 4803; CGL 6889.

676.14 When and to whom presentment must be made.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, pre-

sentment may be made to him or his trustee or assignee.

History.—§145, ch. 4524, 1897; GS 3060; RGS 4804; CGL 6890.

676.15 When bill may be presented for acceptance.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of §§674.75 and 675.03. When Saturday is not otherwise a holiday presentment for acceptance may be made before 12 o'clock noon that day.

History.—§146, ch. 4524, 1897; GS 3061; RGS 4805; CGL 6891.
cf.—Ch. 683, Legal holidays.

676.16 When presentment excused.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill.

(2) Where after the exercise of reasonable diligence presentment cannot be made.

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

History.—§§147, 148, ch. 4524, 1897; GS 3062; RGS 4806; CGL 6892.

676.17 When bill dishonored for nonacceptance.—A bill is dishonored by nonacceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this law is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance, or he loses the right of recourse against the drawer and indorsers.

History.—§§149, 150, ch. 4524, 1897; GS 6063; RGS 4807; CGL 6893.

676.18 Recourse to drawers and indorsers of dishonored bill.—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.

History.—§151, ch. 4524, 1897; GS 6064; RGS 4808; CGL 6894.

676.19 Protesting dishonored bill. — Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

History.—§152, ch. 4524, 1897; GS 6065; RGS 4809; CGL 6895.

676.20 Manner of protest.—(1) The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

(a) The time and place of presentment.

(b) The fact that presentment was made, and the manner thereof.

(c) The cause or reason for protesting the bill.

(d) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(2) Protest may be made by:

(a) A notary public; or

(b) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

History.—§§153, 154, ch. 4524, 1897; GS 6066; RGS 4810; CGL 6896.

676.21 When and where protested.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

History.—§§155, 156, ch. 4524, 1897; GS 6067; RGS 4811; CGL 6897.

676.22 Protest for nonpayment. — A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

History.—§157, ch. 4524, 1897; GS 6068; RGS 4812; CGL 6898.

676.23 Acceptor adjudged bankrupt. — Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

History.—§158, ch. 4524, 1897; GS 6069; RGS 4813; CGL 6899.

676.24 When protest dispensed with.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the

cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

History.—§159, ch. 4524, 1897; GS 6070; RGS 4814; CGL 6900.

676.25 Lost or destroyed bill.—Where a bill is lost or destroyed, or is wrongfully detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

History.—§160, ch. 4524, 1897; GS 6071; RGS 4815; CGL 6901.

676.26 Damages.—Damages on foreign protested bills of exchange shall be at the rate of five per cent.

History.—Feb. 17, 1833; RS 2317; GS 3072; RGS 4816; CGL 6902.

676.27 Acceptance for honor.—Where a bill of exchange has been protested for dishonor by nonacceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

History.—§161, ch. 4524, 1897; GS 3073; RGS 4817; CGL 6903.

676.28 Must be in writing.—An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

History.—§162, ch. 4524, 1897; GS 3074; RGS 4818; CGL 6904.

676.29 Presumed for honor of drawer.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

History.—§163, ch. 4524, 1897; GS 3075; RGS 4819; CGL 6905.

676.30 Acceptor for honor liable to holder.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill, according to the terms of its acceptance, provided it shall not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

History.—§§164, 165, ch. 4524, 1897; GS 3076; RGS 4820; CGL 6906.

676.31 Date of maturity.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance, and not from the date of the acceptance for honor.

History.—§166, ch. 4524, 1897; GS 3077; RGS 4821; CGL 6907.

676.32 Acceptance of dishonored bill.—Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

History.—§167, ch. 4524, 1897; GS 3078; RGS 4822; CGL 6908.

676.33 Presentment for payment.—Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in §675.18.

History.—§168, ch. 4524, 1897; GS 3079; RGS 4823; CGL 6909.

676.34 When delay in presentment excused.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

History.—§169, ch. 4524, 1897; GS 3080; RGS 4824; CGL 6910.

676.35 Acceptor for honor.—When the bill is dishonored by the acceptor for honor, it must be protested for nonpayment by him.

History.—§170, ch. 4524, 1897; GS 3081; RGS 4825; CGL 6911.

676.36 Payment for honor supra protest.—Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

History.—§§171, 172, ch. 4524, 1897; GS 3082; RGS 4826; CGL 6912.

676.37 Notarial act of honor.—The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

History.—§173, ch. 4524, 1897; GS 3083; RGS 4827; CGL 6913.

676.38 Preference between parties offering to pay.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

History.—§174, ch. 4524, 1897; GS 3084; RGS 4828; CGL 6914.

676.39 When parties are discharged.—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged; but the payer for honor is subrogated for and succeeds to both

the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

History.—§175, ch. 4524, 1897; GS 3085; RGS 4829; CGL 6915.

676.40 When holder refuses to receive payment.—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor is entitled to receive both the bill itself and the protest.

History.—§§176, 177, ch. 4524, 1897; GS 3086; RGS 4830; CGL 6916.

676.41 Whole of parts constitute one bill.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

History.—§178, ch. 4524, 1897; GS 3087; RGS 4831; CGL 6917.

676.42 True owner of bill.—Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

History.—§179, ch. 4524, 1897; GS 3088; RGS 4832; CGL 6918.

676.43 Liability of indorsers.—Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if such parts were separate bills.

History.—§180, ch. 4524, 1897; GS 3089; RGS 4833; CGL 6919.

676.44 Acceptance.—The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

History.—§181, ch. 4524, 1897; GS 3090; RGS 4834; CGL 6920.

676.45 Liability of acceptor.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

History.—§182, ch. 4524, 1897; GS 3091; RGS 4835; CGL 6921.

676.46 When bill is discharged.—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

History.—§183, ch. 4524, 1897; GS 3092; RGS 4836; CGL 6922.

676.47 Negotiable promissory note.—A negotiable promissory note within the meaning of this law is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

History.—§184, ch. 4524, 1897; GS 3093; RGS 4837; CGL 6923.

676.48 Check.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this law applicable to a bill of exchange payable on demand apply to a check.

History.—§185, ch. 4524, 1897; GS 3094; RGS 4838; CGL 6924.

676.49 When check must be presented for payment.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

History.—§186, ch. 4524, 1897; GS 3095; RGS 4839; CGL 6925.

676.50 Certified check.—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

History.—§187, ch. 4524, 1897; GS 3096; RGS 4840; CGL 6926.

676.51 Holder of check.—Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

History.—§188, ch. 4524, 1897; GS 3097; RGS 4841; CGL 6927.

676.52 When bank becomes liable.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank; and the bank is not liable to the holder, unless and until it accepts or certifies the check.

History.—§189, ch. 4524, 1897; GS 3098; RGS 4842; CGL 6928.

676.55 Checks and drafts; when deemed paid or accepted.—A check or draft received for deposit or collection by a solvent payor or drawee bank shall not be deemed paid or accepted until the amount is charged to the account of the maker or drawer unless, though not so charged, such item is retained by the drawee or payor bank longer than the end of the business day following its receipt; provided, however, that even though charged to the account of the maker or drawer, the drawee or payor bank shall have the same right to return the item without payment by the end of the business day following the business day of its receipt as the bank would have had to return the item had the item not been so charged, and any item so returned shall be deemed dishonored and unpaid notwithstanding markings or notations thereon to the contrary, and the books of the bank may thereafter be corrected in due course; but this provision shall not of itself create or impose any obligation or requirement on any such bank to reverse any such charge at the instance of the maker, drawer, or any other person or party.

History.—§1, ch. 22609, 1945; §1, ch. 63-323.

CHAPTER 678

WAREHOUSEMEN AND WAREHOUSE RECEIPTS

678.01 Persons who may issue receipts.— Warehouse receipts may be issued by any warehouseman.

History.—§1, ch. 7403, 1917; RGS 4883; CGL 6970.

678.02 Form of receipts; essential terms.— (1) Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored.

(b) The date of the issue of the receipt.

(c) The consecutive number of the receipt.

(d) A statement where the goods received will be delivered to the bearer, to a specified person, or a specified person or his order.

(e) The rate of storage charges.

(f) A description of the goods or of the packages containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the

warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(2) A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

History.—§2, ch. 7403, 1917; RGS 4884; CGL 6971.

678.03 Form of receipts; what terms may be inserted.—A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(1) Be contrary to the provisions of this chapter.

(2) In any wise impair his obligation to exercise that degree of care in the safekeeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

History.—§3, ch. 7403, 1917; RGS 4885; CGL 6972.

678.04 Definition of nonnegotiable receipts.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt.

History.—§4, ch. 7403, 1917; RGS 4886; CGL 6973.

678.05 Definition of negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void.

History.—§5, ch. 7403, 1917; RGS 4887; CGL 6974.

678.06 Duplicate receipts must be so marked.—When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do, to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

History.—§6, ch. 7403, 1917; RGS 4888; CGL 6975.

678.07 Failure to mark "not negotiable."—A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "nonnegotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

History.—§7, ch. 7403, 1917; RGS 4889; CGL 6976.

678.08 Obligation of warehouseman to deliver.—

(1) A warehouseman, in the absence of some lawful excuse provided by this chapter, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien.

(b) An offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

(2) In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

History.—§8, ch. 7403, 1917; RGS 4890; CGL 6977.

678.09 Justification of warehouseman in delivery.—

A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(1) The person lawfully entitled to the possession of the goods, or his agent.

(2) A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority from the person so entitled, either indorsed upon the receipt or written upon another paper, or

(3) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

History.—§9, ch. 7403, 1917; RGS 4891; CGL 6978.

678.10 Warehouseman's liability for misdelivery.—

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subsections (1) and (2) of §678.09, and though he delivered the goods as authorized by said subsections he shall be so liable, if prior to such delivery he had either—

(1) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(2) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

History.—§10, ch. 7403, 1917; RGS 4892; CGL 6979.

678.11 Negotiable receipts must be canceled when goods delivered.—Except as provided in §678.36, when a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

History.—§11, ch. 7403, 1917; RGS 4893; CGL 6980.

678.12 Negotiable receipts must be canceled or marked when part of goods delivered.—Except as provided in §678.36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt, and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

History.—§12, ch. 7403, 1917; RGS 4894; CGL 6981.

678.13 Altered receipts.—

(1) The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

(2) If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt as they were before alteration.

(3) Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

History.—§13, ch. 7403, 1917; RGS 4895; CGL 6982.

678.14 Lost or destroyed receipts.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction, and upon the giving of a bond with sufficient sureties, to be approved by the court, to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also, in its discretion, order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

History.—§14, ch. 7403, 1917; RGS 4896; CGL 6983.

678.15 Effect of duplicate receipts.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

History.—§15, ch. 7403, 1917; RGS 4897; CGL 6984.

678.16 Warehouseman cannot set up title in himself.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

History.—§16, ch. 7403, 1917; RGS 4898; CGL 6985.

678.17 Interpleader of adverse claimants.—If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

History.—§17, ch. 7403, 1917; RGS 4899; CGL 6986.

678.18 Warehouseman has reasonable time to determine validity of claims.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him, or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

History.—§18, ch. 7403, 1917; RGS 4900; CGL 6987.

678.19 Adverse title is no defense except as above provided.—Except as provided in §§678.09, 678.17, 678.18 and 678.36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouse-

man for failure to deliver the goods according to the terms of the receipt.

History.—§19, ch. 7403, 1917; RGS 4901; CGL 6988.

678.20 Liability for nonexistence or misdescription of goods.—A warehouseman shall be liable to the holder of a receipt, issued by him or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of warehouse receipts, for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

History.—§20, ch. 7403, 1917; RGS 4902; CGL 6989; am. §1, ch. 23967, 1947.

678.21 Liability for care of goods.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

History.—§21, ch. 7403, 1917; RGS 4903; CGL 6990.

678.22 Goods must be kept separate.—Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

History.—§22, ch. 7403, 1917; RGS 4904; CGL 6991.

678.23 Fungible goods may be commingled, if warehouseman authorized.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such proportion thereof as the amount deposited by him bears to the whole.

History.—§23, ch. 7403, 1917; RGS 4905; CGL 6992.

678.24 Liability of warehouseman to depositors of commingled goods.—The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

History.—§24, ch. 7403, 1917; RGS 4906; CGL 6993.

678.25 Attachment or levy upon goods for which a negotiable receipt has been issued.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

History.—§25, ch. 7403, 1917; RGS 4907; CGL 6994.

678.26 Creditors' remedies to reach negotiable receipts.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

History.—§26, ch. 7403, 1917; RGS 4908; CGL 6995.

678.27 What claims are included in the warehouseman's lien.—Subject to the provisions of §678.30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

History.—§27, ch. 7403, 1917; RGS 4909; CGL 6996.

678.28 Against what property the lien may be enforced.—Subject to the provisions of §678.30, a warehouseman's lien may be enforced—

(1) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(2) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit, to one who took the goods in good faith for value, would have been valid.

History.—§28, ch. 7403, 1917; RGS 4910; CGL 6997.

678.29 How the lien may be lost.—A warehouseman loses his lien upon goods—

(1) By surrendering possession thereof, or

(2) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this chapter.

History.—§29, ch. 7403, 1917; RGS 4911; CGL 6998.

678.30 Negotiable receipt must state charges for which lien is claimed.—If a negotiable receipt is issued for goods the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of §678.27, although the amount of the charges so enumerated is not stated in the receipt.

History.—§30, ch. 7403, 1917; RGS 4912; CGL 6999.

678.31 Warehousman need not deliver until lien is satisfied.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

History.—§31, ch. 7403, 1917; RGS 4913; CGL 7000.

678.32 Warehouseman's lien does not preclude other remedies.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

History.—§32, ch. 7403, 1917; RGS 4914; CGL 7001.

678.33 Satisfaction of lien by sale.—

A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

(1) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice, and the date or dates when it became due.

(2) A brief description of the goods against which the lien exists.

(3) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(4) A statement that unless the claim is paid within the time specified, the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the term of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this chapter, to the possession of the goods on payment of charges thereon. Otherwise the warehouse shall retain possession of the goods according to the terms of the original contract of deposit.

History.—§33, ch. 7403, 1917; RGS 4915; CGL 7002.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

678.34 Perishable and hazardous goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman, after a reasonable effort, is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in

the same way as the proceeds of sale made under the terms of §678.33.

History.—§34, ch. 7403, 1917; RGS 4916; CGL 7003.

678.35 Other methods of enforcing liens.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

History.—§35, ch. 7403, 1917; RGS 4917; CGL 7004.

678.36 Effect of sale.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to the holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

History.—§36, ch. 7403, 1917; RGS 4918; CGL 7005.

678.37 Sale of goods under specified circumstances.—Warehousemen and wharfingers may sell at public auction all goods, wares and merchandise or other articles commonly designated as "perishable," such as fruits, vegetables, meats and so forth, that shall have been received by them, remaining on hand unclaimed for the space of not less than ten days, and all goods, wares and merchandise, or other articles not perishable, that shall have been received by them and remaining on hand unclaimed for the space of not less than ninety days, but such sale shall, in no instance, take place without previous notice having been first given for at least two days after the expiration of said ten days, or more, in the case of perishable goods, wares and merchandise or other articles, or for at least thirty days after the expiration of ninety days, or more, in the case of goods, wares and merchandise, or other articles that are not perishable, said previous notice to be given in one newspaper published at the place of sale, designating the time and place of sale. If there is no newspaper published at the place of said sale, wherein the legal notice can be given, then public notice may be given by five written notices posted in conspicuous places near the place of sale. The owner or consignee of such goods, wares and merchandise or other articles, may at any time prior to such sale come forward and claim the same, and after paying all charges be entitled to restitution.

History.—§1, ch. 1943, 1873; RS 2339; GS 3127; RGS 4919; CGL 7006.

678.38 Disposition of surplus.—After all charges upon said goods and merchandise or other articles are paid (not exceeding the ordinary mercantile charges for such locality), should there remain a surplus, the same shall be placed in the county treasury subject to the claim of the owner of said goods, wares and merchandise, or other articles. After the lapse of one year from the time of placing said surplus in the county treasury, should no person come forward to claim and receive the same, it shall be applied by the county commissioners of the county for the relief of the poor of such county.

History.—§§2, 3, ch. 1943, 1873; RS 2340; GS 3128; RGS 4920; CGL 7007.

678.39 Negotiation of negotiable receipts by delivery.—

A negotiable receipt may be negotiated by delivery—

(1) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(2) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

(3) Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

History.—§37, ch. 7403, 1917; RGS 4921; CGL 7008.

678.40 Negotiation of negotiable receipts by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner.

History.—§38, ch. 7403, 1917; RGS 4922; CGL 7009.

678.41 Transfer of receipts.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

History.—§39, ch. 7403, 1917; RGS 4923; CGL 7010.

678.42 Who may negotiate a receipt.—A negotiable receipt may be negotiated—

(1) By the owner thereof, or

(2) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

History.—§40, ch. 7403, 1917; RGS 4924; CGL 7011.

678.43 Rights of person to whom a receipt has been negotiated.—A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(1) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(2) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

History.—§41, ch. 7403, 1917; RGS 4925; CGL 7012.

678.44 Rights of person to whom a receipt has been transferred.—A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferer, the title of the goods, subject to the terms of any agreement with the transferer.

If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferer or transferee of a nonnegotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferer, or by a notification to the warehouseman by the transferer or a subsequent purchaser from the transferer of a subsequent sale of the goods by the transferer.

History.—§42, ch. 7403, 1917; RGS 4926; CGL 7013; am. §7, ch. 22858, 1945.

678.45 Transfer of negotiable receipt without indorsement.—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferer is essential for negotiation, the transferee acquires a right against the transferer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

History.—§43, ch. 7403, 1917; RGS 4927; CGL 7014.

678.46 Warranties on sale of receipt.—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

(1) That the receipt is genuine.

(2) That he has a legal right to negotiate or transfer it.

(3) That he has knowledge of no fact which would impair the validity or worth of the receipt; and

(4) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

History.—§44, ch. 7403, 1917; RGS 4928; CGL 7015.

678.47 Indorser not a guarantor.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

History.—§45, ch. 7403, 1917; RGS 4929; CGL 7016.

678.48 No warranty implied from accepting payment of a debt.—A mortgagee, pledgee, or holder for security of a receipt, who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

History.—§46, ch. 7403, 1917; RGS 4930; CGL 7017.

678.49 When negotiation not impaired by fraud, mistake or duress.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

History.—§47, ch. 7403, 1917; RGS 4931; CGL 7018. Am. §24, ch. 57-1.

678.50 Subsequent negotiation.—Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

History.—§48, ch. 7403, 1917; RGS 4932; CGL 7019.

678.51 Negotiation defeats vendor's lien.—Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid

seller unless the receipt is first surrendered for cancellation.

History.—§49, ch. 7403, 1917; RGS 4933; CGL 7020.

678.52 When rules of common law still applicable.—In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

History.—§56, ch. 7403, 1917; RGS 4934; CGL 7021.

678.53 Interpretation shall give effect to purpose of uniformity.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—§57, ch. 7403, 1917; RGS 4935; CGL 7022.

678.54 Definition.—In this chapter, unless the context or subject matter otherwise requires:

"Action" includes counter claim, setoff, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

A thing is done "in good faith" within the meaning of this chapter when it is in fact done honestly, whether it be done negligently or not.

History.—§58, ch. 7403, 1917; RGS 4936; CGL 7023.
cf.—§1.01, General definitions.

678.55 Issuance and transfer of warehouse receipts for goods not in warehouse.—No warehouseman, or any officer, agent, or servant of a warehouseman, shall issue, or aid in the issuance of a warehouse receipt, and no person shall sell, assign, transfer, or pledge any warehouse receipt, except recognized lending agencies, unless he personally knows of his own knowledge that the goods for which such receipt is issued have been actually received and stored in such warehouse, and are under the actual control of such warehouseman at the time of the issuance of such receipt, or at the time such warehouse receipt is sold, assigned, transferred, or pledged. Any person violating the provisions of this section shall be deemed guilty of a crime and upon conviction, shall be punished for each such offense by imprisonment in the state prison not exceeding ten years or by a fine not exceeding five thousand dollars.

History.—§50, ch. 7403, 1917; RGS 5673; CGL 7883.
Am. §1, ch. 28237, 1953.
cf.—§775.06, Alternative punishment.

678.551 Issuance and transfer of receipt by custodian of field warehouse; penalty.—It shall be unlawful for the custodian of a field warehouse to issue a custodian's certificate or receipt, and it shall be unlawful for a processor, owner of goods, or any other person to procure the issuance of such custodian's certificate or receipt, unless the goods for which such certificate is issued, are actually in existance and have been delivered to such custodian, and are in his physical possession and under his control. Any person violating the provisions of this section shall be deemed guilty of a crime and upon conviction, shall be punished for each such offense by imprisonment in the state prison for a period not exceeding ten years, or by a fine not exceeding five thousand dollars.

History.—Comp. §2, ch. 28237, 1953.

678.56 Issue of receipt containing false statement.—A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars.

History.—§51, ch. 7403, 1917; RGS 5674; CGL 7884.
cf.—§775.06, Alternative punishment.

678.57 Issue of duplicate receipt not so marked.—A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt, after proceedings as provided for in §678.14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or a fine not exceeding five thousand dollars.

History.—§52, ch. 7403, 1917; RGS 5675; CGL 7885.
cf.—§775.06, Alternative punishment.

678.58 Issue for warehouseman's goods of receipts which do not state that fact.—Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants, who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars.

History.—§53, ch. 7403, 1917; RGS 5676; CGL 7886.
cf.—§775.06, Alternative punishment.

678.59 Delivery of goods without obtaining negotiable receipt.—A warehouseman, or any officer, agent or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in §§678.14 and 678.36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars.

History.—§54, ch. 7403, 1917; RGS 5677; CGL 7887.
cf.—§775.06, Alternative punishment.

678.60 Negotiation of receipt for mortgaged goods.—Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value and with intent to deceive, and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars.

History.—§55, ch. 7403, 1917; RGS 5678; CGL 7888.
cf.—§775.06, Alternative punishment.

CHAPTER 683

LEGAL HOLIDAYS

683.01 Legal holidays designated.—

(1) The legal holidays are: the first day of the week, commonly called Sunday; the first day of January, New year's day; January 19, birthday of Robert E. Lee; February 22, Washington's birthday; April 26, Confederate memorial day; May 30, Memorial day for veterans of all wars; June 3, birthday of Jefferson Davis; July 4, Independence day; first Monday in September, Labor day; general election day; the day set apart each year by congress or the president of the United States, or, in the absence of the designation of a day by either congress or the president, the day set apart each year by the governor of Florida, Thanksgiving day; December 25, Christmas day; Good Friday; October 12, Columbus day and Farmers' day; November 11, Veterans' day; and in cities or towns where carnival associations are organized for the purpose of celebrating the same, the day in each year known as Shrove Tuesday, shall for all purposes whatsoever as regards the presenting for payment or acceptance and of the protesting and giving notice of dishonor of negotiable instruments, be treated and considered as public holidays.

(2) Whenever any legal holiday shall fall upon a Sunday, the Monday next following shall be deemed a public holiday for all and any of the purposes aforesaid.

History.—RS 2315, 2316; §1, ch. 4198, 1893; §1, ch. 4487, 1895; §1, ch. 4488, 1895; §1, ch. 5275, 1903; §1, ch. 5392, 1905; GS 3102; §1, ch. 6872, 1915; RGS 4846; CGL 6932; §1, ch. 16067, 1933; §1, ch. 20250, 1941; §1, ch. 20525, 1941; am. §1, ch. 22610, 1945; §1, ch. 29926, 1955.

683.02 Meaning of term "legal holidays" as used in contracts.—Wherever in contracts to be performed in the state, reference is made to "legal holidays," legal holidays shall be understood to be the following:

The first day of the week, Sunday; January 1, New year's day; January 19, birthday of Robert E. Lee; February 22, Washington's birthday; April 26, Memorial day; June 3, birthday of Jefferson Davis; July 4, Independence day; first Monday in September, Labor day; general election days; Thanksgiving day; December 25, Christmas day; Good Friday; October 12, Columbus day and Farmers day; November 11, Veterans' day; and also the day known as Shrove Tuesday, commonly known as Mardi Gras in counties where there may be a carnival association.

History.—§1, ch. 5392, 1905; ch. 6872, 1915; RGS 4847; CGL 6933; §2, ch. 16067, 1933; §2, ch. 29926, 1955.

683.03 Veterans' day.—The eleventh day of November each year shall be known as Veterans' day, and shall be a legal holiday. All public schools, city, county, and state offices may remain closed on Veterans' day, and the governor of this state shall each year issue a proclamation calling upon the citizens of this state to set aside all business and to rejoice with the free peoples of the earth.

History.—§1, ch. 7754, 1918; RGS 4848; §1, ch. 9326, 1923; CGL 6934; §3, ch. 29926, 1955.

683.04 Arbor day.—The third Friday in January of each year be and is hereby designated as Arbor Day in the state.

History.—§1, ch. 22538, 1945.

683.05 Pan-American day.—

(1) The governor shall proclaim the fourteenth day of April of each year to be "Pan-American Day," which day shall be suitably observed in the public schools of the state as a day honoring the republics of Latin America, and which day shall otherwise be suitably observed by such public exercises in the state capitol and elsewhere as the governor may designate. If the fourteenth day of April shall fall on a day which is not a school day, "Pan-American Day" shall be observed in the schools on the school day next preceding or on such preceding day as may be designated by local school authorities.

(2) The purpose of the law is to establish a day on which the mutually, friendly relationship between the state and the Pan-American Republics will be recognized and perpetuated.

History.—§§1, 2, ch. 22975, 1945.

683.06 Pascua Florida day.—

(1) April 2 of each year is hereby designated as Florida state day. The day to be known as "Pascua Florida Day."

(2) The governor may annually issue a proclamation designating April 2 as said state day and designating the week of March 27 to April 2 as "Pascua Florida" week at the suggestion of Mary A. Harrell, and calling upon public schools and citizens of Florida to observe the same as a patriotic occasion. Said day will be observed on April 2 unless the day fall on Saturday or Sunday, in which event the governor may declare the preceding Friday or following Monday as state day.

History.—Comp. § § 1, 2, ch. 28063, 1953.

683.07 Memorial day, state legal holiday.—

(1) The governor shall proclaim May 30 of each year to be Memorial day which day shall be suitably observed by the schools of the state as a day honoring the American soldiers of all wars who have given their last full measure of devotion to their country.

(2) The governor shall issue a proclamation each year on May 30 calling upon the peo-

ple of Florida to set aside all business for the proper observance of this day.

History.—Comp. §§1, 2, ch. 29682, 1955.

683.08 Gasparilla day, legal holiday in Hillsborough county.—The day known and designated as Gasparilla day in Hillsborough county shall be a legal holiday within said county, and all city, county, and state offices, and banking institutions may remain closed on Gasparilla day.

History.—§1, ch. 63-419.

CHAPTER 685

COLLATERAL SECURITIES

685.01 Collaterals attached to bills of lading, etc.—Whenever any goods, wares or merchandise shall be shipped into or out of this state, or between points within the limits of the state, and the bill of lading or other evidence of shipment thereof shall be attached to, or transmitted with, any commercial paper, for the price or purchase money of such goods, or any part thereof, the collector or holder of such commercial paper shall not, under any circumstances, except by express contract in writing, be held to be the warrantor of the quality or quantity or title of the goods, wares or merchandise represented by the bill of lading, or other evidence of shipment.

History.—§1, ch. 4760, 1899; GS 8100; RGS 4844; CGL 6930.

685.02 Sale of collateral securities.—In all cases in which any stock in a corporation, contract, obligations, security or evidence of indebtedness, shall be pledged or deposited as security for the payment of any indebtedness, the person or corporation to whom the same may be pledged, hypothecated or transferred, and their assigns, may sell the same in such manner and on such terms as may be agreed upon in writing by the parties at the time of making the pledge, or thereafter, and such sale shall vest in the purchaser or purchasers the title in and to said pledges, collaterals or securities; provided ten days' notice of said sale be given to the pledgor or his legal representative by personal delivery or by registered mail addressed to the pledgor at the address given by him to the pledgee for that purpose, such period of notice to begin to run from the date of such personal delivery or from the date of posting if such notice is given by registered mail; and provided further that whenever such notice has been waived by the written agreement of the pledgor incorporated in said pledge, or in a separate written instrument executed at the time of or at any time after the making of such pledge, any stocks, bonds or other securities which are listed upon the New York stock exchange, the New York curb exchange, the Boston stock exchange, the Chicago stock exchange, the Philadelphia stock exchange, the Pittsburgh stock excharge, or the San Francisco stock exchange, may be sold by the pledgee without notice at a price not less than the lowest market price of such securities on the date of such sale.

History.—§1, ch. 4376, 1895; GS 8101; §1, ch. 5905, 1909; RGS 4845; CGL 6931; §1, ch. 19013, 1939; am. §1, ch. 23761, 1947.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

CHAPTER 687

INTEREST AND USURY

687.01 Rate of interest.—In all cases where interest shall accrue without a special contract for the rate thereof, the rate shall be six per cent per annum, but parties may contract for a lesser or greater rate by contract in writing.

History.—§1, ch. 1483, 1866;§§1, 2, ch. 1562, 1886; RS 2320; GS 3103; RGS 4849; CGL 6936; am. §1, ch. 22745, 1945.

cf.—§§55.03, 55.04 Judgments.

687.02 Usurious contracts defined.—All contracts, other than of a corporation, for the payment of interest upon loan, advance of money, or forbearance to enforce the collection of any debt, or upon any contract whatever at a higher rate of interest than ten per cent per annum, are hereby declared usurious; and any such contract whereby a corporation undertakes to pay an interest rate higher than fifteen per cent per annum is hereby declared usurious.

History.—§1, ch. 4022, 1891; GS 3104; §1, ch. 5960, 1909; RGS 4850; CGL 6937; §1, ch. 29705, 1955.

cf.—Ch. 516, Small Loan Business.
§665.161, Collection of fines, interest or premium on loans made by building and loan associations.

687.03 Unlawful rates of interest defined; proviso.—It shall be usury and unlawful for any person, or for any agent, officer or other representative of any person, to reserve, charge or take for any loan, or for any advance of money, or for forbearance to enforce the collection of any sum of money, except upon an obligation of a corporation, a rate of interest greater than ten per cent per annum, either directly or indirectly, by way of commission for advances, discounts, exchange, or by any contract, contrivance or device whatever, whereby the debtor is required or obligated to pay a sum of money greater than the actual principal sum received, together with interest at the rate of ten per cent; and such transactions with a corporation shall, whereby the corporation pays interest, be usury and unlawful if for a rate of interest greater than fifteen per cent per annum. The provisions of this section shall not apply to sales of bonds in excess of one hundred dollars and mortgages securing the same, or money loaned on bonds.

History.—§2, ch. 4022, 1891; GS 3105; §2, ch. 5960, 1909; RGS 4851; CGL 6938. §2, ch. 29705, 1955.

cf.—§1.01(3), "Person" defined.

687.031 Construction, §§687.02 and 687.03.—Sections 687.02 and 687.03 shall not be construed to repeal, modify or limit any or either of the special provisions of existing statutory law creating exceptions to the general law governing interest and usury (chapter 687) and specifying the interest rates and charges which may be made pursuant to such exceptions, including but not limited to those exceptions which relate to banks, Morris plan banks, discount consumer financing, small loan companies and domestic building and loan associations.

History.—Comp. §3, ch. 29705, 1955.

687.04 Penalty for usury; not to apply to transferee of negotiable paper unless usury appears on face.—Any person, or any agent, officer or other representative of any person, willfully violating the provisions of §687.03 shall forfeit the entire interest so charged, or contracted to be charged or reserved, and only the actual principal sum of such usurious contract can be enforced in any court in this state, either at law or in equity; and when said usurious interest is taken or reserved, or has been paid, then and in that event the person, who has taken or reserved, or has been paid, either directly or indirectly, such usurious interest, shall forfeit to the party from whom such usurious interest has been reserved, taken or exacted in any way, double the amount of interest so reserved, taken or exacted; provided, however, that this shall not apply to a bona fide endorsee or transferee of negotiable paper purchased before maturity, unless the usurious character should appear upon its face, or that the said endorsee or transferee shall have had actual notice of the same before the purchase of such paper, but in such event double the amount of such usurious interest may be recovered after payment, by action against the party originally exacting the same, in any court of competent jurisdiction in this state, together with an attorney's fee, as provided in §687.06.

History.—§3, ch. 4022, 1891; GS 3106; §3, ch. 5960, 1909; RGS 4852; CGL 6939.

687.05 Provisions for payment of attorney's fees.—No provision for the payment of attorney's fees, or charge for exchange or similar charge shall render such instrument subject

to the terms of any statute of this state, limiting the amount of interest which shall be charged on such instrument.

History.—§2, ch. 4374, 1895; GS 3107; RGS 4853; CGL 6940.

687.06 Attorney's fee in enforcing nonusurious contracts; proviso; insurance premiums; attorney's fee provided in note.—This chapter shall not be so construed as to prevent provision for the payment of such attorney's fees as the court may determine in cases brought before the court to be reasonable and just for legal services rendered in enforcing nonusurious contracts, either at law or in equity; provided, that no attorney's fees shall be allowed in any court of the justice of the peace for a sum to exceed five dollars; provided further, that this chapter shall not be construed so as to prohibit mortgagees from contracting for or collecting premiums for insurance actually issued on the property mortgaged, with the usual loss payable or mortgage clause attached thereto; provided further, that it shall not be necessary for the court to adjudge an attorney's fee, provided in any note or other instrument of writing, to be reasonable and just, when such fee does not exceed ten per cent of the principal sum named in said note, or other instrument in writing.

History.—§4, ch. 5960, 1909; §1, ch. 6870, 1915; RGS 4854; CGL 6941.

687.07 Forfeiture and penalty in case of excessive interest or charges.—Any person, or the agent, officer or other representative of any person, lending money in this state who shall willfully and knowingly charge or accept any sum of money greater than the sum of money loaned, and an additional sum of money equal to twenty-five per cent per annum upon the principal sum loaned, by any contract, contrivance or device whatever, directly or indirectly, by way of commissions, discount, exchange, interest, pretended sale of any article, assignment of salary or wages, inspection fees or other fees or otherwise, or for forbearing to enforce the collection of such moneys or otherwise, shall forfeit the entire sum, both the principal and interest, to the party charged such usurious interest, and shall be deemed guilty of a misdemeanor, and on conviction, be fined not more than one hundred dollars, or be imprisoned in the county jail not more than ninety days.

History.—§5, ch. 5960, 1909; RGS 4855, 5689; CGL 6942, 7903.

cf.—§775.06 Alternative punishment.

687.08 Persons lending money to give borrower receipt for payments; contents of receipt; penalty for violation.—Every person, or the agent, officer, or other representative of any person, lending money in this state upon security shall, whenever the borrower of such money makes payment of any money, either principal or interest, immediately upon such payment being made, give to said borrower, a receipt, dated of the date of such payment, which receipt shall state the amount paid and for what such payments is made. If such payment is for interest on the sum borrowed, the receipt shall so state. If the sum so paid is to be applied to the payment of the principal sum borrowed, the receipt shall so state. All such receipts shall be duly and properly signed by the person, or the agent, officer or other representative of the person, to whom such money is paid. Whoever refuses, upon demand, to give a receipt complying with the requirements of this section shall forfeit the entire interest upon said principal sum to the borrower.

History.—§6, ch. 5960, 1909; RGS 4856; CGL 6943.

cf.—§1.01(3) "Person" defined.

687.09 Persons accepting chattel mortgage as security for loans under one hundred dollars to cause amount as principal, etc., to be inserted.—Every mortgagee accepting a mortgage on personal property as security for the repayment of a loan of money less than one hundred dollars shall cause to be stated in such mortgage, separately and distinctly, the several amounts secured as principal, interest and fees, and any mortgagee willfully violating the provisions of this section shall forfeit all interest and fees secured by such mortgage, and be entitled to recover only the principal sum.

History.—§7, ch. 5960, 1909; RGS 4857; CGL 6944.

687.10 Not applicable to chartered banks, trust companies, building and loan associations, savings and loan associations, or insurance companies.—The provisions of §§687.08 and 687.09 shall not apply to chartered banks, state or national, trust companies, building and loan associations or to savings and loan associations, whether chartered under state or federal statutes, or insurance companies.

History.—§8, ch. 5960, 1909; RGS 4858; CGL 6945; §1, ch. 59-50.

TITLE XXXIX

REAL AND PERSONAL PROPERTY

CHAPTER 689

CONVEYANCES OF LAND AND DECLARATIONS OF TRUST

689.01 How real estate conveyed.—No estate or interest of freehold, or for a term of more than one year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than one year, or by his agent thereunto lawfully authorized, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than one year, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by his agent thereunto lawfully authorized, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may convey in accordance with the provisions of this section or in accordance with the provisions of §§692.01 and 692.02.

History.—§1, Nov. 15, 1828; RS 1950; GS 2448; RGS 3787; CGL 5660; §4, ch. 20954, 1941.

cf.—§194.01 et seq., Tax sale certificates and tax deeds.
§692.01 et seq., Conveyances by corporations to be sealed.
§693.01 et seq., Conveyances of married women's interest in real estate.
§695.01, Recordation of conveyances.
§695.03, Acknowledgment and proof.
§695.031, Affidavits and acknowledgments by members of armed service.
§725.01 Fraudulent sales.
§727.01 et seq., General assignment.

689.02 Form of warranty deed prescribed.—Warranty deeds of conveyance to land may be in the following form, viz.:

"This indenture, made this _____ day of _____ A. D. ____, between _____, of the county of _____ in the State of _____, party of the first part, and _____, of the county of _____, in the State of _____, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of _____ dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, his heirs and assigns forever, the following described land, to-wit: _____

_____

_____

_____

_____

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever."

History.—§1, ch. 4038, 1891; GS 2449; RGS 3788; CGL 5661.

689.03 Effect of such deed.—A conveyance executed substantially in the foregoing form shall be held to be a warranty deed with full common law covenants, and shall just as effectually bind the grantor, and his heirs, as if said covenants were specifically set out therein. And this form of conveyance when signed by a married woman shall be held to convey whatever inter-

est in the property conveyed which she may possess.

History.—§2, ch. 4038, 1891; GS 2450; RGS 3789; CGL 5662; §5, ch. 20954, 1941.

689.04 How executed.—Such deeds shall be executed and acknowledged as is now or may hereafter be provided by the law regulating conveyances of realty by deed.

History.—§3, ch. 4038, 1891; GS 2451; RGS 3790; CGL 5663.

cf.—§693.03, Married women's acknowledgments.
§695.03, Acknowledgment.
§695.031, Acknowledgments by members of armed forces.

689.05 How declarations of trust proved.—All declarations and creations of trust and confidence of or in any messuages, lands, tenements or hereditaments shall be manifested and proved by some writing, signed by the party authorized by law to declare or create such trust or confidence, or by his last will and testament, or else they shall be utterly void and of none effect; provided, always, that where any conveyance shall be made of any lands, messuages or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by the act and operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this section had not been made, anything herein contained to the contrary in anywise notwithstanding.

History.—§2, Nov. 15, 1828; RS 1951; GS 2452; RGS 3791; CGL 5664.

689.06 How trust estate conveyed.—All grants, conveyances or assignments of trust or confidence of or in any lands, tenements or hereditaments, or of any estate or interest therein, shall be by deed signed, sealed and delivered, in the presence of two subscribing witnesses, by the party granting, conveying or assigning, or by his attorney or agent thereunto lawfully authorized, or by last will and testament duly made and executed, or else the same shall be void and of none effect.

History.—§3, Nov. 15, 1828; RS 1952; GS 2453; RGS 3792; CGL 5665.

689.07 "Trustee" or "as trustee" added to name of grantee, transferee, assignee or mortgagee transfers interest or creates lien as if additional word or words not used.—

(1) Every deed or conveyance of real estate heretofore or hereafter made or executed, in which the words "trustee" or "as trustee" are added to the name of the grantee, and in which no beneficiaries are named nor the nature and purposes of the trust, if any, are set forth, shall grant and is hereby declared to have granted a fee simple estate with full power and authority in and to the grantee in such deed to sell, convey and grant and encumber both the legal and beneficial interest in the real estate conveyed, unless a contary intention shall appear in the deed or conveyance; provided, that there shall not appear of record among the public records of the county in which the real property is situate at the time of recording of such deed or conveyance, a declaration of trust by the grantee so described declaring the purposes of such trust, if any, declaring that the real estate is held other than for the benefit of the grantee.

(2) Every instrument heretofore or hereafter made or executed transferring or assigning an interest in real property in which the words "trustee" or "as trustee" are added to the name of the transferee or assignee, and in which no beneficiaries are named nor the nature and purposes of the trust, if any, are set forth, shall transfer and assign and is hereby declared to have transferred and assigned the interest of the transferor or assignor to the transferee or assignee with full power and authority to transfer, assign and encumber such interest, unless a contrary intention shall appear in the instrument; provided that there shall not appear of record among the public records of the county in which the real property is situate at the time of the recording of such instrument, a declaration of trust by the assignee or transferee so described declaring the purposes of such trust, if any, or declaring that the interest in real property is held other than for the benefit of the transferee or assignee.

(3) Every mortgage of any interest in real estate or assignment thereof heretofore or hereafter made or executed in which the words "trustee" or "as trustee" are added to the name of the mortgagee or assignee and in which no beneficiaries are named nor the nature and purposes of the trust, if any, are set forth, shall vest and is hereby declared to have vested full rights of ownership to such mortgage or assignment and the lien created thereby with full power in such mortgagee or assignee to assign, hypothecate, release, satisfy or foreclose such mortgage unless a contrary intention shall appear in the mortgage or assignment; provided that there shall not appear of record among the public records of the county in which the property constituting security is situate at the time of recording of such mortgage or assignment, a declaration of trust by such mortgagee or assignee declaring the purposes of such trust, if any, or declaring that such mortgage is held other than for the benefit of the mortgagee or assignee.

(4) Nothing herein contained shall prevent any person from causing any declaration of trust to be recorded before or after the recordation of the instrument evidencing title or ownership of property in a trustee; nor shall this section be construed as preventing any beneficiary under an unrecorded declaration of trust from enforcing the terms thereof against the trustee; provided, however, that any grantee, transferee, assignee or mortgagee, or person obtaining a release or satisfaction of mortgage from such trustee for value prior to the placing of record of such declaration of trust among the public records of the county in which such real property is situate, shall take such inter-

est or hold such previously mortgaged property free and clear of the claims of the beneficiaries of such declaration of trust and of anyone claiming by, through or under such beneficiaries, and such person need not see to the application of funds furnished to obtain such transfer of interest in property or assignment or release or satisfaction of mortgage thereon.

(5) In all cases in which tangible personal property is or has been sold, transferred or mortgaged in a transaction in conjunction with and subordinate to the transfer or mortgage of real property, and the personal property so transferred or mortgaged is physically located on and used in conjunction with such real property, the prior provisions of this section are applicable to the transfer or mortgage of such personal property, and, where the prior provisions of this section in fact apply to a transfer or mortgage of personal property, then any transferee or mortgagee of such tangible personal property shall take such personal property free and clear of the claims of the beneficiaries under such declaration of trust (if any), and of the claims of anyone claiming by, through or under such beneficiaries, and the release or satisfaction of a mortgage on such personal property by such trustee shall release or satisfy such personal property from the claims of the beneficiaries under such declaration of trust (if any) and from the claims of anyone claiming by, through or under such beneficiaries.

History.—§1, ch. 6925, 1915; §10, sub-§11, ch. 7838, 1919; RGS 3793; CGL 5666; (1), (2)-(5) N. by §1, ch. 59-251.

Note.—§2, ch. 59-251 provides that subsections (2), (3), (4) and (5) do not apply to pending litigation.

689.071 Land trusts transferring interests in real estate; ownership vests in trustee.—

(1) Every conveyance, deed, mortgage, lease assignment or other instrument heretofore or hereafter made, hereinafter referred to as the recorded instrument, transferring any interests in real property in this state including but not limited to leasehold and mortgagee interests to any person, corporation, bank, or trust company, qualified to act as a fiduciary in this state, in which said recorded instrument said person, corporation, bank, or trust company is designated trustee, or, as trustee, without therein naming the beneficiaries of such trust, whether or not reference is made in said recorded instrument to any separate collateral unrecorded declarations or agreements, shall be effective to vest and is hereby declared to have vested in such trustee full rights of ownership over said real property or interest therein, with full power and authority as granted and provided in said recorded instrument to deal in and with said property or interest therein or any part thereof: provided, said recorded instrument shall confer on the trustee the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in said recorded instrument.

(2) Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions, releases, or otherwise in any way dealing with the trustee with respect to said real properties held in trust under said recorded instrument, as hereinabove provided for, shall not be obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of said recorded instrument, or under any unrecorded separate declarations or agreements collateral to said recorded instrument whether or not such declarations or agreements are referred to therein, nor to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under said recorded instrument, nor to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such trustee in connection with any interest so acquired from such trustee, nor to inquire into any of the provisions of any said unrecorded declarations or agreements.

(3) All persons dealing with the trustee under said recorded instrument as hereinabove provided shall take any interest transferred by the trustee thereunder within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in said recorded instrument or not, and of anyone claiming by, through or under said beneficiaries including and without limiting the foregoing to any claim arising out of any dower or courtesy interest of the spouse of any beneficiary thereof; provided, nothing herein contained shall prevent a beneficiary of any said unrecorded collateral declarations or agreements from enforcing the terms thereof against the trustee.

(4) In all cases where said recorded instrument, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries thereunder to be personal property only, such provision shall be controlling for all purposes where such determination shall become an issue under the laws or in the courts of this state.

(5) This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

(6) This act shall not apply to any deed, mortgage or other instrument to which §689.07, applies.

History.—§§1-6, ch. 63-468.

689.08 Fines and common recoveries.— Conveyance by fine or by common recovery shall never be used in this state.

History.—§2, Feb. 4, 1835; RS 1953; GS 2454; RGS 3794; CGL 5667.

689.09 Deeds under statute of uses.—By deed of bargain and sale, or by deed of lease and release, or of covenant to stand seized to the use of any other person, or by deed operating by way of covenant to stand seized to the use of another person, of or in any lands or tenements in this state, the possession of the bargainor, releasor or covenantor shall be

deemed and adjudged to be transferred to the bargainee, releasee or person entitled to the use as perfectly as if such bargainee, releasee or person entitled to the use had been enfeoffed by livery of seizin of the land conveyed by such deed of bargain and sale, release or covenant to stand seized; provided, that livery of seizin can be lawfully made of the lands or tenements at the time of the execution of the said deeds or any of them.

History.—§12, Nov. 15, 1828; RS 1954; GS 2455; RGS 3795; CGL 5668.

689.10 Words of limitation and the words "fee simple" dispensed with.—Where any real estate has heretofore been conveyed or granted or shall hereafter be conveyed or granted without there being used in the said deed or conveyance or grant any words of limitation, such as heirs or successors, or similar words, such conveyance or grant, whether heretofore made or hereafter made, shall be construed to vest the fee simple title or other whole estate or interest which the grantor had power to dispose of at that time in the real estate conveyed or granted, unless a contrary intention shall appear in the deed, conveyance or grant.

History.—§1, ch. 5145, 1903; GS 2456; RGS 3796; §1, ch. 10170, 1925; CGL 5669.

689.11 Conveyances between husband and wife direct.—

(1) A conveyance of real estate, made by a husband direct to his wife, or by a wife direct to her husband, shall be effectual to convey the legal title to such wife, or husband, as the case may be, in all cases in which it would be effectual if the parties were not married, and the grantee need not join in the execution of such conveyances. An estate by the entirety may be created by the spouse holding fee simple title conveying to the other by a deed in which the purpose to create such estate is stated.

(2) All deeds heretofore made by a husband direct to his wife or by a wife direct to her husband are hereby validated and made as effectual to convey the title as they would have been were the parties not married;

(3) Provided, that nothing herein shall be construed as validating any deed made for the purpose, or that operates to defraud any creditor or to avoid payment of any legal debt or claim; and

(4) Provided further, that this section shall not apply to any conveyance heretofore made, the validity of which shall be contested by suit commenced within one year of the effective date of this law.

History.—§1, ch. 5147, 1903; GS 2457; RGS 3797; CGL 5670; §6, ch. 20954, 1941; §1, ch. 23964, 1947.

689.12 How state lands conveyed for educational purposes.—The title to all lands granted to or held by the state for educational purposes shall be conveyed by deed executed by the members of the state board of education, with an impression of the seal of the department of agriculture of the state thereon, attested by the commissioner of agriculture, and no other witnesses to the execution thereof shall be required to entitle the same to record and to be received in evidence in all courts and judicial proceedings.

History.—§1, ch. 4999, 1901; GS 2458; RGS 3798; CGL 5671.

689.13 Rule against perpetuities not applicable to dispositions of property for private cemeteries, etc.—No disposition of property, or the income thereof, hereafter made for the maintenance or care of any public or private burying ground, churchyard, or other place for the burial of the dead, or any portion thereof, or grave therein, or monument or other erection in or about the same, shall fail by reason of such disposition having been made in perpetuity; but such disposition shall be held to be made for a charitable purpose or purposes.

History.—§1, ch. 14655, 1931; CGL 1936 Supp. 5671(1).

689.14 Entailed estates.—No property, real or personal, shall be entailed in this state. Any instrument purporting to create an estate tail, express or implied, shall be deemed to create an estate for life in the first taker with remainder per stirpes to the lineal descendants of the first taker in being at the time of his death. If the remainder fails for want of such remainderman, then it shall vest in any other remaindermen designated in such instrument, or, if there is no such designation, then it shall revert to the original donor or to his heirs.

History.—§20, Nov. 17, 1829; RS 1818; GS 2293; RGS 3616; CGL 5481; §2, ch. 20954, 1941; am. §1, ch. 23126, 1945.
cf.—§689.17, Rule in Shelley's Case abolished.

689.15 Estates by survivorship.—The doctrine of the right of survivorship in cases of real estate and personal property held by joint tenants shall not prevail in this state; that is to say, except in cases of estates by entirety, a devise, transfer or conveyance heretofore or hereafter made to two or more shall create a tenancy in common, unless the instrument creating the estate shall expressly provide for the right of survivorship; and in cases of estates by entirety, the tenants, upon divorce, shall become tenants in common.

History.—§20, Nov. 17, 1829; RS 1819; GS 2294; RGS 3617; CGL 5482; §3, ch. 20954, 1941.

689.17 Rule in Shelley's case abolished.—The rule in Shelley's case is hereby abolished. Any instrument purporting to create an estate for life in a person with remainder to his heirs, lawful heirs, heirs of his body or to his heirs described by words of similar import, shall be deemed to create an estate for life with remainder per stirpes to the life tenant's lineal descendants in being at the time said life estate commences, but said remainder shall be subject to open and to take in per stirpes other lineal descendants of the life tenant who come into being during the continuance of said life estate.

History.—§2, ch. 23126, 1945.
cf.—§689.14, Entailed estates.

689.18 Reverter or forfeiture provisions, limitations; exceptions.—

(1) It is hereby declared by the legislature of the state that reverter or forfeiture

provisions of unlimited duration in the conveyance of real estate or any interest therein in the state constitute an unreasonable restraint on alienation and are contrary to the public policy of the state.

(2) All reverter or forfeiture provisions of unlimited duration embodied in any plat or deed executed more than twenty-one years prior to the passage of this law conveying real estate or any interest therein in the state, be and the same are hereby cancelled and annulled and declared to be of no further force and effect.

(3) All reverter provisions in any conveyance of real estate of any interest therein in the state, now in force, shall cease and terminate and become null, void and unenforceable twenty-one years from the date of the conveyance embodying such reverter or forfeiture provision.

(4) No reverter or forfeiture provision contained in any deed conveying real estate or any interest therein in the state, executed on and after July 1, 1951, shall be valid and binding more than twenty-one years from the date of such deed, and upon the expiration of such period of twenty-one years, the reverter or forfeiture provision shall become null, void and unenforceable.

(5) Any and all conveyances of real property in this state heretofore or hereafter made to any governmental, educational, literary, scientific, religious, public utility, public transportation, charitable or non-profit corporation or association are hereby excepted from the provisions of this section.

(6) Any holder of a possibility of reverter who claims title to any real property in the state, or any interest therein by reason of a reversion or forfeiture under the terms or provisions of any deed heretofore executed and delivered containing such reverter or forfeiture provision shall have one year from July 1, 1951, to institute suit in a court of competent jurisdiction in this state to establish or enforce such right, and failure to institute such action within said time shall be conclusive evidence of the abandonment of any such right, title or interest, and all right of forfeiture or reversion shall thereupon cease and determine, and become null, void and unenforceable.

(7) This section shall not vary, alter or terminate the restrictions placed upon said real estate, contained either in restrictive covenants or reverter or forfeiture clauses, and all said restrictions may be enforced and violations thereof restrained by a court of competent jurisdiction whenever any one of said restrictions or conditions shall be violated, or threat to violate the same be made by owners or parties in possession or control of said real estate, by an injunction which may be issued upon petition of any person adversely affected, mandatorily requiring the abatement of such violations or threatened violation and restraining any future violation of said restrictions and conditions.

History.—Comp. §§1-7, ch. 26927, 1951.

689.19 Variances of names in recorded instruments.—

(1) The word "instrument" as used in this section shall be construed to mean and include not only instruments voluntarily executed but also papers filed or issued in or in connection with actions and other proceedings in court and orders, judgments and decrees entered therein and transcripts of such judgments and proceedings in foreclosure of mortgage or other liens.

(2) Variances between any two instruments affecting the title to the same real property both of which shall have been spread on the record for the period of more than ten years among the public records of the county in which such real property is situated, with respect to the names of persons named in the respective instruments or in acknowledgments thereto arising from the full christian name appearing in one and only the initial letter of that christian name appearing in the other or from a full middle name appearing in one and only the initial letter of that middle name appearing in the other or from the initial letter of a middle name appearing in one and not appearing in the other, irrespective of which one of the two instruments in which any such variance occurred was prior in point of time to the other and irrespective of whether the instruments were executed or originated before or after August 5, 1953, shall not destroy or impair the presumption that the person so named in one of said instruments was the same person as the one so named in the other of said instruments which would exist if the names in the two instruments were identical; and, in spite of any such variance, the person so named in one of said instruments shall be presumed to be the same person as the one so named in the other until such time as the contrary appears and, until such time, either or both of such instruments or the record thereof or certified copy or copies of the record thereof shall be admissible in evidence in the same manner as though the names in the two instruments were identical.

History.—Comp. §1, ch. 28208, 1953.

689.20 Limitation on use of word "minerals."—Whenever the word "minerals" is hereafter used in any deed, lease or other contract in writing, said word or term shall not include any of the following: topsoil, muck, peat, humus, sand and common clay, unless expressly provided in said deed, lease or other contract in writing.

History.—§1, ch. 59-375.

CHAPTER 690

UNIFORM PRINCIPAL AND INCOME LAW

690.01 Short title.—This chapter may be cited as the "Uniform Principal and Income Law."

History.—§15, ch. 18392, 1937; CGL 1940 Supp. 5671(2).

690.02 Definition of terms.—"Principal" as used in this chapter means any realty or personalty which has been so set aside or limited by the owner thereof or a person thereto empowered that it and any substitutions for it are eventually to be conveyed, delivered or paid to a person, while the return therefrom or use thereof or any part of such return or use is in the meantime to be taken or received by or held for the same or another person.

"Income" as used in this chapter means the return derived from a principal.

"Tenant" as used in this chapter means the person to whom income is presently or currently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for the time prior to its distribution.

"Remainderman" as used in this chapter means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.

"Trustee" as used in this chapter includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee.

History.—§1, ch. 18392, 1937; CGL 1940 Supp. 5671(2-a); am. §7, ch. 22858, 1945.
cf.—§1.01, General definitions.

690.03 Application of chapter; powers of settlor.—This chapter shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen, in all cases where a principal has been established with or, unless otherwise stated hereinafter, without the interposition of a trust; except that in the establishment of the principal provision may be made touching all matters covered by this chapter, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this chapter.

History.—§2, ch. 18392, 1937; CGL 1940 Supp. 5671(3).

690.04 Income and principal; disposition.—(1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this chapter.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal unless otherwise expressly provided in this chapter. Any profit or loss resulting upon any change in form of principal shall enure to or fall upon principal.

(3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him if already in his possession; or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law.

History.—§3, ch. 18392, 1937; CGL 1940 Supp. 5671(4).

690.05 Apportionment of income. — Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which

such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal.

History.—§4, ch. 18392, 1937; CGL 1940 Supp. 5671(5). Am. §10, ch. 27991, 1953.

690.06 Corporate dividends and share rights.—(1) All dividends on shares of a corporation which form a part of the principal and are payable in the shares of the corporation, or in shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed principal. Subject to the provision of this section, all dividends payable otherwise than in the shares of the declaring corporation, and otherwise than in the shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee, provided however, that all distributions of capital of mutual investment trusts shall be deemed principal irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of the sale of such rights, shall likewise be deemed principal.

(3) Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(4) Where a corporation succeeds another by merger, consolidation or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued in substitution for those of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or in default thereof the date of declaration of the dividend.

History.—§5, ch. 18392, 1937; CGL 1940 Supp. 5671(6); (1), (2) a. by §1, ch. 61-72.

690.07 Premium and discount bonds.—Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized thereon shall fall upon or enure to the principal.

History.—§6, ch. 18392, 1937; CGL 1940 Supp. 5671(7).

690.08 Principal used in business.—(1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(2) Where such business consists of buying and selling property the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of the property at the end of such period, the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses, after the income from such business has been exhausted, shall fall upon principal.

History.—§7, ch. 18392, 1937; CGL 1940 Supp. 5671(8).

690.09 Principal comprising animals.—Where any part of the principal consists of animals employed in business, the provisions

of §690.08 shall apply; and in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income.

History.—§8, ch. 18392, 1937; CGL 1940 Supp. 5671(9).

690.10 Disposition of natural resources.—Where any part of the principal consists of lands from which may be taken timber, minerals, oils, gas or other natural resources and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell or dispose of such natural resources, and no provision is made for the disposition of the proceeds thereof, such proceeds shall be considered principal. Nothing in this section shall be construed to abrogate or extend any right which a tenant may otherwise have by law to exploit or develop such natural resources for his own benefit.

History.—§9, ch. 18392, 1937; CGL 1940 Supp. 5671(10).

690.11 Principal subject to depletion.—Where any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five per cent per annum of its inventory value or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal.

History.—§10, ch. 18392, 1937; CGL 1940 Supp. 5671(11).

690.12 Unproductive estate.—(1) Where any part of the principal in the possession of a trustee consists of realty or personalty which, for more than a year and until disposed of as hereinafter stated, has not produced an average net income of at least one per cent per annum of its inventory value or in default thereof its market value at the time the principal was established or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death his personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of five per cent per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the inventory value of the property or in default thereof its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one year after the trustee first received the property if then unproductive, otherwise one year after it became unproductive.

(4) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(5) In the case of successive tenants the delayed income shall be divided among them or their representatives according to the length of the periods for which each was entitled to income.

History.—§11, ch. 18392, 1937; CGL 1940 Supp. 5671(12).

690.13 Expenses; trust estates.—(1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees, compensation except commissions computed on principal, compensation of assistants, and court and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in connection with unproductive estate as defined in §690.12 shall be paid out of principal, subject to the provisions of subsection (2) of §690.12.

(2) All other expenses, including trustee's commissions computed upon principal, cost of investing or reinvesting principal, attorney's fees and other costs incurred in maintaining or defending any action to protect the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or

gain defined as principal under the terms of subsection (2) of §690.04 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) hereof which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant begins or ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection (2) hereof, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

History.—§12, ch. 18392, 1937; CGL 1940 Supp. 5671(13).

690.14 Expenses; nontrust estates.—(1) The provisions of §690.13, so far as applicable and excepting those dealing with costs of, or assessments for improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in subsection (1) the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, where such improvement is not reasonably expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the official mortality tables and no other evidence of duration or expectancy shall be considered.

History.—§13, ch. 18392, 1937; CGL 1940 Supp. 5671(14).

690.15 Uniformity of interpretation.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—§14, ch. 18392, 1937; CGL 1940 Supp. 5671(15).

CHAPTER 691

UNIFORM TRUST ADMINISTRATION LAW

691.01 Short title.—This chapter may be cited or referred to as the "Uniform Trust Administration Law."

History.—§5, ch. 18397, 1937; CGL 1940 Supp. 5671(16).

691.02 Definitions.—The term "trust" as used in this chapter includes any express trust, except trust deeds in the nature of a mortgage to secure the payment of money due on notes, bonds or other like obligations, and also excepting what are commonly known as voting trusts. "Trust instrument" includes any writing which legally creates, limits, declares, manifests or otherwise evidences the existence of a trust. "Trustee" includes corporations, individuals and any other legal entity authorized to act and that is acting as a trustee.

History.—§1, ch. 18397, 1937; CGL 1940 Supp. 5671(17).
cf.—§1.01, General definitions.

691.03 Powers of trustees.—In the absence of contrary or limiting provisions in the trust instrument or a subsequent order or decree of a court of competent jurisdiction, the trustee of an express trust is authorized:

(1) To exchange, re-exchange, subdivide, develop, improve, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth. Easements may be dedicated to public use without consideration if deemed by the trustee to be for the best interests of the trust.

(2) To grant options and to sell real property at public auction or at private sale for cash or upon credit, secured by lien upon the property sold or upon other property deemed to be adequate security. Where a trustee is authorized to sell, mortgage, lease, or otherwise dispose of land, such authority shall include the right to sell, mortgage, lease, or otherwise dispose of part thereof whether the division is horizontal, vertical, or made in any other way.

(3) To grant leases of real property of which the trustee is the fee owner, to begin at once or within three years from the date thereof, and to grant leases of all rights and privileges above or below the surface of such real property for any term of years not exceeding ninety-nine years, with or without option of purchase and with or without covenants as to erection of buildings, or as to renewals, thereof, though the term of the lease or renewals thereof or of such options extends beyond the term of the trust.

(4) To raze existing party walls or buildings and erect new party walls or buildings, alone or jointly with owners of adjacent property.

(5) To make ordinary or extraordinary repairs or alterations in buildings or other structures.

(6) To effect and keep in force, fire, rent, title, liability, casualty or other insurance of any nature, in any form and in any amount, for the proper protection of the property and the ownership thereof.

(7) To hold without liability, other than that involved in holding property legal for investment of trust funds, any and all property, whether or not permissible for investment of funds of that particular trust, received from or through the settlor of the trust, and any property lawfully coming into the hands of the trustees in lieu of or in substitution therefor. This provision shall not be construed to cover reinvestments of cash made by the trustee.

(8) To make division, allotment and distribution of principal to legatees, beneficiaries, distributees, and remaindermen, wholly or partly in property in kind.

(9) To compromise, contest, submit to arbitration or otherwise settle any and all claims in favor of or against the trust estate or the trustee.

(10) To vote at corporate meetings in person or by proxy.

(11) To pay calls, assessments, and any other sums chargeable or accruing against or on account of shares of stocks, bonds, debentures or other corporate securities in the hands of the trustee, where such payment may be legally enforceable against the trustee or any property of the trust, or the trustee deems payment expedient and for the best interests of the trust. To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts; and to assent to corporate sales, leases and encumbrances. In the exercise of the powers named in this subsection, the trustee shall be authorized, where he deems such course expedient, to deposit stocks, bonds or other securities with any protective or other similar committee, under such terms and conditions respecting the deposit thereof as the trustee may approve.

(12) To dispose of, call in or change and make new investments legal for such trust. An authority in general terms to invest in such securities or in such manner as the trustee may deem or think best or fit or to the advantage of the estate or in good safe securities, or in other terms conferring a discretion not expressly limited to property legal

for investment of trust funds, shall be construed as not so limited.

(13) To hold any corporate stock in his own name or in the name of a nominee, with or without disclosing any fiduciary relationship, but the trustee, however, shall be responsible for all acts and omissions of such nominee relating to such property.

(14) To create reserves out of income for depreciation, obsolescence, amortization or to insure prompt payment of taxes or assessments, general or special and other obligations, and to restore to income such reserves as may be unused.

(15) To make payments of income directly to minor beneficiaries over the age of eighteen years as though they were of full age; and when income is directed to be paid to minors, to apply and expend the same for their benefit either with or without the intervention of a guardian.

(16) To borrow money and to mortgage or otherwise encumber or pledge trust property or future income or principal as security for its repayment.

(17) To advance income to or for the use of the beneficiaries for which advance such trustee shall have a lien on the future benefits of such beneficiary.

(18) To advance money for the protection of the trust or its property and for all expenses, losses and liabilities incurred in or about the execution or protection of the trust or because of the holding or ownership of any property subject thereto. For all such advances, the trustee shall have a lien on the trust property and may reimburse himself with interest therefor out of the trust property.

History.—§2, ch. 18397, 1937; CGL 1940 Supp. 5671(18). Sub. § (6) am. §1, ch. 29876, 1955; (1) by §24, ch. 57-1.

691.04 Investments; mortgages, etc.; survivor and successor trustees; action of less than all; notice to trustee.—The following provisions shall apply to all trusts but shall not be exclusive of others imposed by law unless contrary thereto:

(1) A trustee in making investments of trust funds may rely upon information and opinions deemed by him reliable concerning facts necessary or proper to be taken into consideration in determining whether such investment conforms to the requirements of such trust.

(2) The trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment, which because of changing conditions has ceased to be an investment authorized by the trust instrument or the law applicable thereto.

(3) A trustee shall not be responsible for the genuineness or validity of execution of any instrument representing an investment made by him in good faith and without negligence.

(4) Where a trustee is authorized by the trust instrument or by law to pay or apply capital money subject to the trust for any purpose or in any manner, he shall have power to raise the money required by sale, conversion, mortgage, calling in, or by otherwise encumbering all or any part of the trust property for the time being in his possession.

(5) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(6) A successor trustee shall succeed to all of the powers, duties and discretionary authority of an original trustee.

(7) Where there are three or more trustees of a trust, the action of a majority shall be sufficient unless the trust instrument provides otherwise.

(8) A trustee shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any co-trustee, nor for any banker, broker or other person with whom any trust money or securities may be lawfully deposited, nor for any loss unless the same occurs through his own default or negligence. Whenever the trust instrument reserves unto the trustor, or vests in an advisory or investment committee or in any other person or persons, including a co-trustee, to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of investments or of any investment, the excluded trustee or co-trustee shall be liable, if at all, only as a ministerial agent and shall not be liable as trustee or co-trustee for any loss resulting from the making or retention of any investment pursuant to such authorized direction.

(9) A trustee, acting for more than one trust, shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust if he has obtained notice thereof merely by reason of his acting or having acted for another trust or in some other fiduciary capacity.

History.—§3, ch. 18397, 1937; CGL 1940 Supp. 5671(19); (8) a. by §1, ch. 61-74.

cf.—§518.01 et seq., Investment of fiduciary funds.

691.05 Provisions not deemed exclusive.—The powers, duties and liabilities stated in this chapter shall not be deemed to exclude other powers, duties and liabilities not inconsistent herewith.

History.—§4, ch. 18397, 1937; CGL 1940 Supp. 5671(20).

CHAPTER 692

CONVEYANCES BY CORPORATIONS

692.01 Conveyances by corporations.—Any corporation may convey lands by deed sealed with the common or corporate seal and signed in its name by its president or any vice-president or chief executive officer.

History.—RS 1955; GS 2459; §1, ch. 6183, 1911; RGS 3799; CGL 5672.

692.02 Validation of conveyances.—Conveyances by corporations of lands in this state, heretofore executed, which have been sealed with the common or corporate seal of such corporation and signed in its name by a vice-president or the chief executive officer thereof, shall be as valid and effective and shall bear the same presumptions as if signed in the name of such corporation by its president.

History.—§2, ch. 6183, 1911; RGS 3800; CGL 5673.
cf.—§608.48, Misnomer of corporation in deeds and instruments.

692.03 Validity of conveyances by certain foreign corporations recorded for seven years; limitation.—

(1) Whenever any conveyance, by the surviving directors or trustees of a foreign corporation, which has been dissolved for any cause, or which has had its permit to transact business in the state cancelled for failure to pay fees due the secretary of state, or which has failed to comply with the provisions of laws of this state, has been executed and delivered to any grantee or grantees, and has for a period of seven years or more been spread upon the records of a county wherein the land therein described is situated, the same shall be taken and held by all the courts of this state in the absence of any showing of fraud, adverse possession, or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the corporation on whose behalf said instrument has been executed to the land therein described.

(2) This section shall not apply to any conveyance, the validity of which shall be contested or shall have been contested by suit commenced heretofore or prior to July 1, 1954.

History.—Comp. § § 1, 2, ch. 28078, 1953.

692.04 Validation of deeds, etc., executed by corporations.—All deeds and other instruments relating to the conveyance, transfer, lease, assignment, release, subordination, encumbrance or satisfaction of any right, title, interest, claim, lien or demand in, to or upon real property, heretofore made or hereafter made, and in all other respects executed in due form, by a corporation, not dissolved or expired, but delinquent for six months or more as to payment of capital stock taxes at the time of the making or executing of such deed or other instrument, are, notwithstanding said delinquency, hereby validated.

History.—Comp. §1, ch. 57-264.

CHAPTER 693

CONVEYANCES OF MARRIED WOMEN'S INTEREST IN REAL ESTATE

693.01 Married women may convey.—Any married woman owning real property may sell, convey or mortgage it as she might do if she were not married, provided her husband join in such sale, conveyance or mortgage.

History.—§1, Feb. 4, 1835; RS 1956; GS 2460; RGS 3801; CGL 5674.

cf.—§708.01 et seq., Married women's property.
§708.04, Husband must join in transfer.
§708.07, Specific performance against married woman.

693.02 Release of dower.—Any married woman having a right of dower in any real property may relinquish it by joining in the conveyance or mortgage thereof, or by a separate instrument without the joinder of her husband, executed in like manner as other conveyances.

History.—§7, Nov. 15, 1828; §1, ch. 3011, 1877; RS 1957; GS 2461; RGS 3802; CGL 5675; §7, ch. 20954, 1941.

693.03 Married women's acknowledgments. (1) The acknowledgment by a married woman of deeds, conveyances, mortgages, relinquishments of dower, contracts for the sale of lands, powers of attorney and other instruments shall be necessary to entitle any such instrument to be recorded, but no private examination separate from the husband of such married woman shall be necessary for any purpose, and the acknowledgment of any such instrument by a married woman shall not constitute any part of the execution of any such instrument. Any form of certificate of acknowledgment which is sufficient in the case of an acknowledgment by a single person shall be sufficient in the case of an acknowledgment by a married woman.

(2) A certificate of acknowledgment in substantially the following form shall be sufficient as a certificate of acknowledgment, by any individual, of any of the instruments mentioned in §693.03, as hereby amended, to wit:

"STATE OF_____
COUNTY OF_____

"I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared_____, to me known to be the person described in and who executed the foregoing instrument and _____acknowledged before me that __he__ executed the same.

"WITNESS my hand and official seal in the county and state last aforesaid this_____day of_____, A. D. 19____.

_____
Notary Public,
My commission expires:_____"

(3) All acknowledgments by a married woman in accordance with §693.03, as hereby amended, made before May 13, 1943, are hereby validated, unless the same shall be questioned in a court of competent jurisdiction within one year after May 13, 1943.

History.—§1, Feb. 4, 1835; §1, ch. 3011, 1877; RS 1958; GS 2462; RGS 3803; CGL 5676; §§1-3, ch. 21746, 1943.
cf.—§694.04, Conveyances of married women defective in acknowledgment validated.
§708.07, Specific performance against married women regardless of acknowledgment.

693.04 Relinquishment of dower by minor.—A relinquishment of dower executed and acknowledged by a wife shall be valid notwithstanding her minority at the time of such execution and acknowledgment.

History.—RS 1959; GS 2463; RGS 3804; CGL 5677.

693.05 Execution of deeds by minor.—The execution of a deed by a married woman conveying real estate belonging to her, joined in said deed by her husband, and duly acknowledged, shall be valid notwithstanding her minority at the time of such execution and acknowledgment.

History.—§1, ch. 4954, 1901; GS 2464; RGS 3805; CGL 5678.

693.13 Married women's covenants.—A married woman who joins with her husband in executing a conveyance or mortgage of real property, or of any estate therein, may enter into any covenants as to the title or against encumbrances or of warranty, but such covenants shall have no other effect than to estop her and all persons claiming as her heirs, or by or through her, in the same manner as if she were not married; except that her covenants and warranties which have been or may be made with respect to her separate statutory property shall bind her to the amount of the purchase price received by her for such property, as if she were not married.

History.—RS 1966; GS 2472; RGS 3813; §1, ch. 12083, 1927; CGL 5686.

693.14 Powers of attorney by married woman.—Any deed, conveyance, mortgage, lease or other transfer of real property, or of any interest therein, being the separate property of a married woman, and every relinquishment of dower executed by virtue of a power of attorney from such married woman, shall have the same force and effect as if executed by her in person, if her husband join with her in the execution of such power of attorney, except that if such power of attorney is by a married woman to her husband, the husband need not join with her in the execution thereof, and if she execute and acknowledge the same in the form and manner prescribed for the execution and acknowledgment of the conveyance of her separate real estate or relinquishment of dower, as the case may be, provided such power of attorney be recorded as other powers of attorney are recorded.

History.—§1, ch. 2069, 1875; RS 1967; GS 2473; RGS 3814; CGL 5687; §1, ch. 57-99.

CHAPTER 694

CERTAIN CONVEYANCES MADE VALID

694.01 Those executed between 1817 and 1822.—All deeds of conveyance, bills of sale, mortgages or other transfers of property, either real or personal, within the limits of this state, made and received bona fide and upon good consideration at any time between the seventeenth day of January, 1817, and the first day of October, 1822, shall be as good and efficient in law and equity as if the same had been made and executed according to the formalities of the Spanish law as against the maker or makers thereof, and every person or persons claiming by, through or under him, her or them; provided, that nothing in this section contained shall be so construed as to affect the interest of persons not parties to any of the contracts aforesaid; and provided, also, that the said deeds of conveyance, bills of sale, mortgages and other transfers were recorded agreeably to the laws of the state within six months from the twenty-fourth day of June, 1823.

History.—June 21, 1823; RS 1968; GS 2474; RGS 3815; CGL 5688.

694.02 Married women's conveyances validated.—All sales, conveyances, transfers or mortgages made prior to February 14th, 1835, by married women of their real estate of inheritance where the husbands of such married women have joined therein shall be as valid as if the same had been conveyed by fine as at common law.

History.—§2, Feb. 4, 1835; RS 1969; GS 2475; RGS 3816; CGL 5689.

694.03 Married women's conveyances by attorney validated.—Any deed, release or conveyance executed and acknowledged before the passage of the act approved February 20th, 1875, entitled, "An act to authorize married women to convey their separate estate and release dower by attorney," yet in the manner therein provided, shall have the same force and effect and be as valid as if the same had been executed and acknowledged after the passage of the said act.

History.—§1970 RS 1892; GS 2476; RGS 3817; CGL 5690.

694.04 Conveyances of married women defective in acknowledgment validated. — All deeds of conveyance, bills of sale, mortgages or other instruments of transfer of real or personal property within the limits of this state made and received bona fide and for a valuable consideration, when a consideration is essential or required by law, free from fraud, executed by any married woman whether for the purpose of conveying her separate estate or of relinquishing her dower or right of dower at any time prior to the 1st day of July, 1941, and which may be defective only in such married woman's acknowledgment, or in the officer's certificate of acknowledgment, by a defective statement or the omission of a statement relating to acknowledging separate and apart from her husband, or by an omission of either or all of the words, "freely, voluntarily, compulsion, constraint, apprehension or fear" shall be deemed and held good and sufficient in law or equity to convey the right or interest of any such married woman attempted or intended to be conveyed under any such instrument as if the same had been made and executed according to statutory requirements, as against the maker or makers thereof and every person or persons claiming by, through or under such married woman;

Provided, there appears in such acknowledgment either one or more of said words or any words of similar import;

Provided, however, that this section shall not apply to any instrument heretofore made, the validity of which shall be contested by suit commenced within one year of the effective date of this law.

History.—Ch. 5412, 1905; §1, ch. 6217, 1911; RGS 3818; CGL 5691; §9, ch. 20954, 1941.

694.05 Certain other conveyances validated.—Any deed or conveyance heretofore executed and acknowledged in accordance with the provisions of the act approved February 24, 1873, entitled "An act providing for the acknowledgment of deeds and other conveyances of lands," shall be held good and valid.

History.—§2, ch. 2069, 1875; RS 1971; GS 2477; RGS 3819; CGL 5692.

694.06 Deeds executed by state board of education.—All deeds conveying lands granted to or held by the state for educational purposes heretofore executed by the members of the state board of education are hereby con-

firmed and declared to be valid and binding as conveyances of the title to such lands.

History.—§2, ch. 4999, 1901; GS 2478; RGS 3820; CGL 5693.

694.07 Certain grant of lands confirmed.—The state does hereby grant and confirm to purchasers, grantees and assigns of the several railroad companies which accepted the provisions of the act entitled, "An act to provide for and encourage a liberal system of internal improvements in this state," approved January 6, 1855, and their assigns, the lands and titles thereto which were granted to the state by the United States to aid in the construction of certain railroads in the state, by act of congress, approved May 17, 1856, which said land has been selected and located for the several railroad companies accepting the provisions of said act along the line of their respective roads, to the extent and proportion to which they severally became entitled under said act to provide for and encourage a liberal system of internal improvements in this state and the act of congress granting the same above referred to. And to confirm and convey the title to any lands which may hereafter be selected and approved to the state for the use of the several railroads as aforesaid, to the purchasers, grantees and assigns of said railroads.

History.—§1, ch. 4707, 1899; GS 2479; RGS 3821; CGL 5694.

694.08 Certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment, etc.—Whenever any power of attorney has been executed and delivered, or any conveyance has been executed and delivered to any grantee by the person owning the land therein described, or conveying the same in an official or representative capacity, and has, for a period of seven years or more been spread upon the records of the county wherein the land therein described has been or was at the time situated, and one or more subsequent conveyances of said land or parts thereof have been made, executed, delivered and recorded by parties claiming under such instrument or instruments, and such power of attorney or conveyance, or the public record thereof, shows upon its face a clear purpose and intent of the person executing the same to authorize the conveyance of said land or to convey the said land, the same shall be taken and held by all the courts of this state, in the absence of any showing of fraud, adverse possession, or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the person signing such instruments, or the person in behalf of whom the same was conveyed by a person in an official or representative capacity, to the land therein described as effectively as if there had been no defect in the acknowledgment or the certificate of acknowledgment, if acknowledged, or the relinquishment of dower, and as if there had been no lack of the word "as" preceding the title of the person conveying in an official or representative capacity, of any seal or seals, or of any witness or witnesses, and shall likewise be taken and held by all the courts of this state to have been duly recorded so as to be admissible in evidence under section 21, article XVI of the constitution;

Provided, however, that this section shall not apply to any conveyance the validity of which shall be contested or have been contested by suit commenced heretofore or within one year of the effective date of this law.

History.—§1, ch. 10169, 1925; CGL 5695; §15, ch. 20954, 1941; §1, ch. 25277, 1949; am. §1, ch. 26957, 1951.

cf.—§§95.23-95.26, Limitations where deed or will of record for ten years or more.

694.09 Certified copies admissible in evidence.—A copy of any of the instruments referred to in §694.08 duly certified, under the hand and seal of office of the officer in whose office the same may be recorded, to be a true and correct copy of the original, on file or of record in his office, shall in all cases and in all courts be admitted and received in evidence with the like effect and force as the original thereof might be.

History.—§2, ch. 10169, 1925; CGL 5696.

694.10 Certain titles not affected.—Nothing in §694.08 contained shall be taken or held to validate or perfect any title to any land as against one or more in adverse possession thereof or holding or claiming title under a different or adverse chain of title from either a common or different source.

History.—§3, ch. 10169, 1925; CGL 5697.

694.11 Certain deeds of county commissioners validated.—All deeds of conveyance of lands in this state heretofore made and executed prior to the year 1915 by the board of county commissioners of any county in this state of lands lying and being within such county, or that were made and executed by some one acting by or under the authority of any such board of county commissioners, of any such lands, be and the same are hereby ratified, validated and confirmed, and declared to convey such title, right or interest therein as such county may have had or held at the time of the conveyance, and as was expressed in any such deed of conveyance, and intended to be conveyed thereby. Provided, that nothing in this section shall validate any deed that was fraudulently obtained or that is now in litigation.

History.—§1, ch. 1362, 1929; CGL 1936 Supp. 5697(1).

694.12 Validation of instruments in which name of corporation is incorrectly set out.—All deeds of conveyance, bills of sale, mortgages, or other transfers of real or personal property within the limits of this state, heretofore made and received bona fide and upon good consideration by any corporation, or to any corporation, in which the name of said corporation shall be incorrectly set out in such deed, bill of sale, mortgage or other in-

strument by omitting a word from the corporate name, or by adding a word thereto, or by misspelling any part of the name of said corporation, and the identity of said corporation shall plainly appear from the contents of said instrument, or otherwise, such deed, bill of sale, mortgage or other instrument, shall be taken and deemed valid and effectual as though the name of said corporation were correctly set out in said deed, bill of sale, mortgage or other instrument, and the same shall, notwithstanding such irregularity or defect, be deemed and taken as properly executed.

History.—§1, ch. 14838, 1931; CGL 1936 Supp. 5673(1); am. §7, ch. 22858, 1945.

694.13 Ratifying, validating and confirming conveyances of real estate by county commissioners, etc.—

(1) All conveyances of real estate heretofore made by any of the several counties of the state or the county commissioners thereof, or any county school board, or any board of bond trustees or commissioners or supervisors of a drainage or other special improvement district, be and the same are hereby ratified, validated, and confirmed; provided, however, that this section shall not ratify, validate, or confirm any such conveyances which are the subject of litigation on June 16, 1947, or any tax deed, or title acquired by failure of the owner of lands to pay taxes or assessments.

(2) The several counties of the state by a majority of the county commissioners thereof or any county school board or any board of bond trustees or commissioners or supervisors of a drainage or other special improvement district or a majority of the members thereof, are hereby authorized to execute and deliver deed to real property in which any such county, county school board, board of bond trustees or commissioners or supervisors of a drainage or other special improvement district may have been interested.

History.—§§1-2, ch. 24307, 1947.
Am. §11, ch. 25035, 1949.

694.14 Validation of deeds executed by guardians appointed under uniform veterans' guardianship law.—

(1) Any deed of conveyance, executed bona fide and for a valuable consideration authorized and approved by order of the probate court, by any limited guardian, who was appointed as guardian under the uniform veterans' guardianship law of Florida (of A.D. 1929) and who acted under that law and the order of the probate court in the execution of the deed of conveyance, the said deed is hereby cured and it shall be deemed and taken as if properly executed notwithstanding the fact said deed was executed to property that said mentally incompetent veteran did not directly or otherwise acquire with money received by the veteran from the veterans bureau and notwithstanding the fact the conveyance is to property acquired by the mentally incompetent veteran before he or she became a veteran or was declared insane; and notwithstanding the fact that some of the information required by said uniform veterans' guardianship law was not set out in the petition for appointment of the guardian; and notwithstanding the fact the guardian did not publish the notice of application for an order of sale as required by §294.10; and notwithstanding any other defect in any part of the said guardianship proceeding that resulted in said court-authorized and court-approved proceeding that resulted in the execution of such guardians' deed as aforesaid.

(2) Any person, firm or corporation having an interest in land affected by this section shall have until July 1, 1958, to institute proceedings to enforce any such rights. After July 1, 1958, no such action shall be instituted.

History.—Comp §§1, 2, ch. 57-341.

CHAPTER 695

RECORD OF CONVEYANCES OF REAL ESTATE

695.01 Conveyances to be recorded.—No conveyance, transfer or mortgage of real property, or of any interest therein, nor any lease for a term of one year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.

Grantees by quit-claim, heretofore or hereafter made, shall be deemed and held to be bona fide purchasers without notice within the meaning of the recording acts;

Provided, however, that this section shall not apply to quit-claims heretofore made, the priority of which shall be contested by suit commenced within one year of the effective date of this law.

History.—§§4, 9, Nov. 15, 1828; RS 1972; GS 2480; RGS 3822; CGL 5698; §10, ch. 20954, 1941.

695.02 Blank or master form of instruments may be recorded.—Any person may have a blank or master form of mortgage or other instrument conveying, transferring or reserving an interest in, or creating a lien on, real or personal property, filed, indexed and recorded in the office of the clerk of the circuit court.

When any such blank or master form is filed with the clerk of the circuit court, he shall record and index the same in the manner provided by law for recording and indexing mortgages and such other instruments respectively, except that the name of the person whose name appears on such blank or master form shall be inserted in the indexes as grantor and also as grantee.

When any instrument conveying, transferring or reserving an interest in, or creating a lien on, real or personal property, incorporates by reference the provisions, terms, covenants, conditions, obligations, powers and other contents, or any of them, set forth in any such recorded blank or master form, such incorporation by reference, for all purposes, shall be equivalent to setting forth in extenso in such instrument that which is incorporated by reference.

The fee for filing, recording and indexing such blank or master form shall be five dollars; provided, that nothing herein shall be construed as otherwise affecting existing provisions relating to fees for filing, recording and indexing instruments mentioned in this section.

History.—§§1-4, ch. 17109, 1935; CGL 1936 Supp. 5698(1).
cf.—§1.01(3), "Person" defined.

695.03 Acknowledgment and proof; validation of certain acknowledgments.—In order to entitle any of the instruments named in §§695.01 and 695.02, or any other instrument concerning real property to such record, the execution thereof must be acknowledged by the party executing the same; or the execution thereof by the said party must be proved by a subscribing witness thereto before the officers and in the form and manner following:

(1) IN THIS STATE.—If such acknowledgment or proof be made within this state, it may be made before any judge, clerk or deputy clerk of any court of record, or a United States commissioner, or a notary public, or justice of the peace, or judge of a small claims court of this state, and the certificate of acknowledgment or proof shall be under the seal of the court or of the officer, as the case may be. All affidavits and acknowledgments heretofore made or taken in the manner set forth above are hereby validated.

(2) WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—If the acknowledgment or proof be made out of this state but within the United States, it may be made before a commissioner of deeds appointed by the governor of this state, or before a judge or clerk of any court of the United States or of any state, territory or district, having a seal, or before a notary public, justice of the peace, master in chancery, register or recorder of deeds, of

such state, territory or district having an official seal, and the certificate of acknowledgment or proof shall be under the seal of the court or officer, as the case may be.

(3) IN FOREIGN COUNTRIES.—If the acknowledgment or proof be made in any foreign country, it may be made before any commissioner of deeds appointed by the governor of this state to reside in such country, or before any notary public of such foreign country having an official seal, or before any ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner, charge d'affaires, consul general, consul, vice-consul, consular agent, or any other diplomatic or consular officer of the United States appointed to reside in such country, military or naval officer authorized by the laws or articles of war of the United States to perform the duties of notary public, and the certificate of acknowledgment or proof shall be under the seal of the officer.

All affidavits and acknowledgments heretofore made or taken in the manner set forth above are hereby validated.

History.—RS 1973; ch. 5404, 1905; GS 2481; ch. 7849, 1919; RGS 3823; CGL 5699; §7, ch. 22858, 1945; sub.§(1) am. §1, ch. 28225, 1953.

cf.—§117.07, Duty of notary public to state time of expiration of commission.

695.031 Affidavits and acknowledgments by members of armed forces and their spouses.—(1) In addition to the manner, form and proof of acknowledgment of instruments as now provided by law, any person serving in or with the armed forces of the United States, including the army, navy, marine corps, coast guard, or any component or any arm or service of any thereof, including any female auxiliary of any thereof, and any person whose duties require his or her presence with the armed forces of the United States, as herein designated, or otherwise designated by law or military or naval command, may acknowledge any instrument, wherever located, either within or without the state, or without the United States, before any commissioned officer in active service of the armed forces of the United States, as herein designated, or otherwise designated by law, or military or naval command, or order, with the rank of second lieutenant or higher in the army or marine corps, or of any component or any arm or service of either thereof, including any female auxiliary of any thereof, or ensign or higher in the navy or United States Coast Guard, or of any component or any arm or service of either thereof, including any female auxiliary of any thereof.

(2) The instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment or otherwise shall be required, and no seal shall be necessary, but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this_____day of_____, 19____, before me_____, the undersigned officer, personally appeared_____, known to me (or satisfactorily proven) to be serving in or with, or whose duties require his presence with the armed forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained, and the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the armed forces of the United States.

_____

Signature of commissioned officer.

_____

Rank of commissioned officer and command or branch of service to which officer is attached.

(3) Such acknowledgments by a married woman, who is a member of the armed forces of the United States, shall be sufficient in all respects to bar the dower, homestead rights or separate property rights of such married woman in any real estate described in the instrument thus acknowledged by her, as fully and completely as though such married woman had acknowledged such instrument as now required by other statutes.

(4) An acknowledgment by the spouse of a member of the armed forces of the United States shall be sufficient in all respects if it is acknowledged in the manner and form herein provided and shall have the same force and effect as though the instrument had been acknowledged as now required by other statutes and such acknowledgment by a married woman who is a spouse of a member of the armed forces of the United States shall be sufficient in all respects to bar the dower, homestead rights or separate property rights of such married woman in any real estate described in the instrument thus acknowledged by her as fully and completely as though such married woman had acknowledged such instrument as now required by other statutes.

(5) Any instrument or document acknowledged in the manner and form herein provided shall be entitled to be recorded and shall be recorded as in the case of other instruments or documents properly acknowledged.

(6) This section is to be liberally construed in favor of the validity of any such acknowledgments by any such member of the armed forces of the United States and any acknowledgments heretofore taken, containing words of similar import, are hereby confirmed and declared to be valid and binding. This section shall be construed as an enabling act and as an exception to existing laws rather than, inferentially or otherwise, as a repeal of the same or any part of the same.

History.—Transferred from §120.08 by §7, ch. 22858, 1945; (4) N and renumbering subsequent subsections by §1, ch. 57-40.

695.04 Requirements of certificate. — The certificate of the officer before whom the acknowledgment or proof shall be taken shall contain and set forth substantially the matter

required to be done or proved to make such acknowledgment or proof effectual.

History.—§1974 RS 1892; GS 2482; RGS 3824; CGL 5700.

695.05 Certain defects cured as to acknowledgments and witnesses.—All deeds, conveyances, bills of sale, mortgages or other transfers of real or personal property within the limits of this state, heretofore or hereafter made and received bona fide and upon good consideration by any corporation, and acknowledged for record before some officer, stockholder or other person interested in the corporation, grantee, or mortgagee as a notary public or other officer authorized to take acknowledgments of instruments for record within this state, shall be held, deemed and taken as valid as if acknowledged by the proper notary public or other officer authorized to take acknowledgments of instruments for record in this state not so interested in said corporation, grantee or mortgagee; and said instrument whenever recorded shall be deemed notice to all persons;

Provided, however, that this section shall not apply to any instrument heretofore made, the validity of which shall be contested by suit commenced within one year of the effective date of this law.

History.—§1, ch. 4953, 1901; GS 2483; RGS 3825; §1, ch. 11991, 1927; CGL 5701, 5702; §1, ch. 14706, 1931; CGL 1936 Supp. 5702(1).

695.06 Certain irregularities as to venue validated.—Whenever, in the acknowledgment to any deed or other instrument relating to real estate, heretofore recorded in this state, it shall appear, either from the recitals in such acknowledgment, or following the signature of the officer taking the same, or from the seal of such officer that the said acknowledgment was not taken, or may not have been taken, in the place as stated in the caption or venue thereof, said deed or other instrument shall, notwithstanding such irregularity or defect, be deemed and taken as properly acknowledged and of record.

History.—§1, ch. 11990, 1927; CGL 5703.

695.07 Use of scrawl as seal.—A scrawl or scroll, printed or written, affixed as a seal to any written instrument shall be as effectual as a seal.

History.—§1, ch. 4148, 1893; GS 2484; RGS 3826; CGL 5704.

695.08 Prior use of scrawl as seal.—All written instruments heretofore or hereafter made with a scrawl or scroll, printed or written, affixed as a seal are declared to be sealed instruments, and shall be construed and received in evidence as such in all the courts of this state.

History.—§2, ch. 4148, 1893; GS 2485; RGS 3827; CGL 5705.

695.09 Identity of grantor.—No acknowledgment or proof shall be taken by any officer within or without the United States unless he shall know, or have satisfactory proof, that the person making the acknowledgment is the individual described in and who executed such instrument, or that the person offering to make proof is one of the subscribing witnesses to such instrument.

History.—§1975 RS 1892; GS 2486; RGS 3828; CGL 5706.

695.10 Proof by others.—Where the grantors and witnesses of any instrument which may be recorded are dead, or cannot be had, the judge of the circuit court, or the county judge for the county wherein the real property is situated, may take the examination of any competent witness or witnesses, on oath, to prove the handwriting of the witness or witnesses, or where such proof cannot be had, then to prove the handwriting of the grantor or grantors, which shall be certified by the judge, and the instrument being thus proved may be recorded.

History.—§1976 RS 1892; GS 2487; RGS 3829; CGL 5707.

695.11 Instruments deemed to be recorded from time of filing.—All instruments relating to real and personal property which are authorized or required to be recorded shall be deemed to be recorded from time the same are filed with the officer whose duty it is to record the same and as so recorded and transcribed upon the record shall be notice to all persons.

History.—§1, ch. 3592, 1885; RS 1977; GS 2488; RGS 3830; CGL 5708; §1, ch. 17217, 1935.

695.12 Imperfect record.—Whenever any instrument authorized or required by law to be recorded in any county either has been or may be so imperfectly or erroneously recorded as to require a new record thereof, if the officer who so recorded the same be still in office, he shall, upon demand of the owner of such instrument, or person controlling the same, record it anew free of any charge or fee than the fee allowed by law for one perfect record thereof.

History.—§1, ch. 3896, 1889; RS 1978; GS 2489; RGS 3831; CGL 5709.

695.13 Want of certificate of record.—Whenever any instrument authorized or required by law to be recorded shall appear to be recorded in the appropriate record book in the proper office, whether the record shall be in the handwriting of the officer whose duty it was to record such instrument, or in the handwriting of any other person, the record shall be presumed to have been made by the officer whose duty it was to make it, and the absence of a certificate of such officer that such instrument was recorded by him shall in no wise affect the validity of the record.

History.—§1, ch. 3894, 1889; RS 1979; GS 2490; RGS 3832; CGL 5710.

695.14 Unsigned certificate of record.—Whenever any unsigned certificate on such record of the instruments mentioned in §695.13 shall contain the date of filing or of recording such instrument, it shall be prima facie evidence of the time of filing or of recording such instrument.

History.—§2, ch. 3894, 1889; RS 1980; GS 2491; RGS 3833; CGL 5711.

695.15 Recording conveyances lost by fire.—Whenever the record in the office of the clerk of the circuit court of any county in this state of any deed, conveyance, contract, mortgage, deed of trust, map or plat or other instrument in writing affecting real estate in such county has been heretofore destroyed by fire, any such instrument, or a copy thereof from such former record duly certified, may be re-recorded in such county, and in re-recording the same the officer shall record the certificate of the previous record, and the date of filing for record appearing in said original certificate so recorded shall be deemed and taken as the date of the record thereof. And copies of such record so authorized to be made hereunder, duly certified by said officer, under the seal of said court, shall be received in evidence under the same circumstances and conditions under which a certified copy of the original record would be so received, and shall have the same force and effect as a certified copy of the original record.

History.—§1, ch. 4950, 1901; GS 2492; RGS 3834; CGL 5712; am. §7, ch. 22858, 1945.

695.16 When mortgage or lien is destroyed.—Whenever any mortgage or other lien required by law to be recorded, to be good and effectual against creditors or subsequent purchasers for a valuable consideration and without notice, has been heretofore recorded, and the record thereof has been destroyed by fire prior to May 30th, 1901, such mortgage or other lien or a certified copy thereof, as aforesaid, shall be re-recorded within nine months from said date, or such mortgage or other lien shall not be good or effectual in law or equity against a creditor or subsequent purchaser for valuable consideration and without notice; provided, however, that if the original instrument of mortgage or other lien has been lost or destroyed, the foregoing provision of this section shall not apply thereto, but such mortgage or other lien shall not be good or effectual in law or equity against creditors, or subsequent purchasers for a valuable consideration and without notice, unless legal proceedings to reestablish the same were begun in the proper court prior to March 3rd, 1902.

History.—§2, ch. 4950, 1901; GS 2493; RGS 3835; CGL 5713.

695.17 United States deeds and patents may be recorded.—Deeds and patents issued by the United States government and photographic copies made by authority of said government from its records thereof in the general land office, embracing lands within the state, shall be admitted to record in this state in the county or counties where the land lies, when presented to the clerk of the court of the county where same is to be recorded, and when said deeds, patents or photographic copies shall appear to him to be genuine.

History.—§1, ch. 8565, 1921; CGL 5714.

695.18 Indorsement by clerk.—Upon recording said deed, patent or certified copy, the clerk of the court shall indorse thereon and also upon the record made by him the following:

"This deed and patent (or certified copy as the case may be) having been presented to me on the_____ day of_____ for record, and same appearing to me to be genuine and to have been made and issued by the authority of the United States government, I have duly recorded same in_____ on page_____ of the public records of my office.

Witness my hand and official seal at_____ Florida, this_____ day of_____

_____

Clerk."

History.—§2, ch. 8565, 1921; CGL 5715.

695.19 Certified copies of recorded instruments may be recorded.—Certified copies of deeds, mortgages, powers of attorney and all other instruments of any kind which have been or may hereafter be duly recorded or filed among the public records of any county in this state, may be recorded or re-recorded among the public records of any other county of this state as fully and in the same manner and with like effect as if such certified copy were the original instrument.

History.—§1, ch. 11989, 1927; CGL 5717.

695.20 Unperformed contracts of record.—Whenever anyone shall have contracted to purchase real estate in the state, prior to January 1, 1930, by written agreement requiring all payments to be made within ten years from the date of the contract, or has accepted an assignment of such an agreement, and the fact of the existence of such a contract of purchase, or assignment, appears of record from the instrument itself or by reference in some other recorded instrument, and shall not have obtained and placed of record a deed to the property or a decree of a court of competent jurisdiction recognizing his rights thereunto, and is not in actual possession of the property covered by the contract or by the assignment, as defined in §95.17 he, his widow, heirs, personal representatives, successors and assigns, shall have no further interest in the property described in the contract, or the assignment, by virtue thereof, and the record of such contract, assignment or other record reference thereto, shall no longer constitute either actual or constructive notice to a purchaser, mortgagee, or other person acquiring an interest in the property, unless within six months after this law shall take effect, (approved April 26, 1941) he or some one claiming under him shall:

(1) Place on record a deed or other conveyance of the property from the holder of the record title; or

(2) Place on record a written instrument executed by the holder of the record title evidencing an extension or modification of the original contract and showing that the original contract remains in force and effect; or

(3) Institute, or have pending, in a court of competent jurisdiction a suit for the enforcement of his rights under such contract.

History.—§1, ch. 20235, 1941.

695.21 Instruments relating to real estate to contain post-office address of grantee; exceptions.—After October 1, 1945, it shall be the duty of the several clerks of the circuit courts to ascertain of all persons presenting for public record any instrument other than mortgages conveying or purporting to convey any interest in real estate the correct post-office address of the grantee or grantees named in such instrument, and it shall be the duty of the person presenting such instrument for recordation to furnish such information to said official.

History.—§1, ch. 23114, 1945.

695.22 Same; duties of clerks.—After October 1, 1945, the several clerks of the circuit courts shall keep and furnish to the respective county tax assessors in the counties where such instruments are recorded a daily schedule of the aforesaid deeds and conveyances so filed for recordation, in which schedule shall be set forth the name of the grantor or grantors, the names and addresses of each grantee and a description of the land as specified in each instrument so filed.

History.—§2, ch. 23114, 1945.

CHAPTER 696

RECORD OF CONTRACTS; PHOTOGRAPHIC RECORDING

696.01 Contracts for sale of realty must be acknowledged in order to be recorded.—No contract, agreement, or other instrument purporting to contain an agreement to purchase or sell real estate shall be recorded in the public records of any county in the state, unless such contract, agreement or other instrument is acknowledged by the vendor in the manner provided by law for the acknowledgment of deeds; and where there is no acknowledgment on the part of the vendor, the recording officers in the various counties of this state shall refuse to accept such instrument for record.

History.—§1, ch. 11813, 1927; CGL 5719.

696.02 Assignments of contracts for sale of realty not entitled to record unless original is recorded or entitled to record.—No assignment of any contract, agreement, or other instrument purporting to contain an agreement to purchase or sell real estate shall be recorded in any of the public records of this state, unless the contract, agreement or other instrument sought to be assigned shall have been recorded, or is entitled to be recorded under the provisions of §§696.01-696.04.

History.—§2, ch. 11813, 1927; CGL 5720.

696.03 When agreement executed by agent or attorney may be recorded.—No contract or agreement or other instrument purporting to contain an agreement to sell or purchase real estate, which has been executed by an agent or attorney in fact shall be recorded in any of the public records of this state, unless the authority of such agent or attorney in fact to execute the instrument sought to be recorded is produced and recorded by the recording officer, or is already recorded in the county where such instrument is sought to be recorded; and for the purposes of §§696.01-696.04 no authority for the execution of instruments by an agent or attorney in fact shall be accepted which is not executed in the manner provided by law for the execution of deeds.

History.—§3, ch. 11813, 1927; CGL 5721.

696.04 What instruments affected by §§696.01-696.03.—§§696.01-696.03 shall apply to all contracts and instruments, which had not been recorded on June 6, 1927; but nothing therein contained shall enlarge, impair, alter, or diminish the obligation of any such contract or agreement affected thereby as between the parties privy thereto, or as to those who have actual notice thereof.

History.—§4, ch. 11813, 1927; CGL 5722.

696.05 Photographic recording authorized; clerk circuit court.—

(1) In every county in the state, the clerk of the circuit court may record any and all instruments filed for record by photographic process, this phrase being used in its most general sense and including miniature photographic, microfilming or microphotographic processes or any other photographic, mechanical or other process heretofore or hereafter devised, however designated, such as may be recommended by the clerk from time to time and approved by the board of county commissioners. The board of county commissioners shall provide out of the general revenue fund adequate equipment and supplies for making and preserving such records in accordance with the process so recommended and approved, and shall also provide adequate equipment for reproduction, and for viewing where said recording process is miniature photographic, microfilming or microphotographic, it being the intent hereof that such records shall be readily available for public inspection and copying. The clerk of the circuit court may note on the index to the photographic record of a mortgage or lien a note of assignment or a note of satisfaction of the mortgage or lien.

(2) All instruments heretofore recorded and all action of the boards of county commissioners and clerks of the circuit courts heretofore performed in the purchase of photographic equipment and its use in accordance with the provisions of this act are hereby validated and shall be held good and valid. All fees heretofore charged by the clerks of the circuit courts in accordance with the provisions of this act are hereby approved and confirmed.

History.—§1, ch. 10300, 1925; CGL 1936 Supp. 5722(1); am. §§1-4, ch. 22051, 1943; (2) and (3) R. by §8, ch. 29749, 1955, remaining subsection renum.; (1) by §1, ch. 59-429; (1) a. by §1, ch. 61-186.

696.06 Same; county judges.—

(1) In every county in the state, the county judge may record any and all instruments filed for record by photographic process, this phrase being used in its most general sense not excluding any photographic process heretofore or hereafter devised, however designated, such as may be recommended by the county judge from time to time and approved by the board of county commissioners, and the board of county commissioners shall provide out of the general revenue fund adequate equipment and supplies for making and preserving such records in accordance with the process so recommended and approved.

(2) Any instrument heretofore recorded and any action of the boards of county commissioners or county judges heretofore performed in accordance with the provisions of this section shall be held good and valid.

History.—§1, ch. 11382, 1925; CGL 5723; am. §§1, 2, ch. 21785, 1943.

CHAPTER 697

INSTRUMENTS DEEMED MORTGAGES AND THE NATURE OF A MORTGAGE

697.01 Instruments deemed mortgages.—All conveyances, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages.

Provided, however, that no such conveyance shall be deemed or held to be a mortgage, as against a bona fide purchaser or mortgagee, for value without notice, holding under the grantee.

History.—§1, Jan. 30, 1838; §1, ch. 525, 1853; RS 1981; GS 2494; RGS 3836; CGL 5724; §12, ch. 20954, 1941.

697.02 Nature of a mortgage.—A mortgage shall be held to be a specific lien on the property therein described, and not a conveyance of the legal title or of the right of possession.

History.—§§1, 2, ch. 525, 1853; RS 1982; GS 2495; RGS 3837; CGL 5725.

697.03 Cooperative association mortgages.—(1) Hereafter, any mortgage or other instrument given by a cooperative association for the purpose of creating a lien on real or personal property, or both, may secure not only existing indebtedness, but also such future advances, whether obligatory or otherwise, as are made within ten years from the date thereof. Such lien, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time the mortgage or other instrument is filed for record as provided by law. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount which must be specified therein, plus interest thereon, and any disbursements made for the payment of taxes, levies, or insurance on the property covered by the lien, with interest on such disbursements.

(2) A "Cooperative association" within the meaning of this section means any corporation formed, reorganized or brought under any general or special law of this or any other state as a cooperative association.

History.—§§1, 2. ch. 20248, 1941.

697.04 Future advances may be secured.—(1) Hereafter, any mortgage or other instrument given for the purpose of creating a lien on real or personal property, or both, including, but not limited to, livestock and agricultural, horticultural, or fruit crops, planted, growing or to be planted, grown or raised, to secure agricultural, horticultural, or livestock loans, or loans of any other type or character, may, and when so expressed therein shall, secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of the lender, or otherwise, as are made within twenty years from the date thereof, to the same extent as if such future advances were made on the date of the execution of such mortgage or other instrument, although there may be no advance made at the time of the execution of such mortgage or other instrument, and although there may be no indebtedness outstanding at the time any advance is made. Such lien, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time the mortgage or other instrument is filed for record as provided by law. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount which must be specified in such mortgage or other instrument, plus interest thereon, and any disbursements made for the payment of taxes, levies, or insurance on the property covered by the lien, with interest on such disbursements. This section shall not apply to any mortgages, shipping contracts, or other instruments made and given by naval stores operators and producers to secure existing loans and future advances by naval stores factors.

(2) As against the rights of creditors or subsequent purchasers for a valuable consideration, actual notice or record notice of advances to be made at the option of the lender, under the terms of such mortgage or other instrument, shall be valid only as to such advances as are to be made within twenty years from the date of such mortgage or other instrument; provided that this section shall not apply to any mortgages, shipping contracts, or other instruments made and given by naval stores operators and producers to secure existing loans and future advances by naval stores factors.

(3) Any such mortgage or other instrument shall be prior in dignity to all subsequent encumbrances, including statutory liens, except landlords' liens.

History.—§§1-3, ch. 20846, 1941; §1, ch. 28116, 1953; (1), (2) §§1, 2, ch. 61-135; (1) §3, ch. 63-212.

697.05 Balloon mortgages; scope of law; definition; requirements as to contents; penalties for violations; exemptions.—(1) Any conveyance, obligation conditioned or defeasible, bill of sale or other instrument of writing conveying or selling real property for

the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held to be a mortgage, and shall be subject to the provisions of this section.

(2) Every mortgage in which the final payment or the balance due and payable upon maturity is greater than twice the amount of the regular monthly or periodic payment of the said mortgage shall be deemed a balloon mortgage, and shall have printed or clearly stamped on such mortgage: THIS IS A BALLOON MORTGAGE AND THE FINAL PAYMENT OR THE BALANCE DUE UPON MATURITY IS ....., TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

This legend including the total amount due upon maturity shall appear at the top of the first page or face sheet of the mortgage and also immediately above the place for signature of the mortgagor. The legend shall be conspicuously printed or stamped in type as large as the largest type used in the text of the instrument, either as an over-print or by a rubber stamp impression.

(3) Failure of a mortgagee, creditor or a third party in trust for a mortgagee or creditor to comply with the provisions of this section shall automatically extend the maturity date of such mortgage in the following manner:

The final payment or the balance due and payable is to be divided by the regular monthly or periodic payment and the quotient so secured is to be the number of months or periods the maturity date of the montgage is extended. The mortgagor shall continue to make such monthly or periodic payments until the principal of the mortgage is paid. All such payments shall be credited to the principal only.

(4) Any mortgagee, creditor, bona fide holder, assignee, transferee, endorsee, or any agent, officer, or other representative of any such person violating the provisions of this section shall forfeit the entire interest charged, contracted to be charged or reserved under any such mortgage written in violation of this section, and only the principal sum of such mortgage can be enforced in any court in this state, either at law or in equity. Any interest, collection charge or attorney fee that has been paid or reserved or contracted for, either directly or indirectly, shall be forfeited to the person or mortgagor presently obligated under such mortgage.

(5) This section does not apply to the following:

(a) Any mortgage in effect prior to January 1, 1960;

(b) Any first mortgage;

(c) Any mortgage created for a term of more than five years;

(d) Any mortgage, the periodic payments on which are to consist of interest payments only, with the entire original principal sum to be payable upon maturity.

History.—§§1-5, ch. 59-356; (2), (5) a. by §1, ch. 61-472.

CHAPTER 698

CHATTEL MORTGAGES

698.01 To be recorded.—No chattel mortgage shall be valid or effectual against creditors or subsequent purchasers for a valuable consideration and without notice unless it be recorded, or unless the property included in it be delivered to the mortgagee and continue to remain truly and bona fide in his possession.

History.—§1983 RS 1892; GS 2496; RGS 3833; CGL 5726. cf.—§695.03, Acknowledgment.

698.02 Acknowledgment.—To entitle such mortgage to record, its execution must be acknowledged or proved in the manner provided for mortgages of real property.

History.—§1984 RS 1892; GS 2497; RGS 3839; CGL 5727.

698.03 Power of sale may be included in certain mortgages; exercise of power.—In all mortgages to or in favor of the government of the United States or any agencies thereunder making agricultural loans, or to secure principal indebtedness not exceeding five hundred dollars, bearing interest not in excess of the general legal rate, on farm machinery and equipment, and agricultural, horticultural or fruit crops in being, it may be provided or covenanted that the mortgagee, his legal representatives or assigns, shall have the power to sell the mortgaged property upon any breach or default by the mortgagor of the terms, covenants, conditions or stipulations of such mortgage or of the obligation thereby secured or upon nonpayment of the indebtedness secured by such mortgage or interest thereon, when due and payable in such manner and on such terms as may be provided in such mortgage, and all such provisions and covenants shall be valid, effectual and enforceable, and every such sale thereunder shall vest in the purchaser, or purchasers, the title in and to the property mortgaged and described in such mortgage.

In case of the exercise of such power of sale, written notice of such sale shall be given to the mortgagor and all persons claiming by, through or under him by instrument duly recorded, not less than fifteen days prior to such sale. Such notice may be served in the same manner as summons ad respondendum are served pursuant to the laws of Florida, and a copy of such notice shall be published at least twice, the first publication of which shall be not less than twenty days prior to such sale, in a newspaper published in the county where such sale shall occur, and another copy of such notice shall be served upon any person in charge or having or taking part in the supervision or care of such mortgaged property, or any part thereof. If there be no newspaper published in such county, then such publication may be made in a newspaper published in any county adjoining that wherein such sale is to be made. Such notice may be served upon any of said parties wherever they may be within the state. If any person to whom notice is required to be given under this statute shall not reside in the state, or his residence be unknown to the mortgagee, his legal representatives or assigns, then it shall not be necessary to make personal service of such notice upon him, and in such case, the publication of such notice as above provided shall be sufficient; provided, that where the address of such nonresident be known to the mortgagee, his legal representative or assigns, a copy of such notice shall be mailed to him at such address, by registered mail.

Every such sale shall occur upon a rule day of the circuit court, during the hours prescribed for sheriff's sales at the courthouse of the county where such property is situate at the time of the sale, and if the property is situate in more than one county, the sale may occur in any county where any part of such property is located. The actual possession of such mortgaged property, or its presence, at the place of sale shall be unnecessary to the validity of any such sale.

Every such notice of sale shall describe the mortgaged property to be sold and state the time and place of sale, the name of the person who will conduct the sale and the amount claimed to be due and secured by such mortgage and for the payment of which such sale is being held.

The proceeds of every such sale shall be applied first to the payment of the costs and expenses of such sale, including the cost of advertising and serving notices and of the person conducting such sale (which shall be the same as the fees prescribed by law to be paid sheriffs for conducting sales and executing sheriff's deeds under executions) and attorney's fees of ten per cent of the principal and accrued interest of the obligation secured by such mortgage, for the services of the attorney for the mortgagee or his assigns, and then to the payment of the obligation secured by such property mortgage, including unpaid interest, if any, and the balance or excess, if any, shall be paid to the owner of such mortgaged property if he be known; otherwise, such excess shall be paid by the person conducting such sale into the registry of the circuit court for such county to be there held for the benefit of the person lawfully entitled to the same.

History.—§1, ch. 17108, 1935; CGL 1936 Supp. 5727(1).

698.04 Sale under power.—In case of any sale of property under a power of sale as provided in §698.03, the sale may be conducted by the mortgagee or assignee, or by any person appointed by the mortgagee or as assignee, and the person conducting such sale shall execute a bill of sale to the purchaser or purchasers, which shall effectively transfer title to the property so sold. The mortgagee or assignee may bid and become the purchaser at any such sale. All rights and remedies of the mortgagee provided in §§698.03-698.05 shall extend to the mortgagee's legal representatives and assigns.

History.—§2, ch. 17108, 1935; CGL 1936 Supp. 5727(2).

698.05 Remedy concurrent. — Nothing in §§698.03 and 698.04 shall prevent the holder of any such mortgage from foreclosing such mortgage in equity; the remedy by power of sale given in said sections being intended to be cumulative and concurrent, but not exclusive. In all other respects, the laws relating to chattel mortgages shall be applicable to such mortgages.

History.—§3, ch. 17108, 1935; CGL 1936 Supp. 5727(3).

698.08 Notice given by filing for record of chattel mortgages generally, to extend seven years.—

(1) The notice given to third persons by the filing for record of any mortgage or other security instrument, except mortgages or other instruments given to secure future advances, creating a lien on or conveying or reserving an interest in, personal property, or agricultural, horticultural or fruit crops planted, growing or to be planted, grown or raised, shall, unless otherwise provided by law, expire at the end of seven years from the date of the filing thereof for record.

(2) The notice given to third persons by the filing for record of any mortgage or other security instrument given to secure future advances, creating a lien on, or conveying or reserving an interest in, personal property or agricultural, horticultural or fruit crops planted, growing or to be planted, grown or raised, shall, unless otherwise provided by law, expire at the end of:

(a) Seven years from the date of maturity of the debts or obligations last maturing thereunder and secured by such mortgages or other security instruments, or

(b) Seven years from the last date an advance could validly be made thereunder so as to be secured thereby,

whichever of said dates is later.

(3) Provided, however, that this law shall not apply to any mortgage or other security instrument creating a lien on, or conveying or reserving an interest in, or in respect of property owned by, or sold or leased to, or agreed to be sold or leased to, any railroad corporation, where such mortgage has been or shall be recorded in the county in the state in which the mortgaged property is situated or, in the case of such other instrument, where such other instrument has been or shall be recorded in the office of the secretary of state. Provided further, however, that this law shall not apply to any mortgage or other security instrument given to secure any indebtedness to the United States, or any agency or instrumentality thereof, incurred under the rural electrification act of 1939, as amended.

History.—§1, ch. 17112, 1935; CGL 1936 Supp. 5727(7); §1, ch. 20921, 1941; §1, ch. 26889, 1951; §4, ch. 63-212.
cf.—§95.11 Limitation of actions on sealed instruments.

698.09 Extension of period of notice.—The effect as to third persons of the filing of any such instrument for record, may, in all respects, including the preservation of priority thereof, be extended for successive additional periods, each not exceeding seven years from the date of the filing in the office of the clerk of the circuit court, wherein any such instrument is recorded, upon the filing by the owner or holder thereof, of an affidavit identifying such instrument, stating his interest therein and the nature and amount unpaid on the obligation still secured thereby. Provided, however, that where a mortgage or other security instrument has been amended or supplemented one or more times and an identifying affidavit is so filed for record by the owner or holder thereof with respect to the original mortgage or other security instrument and mention is made in such affidavit of any instrument or instruments amendatory or supplemental thereto such identifying affidavit need not be filed with respect to such amendatory or supplemental instrument or instruments so mentioned therein and the effect of such amendatory or supplemental instrument or instruments and the preservation of any lien or priority thereof shall be extended along with the original mortgage or other security instrument as to which affidavit or affidavits have been filed in accordance with the requirements of this §698.09.

History.—§2, ch. 17112, 1935; CGL 1936 Supp. 5727(8).
Am. §1, ch. 28083, 1953.

Note: §614.17 is expressly not modified, repealed or otherwise affected by the 1953 amendment of this section.

698.10 Effect on certain existing instruments.—The notice given by the filing of any mortgage, or other security instrument creating a lien on, or conveying or reserving an interest in, personal property, or agricultural, horticultural or fruit crops planted, growing or to be planted, grown or raised, filed or recorded, prior to May 1, 1935, shall not extend more than seven years from said date, unless within seven years therefrom such an affidavit is so filed.

History.—§3, ch. 17112, 1935; CGL 1936 Supp. 5727(9).

698.11 Duties of clerk in connection with extension.—The clerk of the circuit court shall file such affidavit, reindex the instrument mentioned therein, and enter on the margin of the record of such instrument a reference to the filing of such affidavit, stating thereon the date of filing of such affidavit and the amount unpaid on the obligation secured by such instrument, for which services the clerk of the circuit court shall be entitled to a fee of twenty-five cents.

History.—§4, ch. 17112, 1935; CGL 1936 Supp. 5727(10).

CHAPTER 699

LIVESTOCK MORTGAGES AND OTHER INSTRUMENTS

699.01 Definitions.—For the purpose of this chapter the word "livestock" shall include horses, mules, asses, cows, bulls, steers, calves and all kinds of cattle, goats, sheep, hogs and livestock of all kinds without limitation. The word "obligation" as herein used shall include promissory notes, bonds, debts and evidences of indebtedness of all kinds.

History.—§1, ch. 7936, 1919; CGL 5728.

699.02 Power of sale may be included in livestock mortgages; exercise of power.—In all mortgages on livestock it may be provided or covenanted that the mortgagee, his legal representatives or assigns, shall have the power to sell the mortgaged property upon any breach or default by the mortgagor of the terms, covenants, conditions or stipulations of such mortgage or of the obligation thereby secured or upon nonpayment of any indebtedness secured by such mortgage or interest thereon, when due and payable in such manner and on such terms as may be provided in such mortgage, and all such provisions and covenants shall be valid, effectual and enforceable, and every such sale thereunder shall vest in the purchaser or purchasers the title in and to the livestock mortgaged and described in such mortgage. In case of the exercise of such power of sale, written notice of such sale shall be given to the mortgagor and all persons claiming by, through or under him by instrument duly recorded, not less than ten days prior to such sale. Such notice may be served in the same manner as summons are served pursuant to the laws of Florida, and a copy of such notice shall be published at least twice, the first publication of which shall be not less than fifteen days prior to such sale, in a newspaper published in the county where such sale shall occur, and another copy of such notice shall be served upon any person in charge or having or taking part in the supervision or care of such mortgaged livestock, or any part thereof. If there be no newspaper published in such county, then such publication may be made in a newspaper published in any county adjoining that wherein such sale is to be made. If any person to whom notice is required to be given under this statute shall not reside in the state, then it shall not be necessary to make personal service of such notice upon him, and in such case, the publication of such notice as above provided and mailing copy of such notice to such nonresident by registered mail shall be sufficient. Such notice may be served upon any of said parties wherever they may be within the state. Every such sale shall occur during the hours prescribed for sheriff's sales at the courthouse of the county where such livestock are situate at the time of the sale, and if the livestock are situate in more than one county, the sale may occur in any county where any part of such livestock is located. The actual possession of such mortgaged livestock, or its presence, at the place of sale shall be unnecessary to validity of any such sale. Every such notice of sale shall describe the mortgaged property to be sold and state the time and place of sale, the name of the person who will conduct the sale and the amount claimed to be due and secured by such mortgage and for the payment of which such sale is being held. The proceeds of every such sale shall be applied first to the payment of the costs and expenses of such sale, including the cost of advertising and serving notices and of the person conducting such sale, (which shall be the same as the fees prescribed by law to be paid sheriffs for conducting sales and executing sheriff's deeds under executions) and attorney's fees of ten per cent of the principal and accrued interest of the obligation secured by such mortgage, for the services of the attorney for the mortgagee or his assigns, and then to the payment of the obligation secured by such livestock mortgage, including unpaid interest, if any, and the balance or excess, if any, shall be paid to the owner of such mortgaged livestock if he be known; otherwise, such excess shall be paid by the person conducting such sale into the registry of the circuit court for such county to be there held for the benefit of the person lawfully entitled to the same.

History.—§2, ch. 7936, 1919; CGL 5729; §2, ch. 29737, 1955.

cf.—§699.13, Sale under power contained in the mortgage.
§702.01 et seq., Foreclosure in general.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

699.03 Form of livestock mortgages.—Mort-

gages on livestock may be in substantially the following form:

This mortgage made the.....day of....., A. D....., by ..... of ....., mortgagor, to ..... of ....., **mortgagee:**

WITNESS: That the mortgagor does hereby mortgage, bargain, sell and convey to the mortgagee the following livestock now situated in ..... county, Florida, (here describe the property to be mortgaged) as security for the payment of (here describe the indebtedness, note or obligation to be secured).

And the mortgagor agrees to pay said obligation when due, with interest as stated therein, and to comply with all the terms of said obligation, and to pay all expenses of collection thereof including an attorney's fee of ten per cent of the unpaid principal and interest of said obligation.

In the event of the failure or refusal of the mortgagor or ..... heirs, legal representatives or assigns to pay this mortgage and the obligation secured thereby, principal and interest, or of the breach or nonperformance of any of the covenants or provisions of this mortgage, then the mortgagee ..... legal representatives or assigns may and is hereby authorized to take immediate possession of said above described livestock and sell the same at public sale to the highest bidder for cash, at the courthouse in ..... county, Florida, after giving fifteen days notice thereof, as provided by law, and the proceeds of such sale shall be applied, first to the cost of making such sale and then to the payment of the amount of principal, interest and attorney's fees due upon said obligation and the remainder of the proceeds, if any, shall be paid to the mortgagor or..... legal representatives or assigns.

(Here insert any additional covenants, conditions, stipulations or agreements agreed upon by the parties, including such covenants, stipulations and provisions relating to power of sale without judicial foreclosure as may be desired).

IN WITNESS WHEREOF, the mortgagor has subscribed this instrument the day and year first above written.

History.—§3, ch. 7936, 1919; CGL 5730.

699.04 Livestock mortgages to cover progeny, and to secure extensions of indebtedness.—The lien of all mortgages on livestock shall, unless otherwise expressly provided therein, include and extend to all progeny or offspring of such mortgaged livestock; and every such mortgage shall secure all extensions and renewals in whole or in part of the obligation or indebtedness, or evidences of indebtedness mentioned or referred to in such mortgage as fully and to the same extent as the original obligation or indebtedness is secured by such mortgage.

History.—§4, ch. 7936, 1919; CGL 5731.

699.05 Lien of mortgage attaches to future-acquired livestock.—All mortgages upon livestock shall constitute a lien upon the livestock mentioned, described or referred to therein, whether at the time of the execution of such mortgage, such livestock shall be in the county or state where the same shall be stated to be or not, and whether actually in the possession of the mortgagor or not, provided that the mortgagor is or at any time before the payment of such mortgage shall become the owner of such property.

History.—§5, ch. 7936, 1919; CGL 5732; am. §7, ch. 22858, 1945.

699.06 Record of livestock mortgages.—All livestock mortgages shall be entitled to record in like manner and under the same circumstances as other mortgages on personal property.

History.—§6, ch. 7936, 1919; CGL 5733.

699.07 Where instruments relating to livestock must be recorded in order to constitute notice.—All bills of sale, conditional bills of sale, retain title contracts, contracts, mortgages, liens and leases upon livestock to be of any force and effect against any bona fide purchaser or party acquiring an interest in or a lien upon said livestock, without actual knowledge of outstanding claims against same, must be recorded and indexed in the county where said livestock is located or in the county from which said livestock has just recently been removed.

History.—§1, ch. 16073, 1933; CGL 1936 Supp. 5733(1).

699.08 What description sufficient.—Mortgages on livestock may cover or include specified numbers of animals constituting a part or all of a stock, flock or herd and having the same mark or marks and brand or brands, and in such cases all such mortgages shall be valid and effectual without any other or more specific description.

History.—§7, ch. 7936, 1919; CGL 5734.

699.09 Mortgaged livestock not to be removed from county or otherwise disposed of; remedies of mortgagee.—No person who shall give or execute any mortgage on livestock nor any person who shall buy, hold, possess or acquire or have any interest or lien in such livestock subordinate or inferior to any mortgages thereon shall remove or permit the removal of said livestock from the county, or otherwise sell or dispose of the same, without the written consent of the mortgagee; and in case of any violation of the provisions of this section the obligation secured by such mortgage shall at the option of holder of such mortgage become immediately due and the mortgagee shall have the right to enforce forthwith all of his rights and remedies for the payment and collection of such mortgage and of the obligation thereby secured, whether at such time by its terms due and payable or not, and the mortgagee shall be entitled to take immediate possession of such mortgaged livestock.

History.—§8, ch. 7936, 1919; CGL 5735; am. §7, ch. 22858, 1945.

cf.—§699.14, Penalty for disposing of property under lien.

699.10 Limitation on enforcement of livestock mortgages.—

(1) Mortgages on livestock, other than mortgages or other instruments given to secure future advances, filed and recorded in any county in this state, shall be presumed to have been paid and shall not be enforceable or collectible after the expiration of seven years from the date of maturity of the debts or obligations secured by such mortgages, unless the owner or holder of such livestock mortgage, his agent or attorney, shall, prior to the expiration of the said period of seven years, file and cause to be recorded in the record of mortgages in the county where such livestock mortgage was recorded an affidavit stating that such debt or obligation has not been paid and the amount still due thereon.

(2) Mortgages on livestock, given to secure future advances, filed and recorded in any county in this state, shall be presumed to have been paid and shall not be enforceable or collectable after the expiration of:

(a) Seven years from the date of maturity of the debts or obligations last maturing thereunder and secured by such mortgages, or

(b) Seven years from the last date an advance could validly be made thereunder so as to be secured thereby, whichever of said dates is later, unless the owner or holder of such livestock mortgage to secure future advances, his agent or attorney, shall, prior to the expiration of said period, file and cause to be recorded in the record of mortgages in the county where such livestock mortgage to secure future advances was recorded, an affidavit stating that such debt or obligation has not been paid and the amount still due thereon.

History.—§9, ch. 7936, 1919; CGL 5736; §5, ch. 63-212.
cf.—§95.11, Limitation of actions on sealed instruments.

699.11 Provisions of this chapter to be cumulative.—Nothing in this chapter shall preclude the use of any other form or forms of livestock mortgages than that set forth in §699.03, or render invalid any special provision, condition, agreements or covenants in any mortgage of livestock (including the form set forth in said §699.03) which would be valid or enforceable in any mortgage of other kinds of personal property or under this chapter; nor shall anything in this chapter prevent the holder of any such mortgage on livestock from foreclosing such mortgage in equity as in other cases of mortgages on other classes of property, the remedy by power of sale given in this chapter being intended to be cumulative and concurrent, but not exclusive.

History.—§10, ch. 7936, 1919; CGL 5737.

699.12 Powers of circuit courts in aid of rights of mortgagee.—The circuit courts of this state in equity shall have full power to issue writs of injunction to prevent the removal of mortgaged livestock from the county in which they were situate when mortgaged, or the unlawful disposition thereof, and to appoint receivers for such mortgaged livestock whenever in the discretion of such court any such remedy shall be necessary for the preservation of the lien of the mortgage, or for the protection and preservation of such livestock or to prevent the security from being impaired, or depreciated. Such courts may also order such mortgaged livestock to be sold pending any such suit, when livestock is returned to the county where mortgaged, and the proceeds held in court to abide the result of such suit. Such remedies may be granted either on complaint or in connection with any suit to foreclose any such mortgage or the exercise of any power of sale under such mortgage. For the exercise of any such remedies it shall not be necessary to allege or prove that the mortgagor is insolvent, or that the mortgaged property is insufficient to pay the mortgaged indebtedness.

History.—§11, ch. 7936, 1919; CGL 5738; §2, ch. 29737, 1955.

699.13 Sale under power contained in mortgage.—In case of any sale of livestock under a power of sale, provided for by such livestock mortgage and hereunder, the sale may be conducted by any person appointed by the mortgagee, and the person conducting such sale shall execute a bill of sale to the purchaser or purchasers which shall effectually transfer title to the property so sold. The mortgagee or his assigns may bid and become the purchaser at any such sale. All the rights and remedies of the mortgagee provided in this chapter shall extend to the mortgagee's legal representatives and assigns.

History.—§12, ch. 7936, 1919; CGL 5739.
cf.—§702.01 et seq., Foreclosure of mortgage.

699.14 Penalty for disposing of property under lien.—Whoever shall pledge, mortgage, sell or otherwise dispose of any livestock to him belonging, or which shall be in his possession and which shall be subject to any mortgage upon such livestock or to any written lien or to any statutory lien whether written or not, without the written consent of the person holding such livestock mortgage or lien, or whoever shall remove or cause to be removed beyond the limits of the county any such livestock without the consent aforesaid, and whoever shall willfully conceal such livestock or willfully obstruct, delay or hinder the holder of such mortgage thereon in the prosecution of his rights or remedies against such livestock shall, if the value of the property shall be less than one hundred dollars be punished by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months; if the value of the property shall be more than one hundred dollars, the offender shall be punished by a fine of not exceeding five thousand dollars or by imprisonment in the state prison for not exceeding five years.

History.—§13, ch. 7936, 1919; CGL 7322.
cf.—§775.06, Alternative punishment.

CHAPTER 700

CROP MORTGAGES

700.01 Crop mortgages authorized. — Valid mortgage liens may be created upon agricultural, horticultural or fruit crops, then planted, growing, or to be thereafter planted, grown or raised; provided that the lands upon which said crops are grown or raised, or are to be thereafter grown or raised, are fully described in said mortgage.

History.—§1, ch. 10279, 1925; CGL 5741.
cf.—§85.22, Liens for loans and advances.

700.02 Necessity for recording.—In order to be valid, however, against subsequent encumbrances, or subsequent purchasers in good faith, all such mortgages shall be executed, acknowledged and recorded, as is now, or may be hereafter provided by law, upon mortgages upon real estate.

History.—§2, ch. 10279, 1925; CGL 5742.
cf.—§695.01 et seq., Recordation of conveyances and mortgages of real estate.

700.03 Fee for recording certain instruments in favor of United States or its agencies, etc.; copy may be used in recording.—The fee which shall be charged for the filing, indexing and recording of any mortgage, or other instrument creating a lien on or conveying or reserving an interest in personal property, or agricultural, horticultural, or fruit crops planted, growing or to be planted, grown or raised, or any transfer or assignment thereof, to or in favor of the government of the United States, or any department, agency, or officer thereof, the reconstruction finance corporation, the land bank commissioner, the federal farm mortgage corporation, any corporation organized under the act of congress known as the farm credit act of 1933, and amendments thereto, any corporation organized under the act of congress known as the federal farm loan act, and amendments thereto, or any corporation which rediscounts notes or other obligations with, or procures loans from a federal intermediate credit bank, shall be not more than fifty cents, provided, that a copy or duplicate of such instrument be furnished to the recording officer.

When a copy of any such mortgage, or such other instrument, or any transfer or assignment thereof, shall be presented with the original thereof for record, the pasting or otherwise securely fastening of such copy in the book or books provided for the recording of such instrument shall be a good and sufficient record thereof.

History.—§§1, 2, ch. 17106, 1935; CGL 1936 Supp. 5723(5).

CHAPTER 701

ASSIGNMENT AND CANCELLATION OF MORTGAGES

701.01 Assignment. — Any mortgagee may assign and transfer any mortgage made to him, and the person to whom any mortgage may be assigned or transferred may also assign and transfer it, and he or his assigns or subsequent assignees may lawfully have, take and pursue the same means and remedies which the mortgagee may lawfully have, take or pursue for the foreclosure of a mortgage and for the recovery of the money secured thereby.

History.—§1, Dec. 11, 1834; RS 1985; GS 2498; RGS 3840; CGL 5743.

701.02 Assignment not effectual against creditors unless recorded.—No assignment of a mortgage upon real property or of any interest therein, shall be good or effectual in law or equity, against creditors or subsequent purchasers, for a valuable consideration, and without notice, unless the same be recorded according to law.

The provisions of this section shall also extend to assignments of mortgages resulting from transfers of all or any part or parts of the debt, note or notes secured by mortgage, and none of same shall be effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration without notice, unless a duly executed assignment be recorded according to law.

Any assignment of a mortgage, duly executed and recorded according to law, purporting to assign the principal of the mortgage debt or the unpaid balance of such principal, shall, as against subsequent purchasers and creditors for value and without notice, be held and deemed to assign any and all accrued and unpaid interest secured by such mortgage, unless such interest shall be specifically and affirmatively reserved in such assignment by the assignor, and no reservation of such interest or any part thereof shall be implied.

History.—§1, ch. 6909, 1915; RGS 3841; CGL 5744; §13, ch. 20954, 1941.
cf.—§695.01 et seq., Recordation of conveyances and mortgages of real estate.

701.03 Cancellation.—Whenever the amount of money due on any mortgage shall be fully paid, the mortgagee or assignee shall within sixty days thereafter cancel the same in the manner provided by §28.22.

History.—RS 1986; GS 2499; RGS 3842; CGL 5745.

701.04 Cancellation of mortgages, liens and judgments.—Whenever the amount of money due on any mortgage, lien or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, shall enter on the margin of the record of such mortgage, notice of lien or judgment, in the presence of the custodian of such record, to be attested by said custodian, satisfaction of said mortgage, notice of lien or judgment, and sign the same with his, her or their hand; or shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien or judgment, and have the same acknowledged or proven, and duly entered of record in the book provided by law for such purposes in the proper county.

History.—§1, ch. 4138, 1893; §1, ch. 4918, 1901; GS 2500; RGS 3843; CGL 5746.

701.05 Failing or refusing to satisfy lien; punishment for.—Any person entitled to and receiving the payment of the amount of money due upon any mortgage, lien or judgment, who shall fail for thirty days after written demand made by the person paying the same, to cancel and satisfy of record, as provided by law, any such mortgage, lien or judgment so paid, shall be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding six months.

History.—§2, ch. 4918, 1901; GS 3712; RGS 5663; CGL 7866.
cf.—§775.06, Alternative punishment.

701.06 Certain cancellations and satisfactions of mortgages validated.—All cancellations or satisfactions of mortgages made prior to the enactment of chapter 4138, acts of 1893, by the mortgagee or assignee of record of such mortgage entering same on the margin of the record of such mortgage in the presence of the custodian of such record and attested by the said custodian and signed by said mortgagee or assignee of record of such mortgage, shall be valid and effectual for every purpose as if the same had been done subsequent to the enactment of chapter 4138, acts of 1893.

History.—§1, ch. 14763, 1931; CGL 1936 Supp. 5746(1).

CHAPTER 702

FORECLOSURE OF MORTGAGES

702.01 Chancery.—All mortgages shall be foreclosed in chancery, unless otherwise provided by statute.

History.—§1987 RS 1892; GS 2501; RGS 3844; CGL 5747; am. §7, ch. 22858, 1945.
cf.—§§37.01(i) and 81.25, Foreclosure of certain mortgages in courts of justice of the peace.
§699.02, Foreclosure of certain mortgages under power of sale.

702.02 Foreclosure procedure.—

(1) COMPLAINT.—In foreclosure, the original or a copy of the mortgage note and mortgage shall be attached to the complaint as a part thereof, and such attachment shall constitute averments of all of the contents of each instrument to the same extent as if fully set forth in the body of the complaint. If a copy of the mortgage note be contained in the mortgage, attachment of the mortgage alone shall be sufficient.

(2) SALE BY CLERK.—In any final decree of foreclosure, the court shall direct its clerk to sell the mortgaged property at public sale on the day specified in such final decree, which day shall be not less than ten nor more than thirty days after the date of such final decree, and upon the terms and conditions as provided in such final decree. Notice of such sale shall be published once only at least seven days prior to the sale in a newspaper circulated in the county where the sale is to be held. Such notice shall be concise and shall contain:

(a) A description of the property to be sold;

(b) The time and place of sale;

(c) A statement that the sale will be made pursuant to a final decree of foreclosure, and specifying the court in which the cause be pending and the docket number of the case; and

(d) The name of the clerk making the sale.

For his services in making such sale, the clerk shall receive a fee of ten dollars, to be assessed as cost.

(3) CERTIFICATION OF SALE.—After a sale of the mortgaged property, the clerk shall promptly complete and file in the proceeding a certificate of sale, which shall be substantially in the following form:

(Style of case) (Designation of court)

CERTIFICATE OF SALE

I, _____, Clerk of the above entitled Court, do hereby certify that pursuant to the directions of the Court in its Final Decree of Foreclosure entered herein, I gave notice of public sale of the mortgaged property described in said decree, by publishing same in_____, a newspaper circulated in_____ County, Florida, in the manner evidenced by Proof of Publication hereto attached, and on the_____ day of_____, 19____, offered said mortgaged property for sale at public outcry to the highest and best bidder for cash, and at such sale the highest and best bid received for said property was that submitted by_____, being a bid in the amount of $_____, and I thereupon accepted such bid and sold said property to the said_____, and have retained the proceeds of such sale for distribution in accordance with the directions of said decree.

I have received my fee of ten dollars for making the sale, same being paid by _____.

WITNESS my hand and the official seal of this Honorable Court, this _____ day of _____, 19_____.

(SEAL) _____, Clerk

By _____
Deputy Clerk

If no objections to such sale be filed in the proceeding within ten days after the filing of such certificate of sale, the clerk shall thereupon complete and file in the proceeding a further certificate of title which shall be substantially in the following form:

(Style of case) (Designation of court)

CERTIFICATE OF TITLE

I, _____, Clerk of the above entitled Court, do hereby certify that heretofore, on the _____ day of_____, 19____, I executed and filed herein my Certificate of Sale of the mortgaged property, and that no objections to such sale have been filed herein on or before the date hereof, and that 10 days have elapsed since the filing of said Certificate of Sale.

That, as recited in said Certificate of Sale, the mortgaged property described as follows, to wit:

(Description)

was sold by me to_____, who now has title thereto.

WITNESS my hand and the official seal of this Honorable Court, this_____ day of_____, 19_____.

(SEAL) _____, Clerk

By _____
Deputy Clerk

Upon the filing of the certificate of title, the sale shall stand confirmed as certified by the clerk and title to the mortgaged property shall pass fully and completely to the purchaser named in such certificate, without the necessity

of any further proceedings or instruments. The certificates of the clerk provided herein shall be by him duly recorded in the chancery order book maintained by the clerk, and shall be duly indexed in the general index of the county under the name of the purchaser named in such certificate.

(4) DISBURSEMENT OF PROCEEDS OF SALE.—Upon the filing of a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the provisions of the final decree of foreclosure, and shall thereupon file in the proceeding a report of such disbursements, which report shall be substantially in the following form:

(Style of case) (Designation of court)

CERTIFICATE OF DISBURSEMENTS

I, _____, Clerk of the above entitled Court, do hereby certify that I have disbursed the proceeds received by me from the sale of the mortgaged property, as provided in the Final Decree of Foreclosure entered herein, to the persons and in the amounts, as follows:

Name	Amount
Total	

WITNESS my hand and the official seal of this Honorable Court, this_____ day of_____, 19_____.

(SEAL) _____, Clerk

By _____
Deputy Clerk

If no objections to such report of disbursements be filed in the proceeding within ten days after the filing of the report, the disbursements by the clerk shall stand approved as reported. If any objections to the report of disbursements be filed within such ten day period, such objections shall be considered by the court; provided, however, that the filing of objections to the report of disbursements shall not in any manner affect or cloud the title of the purchaser at the sale to the mortgaged property.

(5) VALUE OF PROPERTY.—The value of the property sold by the clerk shall be conclusively presumed to be the amount bid therefor and for which the property was sold at the sale, unless objection thereto shall be filed in the cause within ten days after the filing of the clerk's certificate of sale. If any objections to said value be filed within such ten day period, such objections shall be considered by the court; provided, however, that the filing of objections to the value of the mortgaged property shall not in any manner affect or cloud the title of the purchaser at the sale to the mortgaged property. If no such objections be filed, the value as fixed herein shall have the same force and effect as if the court had decreed that the value of the said property was the amount bid and for which the property was sold at the foreclosure sale.

(6) The provisions of this section shall not apply to any suits pending at the time this act becomes a law.

History.—§1, ch. 2004, 1874; RS 1988; GS 2502; RGS 3845; §1, ch. 12095, 1927; CGL 5748; §1, ch. 28093, 1953; (2), (3), §§1, 2, ch. 63-46.

702.021 Alternative foreclosure procedure.—(1) The foreclosure procedure set forth under §702.02, is declared to be an alternative method of foreclosure procedure and all foreclosure procedure in existence prior to the effective date of §702.02, is declared to be likewise an alternative foreclosure procedure. The plaintiff may adopt either method and the method so adopted shall exclusively govern.

(2) This section shall not affect suits pending on its effective date.

(3) All mortgage foreclosures, completed subsequent to June 2, 1953, whether they were completed in accordance with the procedure outlined in chapter 28093, acts of 1953, or in accordance with the procedure under the law as it existed prior to June 2, 1953, are hereby validated and confirmed insofar as relate to the procedure used.

History.—Comp. §§1, 2 and 4, ch. 29700, 1955.

702.03 Certain foreclosures validated.—All mortgage foreclosures heretofore made, or now pending, wherein there has been annexed to the bill of complaint in such cause, an uncertified copy of the mortgage, as provided by chapter 12095, acts of 1927, entitled: "An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages" be and the same are hereby validated and confirmed insofar as relates to the copy of the mortgage attached to such complaint, to the same extent and effect as if section 3117, RGS, had been expressly repealed by chapter 12095, acts of 1927, entitled: "An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages."

History.—§1, ch. 13642, 1929; CGL 5748(1).

702.04 Mortgaged lands in different counties. — When a mortgage includes lands, or railroad track, or right-of-way, or terminal facilities and station grounds, lying in two or more counties, it may be foreclosed in any one of said counties, and all proceedings shall be had in that county as if all the mortgaged land, or railroad track, or right-of-way, or terminal facilities and station grounds lay therein, except that notice of the sale must be published in every county wherein any of the lands, or railroad track, or right-of-way, or terminal facilities and station grounds to be sold lie. After final disposition of the suit, the clerk of the circuit court shall prepare and forward a certified copy of the decree of foreclosure and sale and of the decree of confirmation of sale to the clerk of the circuit court of every county wherein any of the mortgaged lands, or railroad tracks, or right-of-way, or terminal facilities and station grounds lie, to be recorded in the foreign judgment book of each such county, and the

costs of such copies and of the record thereof shall be taxed as costs in the cause.

History.—RS 1989; §1, ch. 4420, 1895; GS 2503; §1, ch. 7339, 1917; RGS 3846; CGL 5749.

702.05 Mortgaged lands sold for taxes. — Any person who has a lien by mortgage or otherwise upon lands sold for taxes may, within the time allowed by law for redemption, redeem such lands, and the receipt of the officer authorized to receive the amount paid for redemption money shall entitle the lien holder to collect the said amount, with interest at the rate of ten per cent per annum, as a part of and in the same manner as the amount secured by his original lien.

History.—§1, ch. 3903, 1889; RS 1990; GS 2504; RGS 3847; CGL 5750.

702.06 Deficiency decree; common law suit to recover deficiency.—In all suits for the foreclosure of mortgages heretofore or hereafter executed the entry of a deficiency decree for any portion of a deficiency, should one exist, shall be within the sound judicial discretion of the court, but the complainant shall also have the right to sue at common law to recover such deficiency, provided no suit at law to recover such deficiency shall be maintained against the original mortgagor in cases where the mortgage is for the purchase price of the property involved and where the original mortgagee becomes the purchaser thereof at foreclosure sale and also is granted a deficiency decree against the original mortgagor.

History.—§1, ch. 11993, 1927; CGL 5751; §1, ch. 13625, 1929.

702.07 Power of courts and judges to set aside foreclosure decrees at any time before sale.—The circuit courts of this state, and the judges thereof at chambers, shall have jurisdiction, power and authority to rescind, vacate and set aside a decree of foreclosure of a mortgage of property at any time before the sale thereof has been actually made pursuant to the terms of such decree, and to dismiss the foreclosure proceeding upon the payment of all court costs.

History.—§1, ch. 11881, 1927; CGL 5752.

702.08 Effect of setting aside foreclosure decree.—Whenever a decree of foreclosure has been so rescinded, vacated and set aside and the foreclosure proceedings dismissed as provided in §702.07, the mortgage together with its lien and the debt thereby secured shall be, both in law and equity, completely relieved of all effects of any kind whatsoever resulting from or on account of the foreclosure proceedings and the decree of foreclosure and fully restored in all respects to the original status of the same as it existed prior to the foreclosure proceedings and the decree of foreclosure, and thereafter the same shall be for all purposes whatsoever legally of force and effect just as if foreclosure proceeding had never been instituted and a decree of foreclosure had never been made.

History.—§2, ch. 11881, 1927; CGL 5753.

702.09 Definitions. — For the purposes of §§702.07 and 702.08 the words "decree of foreclosure" shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated and set aside; the word "mortgage" shall mean any written instrument securing the payment of money or advances; the word "debt" shall include promissory notes, bonds and all other written obligations given for the payment of money; the words "foreclosure proceedings" shall embrace every action in the circuit courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word "property" shall mean and include both real and personal property.

History.—§3, ch. 11881, 1927; CGL 5754.

CHAPTER 703

ABSTRACTS OF TITLE

703.01 County commissioners authorized to require clerk to make abstracts.—The county commissioners in and for any county of this state, whenever the said board deems it advisable, may require the clerk of the circuit court in and for said county to abstract any or all instruments of writing affecting any real estate situated in the county as the same is recorded. For such services the clerk may charge and collect a fee not to exceed 30¢ for each piece of property so abstracted, provided there are not more than two descriptions. In instruments to be recorded, where there are more than two descriptions, the fee of the clerk shall not exceed 30¢ for each of the first two descriptions, and an additional fee of 10¢ for each of the others. In cases where instruments are to be recorded and real estate is described by reference only, a search fee not to exceed 25¢ may be collected. These fees shall be taxed as a part of the recording fee of said instruments.

History.—§1, ch. 5173, 1903; GS 2505; RGS 3848; CGL 5755; §1, ch. 61-386.

703.02 Abstracts of real estate upon petition; fees of clerk.—Upon a petition of a majority of the registered voters of any county of this state, the board of county commissioners of said county, if they deem it advisable, shall have abstracted, under the supervision of said clerk, any or all instruments of record relating to real estate situated in said county. For such services the clerk shall receive a compensation not to exceed seventy-five dollars per month for himself or each deputy employed in the actual performance of such service.

History.—§2, ch. 5173, 1903; GS 2506; RGS 3849; CGL 5756.

703.03 What abstract to show. — The said abstract books shall be so ruled and headed as to show the description of the property, the names of the grantors and grantees, mortgagors and mortgagees, nature of the instrument, consideration, date, release of dower, number of witnesses, number of book and page of record, and such other information, and arranged in such order, as the said board of commissioners may deem advisable.

History.—§3, ch. 5173, 1903; GS 2507; RGS 3850; CGL 5757.

703.04 Abstracting tax sales.—Whenever the said board of county commissioners deem it advisable, they shall have abstracted any or all of the tax sales relating to any real estate situated in the county. This shall be done under the supervision of the clerk, who shall receive a monthly compensation for himself or deputy, or deputies, not to exceed seventy-five dollars per month during the performance of such services. The said abstract books shall be so ruled and headed as to show number of certificate, date of sale, the year for which taxes were unpaid, number and page of book where recorded, date of redemption or cancellation, date of deed, number and page of book where recorded, and such other information and in such order as may be deemed advisable.

History.—§4, ch. 5173, 1903; GS 2508; RGS 3851; CGL 5758.

703.05 Fees of clerk for furnishing abstract.—When the records of the county have been abstracted, the fee of the clerk for making an abstract shall be fifty cents for the first transfer and twenty-five cents for every other record affecting the same.

History.—§5, ch. 5173, 1903; GS 2509; RGS 3852; CGL 5759.

703.06 Board may purchase abstract books.—Upon a petition of a majority of the registered voters of any county in this state, the board of county commissioners of said county, if the said board deems it advisable, may purchase a set of abstract books, for whatever price and on whatever terms the board may deem expedient. The clerk of the court shall have custody of said books, and they shall be open to examination free of charge.

History.—§6, ch. 5173, 1903; GS 2510; RGS 3853; CGL 5760.

703.07 Abstracts of records destroyed by

fire; purchase of abstract books by county; proceedings for.—When the records, or any material part thereof, in any county in this state, concerning the title to property have been heretofore destroyed by fire, so that a connected chain of title cannot be taken therefrom, the judge of the circuit court of such county, if requested by the board of county commissioners of such county by resolution of such board, shall appoint three competent and trustworthy persons as commissioners to examine into the state of the records in such county, and in case they find any abstracts, copies, minutes, extracts, maps or plats from such records, existing after such destruction as aforesaid, and find that such abstracts, copies, minutes, extracts, maps or plats were fairly made before such destruction of the records by any person or persons in the ordinary course of business, and that they contain a material and substantial part of such records, they shall certify the facts found by them in respect to such copies, abstracts, minutes, extracts, maps or plats, and also (if they are of that opinion) that such abstracts, copies, minutes, extracts, maps or plats tend to show a connected chain of title to the lands in said county, and shall file such certificates with the county clerk of the proper county, and the board of county commissioners thereof may, with the approval of the judge of the circuit court of the county, purchase from the owners thereof such abstracts, copies, minutes, extracts, maps or plats, or such parts thereof as may tend to constitute a connected chain of title to the lands in said county, including all judgments and decrees that form part of such chain of title, paying therefor such reasonable price as may be agreed upon between them and such owners; provided, that such price shall be approved by said board of three commissioners appointed by such circuit judge as aforesaid, and also by said circuit judge; or such board of county commissioners may, with such approval and upon such conditions, procure a copy of said abstracts, copies, minutes, extracts, maps or plats, instead of the originals, to be paid for in like manner, upon approval of the price thereof by said circuit judge and said board of three commissioners as aforesaid.

The compensation of said three commissioners to be appointed by said circuit judge as aforesaid shall be fixed and allowed by the board of county commissioners, and shall be paid by the county.

History.—§2, ch. 4951, 1901; GS 2511; RGS 3854; CGL 5761.

703.08 Copies of abstracts as evidence.—The abstracts, copies, minutes, maps and plats of said county purchased under the provisions of §703.07 shall thereupon be placed in the office of the clerk of the circuit court of said county, to be copied or arranged in such form as the board of county commissioners shall deem best for the public interest. And in case the originals have been lost or destroyed, and no certified copy from the records of the original papers shall be in the power, custody or control of the party asking to use the same on any trial or other proceedings, copies of the same, or any part thereof, duly certified by the clerk of the circuit court of said county, shall be admitted in evidence in all courts of law and equity in this state. Such clerk shall furnish to any and all parties requesting it, upon being paid his proper fees, certified copies of the same, or parts thereof.

History.—§3, ch. 4951, 1901; GS 2512; RGS 3855; CGL 5762.

703.09 Condemnation of abstracts, maps, etc., by county where records have been destroyed.—When the records, or any material part thereof, in any county in this state, concerning the title to property, have been destroyed by fire or other causes, so that a connected chain of title cannot be taken therefrom, and any person or corporation is possessed of any abstracts, copies, minutes, extracts, maps or plats, made from said records before such destruction, the board of county commissioners of any such county may acquire such abstracts, copies, minutes, extracts, maps or plats in whole or in part, as the board may determine, or copies thereof, to be placed in the office of the clerk of the circuit court for the use of the public as part of the public records, in the following manner: (1) first, the said board shall determine, by an entry in their minutes, what abstracts, copies, minutes, extracts, maps or plats so owned by any person or corporation they desire to acquire for the use of the public; (2) second, the said board of county commissioners shall thereupon cause a petition in the name of such county, to be presented to the judge of the circuit court of the circuit in which such county is situated, setting forth what abstracts, copies, minutes, extracts, maps or plats, so made from such burned records, are required, and giving the name of any person, persons or corporation owning the same or in possession thereof, and praying that the said abstracts, copies, minutes, extracts, maps or plats, or copies thereof sworn to by the custodian thereof to be correct copies of the same, may be condemned and placed in the clerk's office for the use of the public as part of the public records.

History.—§1, ch. 5414, 1905; RGS 3856; CGL 5763.

703.10 Order to show cause; enjoining owners from removing abstracts, etc., beyond jurisdiction of court.—Upon the presentation of such petition to such judge, he shall make an order requiring the owner or custodian of such abstracts, copies, minutes, extracts, maps or plats to appear before him at a day by him fixed, not less than ten nor more than thirty days from the date of such order, and show cause why the petition should not be granted, and the said judge shall at the time make an order enjoining the owners or persons in charge of such abstracts, copies, minutes, extracts, maps or plats from removing the same beyond the jurisdiction of the court pending the litigation.

History.—§2, ch. 5414, 1905; RGS 3857; CGL 5764.

703.11 Order granting petition; jury to assess compensation; copies of original abstracts, etc.—Upon the day fixed, or any day to which the hearing may be adjourned, if no person shall appear, or if no sufficient cause be shown why the prayer of the petition should not be granted, then the said judge shall make an order granting the prayer of the petition and issue an order to the sheriff to empanel a jury of twelve men to try what shall be just compensation for the said abstracts, copies, minutes, extracts, maps or plats, or copies thereof, sought to be taken for the county. If the defendant so appearing shall, in his return to such order, elect that the condemnation sought by the petitioner shall, if any such condemnation be allowed, be of copies of such abstracts, copies, minutes, extracts, maps or plats and not of the originals thereof, no condemnation shall be allowed of such originals, and the petition, in case it shall have sought a condemnation of such originals, shall thereupon be amended so as to seek only a condemnation of a copy of said abstracts, copies, minutes, extracts, maps or plats.

History.—§3, ch. 5414, 1905; RGS 3858; CGL 5765.

703.13 Payment of compensation and delivery of abstracts, etc.; petitioner to pay cost.—Upon the rendition of the verdict, the said judge shall make an order that, upon the payment into court for the use of the defendant, within ten days, unless further time be allowed by the court, of the compensation ascertained by the jury, the prayer of the petition is granted, or else the proceedings shall be null and void, and the said judge shall fix a time within which, after such payment into court, the defendant shall place in the office of the clerk of the circuit court for said county, for the use of the public, such abstracts, copies, minutes, extracts, maps or plats, or copies thereof, sworn to by the custodian of the said abstracts, copies, minutes, extracts, maps or plats, in accordance with the prayer of said petition, and said judge shall render judgment against the petitioner for the cost.

History.—§5, ch. 5414, 1905; RGS 3860; CGL 5767.

703.14 Penalty for failure to deliver abstracts, etc.—Any person or the officers of any corporation in possession of, or having under their control such abstracts, copies, minutes, extracts, maps or plats who shall fail or refuse to comply with such order, shall be guilty of a contempt of court and may be imprisoned until such order is obeyed.

History.—§6, ch. 5414, 1905; RGS 3861; CGL 5768.

703.15 Abstracts, etc., acquired by condemnation. — Upon the filing of such abstracts, copies, minutes, maps or plats, or such copies thereof, in the office of the clerk of the circuit court for such county, they shall have the same force and effect as is now provided in §§703.07 and 703.08 for those obtained and filed in such clerk's office under the provisions of said sections.

History.—§8, ch. 5414, 1905; RGS 3862; CGL 5769.

703.17 Alteration of abstracts condemned by county for use of the public.—Any person or persons making any erasure, alteration, interlineation or interpolation in any abstracts, copies, minutes, extracts, maps or plats, or in any copies thereof filed in the clerk's office under the provisions of §§703.09-703.11 and 703.13-703.15 shall be guilty of the crime of forgery and upon conviction thereof shall be punished by imprisonment not exceeding five years.

History.—§9, ch. 5414, 1905; RGS 5207; CGL 7325.

703.18 Refusing to make abstract. — Any person or any employee thereof, who may be engaged in such business of making abstracts, writing, entries or maps in any county in which the records have been destroyed, shall furnish such abstract or copy, or any portion thereof and a certificate and affidavit of the correctness thereof to any person from time to time applying therefor in the order of application, and without unnecessary delay, and for a reasonable consideration to be allowed therefor, which in no case shall exceed the sum of sixty cents for each deed, mortgage or other instrument for which such abstract is furnished, and five dollars for the certificate and affidavit, and only one certificate and affidavit shall be necessary or shall be charged to or for all the entries, instruments or items of the abstract of any chain of title, and any and all persons so engaged, whose business is hereby declared to stand upon a like footing with that of common carriers, who shall refuse so to do, if tender or payment be made to him or them of the amount demanded for such abstract or copy, and not exceeding the amount aforesaid, as soon as such amount is made known and ascertained, or of a sum adequate to cover such amount before it is ascertained, shall be guilty of the crime of extortion, and shall be punished by fine not less than one hundred dollars and not exceeding one thousand dollars therefor; and shall also be liable in any action for any and all damages, loss or injury which any person applying therefor may suffer or incur by reason of such failure to furnish such abstract or copy, as aforesaid, and shall also be subject to be compelled to furnish such abstract by mandamus or other legal proceedings.

History.—§7, ch. 4951, 1901; GS 3484; RGS 5358; CGL 7493.

cf.—§1.01(3), "Person" defined.

703.19 Filing untrue copies of abstracts ordered filed for use of public. — Any person making copies of abstracts, copies, minutes, extracts, maps or plats, where copies are prayed for under the provisions of §§703.09-703.11 and 703.13-703.15 and ordered filed in the office of the clerk of the circuit court for the use of the public, who shall not make the same truly and without alteration or interpolation, shall be guilty of a felony, and upon conviction shall be punished by imprisonment for not less than two nor more than five years.

History.—§7, ch. 5414, 1905; RGS 5359; CGL 7494.

CHAPTER 704
EASEMENTS

704.01 Common law, statutory easements defined and determined.—

(1) IMPLIED GRANT OF WAY OF NECESSITY.—The common law rule of an implied grant of a way of necessity is hereby recognized, specifically adopted and clarified. Such an implied grant exists where a person has heretofore or hereafter grants lands to which there is no accessible right-of-way except over his land, or has heretofore or hereafter retains land which is inaccessible except over the land which he conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress or ingress and same is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved. An implied grant arises only where a unity of title exists from a common source other than the original grant from the state or United States; provided, however, that where there is a common source of title subsequent to the original grant from the state or United States, the right of the dominant tenement shall not be terminated if title of either the dominant or servient tenement has been or should be transferred for nonpayment of taxes either by foreclosure, reversion or otherwise.

(2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON LAW RIGHT.—Based on public policy, convenience and necessity, a statutory way of necessity exclusive of any common law right exists when any land or portion thereof outside any municipality which is being used or desired to be used as a dwelling or for agricultural or for timber raising or cutting or stockraising purposes shall be shut off or hemmed in by lands, fencing or other improvements of other persons so that no practicable route of egress or ingress shall be available therefrom to the nearest practicable public or private road. The owner or tenant thereof or anyone in their behalf lawfully may use and maintain an easement for persons, vehicles, stock and electricity and telephone service over and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put; and the use thereof, as aforesaid, shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof; provided, that such easement shall be used only in an orderly and proper manner.

History.—§1, ch. 7326, 1917; RGS 4999; CGL 7088. Am. §1, ch. 28070, 1953.

704.02 When lands enclosed person using easement to maintain gates.—When the land on which the statutory easement referred to in §704.01(2) shall be in use, or afterwards put to the use of enclosing farm or grove products, or livestock, the owner or tenant of the dominant tenement using the easement of the same shall, if no compensation is paid under §704.04, when requested by the owner of the servient tenement, erect and maintain either a cattle guard or a gate at each place where said easement intersects a fence. Any such gate is to be kept closed when not opened for passage, and any such cattle guard or gate so erected and maintained shall be in substantial conformity with the character of the fence at such intersection.

History.—§2, ch. 7326, 1917; RGS 5000; CGL 7089. Am. §2, ch. 28070, 1953.

704.03 The term "practicable," as used in chapter, defined.—That for the purposes of this chapter the word "practicable," as used in §704.01, shall be held and construed to mean "without the use of bridge, ferry, turnpike road, embankment or substantial fill".

History.—§3, ch. 7326, 1917; RGS 5001; CGL 7090. Am. §3, ch. 28070, 1953.

704.04 Judicial remedy and compensation to servient owner.—When the owner or owners of such lands across which a statutory way of necessity under §704.01(2) is claimed, exclusive of the common law right, objects or refuses to permit the use of such way under the conditions set forth herein, or until he receives compensation therefor, then either party or the board of county commissioners of such county may file suit in the circuit court of the county wherein the land is located in order to determine if the claim for said easement exists, and the amount of compensation to which said party is entitled for use of such easement. Where said easement is awarded to the owner of the dominant tenement, it shall be temporary and exist so long as such easement is reasonably necessary for the purposes stated herein. The court, in its discretion, shall determine all questions including the type, extent and location of the easement and the amount of compensation, provided that if either of said parties so request in his original pleadings the amount of compensation may be determined by a jury trial. The easement shall date from the time the award is paid.

History.—Comp. §4 ch. 28070, 1953.

CHAPTER 705

WRECKED AND DERELICT PROPERTY, GENERALLY

705.01 County judge to order sale.—Whenever any wrecked derelict goods, abandoned motor vehicle or other personal property shall be found in any county in this state, the county judge shall ascertain the amount and situation of the same, and by his written order shall cause the sheriff to take charge thereof and sell the same at public outcry, after giving a reasonable public notice of the time and place of such sale.

(2) Whenever any confiscated or contraband personal property of any description shall come into the possession or custody of the sheriff by seizure in the performance of his duty or otherwise which is subject to forfeiture and sale under any provision of the state constitution or statutes, such property shall be disposed of as hereinafter provided.

History.—§1, ch. 1005, 1859; RS 2010; GS 2532; RGS 3887; CGL 5794; §1, ch. 22031, 1943; §1, ch. 63-267.

705.02 Mode of ascertaining salvage. — In order to ascertain the quantum of salvage to be paid to the person finding and reporting such wrecked derelict goods, abandoned motor vehicle or other personal property, the county judge shall appoint two disinterested citizens of the county as arbitrators (who shall be authorized in case of disagreement to select an umpire), who shall determine the quantum of salvage, not to exceed one-half the proceeds of such goods, to be paid to the salvors or persons finding and reporting such goods, and the county judge shall draw his order upon the sheriff, who shall pay the same for the amount so awarded in favor of the salvors or persons finding and reporting.

History.—§2, ch. 1005, 1859; RS 2011; GS 2533; RGS 3888; CGL 5795; am. §2, ch. 22031, 1943.

705.03 Disposition of proceeds of sale.—The sheriff shall pay the balance of the proceeds of such sale, after paying to the county judge one per cent of the balance for his services, into the state treasury for the benefit of the state school fund and unless the same shall be claimed and proceedings initiated to validate said claim within one year and a day, the said proceeds shall be forever forfeited to the state school fund.

History.—§3, ch. 1005, 1859; RS 2012; GS 2534; RGS 3889; CGL 5796; §2, ch. 63-267.

705.05 Sheriff to report to county judge.—The sheriff shall place in the hands of the county judge within one month of the time at which any money is received a statement of the amount of money received by him, the time at which and the source from which said money was received; which statement shall be kept by the county judge, and a copy thereof forwarded without unnecessary delay to the state comptroller.

History.—§6, ch. 344, 1850; RS 2014; GS 2536; RGS 3891; CGL 5798.

705.06 Recovery from person wrongfully in possession.—Whenever any property described in this chapter, chapter 706, or chapter 707, is ascertained to be wrongfully withheld and the person in possession refuses to give it up to the sheriff on demand, the county attorney of the county in which the property is situated, or the city attorney, if within a municipality, when required to do so by the sheriff, shall enter a suit for said property and prosecute it to a final recovery. All moneys derived from these sources shall be paid by the sheriff into the state treasury for the benefit of the state school fund.

History.—§§4, 5, ch. 344, 1850; RS 2015; GS 2537; RGS 3892; CGL 5799; §4, ch. 63-267.

705.07 Finder of derelict goods failing to report. — Whoever finds wrecked or derelict goods and fails to report them to the county judge of the county wherein the same are found, shall be punished by a fine not exceeding five hundred dollars.

History.—§4, ch. 1005, 1859; RS 2501; GS 3384; RGS 5232; CGL 7351.

705.08 Finder appropriating derelict goods.—Whoever finds wrecked or derelict goods and secretes or appropriates the same to his own use, or shall refuse to deliver the same when required, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§2502 RS 1892; GS 3385; RGS 5233; CGL 7352.

705.09 Disposition and appraisal of property seized by the sheriff or by any other officer.—

(1) When personal property not subject to be summarily destroyed is seized by the sheriff pursuant to any of the provisions of the law of this state permitting forfeiture thereof, or when property seized by any other officer is delivered to the sheriff under such provisions, the sheriff shall forthwith fix the approximate value thereof and make report thereof to the

county judge. The report shall contain a schedule of the property seized, a full statement of the facts giving cause for said seizure, the name and position of the person making the seizure and the name and address of the owners or persons having possession of the property seized, and names and addresses of all persons, firms or corporations known to the sheriff to have an interest in the property seized.

(2) The sheriff shall hold the property seized pending an order of disposal by the court.

History.—§5, ch. 63-267.

705.10 Notice of seizure and order to show cause.—

(1) The county judge upon receiving the report and schedule of the sheriff shall treat it as a petition or libel in rem for the forfeiture of the property therein described. The report shall be sufficient as said petition or libel notwithstanding the fact that it may not contain a formal prayer or demand for forfeiture. The report shall be subject to amendment at any time before final hearing upon due notice to all interested parties.

(2) Upon the filing of the report, the county judge shall cause to be issued a citation directed to all persons, firms, and corporations owning, having or claiming any interest in or lien upon the seized property, giving notice of the seizure and directing all such persons, firms and corporations to file their claims stating their particular interest in said property. All persons, firms and corporations personally served shall file their claims within twenty days after receiving service of the citation. The citation shall set the time for filing a claim for interested parties not personally served not to exceed thirty days from the date the report was filed. Personal service shall be made on all parties in the state having liens noted upon a certificate of title as shown by the records in the office of the motor vehicle commissioner.

History.—§5, ch. 63-267.

705.11 Notice of seizure and order to show cause when owners of property are unknown.— When personal property not subject to summary destruction is seized by the sheriff pursuant to any of the provisions of the law in this state permitting forfeiture of said property, or when property seized by any other officer is delivered to the sheriff, and the name of the owners of said property or the names of any person, firm or corporation having an interest in or lien upon said property cannot be ascertained, the sheriff shall give notice of seizure and an order to show cause why the property should not be forfeited and sold by publication for a period of thirty days in the manner provided in chapter 49.

History.—§5, ch. 63-267.

705.12 Proceeding when claim filed.—When one or more claims are filed in the cause, the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state making such property subject to such forfeiture, and further, that at such time there was no reasonable reason to believe that said property might be used for such purpose. Where the owner of the property has been convicted of the violation of a statute or laws of the state which provide for the seizure and forfeiture of property, such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and it shall be incumbent upon such claimant to satisfy the court that he was without knowledge of such conviction.

History.—§5, ch. 63-267.

705.13 Judgment of forfeiture.—On final hearing the report of the sheriff to the county judge shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state subjecting the property involved to forfeiture and sale and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimants to show that the property was not so used or if so used that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such properties are encumbered by a lien or retained title agreement under circumstances wherein the lien holder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all the rights, titles and interest, subject, however, to the lien of such innocent lien holder, or may direct the payment of such a lien from the proceeds of any sale of said property. The proceedings and judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some other governmental function or use, or otherwise, as the court may determine. If any of the property declared forfeited is of such a nature as to be readily adaptable for use in the office of sheriff, the sheriff of the county involved shall be allowed to requisition such items of the forfeited property before any other disposition is made under the judgment. The

sheriff's requisition shall be filed before judgment and the property requisitioned therein shall be allocated to the office of the sheriff in said judgment. The balance of the property shall be destroyed or sold or allocated to some other governmental function or use. Sales of such property shall be a public sale to the highest and best bidder for cash after two weeks public notice as the court may direct. Upon the application of any claimant, the court may fix the value of a forfeitable interest in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of the sale of said property under a judgment of forfeiture.

History.—§5, ch. 63-267.

705.14 Disposition of proceeds or forfeiture.—All sums received from the sale or other disposition of the seized property shall be paid into the state treasury for the benefit of the state school fund and shall become a part thereof.

History.—§5, ch. 63-267.

705.15 Fees for services.—Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and similar services in other cases.

History.—§5, ch. 63-267.

CHAPTER 706

WRECKED COTTON; LUMBER ADRIFT; BOATS AND VESSELS ADRIFT

706.01 Finder of wrecked cotton to advertise.—Persons taking up cotton afloat in the rivers of this state shall place it in a secure place out of the weather and give early notice, by advertisement at the port to which said cotton was destined, of the finding of the same, giving the marks or brands on said cotton, together with the place of finding and the name of the finder.

History.—§1, March 4, 1841; RS 2016; GS 2538; RGS 3893; CGL 5800.

706.02 Owner to pay expenses and salvage.—The person finding said cotton shall deliver it to the owner, on his paying the expense of advertisement and the sum of five dollars for each bale so saved.

History.—§2, March 4, 1841; RS 2017; GS 2539; RGS 3894; CGL 5801.

706.03 Sale.—If no owner shall appear within three months after the time of such advertisement, the person finding shall expose the same at public auction to the highest bidder, and shall hold the proceeds, after the payment of proper costs and charges and the salvage aforesaid, for the benefit of the owner.

History.—§3, March 4, 1841; RS 2018; GS 2540; RGS 3895; CGL 5802.

706.04 Persons to adopt brand for lumber.—Any person floating lumber, logs or timber down the current of rivers, streams or water-courses in the state may adopt, to his exclusive use, a particular mark, brand or stamp, to be used and applied on all such lumber, logs or timber, to distinguish and designate his ownership thereof; but such person adopting any such mark, brand or stamp shall have it recorded in the office of the clerk of the circuit court, describing it particularly and its usual mode of application.

History.—§2, ch. 507, 1853; RS 2019; §1, ch. 4174, 1893; GS 2541; RGS 3896; CGL 5803.

706.05 Damages for fraudulently using stamp.—Any person who shall after such record knowingly use said mark, brand or stamp shall be liable in double damages to the party aggrieved.

History.—RS 2020; §2, ch. 4174, 1893; GS 2542; RGS 3897; CGL 5804.

706.06 Booms may be constructed.—Owners of timber or lumber floating down rivers or water-courses may make use of floating booms on such streams for the purpose of securing such timber or lumber from loss, but such booms shall not be used in such manner as to cause any unnecessary delay to boats and vessels engaged in the navigation of such streams, nor shall they remain stretched out upon or across such streams any longer than is absolutely necessary to secure the timber or lumber from loss.

History.—§3, ch. 507, 1853; RS 2021; GS 2543; RGS 3898; CGL 5805.

706.07 Public custodian for certain ports.—The governor shall appoint, by and with the advice and consent of the senate, for each port in the state into which have or shall come during any calendar year not fewer than fifty vessels of five hundred tons burden each, a public custodian of lost timber and lumber, who shall give a bond in the sum of one thousand dollars to the governor for the faithful discharge of his duties, and shall hold his office for four years, unless sooner removed by the governor for good cause.

History.—§1, ch. 5171, 1903; GS 2544; RGS 3899; CGL 5806.

706.08 To what ports §§706.04-706.15 apply.—Sections 706.04-706.15 shall apply to all ports, and none other, into which have come during the past five years vessels of five hundred tons burden and upwards, at the average of not less than two hundred and fifty vessels per year, according to the records of the United States custom house at or nearest the port for which such appointment shall be made.

History.—§2, ch. 4803, 1899; GS 2552; RGS 3905; CGL 5812.

706.09 Custodian; duties as to vessels.—The said public custodian shall keep in his office a register book, wherein he shall immediately upon the arrival of any vessel record the name, date of arrival, master, nationality, and the tonnage thereof, and the cargo stamp to be furnished as hereinafter provided. The said public custodian of timber and lumber shall furnish to the master of each vessel loading cargo from the water a suitable stamp, with which the master of the said vessel shall cause to be stamped all timber and lumber immediately upon its receipt alongside to be loaded as above set forth.

History.—§2, ch. 3899, 1889; RS 2023; GS 2545; RGS 3900; CGL 5807.

706.10 Custodian; duties as to lost timber.—The said public custodian, either by himself or his agent, shall keep at all times a careful watch over the waters of his port, and shall recover and place in a boom to be kept by him for the purpose, convenient to the shipping, all timber and lumber that shall be found adrift in said waters, and safely keep the same until disposed of in the manner hereinafter provided; but nothing in this section contained shall authorize the public custodian, or his agent, or any other person, to take possession of any lumber or timber afloat upon the waters of such port, or its tributaries, when the owner thereof, or his bailee or agent, shall be in possession, view or immediate pursuit thereof.

History.—§3, ch. 3899, 1889; RS 2024; §2, ch. 5171, 1903; GS 2546; RGS 3901; CGL 5808.

706.11 Notice of finding lost timber.—The said public custodian of timber and lumber immediately upon the recovery of any timber or lumber shall give public notice for five days in some newspaper published at said port giving the description, quantity and stamp of such timber or lumber, and stating that unless said timber or lumber be called for and identified by the owner within five days, the same will be sold as provided in §706.14, and that if the proceeds of such sale be not called for by the person lawfully entitled to the same within ninety days after such sale, the same will be forfeited and paid into the county treasury for the use of county schools; and the owners of any such timber or lumber shall be entitled to have the same delivered when at said boom upon paying to the said custodian the fees hereinafter provided.

History.—§4, ch. 3899, 1889; RS 2025; §3, ch. 5171, 1903; GS 2547; RGS 3902; CGL 5809.

706.12 Stamp to be evidence.—The stamp furnished and used under the provisions of §706.09 when appearing upon timber or lumber adrift shall be, in the courts of the state, prima facie evidence of ownership.

History.—§5, ch. 3899, 1889; RS 2026; GS 2548; RGS 3903; CGL 5810.

706.13 Fees.—The said public custodian of lost timber and lumber shall be entitled to demand and receive from the master of each vessel using the stamp provided for in this chapter the sum of two dollars for the use of the same while engaged in loading, and for each stick of sawn timber recovered and delivered the sum of seventy-five cents and for each stick of hewn timber recovered and delivered the sum of one dollar and fifty cents, and for lumber recovered and delivered the sum of three dollars per thousand superficial feet measurement, two dollars and fifty cents for each chain and five cents for each iron dog recovered and delivered, and five dollars for each ship's boat or yawl recovered and delivered, and the said custodian shall have a first lien upon timber, lumber, chains, iron dogs and boats or yawls so recovered by him for all his fees and dues for same until the same be fully paid, and he shall not be required to deliver any timber, lumber, chains, iron dogs, boats or yawls until such payment is made.

History.—§6, ch. 4044, 1891; §1, ch. 4803, 1899; GS 2549; RGS 3904; CGL 5811; am. §7, ch. 22858, 1945.

706.14 Sale of lost timber.—After any lost timber or lumber has been advertised as above required for the period of five days, and no owner or claimant has appeared, the custodian shall sell the same at public sale, after public notice as aforesaid, advertised for five days, for the benefit of whom it may concern, for which service he shall receive from the proceeds of such sale five per cent on the gross amount of such sale; the net proceeds of such sales to be held and paid by him to such person as shall be lawfully entitled to the same.

History.—§7, ch. 3899, 1889; §3, ch. 4044, 1891; RS 2028; GS 2551; RGS 3906; CGL 5813.

706.15 Picking up lumber adrift.—No person other than the custodian of lost timber, or his agents, in ports where such custodian has been appointed, shall pick up, recover, or in any manner interfere with any timber or lumber found adrift in the waters of such port, which has been stamped as required by law or which has not been stamped. Any person violating the provisions of this section shall be punished by fine of not less than five dollars and not more than fifty dollars or imprisonment for not more than thirty days.

History.—RS 2503; §8, ch. 3899, 1889; §4, ch. 5171, 1903; GS 3386; RGS 5234; CGL 7353.

706.16 Ports having no public custodian; lumber, etc., not to be stayed before reaching the sea.—In ports having no public custodian, no person other than the owner or his agents shall arrest, stay or take possession of any sawed lumber in rafts, hewed timber, round saw-mill logs or spars adrift before the same shall have reached the mouths or outlets of the rivers and streams and have passed out into the open sea or bays where the said rivers or streams empty their waters.

History.—§1, ch. 507, 1853; RS 2030; GS 2552; RGS 3907; CGL 5814.

706.17 Lumber taken up in sea, etc., to be advertised.—Whenever any person shall find any rafts of the timber or lumber mentioned in §706.16 in the said open sea or bays, he shall secure it in the place where found, or in the nearest place of safety, and shall proceed to advertise it at the door of the courthouse of the county wherein it was found, stating the kind and probable quantity of lumber, the place where found and where deposited.

History.—§1, Feb. 10, 1834; RS 2031; GS 2553; RGS 3908; CGL 5815.

706.18 Sale and disposition of proceeds.—If after the expiration of sixty days from the date of the advertisement no person shall claim and establish his right of property to said timber or lumber to the satisfaction of the justice of the peace of the district (to

prove which right the person claiming to be the owner of said timber or lumber shall not be required to produce testimony upon oath to the identity thereof, but such circumstantial proof as the nature of the case admits) then the finder may take it to the nearest market and deliver it to some justice of the peace, who shall forthwith sell the same to the best advantage, pay to the finder all necessary and reasonable expenses, reserve to himself five per cent as compensation for his services, and place the balance in the hands of the clerk of the circuit court, whose receipt he shall take. But if before the expiration of the sixty days the owner shall appear and establish his right to said lumber such owner shall pay all expenses and reasonable charges for securing the same, to be determined, in case of difference between the parties, by an arbitrator appointed by each; but if after the expiration of another term of sixty days no right shall have yet been established to said lumber, then the balance of said money remaining in the hands of the clerk shall be paid over, one-half to the finder and the other half to the county treasury, to be applied in common with other funds to county purposes.

History.—§2, Feb. 10, 1834; RS 2032; GS 2554; RGS 3909; CGL 5816.

706.19 Selling rafted lumber adrift.—Whoever finding any timber or lumber adrift, outside of ports for which a public custodian for lost timber and lumber is appointed, sells it without complying with the law relative to lumber adrift, or disposes of it, in the place or places where found, as his timber or lumber, or appropriates it to his own use, shall be deemed guilty of larceny, grand or petit, as the case may be, and shall be punished accordingly.

History.—§3, Feb. 10, 1834; RS 2446; GS 3294; RGS 5128; CGL 7229.

706.20 Proceedings like those for estrays.—If any person shall take up any boat or other vessel adrift, he shall as in the case of estrays, make application to some justice of the peace of the district where such boat or vessel was taken up for his warrant to have the same valued and described by her kind, burthen and build, and shall proceed in all other respects and shall have the same benefits as directed in the case of estrays.

History.—§8, Nov. 21, 1828; RS 2033; GS 2555; RGS 3910; CGL 5817.
cf.—Ch. 707 Estrays.

CHAPTER 707

ESTRAYS

707.01 Definitions. — Cattle of all kinds, hogs, sheep and goats wandering about the neighborhood for six months, and stud-horses, geldings, mares, fillies, colts, asses and mules for three months, shall be considered estrays.

History.—§9, Nov. 21, 1828; RS 2034; GS 2556; RGS 3911; CGL 5818.

707.02 Maliciously taking up animals as estrays.—If any person shall vexatiously or maliciously take up any animal as an estray contrary to law, he shall be liable to an action for damages to the party injured.

History.—§7, Nov. 21, 1828; RS 2035; GS 2557; RGS 3912; CGL 5819.

707.03 Failure to comply with regulations. —Any person taking up any estray and failing or neglecting to comply with the regulations of this chapter relative to such estray, and being thereof duly convicted before a court of competent jurisdiction, shall for every such offense (except when otherwise provided) forfeit and pay a sum equal to double the value of the estray, which appraisement and and advertised as aforesaid, to be recovered by suit or action at law by any person who may prosecute for the same to the use of the county school fund.

History.—§13, Nov. 12, 1833; RS 2036; GS 2558; RGS 3913; CGL 5820.

707.04 Who may take up estrays.—Any person may take up all estrays that may be found straying away from their owners.

History.—§2037 RS 1892; GS 2559; RGS 3914; CGL 5821.

707.05 Proceedings for estrays broken to service.—If the estray has been broken to service, the person taking it up shall within five days take or drive it before the justice of the peace of the district, who shall take down in writing a full description of the estray, including a particular description of its marks, natural and artificial brands, stature, age and color, and shall immediately cause it to be appraised by two or more discreet persons of the vicinage, under his warrant, they being first sworn well and truly to ascertain the value of such estray which appraisement and description, together with the name of the taker-up and his place of residence, the justice shall within five days transmit to the clerk of the circuit court, having special care that the taker-up do solemnly swear that he has not altered, or caused to be altered, the marks or brands of such estray, and that to the best of his knowledge and belief such marks or brands have, or have not (as the case may be), in any case been altered, and that the owner is to him unknown.

History.—§1, Feb. 12, 1833; §1, Feb. 11, 1837; RS 2038; GS 2560; RGS 3915; CGL 5822; §29, ch. 29615, 1955.

707.06 Proceedings for other animals.—In case any person shall take up any estrayed neat cattle, sheep, goats or hogs, he shall cause the same to be viewed by a householder in the county, and the taker-up shall be compelled to advertise said estray at least five days at the place of holding justice's courts, as in the district prior to tolling, and shall immediately thereafter go with such householder before the justice of the peace and make oath before him that the same was taken by him, and that the marks or brands of such estray have (or have not) to the best of his knowledge and belief been altered, and the said justice shall take from the taker-up and householder, upon oath, a particular and exact description of the marks and brands, color and age of all and every such neat cattle, sheep, goats or hogs, and such justice shall, in manner as above directed, issue his warrant for the appraisement of such estrays, which description and valuation shall by said justice within five days be transmitted to the clerk of the circuit court, by him to be disposed of as hereinafter directed.

History.—§2, Feb. 12, 1833; RS 2039; GS 2561; RGS 3916; CGL 5823.

707.07 Justice to record certificate. — The justice shall enter a true copy of the certifi-

cate by him transmitted to the clerk of the circuit court in a book to be by him kept for that purpose.

History.—§3, Feb. 12, 1833; RS 2040; GS 2562; RGS 3917; CGL 5824.

707.08 Clerk to record certificate and to advertise estray. — The clerk of the circuit court in each county shall receive and enter in a book by him to be provided and kept for that purpose all such certificates of description or appraisement as to him shall be transmitted from the respective justices, and he shall also advertise the estray, with description, and the name of the taker-up, as returned to him by the justice of the peace, at the courthouse door of the county and in a newspaper published in the county once a week for four weeks.

History.—§4, Feb. 12, 1833; §2, Feb. 11, 1837; RS 2041; GS 2563; RGS 3918; CGL 5825.

707.09 Sale and disposition of proceeds in case of horses, etc.—The taker-up shall bring to the courthouse, or place of holding court in the county in which he resides, every such strayed horse, mare, colt, filly, ass or mule, on the first sheriff's sale day that shall happen after the expiration of the said advertisement, and the clerk of the circuit court of the county, on said sheriff's sale day, upon giving ten days' notice at such places as is usual for advertising the sheriff's sales of said county, shall cause the estray to be sold at public outcry to the highest bidder for cash, and pay over the proceeds of such sale to the clerk, after defraying the charges and fees directed for county school fund purposes. Every taker-up who shall neglect or refuse to comply with the requirements of this section shall be liable for double the amount of the appraisement to be recovered before a court of competent jurisdiction, which shall be applied to the use of the county school fund, after deducting the legal fees.

History.—§5, Feb. 12, 1833; §2, Feb. 11, 1837; RS 2042; GS 2564; RGS 3919; CGL 5826.

707.10 Sale and disposition of proceeds in case of cattle, etc.—In case any person shall take up as aforesaid any neat cattle, sheep, goats or hogs, and no person shall appear and make satisfactory proof that the said estray is his property, the justice of the peace before whom the estray has been tolled, having given five days' notice by advertisement in two of the most public places in the justice's district wherein he resides, shall proceed to sell the said estray, at such place and by such person as he may consider most to the interest of the county upon one of his regular court days, between the usual hours for ready money, to the highest bidder; and the justices of the peace shall pay to the county treasury of their respective counties, within twenty days after receipt, all moneys in their hands that have arisen from the sale of estrays as aforesaid, deducting five per cent for commission and such other charges as are allowed by law.

History.—§6, Feb. 12, 1833; §3, Feb. 11, 1837; RS 2043; GS 2565; RGS 3920; CGL 5827.

707.11 Claim by owner of estray.—If any person shall, within six months from the time of such sale, prove to the satisfaction of the board of county commissioners of the county that the estray so sold was his own property, or that of his employer (as the case may be), the board of county commissioners shall, after deducting the fees and charges hereinafter allowed, direct the money arising from such sale to be paid to the claimant of said estray. If no person shall so make proof, the board of county commissioners shall cause the moneys arising from such sale, after deducting the said fees and charges, to be paid to the county school fund.

History.—§7, Feb. 12, 1833; §2, Feb. 11, 1837; RS 2044; GS 2566; RGS 3921; CGL 5828.

707.12 Taker-up not responsible for death of estray.—If after notice published as aforesaid any estray shall happen to die, or by any casualty get out of the possession of the person who took up the same without his default, such taker-up shall not be answerable for the same or the valuation thereof.

History.—§10, Nov. 21, 1826; RS 2045; GS 2567; RGS 3922; CGL 5829.

707.13 Estray may be put into service.—The taker-up of such estrays shall, as a compensation for maintaining and keeping the same, put them to immediate service (if capable of service), and if incapable, or if he should prefer it, receive from the owner, if the estray be claimed, or from the board of county commissioners, if it be sold, a reasonable satisfaction, to be adjudged by the clerk of the circuit court and a justice of the peace of the county according to the circumstances of the case. In case of putting such estray to labor, he shall be bound to produce the same to the owner, if claimed, or the clerk of the circuit court, if sold (casualties excepted), in as good condition as when appraised.

History.—§9, Nov. 12, 1833; RS 2046; GS 2568; RGS 3923; CGL 5830.

707.14 Compensation to taker-up. — Upon the delivery of any such estray to the legal owner, or in case of sale, upon the sale thereof, the taker-up shall receive from the owner or the clerk of the circuit court, as the case may be, the sum of one dollar for each horse, mare, colt, filly, ass, mule or ox, in addition to the sum by him paid to the justice of the peace, and the sum of twelve and a half cents for each head of neat cattle, sheep, goats or hogs, in addition to the sum above mentioned for the keeping and maintaining of the same.

History.—§10, Nov. 12, 1833; RS 2047; GS 2569; RGS 3924; CGL 5831.

707.15 Fees.—The justice of the peace, for his services, shall receive from the taker-up, at the time such estray shall be brought before

him, or description or valuation presented to him as above, the sum of twenty-five cents for each horse, mare, colt, filly, ass or mule, and the sum of six and one-quarter cents for each head of neat cattle, sheep, goats or hogs. The clerk of the circuit court shall receive, for the receiving, entering and publishing every certificate as above directed, the sum of six cents, to be paid by the owner claiming the property, or deducted from the moneys arising from the sale of such property, and the further sum of five per cent upon the balance of such money as a compensation for selling or collecting and paying.

History.—§§8, 11, Nov. 12, 1833; RS 2048; GS 2570; RGS 3925; CGL 5832.

707.16 Clerks to render statement of proceeds of sales.—The clerk of the circuit court in each county shall render to the chairman of the board of county commissioners annually a true statement of all moneys arising from the sale of estrays as aforesaid, accompanied with the proper vouchers, and exhibit a correct statement as aforesaid to the grand jury at every fall term thereof, if required.

History.—§12, Nov. 12, 1833; RS 2049; GS 2571; RGS 3926; CGL 5833.

707.17 Penalty for malfeasance of justice or clerk.—If any justice of the peace or clerk of the circuit court shall refuse or neglect to perform the duties required by this chapter, chapter 705, or chapter 706, such justice or clerk so neglecting or refusing shall for every such neglect or refusal forfeit the sum of ten dollars to the use of the county school fund of the county where such offense shall be committed, to be recovered by action of debt in any court having jurisdiction of the same, and shall moreover be liable to an action of damages to the party injured.

History.—§14, Nov. 12, 1833; RS 2050; GS 2572; RGS 3927; CGL 5834.

707.18 Owners of strayed animals may enter pasture of another to seek for same.—It shall be lawful for the owner or owners of any cattle or other domestic animals or the agent or agents of said owners to enter the pasture of another for the sole purpose of seeking and recovering any cattle or other domestic animals that may have strayed or broken into, or which may have been driven into, such inclosure, inadvertently or otherwise and to drive from such inclosure any cattle or other domestic animals belonging to such owners or under the control of such agent or agents so entering.

History.—§1, ch. 5417, 1905; RGS 3928; CGL 5835.

707.19 Owner of strayed animals to notify owner of pasture of intention to enter.—The owners of any cattle or other domestic animals or their agent or agents, desiring to enter any pasture of another for the purpose as set forth in §707.18, shall notify the owner or owners or their agent or agents of the time and place they desire to enter such pasture for the purposes set forth in said section. Such notice may be given verbally or in writing.

History.—§2, ch. 5417, 1905; RGS 3929; CGL 5836.

707.20 Duty of owner of pasture to facilitate entry.—The owner or owners, their agent or agents shall facilitate the entering into any pasture owned by them or controlled by their agent or agents when request is made by any party or parties entitled to the benefits of §707.18, the request to be made according to §707.19.

History.—§3, ch. 5417, 1905; RGS 3930; CGL 5837.

707.21 Refusing entrance to pasture to seek strayed domestic animals.—Any person or owner of any pasture, who refuses to allow entrance or who hinders any owner or owners of cattle or other domestic animals, or their agent or agents, who have complied with §707.19, either by their own acts or the acts of their agent or agents, shall be deemed guilty of a misdemeanor, and when convicted of the same by a competent court having jurisdiction thereof, shall be fined in a sum not to exceed two hundred dollars for each and every such offense, or by imprisonment in the county jail at hard labor not to exceed one month. Provided, that this section shall not apply to any county having no-fence districts.

History.—§§1, 4, ch. 5417, 1905; RGS 5238; CGL 7357.
cf.—§775.06, Alternative punishment.

707.22 Stud horse or ass running at large may be gelded by permission of justice of peace.—It shall not be lawful for any stud-horse or ass to run at large, and if any such shall be found running at large, any person may take up the same, and having taken him before the justice of the peace of the district, may geld the same stud-horse or ass, with the permission of the justice, taking care that the operation be performed by a person usually doing such business, for which the person so gelding shall receive five dollars, to be paid by the owner of the horse or ass, to be recovered from him by summary proceedings before a justice of the peace. But if any person shall take up and geld such stud-horse or ass contrary to §§707.22 and 707.23, or without fully pursuing the directions of this section, he shall for every such offense forfeit to the party injured double the value of such horse or ass, to be recovered in a court of competent jurisdiction.

History.—§11, Nov. 21, 1828; RS 2051, 2052; GS 2573; RGS 3931; CGL 5838.

707.23 Proceedings, when not gelded.—Any person who shall take up any stud-horse or ass, and may not choose to geld him, may take him before the justice of the peace of the district, and shall cause the said horse or ass with his brands and marks, if he has any, and if not, with a description of him, to be advertised is not less than three of the most public places of the county, and the person

taking up said horse or ass shall recover from the owner thereof, before the proper justice of the peace, the sum of five dollars and all reasonable expenses of keeping such horse or ass. If such stud-horse or ass shall not be claimed by any person within ten days the person taking up the stud-horse or ass shall proceed as in other cases of estrays, but in no case shall he forfeit or lose the sum of five dollars and all reasonable expenses allowed him by this chapter.

History.—§12, Nov. 21, 1828; RGS 3932; CGL 5839.

CHAPTER 708

MARRIED WOMEN'S PROPERTY

708.01 Rights reserved under the Spanish laws.—Whereas some doubts have been entertained as to the effect and operation of the introduction of the common law of England upon the separate rights of husband and wife under the laws of the provinces of East and West Florida upon marriages solemnized before the change of government; to obviate any doubts in future, be it enacted, that all the rights and privileges of husband and wife established or derived by marriage under the civil laws of Spain while this state was under the jurisdiction of that government, shall be held, possessed and exercised by the husband and wife respectively in this state, and each shall be permitted to sell, succeed to, dispose of and convey by sale, devise or will their goods, chattels, lands and tenements in the same manner as they could or might have done under the laws of Spain, observing only the formalities of conveyance required by any other laws established, or which may hereafter be established, in this state.

History.—§1, Dec. 23, 1824; RS 2069; GS 2587; RGS 3946; CGL 5865.

708.02 Right to separate property. — All property real and personal, of a wife, owned by her before marriage or lawfully acquired afterward by gift, devise, bequest, descent, or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent given by some instrument in writing executed according to the law respecting conveyances by married women.

History.—§§1, 2, March 6, 1945; RS 2070; GS 2588; RGS 3947; CGL 5866.
cf.—§2, Art. XI, Const.

708.03 Custody and management of such property.—The property of the wife shall remain in care and management of the husband but he shall not charge for his care and management, nor shall the wife be entitled to sue her husband for the rent, hire, issues, proceeds or profits of her said property.

History.—§§1, 3, March 6, 1845; RS 2071; GS 2589; RGS 3948; CGL 5867.
cf.—§ § 62.40 through 62.46, Removal of disabilities of married women.

708.04 Sales and conveyances.—The husband and wife shall join in all sales, transfers and conveyances of the property of the wife, other than personal property and choses in action.

History.—§4, March 6, 1845; RS 2072; GS 2590; RGS 3949; §1. ch. 12255, 1927; CGL 5868.

708.05 Husband not liable for antenuptial debts of wife.—The husband shall not be liable to pay the debts of the wife contracted before marriage, but the property of the wife shall be subject to such debts.

History.—§5, March 6, 1845; RS 2073; GS 2591; RGS 3950; CGL 5869.

708.06 Right to wages and earnings. — A married woman's wages and earnings acquired by her in any employment separate from her husband shall be her separate property and subject to her own disposal, and she shall be entitled to sue for and recover the same as though she were a single woman.

History.—§2076 RS 1892; GS 2593; RGS 3952; CGL 5871.

708.07 Specific performance against married woman.—Coverture shall not prevent a decree against husband and wife or either of them to specifically perform their written agreement to sell or convey the separate property of the wife or to relinquish her right of dower in the property of the husband, regardless of whether the same shall be acknowledged or not.

History.—§2076 RS 1892; GS 2594; RGS 3953; CGL 5872; am. §1, ch. 23820, 1947.

708.08 Married women's rights; separate property.—Every married woman is hereby empowered to take charge of, and manage and control her separate property, to contract and to be contracted with, to sue and be sued, and to sell, convey, transfer, mortgage, use and pledge her property, real and personal, and to make, execute and deliver instruments and documents of every character, without restraint, without the joinder or consent of her husband, in all respects as fully as if she were unmarried. Every married woman, without the joinder or consent of her husband, shall have and may exercise all rights and powers with respect to her separate property, income and earnings, and may enter into, obligate herself to perform, and enforce contracts or undertakings to the same extent and in like manner as if she were unmarried; provided, however, that no deed, mortgage or other instrument conveying or encumbering real property owned by a married woman shall be valid without the joinder of her husband; provided, further, that any claim or judgment against any married woman shall not be a claim or lien against such married woman's inchoate right of dower in her husband's separate property.

History.—§1, ch. 21932, 1943.
cf.—§46.10, Right to sue individually.
§§62.40 through 62.46, Removal of disabilities of married women.
§689.01 et seq., Conveyances of real property.
§689.11, Conveyance between husband and wife.
§693.01, Requiring joinder of husband.
§693.03, Married women's acknowledgments.

708.09 Same; agreements with husband, power of attorney, etc.—Every married woman may enter into agreements and contracts with her husband, may become the partner of her husband or others, may give a power of attorney to her husband, and may execute powers conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her or by herself and her husband as tenants by the entirety or by her husband. All powers of attorney heretofore executed by a wife to her husband and vice versa, and the execution of all documents executed thereunder, are hereby validated and confirmed.

History.—§1, ch. 21696, and §2, ch. 21932, 1943.

708.10 Same; construction of law.—This law shall not be construed as (1) relieving a husband from any duty of supporting and maintaining his wife and children; (2) abolishing estates by the entireties or any of the incidents thereof; (3) abolishing dower or any of the incidents thereof; (4) changing the rights of either husband or wife to participate in the distribution of the estate of the other upon his death, as may now or hereafter be provided by law; (5) dispensing with the joinder of husband and wife in conveying or mortgaging homestead property.

History.—§3, ch. 21932, 1943.

CHAPTER 709

POWERS OF ATTORNEY AND SIMILAR INSTRUMENTS

709.01 Power of attorney; authority of nominee when principal dead.—If any agent, constituted by power of attorney or other authority, shall do any act for his principal which would be lawful if such principal were living, the same shall be valid and binding on the estate of said principal, although he or she may have died before such act was done; provided, the party treating with such agent dealt bona fide, not knowing at the time of the doing of such act that such principal was dead. An affidavit, executed by the attorney in fact or agent setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the death of the principal, or notice of any facts indicating his death, shall in the absence of fraud be conclusive proof of the absence of knowledge or notice by the agent of the death of the principal at such time. If the exercise of the power requires the execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. No report or listing, either official or otherwise, of "missing" or "missing in action" regarding any person in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, as such words "missing" or "missing in action" are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal, or notice of any facts indicating the death of such person, or shall operate to revoke the agency.

History.—§1, ch. 23011, 1945.

709.02 Power of appointment; method of release.—Powers of appointment over any property, real, personal, intangible or mixed, may be released, in whole or in part, by a written instrument signed by the donee or donees of such powers. Such written releases shall be signed in the presence of two witnesses but need not be sealed, acknowledged or recorded in order to be valid, nor shall it be necessary to the validity of such releases for husbands of married donees to join such donees in the execution of releases, in whole or part, of powers of appointment.

History.—§1, ch. 23007, 1945.

709.03 Same; property held in trust.—If property subject to a power of appointment is held in trust by a person, firm or corporation other than the donee or donees of the power, a written release, in whole or in part, of a power to appoint the same shall be delivered to such trustee or trustees before the written release becomes legally effective. In no other instance shall a delivery of a release, in whole or in part, of a power of appointment be necessary to the validity of such release.

History.—§2, ch. 23007, 1945.

709.04 Same; effect of revocation.—Any power of appointment wholly released by a written instrument signed by the donee or donees of such power shall be, in legal effect, completely revoked, and shall not, after such release, be subject to being exercised in any manner whatsoever. Any power of appointment partially released by a written instrument signed by the donee or donees of such power shall be, in legal effect, as to such released part, completely revoked, and shall not after such release be subject to being exercised in any manner whatsoever as to such released part.

History.—§3, ch. 23007, 1945.

709.05 Same; prior powers validated.—All releases, in whole or in part, of powers of appointment heretofore executed in a manner that conforms with the provisions of this law be and they are hereby validated and shall be given the same force and effect as if executed subsequently to the effective date of this law.

History.—§4, ch. 23007, 1945.

709.06 Same; powers included in law.—Powers of appointment referred to in this law shall include not only those recognized as such by general law but also those designated as such under the tax law of the United States.

History.—§5, ch. 23007, 1945.

709.07 Same; effect on title to property.—No such release, in whole or in part, of a power of appointment shall affect the title to property of any bona fide purchaser for value who does not have notice or knowledge of such release.

History.—§7, ch. 23007, 1945.

CHAPTER 710

GIFTS TO MINORS

710.01 Short title.—This act may be cited as the Florida Gifts to Minors Act.

History.—Comp. §11, ch. 57-53.

710.02 Definitions.—In this act, unless the context otherwise requires:

(1) An "adult" is a person who has attained the age of twenty-one years.

(2) A "bank" is a bank, trust company, national banking association, saving or industrial bank.

(3) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes persons lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of regular business.

(4) A "savings and loan association" is a savings and loan association organized under the laws of this state or the United States, and located in this state.

(5) "Court" means the circuit court.

(6) The "custodial property" includes:

(a) All securities and money under the supervision of the same custodian for the same minor as a consequence of a gift made to the minor in a manner prescribed by this act.

(b) The income from custodial property; and

(c) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income.

(7) A "custodian" is a person so designated in a manner prescribed by this act.

(8) A "guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

(9) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(10) A "legal representative" of a person is his executor or administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(11) A "member" of a "minor's family" means any of the minor's parents, grand parents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(12) A "minor" is a person who has not attained the age of twenty-one years.

(13) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, (certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease), collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specificies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(14) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(15) A "trust company" is a bank authorized to exercise trust powers in Florida.

History.—§1, ch. 57-53; (4) n., subsequent subsections renum. by §1, ch. 61-125.

710.03 Manner of making gifts.—

(1) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(a) If the subject of the gift is a security in registered form, by registering it in the name of the donor, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for _____ under the Florida Gifts to Minors Act";

(b) If the subject of the gift is a security not in registered form, by delivering it to an adult member, other than the donor, of the minor's family, a guardian of the minor or trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as cutodian:

"GIFT UNDER THE FLORIDA GIFTS TO MINORS ACT

_____ hereby delivers to
(name of donor)

_____ as custodian for
(name of custodian)
_____ under the Florida Gifts to Minors Act, the following security(ies): (insert an appropriate description of the securities or security delivered sufficient to identify it or them)

_____
(signature of donor)
_____ hereby acknowledges
(name of custodian)
receipt of the above described security(ies) as custodian for the above minor under the Florida Gifts to Minors Act.

Dated: _____

_____"
(signature of custodian)

(c) If the subject of the gift is money, by paying or delivering it to a broker, savings and loan association, or a bank for credit to an account in the name of the donor, an adult member of the minor's family, a guardian of the minor or a bank with trust powers, followed, in substance, by the words: "as custodian for _____ under the Florida Gifts to Minors Act."

(2) Any gift made in a manner prescribed in subsection (1) may be made to only one minor and only to one person as custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

History.—§2, ch. 57-53; (1) (c) a. by §2, ch. 61-125.

710.04 Effect of gift.—

(1) A gift made in a manner prescribed in this act is irrevocable and conveys to the minor indefeasible vested legal title to the security or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this act.

(2) By making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act and grants to the custodian, and to any issuer, transfer agent, bank, broker, savings and loan association, or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this act.

History.—§3, ch. 57-53; (2) a. by §3, ch. 61-125.

710.05 Duties and powers of custodian.—

(1) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(2) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor.

(5) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this act.

(6) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(7) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for _____ under the Florida Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker, savings and loan association, or in a bank in the name of the custodian, followed, in substance, by the words: "as custodian for _____ under the Florida Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(8) The custodian shall keep records of all transactions with respect to the custodial prop-

erty and keep them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(9) A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this act, all the rights and powers which a guardian has with respect to property not held as custodial property.

History.—§4, ch. 57-53; (7) a. by §4, ch. 61-125.

710.06 Custodian's expenses, compensation, bond and liabilities.—

(1) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(2) A custodian may act without compensation for his services.

(3) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services as directed by the donor when the gift is made.

(4) Except as otherwise provided in this act, a custodian shall not be required to give a bond for the performance of his duties.

(5) A custodian is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this act.

History.—Comp. §5, ch. 57-53.

710.07 Exemption of third persons from liability.—

No issuer, transfer agent, bank, broker, savings and loan association or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this act, or is obliged to inquire into the validity or propriety under this act of any instrument or instructions executed or given by a person purporting to act as a donor in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

History.—§6, ch. 57-53; §5, ch. 61-125.

710.08 Resignation, death or removal of custodian; bond; appointment of successor custodian.—

(1) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this act.

(2) A custodian may petition the court for permission to resign and for the designation of a successor custodian.

(3) If a person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no legal guardian, a donor, his legal representative, the legal representative of the custodian, the natural guardian of the minor, the minor's legal representative, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(4) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give a bond for the faithful performance of his duties.

(5) Upon the filing of a petition as provided in this section the circuit court shall issue an order, directed to the custodian and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interest of the minor.

History.—Comp. §7, ch. 57-53.

710.09 Accounting by custodian.—

(1) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(2) The court, in a proceeding under this act or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

History.—Comp. §8, ch. 57-53.

710.10 Construction.—This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. This act shall not be construed as providing an exclusive method for making gifts to minors.

History.—Comp. §9, ch. 57-53.

CHAPTER 711

CONDOMINIUM ACT

711.01 Short title.—This law shall be known and may be cited as the condominium act.

History.—§1, ch. 63-35.

711.02 Purpose; cumulative.—The purpose of this law is to give statutory recognition to the condominium form of ownership of real property. It shall not be construed as repealing or amending any law now in effect except those in conflict herewith, and any such conflicting law shall be affected only insofar as they apply to condominiums.

History.—§2, ch. 63-35.

711.03 Definitions.—As used in this law:

(1) Assessment means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner.

(2) Association means the entity responsible for the operation of a condominium.

(3) Bylaws mean the bylaws for the government of the condominium as they exist from time to time.

(4) Common elements means the portions of the condominium property not included in the units.

(5) Common expenses means the expenses for which the unit owners are liable to the association.

(6) Common surplus means the excess of all receipts of the association, including but not limited to assessments, rents, profits and revenues on account of the common elements, over the amount of common expenses.

(7) Condominium is that form of ownership of condominium property under which units of improvements are subject to ownership by different owners, and there is appurtenant to each unit as part thereof an undivided share in the common elements.

(8) Condominium parcel means a unit together with the undivided share in the common elements which is appurtenant to the unit.

(9) Condominium property means and includes the land in a condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(10) Declaration, or declaration of condominium, means the instrument or instruments by which a condominium is created, and such instrument or instruments as they are from time to time amended.

(11) Limited common elements means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

(12) Operation, or operation of the condominium, means and includes the administration and management of the condominium property.

(13) Unit means a part of the condominium property which is to be subject to private ownership.

(14) Unit owner or owner of a unit means the owner of a condominium parcel.

History.—§3, ch. 63-35.

711.04 Condominium parcels; appurtenances; possession and enjoyment.—

(1) A condominium parcel is a separate parcel of real property, the ownership of which may be in fee simple, or any other estate in real property recognized by law.

(2) There shall pass with a unit as appurtenances thereto:

(a) An undivided share in the common elements.

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration.

(c) An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

(d) An undivided share in the common surplus.

(e) Such other appurtenances as may be provided in the declaration.

(3) The owner of a unit is entitled to the exclusive possession of his unit. He shall be entitled to use the common elements in accordance with the purposes for which they are in-

tended, but no such use shall hinder or encroach upon the lawful rights of owners of other units.

History.—§4, ch. 63-35.

711.05 Restraint upon separation and partition of common elements.—

(1) The undivided share in the common elements which is appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit whether or not separately described.

(2) A share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common elements appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

History.—§5, ch. 63-35.

711.06 Common elements.—

(1) Common elements includes within its meaning the following items:

(a) The land on which the improvements are located and any other land included in the condominium property whether or not contiguous.

(b) All parts of the improvements which are not included within the units.

(c) Easements through units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to units and the common elements.

(d) An easement of support in every portion of a unit which contributes to the support of a building.

(e) Installations for the furnishing of utility services to more than one unit or to the common elements or to a unit other than the unit containing the installation.

(f) The property and installations in connection therewith required for the furnishing of services to more than one unit or to the common elements.

(2) The declaration may designate other parts of the condominium property as common elements.

History.—§6, ch. 63-35.

711.07 Legal description of condominium parcels.—Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration together with the recording data identifying the declaration shall be a sufficient legal description for all purposes. Such a description shall include all appurtenances to the unit concerned whether or not separately described, including but not limited to the undivided share in the common elements appurtenant thereto.

History.—§7, ch. 63-35.

711.08 Creation of condominiums; contents of declaration.—

(1) A condominium may be created by recording in the public records of the county wherein the land to be included is located a declaration executed with the formalities of a deed by all persons having title of record to such land, which declaration shall contain or provide for the following matters:

(a) A statement submitting the condominium property to condominium ownership.

(b) The name by which the condominium is to be identified, which name shall include the word condominium or be followed by the words a condominium.

(c) Legal description of the land included.

(d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.

(e) Survey of the land and a graphic description of the improvements in which units are located and a plot plan thereof which together with the declaration are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. Such survey, plot plan and description may be in the form of exhibits consisting of building plans, floor plans, maps, sketches, surveys or other means, provided that there shall be included or attached a certificate or certificates of an architect, engineer or surveyor authorized to practice in this state that such material, together with the wording of the declaration, is a correct representation of the improvements described, and that there can be determined therefrom the identification, location, dimensions and size of the common elements and of each unit.

(f) The undivided shares, stated as percentages or fractions, in the common elements which are appurtenant to each of the units.

(g) The proportions or percentages and manner of sharing common expenses and owning common surplus.

(h) Voting rights of owners of units.

(i) Method of amendment of declaration.

(j) Bylaws.

(k) The name of the association and whether or not it is incorporated. If the association is not incorporated, the name and residence address of the person designated as agent to receive service of process upon the association. Such agent must be a resident of the state.

(l) Such other provisions not inconsistent with this law as may be desired, including but not limited to those relating to amendment of the declaration, values of the condominium property and of each unit or condominium parcel, statement of purpose for which condominium property and units are intended, designation of limited common elements, responsibility for maintenance and repair of units, insuring of the condominium property against loss and the owners and association against liability, reconstruction or repair after casualty and votes required in connection therewith, use restrictions, limitation upon conveyance, sale, leasing, purchase, ownership and occupancy of units, termination of the condominium.

(2) The declaration may include such covenants and restrictions concerning the use, occupancy and transfer of the units as are permitted by law with reference to real property.

(3) All valid provisions of the declaration

shall be enforceable equitable servitudes and shall run with the land and shall be effective until the declaration is revoked.

History.—§8, ch. 63-35.

711.09 Recording of declaration.—

(1) When duly executed with the formalities required for the execution of a deed, a declaration together with all exhibits thereto and all amendments thereof shall be entitled to record according to law as an agreement relating to the conveyance of land and when recorded in the public records of the county where the land described in the declaration is located shall constitute constructive notice to creditors, subsequent purchasers and all other persons.

(2) Graphic descriptions of improvements constituting exhibits to a declaration, when accompanied by the certificate of an architect, engineer or surveyor elsewhere required, shall be recorded as a part of a declaration without approval of any public body or officer.

(3) The clerk of the circuit court recording the declaration may for his convenience file or record the exhibits of a declaration in a separate book and indicate the place of filing or recording upon the margin of the record of the declaration.

History.—§9, ch. 63-35.

711.10 Amendment of declaration.—

(1) An amendment of a declaration shall become effective when recorded according to law.

(2) An amendment shall be evidenced by a certificate executed with formalities of a deed and shall include the recording data identifying the declaration.

(3) Unless otherwise provided in the declaration as originally recorded, no amendment shall change any condominium parcel unless the record owner thereof and all record owners of liens thereon shall join in the execution of the amendment.

(4) Notwithstanding any other provision of this act or the declaration, the designation of the agent for the service of process named in the declaration may be changed from time to time by an instrument executed by the association with the formalities required for the execution of a deed and recorded among the public records of the county in which the condominium property is located.

History.—§10, ch. 63-35.

711.11 Bylaws.—

(1) The operation of the condominium property shall be governed by bylaws, which shall be set forth in or annexed to the declaration. No modification of or amendment to the bylaws shall be valid unless set forth in or annexed to a duly recorded amendment to the declaration.

(2) The bylaws shall provide for the following:

(a) The form of administration, indicating the title of the officers and board of administration, if any, and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards.

(b) Method of calling or summoning unit owners to assemble at meetings; the percentage of unit owners or voting rights required to make decisions, and to constitute a quorum. The foregoing requirements as to meetings are not to be construed, however, to prevent unit owners from waiving notice of meetings or from acting by written agreement without meetings, if so provided in the bylaws, the declaration or this law.

(c) Manner of collecting from the unit owners their shares of the common expenses.

(d) The method by which the bylaws may be amended consistent with the provisions of this law.

(3) The bylaws may provide for the following:

(a) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(b) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of the units and common elements.

(c) Such other provisions not inconsistent with this law or with the declaration as may be desired.

History.—§11, ch. 63-35.

711.12 The association.—

(1) The operation of the condominium shall be by the association, the name of which shall be stated in the declaration. The declaration may require the association to be organized as a particular entity, such as but not limited to a corporation for profit or corporation not for profit, in which the owners of units shall be stockholders or members.

(2) The association, whether or not incorporated, shall be an entity which shall act through its officers and shall have the capability of contracting, bringing suit and being sued. If not incorporated the association shall be deemed to be an entity existing pursuant to this act. Service of process upon the association if not incorporated may be had by serving any officer of the association or by serving the agent designated for service of process. Service of process upon the association shall not constitute service of process upon any unit owner.

(3) No unit owner, except as an officer of the association, shall have any authority to act for the association.

(4) Unless limited by the declaration the powers and duties of the association shall include those set forth in this law. The powers and duties of the association shall include also those set forth in the declaration and bylaws.

(5) The association shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to

the common elements or to another unit or units.

(6) The association shall have the power to make and collect assessments, and to lease, maintain, repair and replace the common elements.

(7) The association shall maintain accounting records according to good accounting practices which shall be open to inspection by unit owners at reasonable times. Such records shall include:

(a) A record of all receipts and expenditures.

(b) An account for each unit which shall designate the name and address of the unit owner, the amount of each assessment, the dates and amounts in which the assessment come due, the amounts paid upon the account and the balance due.

History.—§12, ch. 63-35.

711.13 Maintenance; limitation upon improvement.—

(1) The maintenance of the common elements shall be the responsibility of the association.

(2) There shall be no material alteration or substantial additions to the common elements except in a manner provided in the declaration.

(3) No unit owner shall make any alterations in the portions of the improvements of a condominium which are to be maintained by the association or remove any portion thereof, or make any additions thereto, or do any work which would jeopardize the safety or soundness of the building containing his unit or impair any easement.

History.—§13, ch. 63-35.

711.14 Common expenses and common surplus.—

(1) Common expenses shall include the expenses of the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the association and any other expense designated as common expense by this law, the declaration or the bylaws.

(2) Funds for the payment of common expenses shall be assessed against unit owners in the proportions or percentages of sharing common expenses provided in the declaration.

(3) The common surplus shall be owned by unit owners in the shares provided in the declaration.

History.—§14, ch. 63-35.

711.15 Assessments; liability; lien and priority; interest; collection.—

(1) A unit owner, regardless of how title is acquired, including without limitation a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the owner of a unit. In a voluntary conveyance the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate provided in the declaration, not to exceed the rate allowed by law, and if no rate is provided then at the legal rate.

(4) The association shall have a lien on each condominium parcel for any unpaid assessments, and interest thereon, against the unit owner of such condominium parcel. If authorized by the declaration said lien shall also secure reasonable attorney's fees incurred by the association incident to the collection of such assessment or enforcement of such lien. Said lien shall be effective from and after the time of recording in the public records in the county in which the condominium parcel is located of a claim of lien stating the description of the condominium parcel, the name of the record owner, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien shall have been fully paid. Such claims of liens shall include only assessments which are due and payable when the claim of lien is recorded. Such claims of liens shall be signed and verified by an officer or agent of the association and shall then be entitled to be recorded. Upon full payment the party making payment shall be entitled to a recordable satisfaction of the lien. All such liens shall be subordinate to the lien of a mortgage or other lien recorded prior to the time of recording of the claim of lien.

(5) Liens for assessments may be foreclosed by suit brought in the name of the association in like manner as a foreclosure of a mortgage on real property. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the condominium parcel, if so provided in the declaration or bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The association shall have the power, unless prohibited by the declaration or bylaws, to bid in the condominium parcel at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same.

(6) Where the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of common expenses or assessments by the association pertaining to such condominium parcel or chargeable the former unit owner of such parcel which became due prior to acquisition of title as a result of the foreclosure. Such unpaid share of common expenses or assessments shall

be deemed to be common expenses collectible from all of the unit owners including such acquirer, his successors and assigns.

(7) Any unit owner shall have the right to require from the association a certificate showing the amount of unpaid assessments against him with respect to his condominium parcel. The holder of a mortgage or other lien shall have the same right as to any condominium parcel upon which he has a lien. Any person other than the owner who relies upon such certificate shall be protected thereby.

History.—§15, ch. 63-35.

711.16 Termination.—

(1) All of the unit owners may remove the condominium property from the provisions of this law by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the condominium parcels consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property as herinafter provided.

(2) Upon removal of the condominium property from the provisions of this law, the condominium property shall be deemed to be owned in common by the unit owners. Unless otherwise provided in the declaration, the undivided interest in the property owned in common by each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements.

(3) The condominium may be terminated in such other manner as may be prescribed in the declaration.

(4) The termination of a condominium shall not bar the creation of another condominium affecting the same property.

History.—§16, ch. 63-35.

711.17 Equitable relief.—In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and in the event the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner shall have the right to petition a court of equity having jurisdiction in and for the county where the condominium property is located for equitable relief, which may, but need not necessarily, include a termination of the condominium and a partition.

History.—§17, ch. 63-35.

711.18 Limitation of liability.—

(1) The liability of the owner of a unit for common expenses shall be limited to the amounts for which he is assessed from time to time in accordance with this law, the declaration and bylaws.

(2) The owner of a unit shall have no personal liability for any damages caused by the association on or in connection with the use of the common elements. A unit owner shall be liable for injuries or damages resulting from an accident in his own unit to the same extent and degree that the owner of a house would be liable for an accident occurring within his house.

History.—§18, ch. 63-35.

711.19 Separate taxation of condominium parcels; survival of declaration after tax sale.—

(1) Property taxes and special assessments assessed by municipalities, counties and other taxing authorities shall be assessed against and collected on the condominium parcels and not upon the condominium property as a whole. Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The taxes and special assessments levied against each condominium parcel shall constitute a lien only upon such condominium parcel so assessed and upon no other portion of the condominium property.

(2) All provisions of a declaration relating to a condominium parcel which has been sold for taxes or special assessments shall survive and be enforceable after the issuance of a tax deed or master's deed upon foreclosure of an assessment, certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee, immediate, mediate, or remote, of the owner of the title immediately prior to the delivery of the tax deed or master's deed.

(3) Nothing contained in this act shall be construed to alter, amend, or expand the laws governing exemption of homesteads from taxation. It is the specific intent of the legislature that the aggregate of all of the homestead exemptions from taxation in any one building shall not exceed the sum of five thousand dollars irrespective of the number of units contained therein.

History.—§19, ch. 63-35.

711.20 Liens.—

(1) Subsequent to recording the declaration and while the property remains subject to the declaration, no liens of any nature shall thereafter arise or be created against the condominium property as a whole except with the unanimous consent of the unit owners. During such period liens may arise or be created only against the several condominium parcels.

(2) Labor performed or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to the mechanics' lien law against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the same. No labor performed or materials furnished to the common elements shall be the basis for a lien thereon, but if duly authorized by the association such labor or materials shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners thereof are liable for common expenses.

(3) In the event a lien against two or more condominium parcels becomes effective each owner thereof may relieve his condominium parcel of the lien by payment of the proportionate amount attributable to his condominium parcel. Upon such payment it shall be the duty of the lienor to release the lien of record for such condominium parcel.

(4) Service or delivery of notices, papers or copies thereof permitted or required under the mechanics lien law for or incident to the perfection or enforcement of liens arising from labor or materials furnished to the common elements, duly authorized by the association, may be effected by service on or delivery to the association. Suits to foreclose or otherwise enforce liens arising from labor or materials furnished to the common elements may be brought against the association and the owners of units shall not be deemed necessary parties to such suits.

History.—§20, ch. 63-35.

711.21 Zoning and building.—Laws and ordinances concerning buildings and zoning shall be construed with reference to the nature and use of such property without regard to the form of ownership.

History.—§21, ch. 63-35.

711.22 Authority to regulate.—Buildings included in a condominium property shall be subject to the authority, regulation or control of the Florida hotel and restaurant commission only to the extent provided in chapter 509. Such buildings not subject to the authority, regulation or control of the Florida hotel and restaurant commission under chapter 509 shall be subject to the provisions of chapter 399 with respect to elevators.

History.—§22, ch. 63-35.

711.23 Remedies for violation.—Each unit owner shall be governed by and shall comply with this law and the declaration and bylaws as they may exist from time to time. Failure to do so shall entitle the association or any other unit owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by the association or in a proper case by an aggrieved unit owner. Such relief shall not be exclusive of other remedies provided by law.

History.—§23, ch. 63-35.

CHAPTER 712

MARKETABLE RECORD TITLES TO REAL PROPERTY

712.01 Definitions.—As used in this law:

(1) The term person as used herein denotes singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes.

(2) Root of title means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least thirty years prior to the time when marketability is being determined. The effective date of the rest of title is the date on which it was recorded.

(3) Title transaction means any recorded instrument or court proceeding which affects title to any estate or interest in land.

History.—§1, ch. 63-133.

712.02 Marketable record title.—Any person having the legal capacity to own land in this state, who, alone or together with his predecessors in title, has been vested with any estate in land of record for thirty years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in §712.03. A person shall have a marketable record title when the public records disclosed a title transaction affecting the title to the land which has been of record for not less than thirty years purporting to create such estate either in:

The person claiming such estate; or

Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

History.—§2, ch. 63-133.

712.03 Exemptions.—Such marketable record title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based arising after the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of subsection (5).

(2) Estates or interests preserved by the filing of a proper notice in accordance with the provisions hereof.

(3) Rights of any person in possession of the lands, so long as such person is in such possession.

(4) Estates or interests arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.

(5) Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights of way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof.

(6) Rights of any person in whose name the land is assessed on the county tax rolls for such period of time as the land is so assessed and which rights are preserved for a period of three years after the land is last assessed in such person's name.

History.—§3, ch. 63-133.

712.04 Interests extinguished by marketable record title.—Subject to the matters stated in §712.03, such marketable record title shall be free and clear of all estates, interests, claims or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title. All such estates, interests, claims or charges, however denominated, whether such estates, interests, claims or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void, except that this act shall not be deemed to affect any right, title or interest of the United States or Florida reserved in the patent or deed by which the United States or Florida parted with title.

History.—§4, ch. 63-133.

712.05 Effect of filing notice.—

(1) Any person claiming an interest in land may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the thirty year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right for a period of not longer than thirty

years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said thirty year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

(a) Under a disability,

(b) Unable to assert a claim on his behalf, or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(2) It shall not be necessary for the owner of the marketable record title, as herein defined, to file a notice to protect his marketable record title.

History.—§5, ch. 63-133.

712.06 Contents of notice; recording and indexing.—To be effective, the notice above referred to shall contain:

(1) The name or description of the claimant and the name and particular post office address of the person filing the claim.

(2) The name and post office address of an owner, or the name and post office address of the person in whose name said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for the purpose of such notice, shall be deemed to be an owner.

(3) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument, provided the same shall be sufficient to identify the property.

(4) A statement of the claim showing the nature, description and extent of such claim, except that it shall not be necessary to show the amount of any claim for money or the terms of payment.

(5) If such claim is based upon an instrument of record, such instrument shall be sufficiently described to identify the same, including reference to the book and page in which the same is recorded.

(6) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

Such notice shall be filed with the clerk of the circuit court of the county or counties where the land described therein is situated, together with a true copy thereof. The clerk shall enter, record and index said notice in the same manner that deeds are entered, recorded and indexed, as though the claimant were the grantee in the deed and the purported owner were the grantor in a deed, and the clerk shall charge the same fees for recording thereof as are charged for recording deeds. In those counties where the circuit court clerk maintains a tract index, such notice shall also be indexed therein.

The clerk of the circuit court shall, upon such filing, mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For mailing each such copy, the claimant shall pay the sum of fifty cents, in addition to the recording charges. If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

> I hereby certify that I did on this _____ _____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:
>
> _____
>
> Clerk of the circuit court of _____ county, Florida,
>
> By _____
>
> Deputy clerk

Failure of any purported owner to receive the mailed notice shall not affect the validity of the notice or vitiate the effect of the filing of such notice.

History.—§6, ch. 63-133.

712.07 Limitations of actions and recording acts.—Nothing contained in this law shall be construed to extend the period for the bringing of an action or for the doing of any other act required under any statute of limitations or to affect the operation of any statute governing the effect of the recording or the failure to record any instrument affecting land. This law shall not vitiate any curative statute.

History.—§7, ch. 63-133.

712.08 Filing false claim.—No person shall use the privilege of filing notices hereunder for the purpose of asserting false or fictitious claims to land; and in any action relating thereto if the court shall find that any person has filed a false or fictitious claim, the court may award to the prevailing party all costs incurred by him in such action, including a reasonable attorney's fee, and in addition thereto may award to the prevailing party all damages that he may have sustained as a result of the filing of such notice of claim.

History.—§8, ch. 63-133.

712.09 Extension of thirty year period.—If the thirty year period for filing notice under §712.05 shall have expired prior to July 1, 1965, such period shall be extended to July 1, 1965.

History.—§9, ch. 63-133.

712.10 Law to be liberally construed.—This law shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in §712.02 subject only to such limitations as appear in §712.03.

CHAPTER 715

PROPERTY GENERALLY

715.01 Title to personal property found in public places.—The title to all personal property found in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas and other places open to the public is hereby vested in the finder unless the same be called for or claimed by the rightful owner thereof within six months after the finding thereof. Employees of public transportation systems shall be deemed agents of such transportation systems and personal property found on public conveyances, in depots, and garages of said transportation system shall be turned in to the proper person or department designated to receive such property by the said transportation systems, and such property shall be securely kept for the period of time as required by this section after which time if unclaimed by the rightful owner the title of such property shall be vested in the transportation system and not in the employee.

History.—§1, ch. 24313, 1947.

715.02 Prohibiting recovery from seller of forfeited deposit or down payment made by check, draft or obligation refused through nc fault of seller.—In any action by any person against the seller of real property for any share of a forfeited deposit or down payment by a prospective purchaser, no check, draft or other obligation of such prospective purchaser shall be construed to be a deposit and the action shall not be maintained by any person against the seller by reason thereof, if payment of said check, draft or obligation is refused through no fault of the seller, notwithstanding any recitation of a receipt of said deposit in any written agreement.

History.—§1, ch. 24304, 1947.
Am. §11, ch. 25035, 1949.

715.03 Laundries and dry cleaners; disposition of unclaimed articles.—If any person shall fail to claim any garment, clothing, household article or other articles delivered for laundering, cleaning, or pressing to any laundry or dry cleaning establishment for a period of six months after the delivery of such article for laundering, cleaning or processing the laundry or dry cleaning establishment to whom the garment, clothing or household article is delivered shall have the right to dispose of such garment, clothing or household article by whatsoever means it may choose without incurring liability or responsibility to the owner provided, however, that before such laundry or dry cleaning establishment may claim the benefits of this section it shall at the time of the receiving of such garment, clothing or household articles, give to the individual delivering such article notice in writing that the articles so delivered may be disposed of by such laundry or dry cleaning establishment unless such articles are reclaimed within six months from date of delivery to such laundry or dry cleaning establishments. Provided, further, that if any garment, clothing, household article or other articles referred to above is left at a laundry or dry cleaning establishment for storage, and insurance is charged for thereon, then, in that event, the said six months as set forth above in this section shall not start to run until the period for which the article so insured has expired and when the time for which the insurance on said garment, clothing or household article shall have expired then the laundry or dry cleaning establishment may dispose of the property as though no insurance had been placed on said property in the same way as is provided herein above in this section.

History.—Comp. §1, ch. 57-416.

715.04 Pawnbrokers; disposition of pledged property for nonpayment of principal or interest.—

(1) Any article or articles placed with a licensed pawnbroker within this state pledged as security for a loan of money shall be subject to sale and disposal at public or private sale when there has been no payment on account of principal or interest made for a period of six months, subject to the provisions of this section.

(2) Every pawn ticket or receipt for such pledge shall have printed thereon the provisions of subsections (1) and (2) this section which shall constitute notice to the pledgor of such sale and disposal and shall further constitute notice of intention to sell and dispose of the property without further notice to the pledgor, and shall further constitute consent to such sale by the pledgor. Any sale or disposal of property under this section shall terminate all liability of the pledgee to the pledgor and shall vest in a purchaser the right, title and interest of the pledgor and pawnbroker.

History.—Comp. §§1, 2, ch. 57-811.

715.05 Reporting of unclaimed motor vehicles.—

(1) The person in charge of any garage or repair shop, or automotive service, storage, or parking place, shall report in writing to the city police department, or the nearest police department where the establishment is located outside of an incorporated municipality, and the

sheriff's department, and the nearest Florida highway patrol office on a form prescribed, prepared in triplicate and furnished by the department of public safety, any motor vehicle involuntarily brought in or left unclaimed in his place of business for more than two weeks from date of storage when he does not of his own knowledge know the name of the owner or the reason for such storage, even though an officer may have authorized the vehicle to be pulled in and stored.

(2) Nothing herein contained in this act shall apply to any licensed public housing establishment.

(3) Failure to comply with subsection (1) shall preclude the imposition of any storage and repair charges against such vehicle after two weeks from the date of storage.

History.—§§1-3, ch. 63-431.

CHAPTER 716

ESCHEATS, FORFEITURE, ETC.

716.01 Declaration of policy.—It is hereby declared to be the policy of the state, while protecting the interests of the owners thereof, to possess all unclaimed and abandoned money and property for the benefit of all the people of the state, and this law shall be liberally construed to accomplish such purpose.

History.—§1, ch. 24333, 1947.

716.02 Escheat of funds in the possession of federal agencies.—All property within the provisions of subsections (1), (2), (3), (4) and (5) of this section, are declared to have escheated, or to escheat, including all principal and interest accruing thereon, and to have become the property of the state.

(1) All money or other property which has remained in, or has been deposited in the custody of, or under the control of, any court of the United States, in and for any district within this state, or which has been deposited with and is in the custody of any depository, registry, clerk or other officer of such court, or the United States treasury, which money or other property the rightful owner or owners thereof, either:

(a) Has been unknown for a period of five or more consecutive years; or,

(b) Has died, without having disposed thereof, and without having left heirs, next of kin or distributees, or

(c) Has made no demand for such money or other property for five years; are declared to have escheated, or to escheat, together with all interest accrued thereon, and to have become the property of the state.

(2) After June 16, 1947, all money or other property which has remained in, or has been deposited in the custody of, or under the control of, any court of the United States, in and for any district within this state, for a period of four years, the rightful owner or owners of which, either:

(a) Shall have been unknown for a period of four years; or,

(b) Shall have died without having disposed thereof, and without having left or without leaving heirs, next of kin or distributees; or,

(c) Shall have failed within four years to demand the payment or delivery of such funds or other property; is hereby declared to have escheated, or to escheat, together with all interest accrued thereon, and to have become the property of the state.

(3) All money or other property which has remained in, or has been deposited in the custody of, or under the control of any officer, department or agency of the United States for five or more consecutive years, which money or other property had its situs or source in this state, except as hereinafter provided in subsection (4) of this section, the sender of which is unknown, or who sent the money or other property for an unknown purpose, or money which is credited as "unknown", and which said governmental agency is unable to credit to any particular account, or the sender of which has been unknown for a period of five or more consecutive years; or when known, has died without having disposed thereof, and without leaving heirs, next of kin or distributees, or for any reason is unclaimed from such governmental agency.

(4) In the event any money is due to any resident of this state as a refund, rebate or tax rebate from the United States commissioner of internal revenue, the United States treasurer, or other governmental agency or department, which said resident will, or is likely to have his rights to apply for and secure such refund or rebate barred by any statute of limitations or, in any event, has failed for a period of one year after said resident could have filed a claim for said refund or rebate, the comptroller of Florida is hereby appointed agent of such resident to demand, file and apply for said refund or rebate, and is hereby appointed to do any act which a natural person could do to recover said money, and it is hereby declared that when the comptroller files said application or any other proceeding to secure said refund or rebate, his agency is coupled with an interest in the money sought and money recovered.

(5) It is the purpose of this chapter to include all funds or other property in the possession of the government of the United States, and of its departments, officers, and agencies, which property has its situs in this state or belonged to a resident thereof, and not to limit the application of this chapter by the naming of any particular agency. This chapter shall include all funds held in the veterans administration, comptroller of currency, United States treasury, department of internal revenue, federal courts, registry of federal courts, and such evidences of indebtedness as adjusted service bonds, old matured debts issued prior to 1917, unclaimed and interest thereon, postal savings bonds, liberty bonds, victory notes, treasury bonds, treasury notes, certificates of indebtedness, treasury bills, treasurer's savings certificates, bonuses and adjusted compensation, allotments, and all unclaimed refunds or rebates of whatever kind or nature, which are subjects of escheat, under the terms of this chapter. Provided, however, that nothing in this chapter shall be construed to mean that any funds now held or controlled by the United States postal savings deposits or any refunds due ratepayers

under order of any court of the United States shall become property of the state. Provided, however, that nothing in this chapter shall be construed to mean that any refunds due ratepayers under order of any court of the United States shall become the property of the state.

History.—§2, ch. 24333, 1947.
Am. §11, ch. 25035, 1949.

716.03 Comptroller may recover federal funds.—When there exists, or may exist, escheated funds or property under this chapter, the comptroller shall demand and/or institute proceedings in the name of the state for an adjudication that an escheat to the state of such funds or property has occurred; and shall take appropriate action to recover such funds or property.

History.—§3, ch. 24333, 1947.
Am. §11, ch. 25035, 1949.

716.04 Jurisdiction.—Whenever the comptroller is of the opinion an escheat has occurred, or shall occur, of any money or other property deposited in the custody of, or under the control of, any court of the United States, in and for any district within the state, or in the custody of any depository, registry or clerk or other officer of such court, or the treasury of the United States, he shall cause to be filed a complaint in the circuit court of Leon county, or in any other court of competent jurisdiction, to ascertain if any escheat has occurred, and to cause said court to enter a judgment or decree of escheat in favor of the state, with costs, disbursements and attorney fee.

History.—§4, ch. 24333, 1947.

716.05 Money recovered to be paid into the state treasury.—When any funds or property which have been escheated within the meaning of this chapter, shall have been recovered by the comptroller, he shall first pay all costs incident to the collection and recovery of such funds and property, and shall promptly deposit the remaining balance of said funds or property with the treasurer of the state, to be distributed in accordance with law.

History.—§5, ch. 24333, 1947.

716.06 Public records.—All records in the office of the state treasurer or comptroller relating to federal funds, pursuant to this chapter, shall be public records.

History.—§6, ch. 24333, 1947.

716.07 Recovery of escheated property by claimant.—Any person who claims any property, funds or money delivered to the state treasurer under this chapter, shall, within five years from the date of receipt of said property, funds or money, file a verified claim with the state treasurer, setting forth the facts upon which said party claims to be entitled to recover said money or property. The state treasurer, within five days after receipt of such claim, shall submit said verified claim or a verified copy thereof, to the comptroller. All claims made for recovery of property, funds or money, not filed within five years from the date that said property, funds or money is received by the state treasurer, shall be forever barred, and the treasurer of the state shall be without power to consider or determine any claims so made by any claimant after five years from the date that the property, funds or money was received by the state treasurer. The comptroller shall, within thirty days after he has received said claim from the state treasurer, approve or disapprove the same. If the claim is approved, the funds, money or property of the claimant, less any expenses and costs which shall have been incurred by the state in securing the possession of said property, as provided by this chapter, shall be delivered to him by the state treasurer upon warrant issued according to law and his receipt taken therefor. If the comptroller shall disapprove the claim so filed, upon the ground that it does not show or state facts legally sufficient to entitle said claimant to recover said property, funds or money, then the claimant may file a complaint in the circuit court of Leon county, naming therein the treasurer and the comptroller of the state as defendants, in said action, setting forth in said petition or complaint all the facts supporting his claim to said property, funds or money. A hearing on said petition or complaint shall be held by the court not less than thirty nor more than sixty days from the date of the filing of said petition or complaint, and a copy of said petition or complaint, and notice of the date of hearing, must be served upon the comptroller and the state treasurer within ten days from the date of filing thereof; the comptroller and the state treasurer may answer said petition or complaint, as in other chancery actions. Any party interested and aggrieved by the decision of said court may appeal from such decision or judgment to the district court of appeal, first district, as provided by law for appeals in chancery cases. After hearing of the issues upon the merits of the case, if the court finds that the petitioner or plaintiff is entitled to the property, money or funds claimed, and shall render judgment in his or its favor, declaring that the petitioner or plaintiff is entitled to said property, funds or money, then upon presentation of said judgment or a certified copy thereof to the state comptroller, said comptroller shall draw his warrant for the amount of money stated in said judgment, without interest or cost to the state, less any sum paid by the state as costs or expenses in securing possession of said property, funds or money. When payment has been made to any claimant, no action thereafter shall be maintained by any other claimant against the state or any officer thereof, for or on account of said money, property or funds.

History.—§7, ch. 24333, 1947; §30, ch. 63-559.

CHAPTER 717

DISPOSITION OF UNCLAIMED PROPERTY

717.01 Short title.—This act may be cited as the Florida disposition of unclaimed property act.

History.—§31, ch. 61-10.

717.02 Definitions and use of terms.—As used in this act, unless the context otherwise requires:

(1) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company.

(2) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state.

(4) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or indebted to another on an obligation subject to this act.

(5) "Insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities; disability, accident and health insurance; and property, casualty and surety insurance; as all said terms are defined in chapter 624, part V.

(6) "Owner" means a depositor, or a person entitled to receive the funds as reflected on the records of the bank or financial organization, in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, for the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, or gas, or for the transportation of persons or property.

(9) "Administrator" means the state comptroller.

History.—§1, ch. 61-10.

717.03 Property held by banking or financial organizations.—The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the

purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within fifteen years:

(a) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the fund or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than fifteen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within fifteen years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(4) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository, or agency or collateral deposit box, in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than fifteen years from the date on which the lease or rental period expired.

History.—§2, ch. 61-10.

717.04 Unclaimed funds held by insurance corporations.—

(1) LIFE INSURANCE.—

(a) Unclaimed funds, as defined in this subsection, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (1), means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding fifteen years,

1. Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or

2. Corresponded in writing with the life insurance corporation concerning the policy.

(2) INSURANCE OTHER THAN LIFE INSURANCE.—

(a) Unclaimed funds as defined in subsection (1), held and owing by a fire, casualty or surety insurance corporation shall be presumed abandoned if the last known address according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured, the principal, or the claimant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal, or the claimant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (2), means all moneys held and owing by any fire, casualty or surety insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation either to an insured, a principal, or a claimant under any fire, casualty or surety insurance policy or contract.

(3) Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History.—§3, ch. 61-10.

717.05 Deposits and refunds held by utilities.—The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility

entitled thereto for more than fifteen years after the date it became payable in accordance with the final determination or order providing for the refund.

(3) Any sum paid to a utility for a utility service, which service has not, within fifteen years of such payment, been rendered.

History.—§4, ch. 61-10.

717.06 Undistributed dividends and distribution of business associations.—Any stock or other certificate of ownership, or any dividend, profit distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within fifteen years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History.—§5, ch. 61-10.

717.07 Property of business associations and banking or financial organizations held in course of dissolution.—All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within fifteen years after the date for final distribution is presumed abandoned.

History.—§6, ch. 61-10.

717.08 Property held by fiduciaries.—All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within fifteen years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(2) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(3) If it is held in this state by any other person.

History.—§7, ch. 61-10.

717.09 Property held by state courts and public officers and agencies.—All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof that has remained unclaimed by the owner for more than fifteen years is presumed abandoned.

History.—§8, ch. 61-10.

717.10 Miscellaneous personal property held for another person.—All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than fifteen years after it became payable or distributable is presumed abandoned.

History.—§9, ch. 61-10.

717.11 Reciprocity for property presumed abandoned or escheated under the laws of another state.—If specific property which is subject to the provisions of this act is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History.—§10, ch. 61-10.

717.12 Report of abandoned property.—

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the administrator with respect to the property as hereinafter provided.

(2) The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this act;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Other information which the administrator prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The administrator may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding September 30, 1961.

History.—§11, ch. 61-10.

717.13 Notice and publication of lists of abandoned property.—

(1) Within one hundred twenty days from the filing of the report required by §717.12, the administrator shall cause notice to be published at least once each week for two successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the administrator.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the administrator to whom all further claims must thereafter be directed.

(3) The administrator is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

(4) Within one hundred twenty days from the receipt of the report required by §717.12, the administrator shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this act.

(5) The mail notice shall contain:

(a) A statement that, according to a report filed with the administrator property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the administrator to whom all further claims must be directed.

History.—§12, ch. 61-10.

717.14 Payments or delivery of abandoned property.—Every person who has filed a report as provided by §717.12 shall within twenty days after the time specified in §717.13 for claiming the property from the holder pay or deliver to the administrator all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder with the time specified in §717.13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the administrator, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History.—§13, ch. 61-10.

717.15 Relief from liability by payment or delivery.—Upon the payment or delivery of abandoned property to the administrator, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the administrator under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may

arise or be made in respect to the property. Any holder who has paid moneys to the administrator pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the administrator shall forthwith reimburse the holder for the payment.

History.—§14, ch. 61-10.

717.16 Income accruing after payment or delivery.—When property is paid or delivered to the administrator under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History.—§15, ch. 61-10.

717.17 Periods of limitation not a bar.—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the administrator.

History.—§16, ch. 61-10.

717.18 Sale of abandoned property.—

(1) All abandoned property other than money delivered to the administrator under this act may be sold by him. Such sale shall be to the highest bidder at public sale in whatever place in the state affords in his judgment the most favorable market for the property involved. The administrator may decline the highest bid and re-offer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in a newspaper of general circulation in the county where the property is to be sold.

(3) The purchaser at any sale conducted by the administrator pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of title.

History.—§17, ch. 61-10.

717.19 Deposit of funds.—

(1) All funds received under this act, including the proceeds from the sale of abandoned property under §717.17 shall forthwith be deposited by the administrator in the state school fund of the state, except that the administrator shall retain in a separate account an amount not exceeding one hundred thousand dollars from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(2) Before making any deposit to the credit of the state school fund, the administrator may deduct:

(a) Any costs in connection with sale of abandoned property,

(b) Any costs of mailing and publication in connection with any abandoned property.

History.—§18, ch. 61-10.

717.20 Claim for abandoned property paid or delivered.—Any person claiming at any time an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the administrator.

History.—§19, ch. 61-10.

717.21 Determination of claims.—

(1) The administrator shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(2) If the claim is allowed, the administrator, shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History.—§20, ch. 61-10.

717.22 Judicial action upon determination.—Any person aggrieved by a decision of the administrator or as to whose claim the administrator has failed to act within ninety days after the filing of the claim, may commence an action in the circuit court of the second judicial circuit in and for Leon county, to establish his claim. The proceeding shall be brought within ninety days after the decision of the administrator or within one hundred eighty days from the filing of the claim if the administrator fails to act. The action shall be tried de novo without a jury.

History.—§21, ch. 61-10.

717.23 Election to take payment or delivery.—The administrator, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History.—§22, ch. 61-10.

717.24 Examination of records.—The administrator may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act. If any person refuses to permit the examination of his records, the administrator may issue subpœna to compel such person to testify and produce his records; said subpœna to be served by the sheriff of the county where the person resides or may be found. Such person shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state which shall be paid by the state. If any person shall refuse to obey any subpœna so issued or shall refuse to testify or produce his records, the administrator may present his petition to the circuit court of the county where any such person is served with the subpœna or where he resides, whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpœna issued by the board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpœna, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

History.—§23, ch. 61-10.

717.25 Proceeding to compel delivery of abandoned property.—If any person refuses to deliver property to the administrator as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History.—§24, ch. 61-10.

717.26 Administration. — The administrator shall create a division of his office, to be known as the abandoned property office, for the purpose of administering the provisions of this act and of chapter 716. An appropriation shall be made biennially for the maintenance of such office, and to provide sufficient staff to adequately enforce the provisions of this law. Other divisions of the office of the administrator, as well as all state officers and employees generally, shall assist in the enforcement of this act in connection with the performance of their normal duties.

History.—§25, ch. 61-10.

717.27 Penalties.—

(1) Any person who wilfully fails to render any report or perform other duties required under this act, shall be punished as for a misdemeanor.

(2) Any person who wilfully refuses to pay or deliver abandoned property to the administrator as required under this act shall be punished as for a misdemeanor.

History.—§26, ch. 61-10.

717.28 Rules and regulations.—The administrator is hereby authorized to make necessary rules and regulations to carry out the provisions of this act.

History.—§27, ch. 61-10.

717.29 Effect of laws of other states.—This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to September 30, 1961.

History.—§28, ch. 61-10.

717.30 Repeal.—The following sections of Florida Statutes are hereby repealed: §§69.07, 69.16 and 14.07-14.13. This act shall not repeal, but shall be additional and supplemental to the existing provisions of §§54.04-54.06 and 550.-164, chapter 716, §§731.28, 731.33 and 965.08(4).

History.—§30, ch. 61-10.

Note.—The repeals cited in the section above did not appear in the title of ch. 61-10.

TITLE XL

STATUTE OF FRAUDS, FRAUDULENT CONVEYANCES AND GENERAL ASSIGNMENTS

CHAPTER 725

UNENFORCEABLE CONTRACTS

725.01 Promise to pay another's debt, etc.— No action shall be brought whereby to charge any executor or administrator upon any special promise to answer or pay any debt or damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, or of any uncertain interest in or concerning them, or for any lease thereof for a period longer than one year, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or by some other person by him thereunto lawfully authorized.

History.—§10, Nov. 15, 1828; RS 1995; GS 2517; RGS 3872; CGL 5779.
cf.—§689.01 Fraudulent sales.

725.02 Contracts to sell personalty. — No contract for the sale of any personal property, goods, wares or merchandise shall be good, unless the buyer shall accept the goods (or part of them) so sold and actually receive the same, or give something in earnest to bind the bargain or in part payment, or some note or memorandum in writing of the said bargain or contract be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

History.—§11, Nov. 15, 1828; RS 1996; GS 2518; RGS 3873; CGL 5780.

725.03 Newspaper subscription.—No person shall be liable to pay for any newspaper, periodical or other like matter, unless he shall subscribe for or order the same in writing.

History.—§1, ch. 379, 1851; RS 1997; GS 2519; RGS 3874; CGL 5781.

CHAPTER 726

FRAUDULENT CONVEYANCES, SALES, AND LOANS

726.01 Fraudulent conveyances void.—Every feoffment, gift, grant, alienation, bargain, sale, conveyance, transfer and assignment of lands, tenements, hereditaments, and of goods and chattels, or any of them, or any lease, rent, use, common or other profit, benefit or charge whatever out of lands, tenements, hereditaments or goods and chattels, or any of them, by writing or otherwise, and every bond, note, contract, suit, judgment and execution which shall at any time hereafter be had, made or executed, contrived or devised of fraud, covin, collusion or guile, to the end, purpose or intent to delay, hinder or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, demands, penalties or forfeitures, shall be from henceforth as against the person or persons, or bodies politic or corporate, his, her or their successors, executors, administrators and assigns, and every one of them so intended to be delayed, hindered or defrauded, deemed, held, adjudged and taken to be utterly void, frustrate and of none effect, any pretense, color, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding; provided, that this section, or anything therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, uses, commons, profits, goods or chattels which shall be had, made, conveyed or assured if such estate shall be, upon good consideration and bona fide, lawfully conveyed or assured to any person or persons, or body politic or corporate, not having at the time of such conveyance or assurance to them made any manner of notice or knowledge of such covin, fraud or collusion as aforesaid, anything in this section to the contrary notwithstanding.

History.—§1, Jan. 28, 1823; RS 1991; GS 2513; RGS 3864; CGL 5771; am. §7, ch. 22858, 1945.

726.02 Vendee of stock of goods in bulk to demand from vendor statement of creditors, etc.—It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares or merchandise in bulk for cash or credit, before paying or delivering to the vendor any part of the purchase price therefor, to demand and receive from the vendor thereof, and if the vendor be a corporation, then from the managing officer or agent thereof, a written statement under oath of the names and addresses of all the creditors of said vendor, together with the amount of indebtedness due or owing by the said vendor to each of such creditors; and it shall be the duty of such vendor to furnish such statement, whether he be a wholesale or a retail merchant.

History.—§1, ch. 5679, 1907; RGS 3865; CGL 5772.

726.03 Notice to creditors by vendee.—(1) Thereupon it shall be the duty of the purchaser, at least five days before the completion of said purchase, or the payment therfor, to notify personally or by registered mail, each of said creditors of the said proposed sale, the price to be paid therefor, and the terms and conditions thereof.

(2) In counties having a population in excess of two hundred thousand inhabitants, according to the latest official state-wide decennial census, it shall be the duty of the purchaser to cause to be published one time in a daily newspaper in the county in which the vendor resides, not less than seven days prior to the completion of said purchase, a notice of intention to purchase, in substantially the following form:

NOTICE OF INTENTION TO PURCHASE UNDER BULK SALES LAW TO ALL PERSONS HAVING CLAIMS OR DEMANDS AGAINST

_____
(Name of Business and Vendor)

The undersigned intend(s) to purchase in bulk the stock of goods, wares or merchandise and/or the business fixtures or equipment used in connection with that certain business or enterprise known as _____ _____ located at _____ _____ and to conclude such purchase on _____ 19__ at _____ and all persons having claims or demands against the vendor are admonished to notify the undersigned at that address on or before said date.

Dated at: _____

_____
(Name of Purchaser)

In the event such notice is not published by the purchaser, such sale or transfer shall be presumed to be fraudulent as to any and all creditors of the vendor.

History.—§2, ch. 5679, 1907; RGS 3866; CGL 5773; (2) N. by §1, ch. 59-296.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

726.04 Sale without notice to creditors presumed fraudulent.—When any person shall purchase any stock of goods, wares or mer-

chandise in bulk, and shall pay the price or any part thereof, or execute or deliver to the vendor thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness, for said purchase price, or any part thereof, without having first demanded and received from said vendor the statement under oath mentioned in §726.02, and without first giving to each of the creditors whose names have been furnished by said vendor the notice provided for in §726.03, such sale or transfer shall, as to any and all creditors of the vendor, be presumed to be fraudulent.

History.—§3, ch. 5679, 1907; RGS 3867; CGL 5774.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

726.05 What sales deemed fraudulent; proviso.—Any sale or transfer of a stock of goods, wares or merchandise out of the usual or ordinary course of business or trade of the vendor, or whereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed, or attempted to be sold or conveyed, to one or more persons, shall be deemed a fraudulent transaction or transfer in bulk in contemplation of §§726.02-726.06; provided, that nothing contained in said sections shall apply to sales by executors, administrators, receivers or any public officer under judicial process.

History.—§5, ch. 5679, 1907; RGS 3868; CGL 5775.

726.06 Punishment for making false statements to vendee of stock of goods in bulk.—Any vendor of a stock of goods, wares or merchandise in bulk who shall knowingly or willfully make or deliver, or cause to be made or delivered, any false statement or any statement of which any material portion is false, or shall fail to include the names of all his creditors in any such statement, as is required in §726.02, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

History.—§4, ch. 5679, 1907; RGS 5200; CGL 7304.

726.07 Fraudulent conveyance void against subsequent purchasers.—Every feoffment, deed, conveyance, mortgage, grant, charge, lease, transfer, assignment, estate, encumbrance, interest, and limitation of use or uses of, in or out of any lands, tenements or other hereditaments whatsoever, which shall at any time hereafter be had, made, executed or contrived for the intent and purpose of defrauding and deceiving such person or persons, bodies politic or corporate, as shall afterward purchase the same lands, tenements and hereditaments, or any part thereof, or any estate, interest, rent, property, right or commodity, in, to or out of the same, or any part thereof, so formerly conveyed, granted, leased, charged, transferred, assigned, encumbered or limited in use, shall be deemed, adjudged, taken and held as against the person or persons, bodies politic or corporate, their heirs, successors, executors, administrators and assigns, and against all and every person and persons lawfully having or claiming by, from, through or under them, or any of them who shall have so purchased for money or other good consideration the same lands, tenements or hereditaments, or any part thereof, or any estate, right, interest, profit, benefit or commodity, in, to or out of the same, to be utterly void, frustrate and of none effect, any pretense, feigned consideration or expressing of use or uses to the contrary notwithstanding; provided, that nothing in this section contained shall extend or be construed to impeach, make void or frustrate any conveyance, assignment or lease, assurance, grant, charge, lease, estate, interest or limitation, or use or uses of, in, to or out of any lands, tenements or hereditaments, which shall be made upon and for good consideration and bona fide, to any person or persons, bodies politic or corporate, anything in this section to the contrary notwithstanding.

History.—§2, Jan. 28, 1823; RS 1992; GS 2514; RGS 3869; CGL 5776.

726.08 Conveyances with power of revocation void against subsequent purchasers.—If any person or persons shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration at his, her or their will or pleasure, of such conveyance, gift, assurance, grant, demise, charge, limitation of use or uses contained in the same, or in any other writing whatever of, in or out of the said lands, tenements or hereditaments, or any part and parcel of them, and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance so made or had, shall or do bargain, sell, demise, grant, convey, transfer or charge the same lands, tenements or hereditaments, or any part or parcel thereof, or any estate, right or interest in the same to any other person or persons, bodies politic or corporate, for money or other good consideration (the said first conveyance, assurance, gift, grant, demise, charge or limitation not being revoked, made void or altered according to the power and authority reserved or expressed in and by the said first conveyance or other writing), then the said former conveyance, assurance, grant, demise, charge or limitations, as touching the said lands, tenements and hereditaments and estate, right or interest in the same so afterward bargained, sold, granted, conveyed, demised, transferred or charged, as against the said bargainees, vendees, grantees, lessees and every of them, their heirs, successors, executors, administrators and assigns, and as against all and every person and persons who shall or may lawfully claim by, through, from or under them, or any of them, shall be deemed, taken and adjudged to be void and of none effect.

History.—§3, Jan. 28, 1823; RS 1993; GS 2515; RGS 3870; CGL 5777.

726.09 Fraudulent loans void.—When any loan of goods and chattels shall be pretended to have been made to any person with whom or those claiming under him, possession shall have remained for the space of two years without demand and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder or otherwise in goods and chattels, and the possession thereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and the absolute property shall be with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded.

History.—§4, Jan. 28, 1823; §1, ch. 872, 1859; RS 1994; GS 2516; RGS 3871; CGL 5778.

726.10 Watches, used; sales regulated.—

(1) The purpose of this law is to identify all watches other than new, with a label or designation of "used" in order to safeguard the public from being misled in purchasing used, rebuilt or reconditioned watches as new.

(2) Any person, firm, partnership, association or corporation engaged in the business of buying or selling watches, or any agent or servant thereof, who shall sell or exchange, or offer for sale or exchange, expose for sale or exchange, possess with the intent to sell or exchange, or display with the intent to sell or exchange any used watch, shall affix and keep affixed to the same a tag with the word "used" clearly and legibly written or printed thereon, and the said tag shall be so placed that the word "used" shall be in plain sight at all times.

(3) Any person, firm, partnership, association or corporation engaged in the business of buying or selling watches, or any agent or servant thereof, who shall sell a used watch or in any other way pass title thereto shall deliver to the vendee a written invoice bearing the words "used watch" in bold letters larger than any of the other written matter upon said invoice. Said invoice shall further set forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers (if any), and any other distinguishing numbers or identification marks upon its case and movement. If the serial numbers or other distinguishing numbers or identification marks shall have been erased, defaced, removed, altered or covered, said invoice shall so state. The vendor shall keep on file a duplicate of said invoice for at least two years from the date of the sale thereof, which shall be open to inspection during all business hours by the sheriff or any prosecuting officer of the county in which the vendor is engaged in business.

(4) Any person, firm, partnership, association or corporation, or any agent or servant thereof, who may advertise or display in any manner a used watch for sale or exchange shall state clearly in such advertisement or display that said watch is a used watch.

(5) A watch shall be deemed to be used if:

(a) It as a whole or the case thereof or the movement thereof has been previously sold to or acquired by any person who bought or acquired the same for his use or the use of another, but not for resale; provided, however, that a watch which has been so sold or acquired and is thereafter returned either through an exchange or for credit to the original individual, firm, partnership, association or corporation who sold or passed title to such watch within ten days after the sale or acquisition thereof, shall not be deemed to be a used watch for the purpose of this section, if such vendor shall keep a written or printed record setting forth the name of the purchaser thereof, the date of the sale or transfer thereof and the serial number (if any) on the case and the movement, and any other distinguishing numbers or identification marks, which said record shall be kept for at least two years from the date of such sale or transfer and shall be open for inspection during all business hours by the sheriff or any prosecuting officer of the county in which such vendor is engaged in business; or,

(b) Its case serial numbers or movement numbers or other distinguishing numbers or identification marks shall be erased, defaced, removed, altered or covered; or,

(c) Its movement is more than five years old and has been repaired by any person or persons, including the vendor. Cleaning and oiling a watch movement or recasing the movement in a new case shall not be deemed a watch repair for the purpose of this section.

(6) Any person, firm, partnership, association or corporation, or any agent or servant thereof, who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court.

History.—§§1-6, ch. 22040, 1943.

CHAPTER 727

GENERAL ASSIGNMENTS

727.01 To be in writing and to contain no preferences.—No assignment made for the benefit of creditors shall be valid in this state, except the same shall be made in writing and shall provide for an equal distribution of all the assignor's real and personal property, except such as is exempted by law from forced sale, among the several creditors of the said assignor in equal proportion to their respective demands.

History.—§1, ch. 3891, 1889; RS 2307; GS 2926; RGS 4666; CGL 6752.

727.02 Oath of assignor.—The said assignor shall make and subscribe an oath in writing before any officer authorized to administer oaths in the county in which he lives and does business, or of the county or counties wherein is situated the property assigned, not more than ten days after the assignment, that he has placed or assigned, and that the true intention of his assignment was to place in the hands of his assignee all of his property of every description, except such as is exempt by law from forced sale, to be divided among the creditors in proportion to their respective demands.

History.—§2, ch. 3891, 1889; RS 2308; GS 2927; RGS 4667; CGL 6753.

727.03 Record of assignment and oath.—Both the said deed of assignment and oath of assignor shall be recorded in the office or offices of the clerk or clerks of the county or counties in which the property assigned is situated.

History.—§3, ch. 3891, 1889; RS 2309; GS 2928; RGS 4668; CGL 6754.

727.04 Qualifications of assignee.—No one shall be selected and appointed as assignee by the assignor, in such assignment, who does not give bond to be approved by the clerk of the circuit court of the county wherein the assignor lives or does business, or of the county wherein is situated the property assigned, payable to the governor of Florida, in double the value of the property assigned, conditioned for the faithful discharge of the duties devolved on him as such assignee, said bond to be filed in the office aforesaid, immediately upon the assignee's taking possession of the assigned property.

History.—§4, ch. 3891, 1889; RS 2310; GS 2929; RGS 4669; CGL 6755.

727.05 Notice of assignment.—Said assignee immediately upon taking possession of the assigned property shall give notice by publication in a newspaper, published in the county where the assigned property is situated or wherein a portion of the same is, once a week for four consecutive weeks, to all the creditors of the assignor, of the fact of the assignment, and calling upon said creditors to file with him within sixty days, if such creditors reside in the state, or if beyond the limits of the state, within four months, sworn statements of their claims against said assignor, and he shall send by mail a copy of the newspaper containing said notice to each of the said creditors, as far as he may know them.

History.—§6, ch. 3891, 1889; RS 2311; GS 2930; RGS 4670; CGL 6756.

727.06 Disposition of property.—The said assignee shall, as soon as the foregoing provisions have been complied with, proceed to dispose of all the property mentioned in the deed of assignment to him, to the best interest of all the parties concerned, either at public or private sale, as to him may seem best, and to collect and to recover by law, or otherwise, all debts due the assignor in the same manner as said assignor might or could do in his own right if such assignment had not been made, and for this purpose said assignee may employ an attorney to prosecute such claims.

History.—§7, ch. 3891, 1889; RS 2312; GS 2931; RGS 4671; CGL 6757.

727.07 Semiannual statements.—Semiannually, as long as shall be necessary after his appointment, said assignee shall file his sworn statement in the office of the clerk of the circuit court, of all his doings and financial transactions as said assignee.

History.—§8, ch. 3891, 1889; RS 2313; GS 2932; RGS 4672; CGL 6758.

727.08 Application for discharge of assignee.—After the final statement of the assignee of all the matters pertaining to his position, he may, after publication for thirty days in a newspaper in the county where he published his notice mentioned in §727.05, apply by petition to the judge of the circuit court of said circuit for his letters of discharge as said assignee, and if the said circuit judge shall be satisfied that the said assignee has complied with his duties as such assignee, he shall then grant him such letters as prayed for.

History.—§9, ch. 3891, 1889; RS 2314; GS 2933; RGS 4673; CGL 6759.

TITLE XLI

ESTATES OF DECEDENTS

CHAPTER 731

FLORIDA PROBATE LAW, FIRST PART

731.01 Short title.—This chapter, together with the three chapters next following, shall be known and may be cited as the Florida probate law.

History.—§1, ch. 16103, 1933; CGL 1936 Supp. 5457(1) am. §1, ch. 22783, 1945.

731.02 Application.—This Florida probate law shall apply to and govern the estates of all decedents, whether dying prior to or after its enactment; provided, however, that estates of decedents dying prior to October 1, 1933, which are now in the process of administration may be completed and closed in accordance with the statutes and laws under which they have heretofore been administered.

History.—§2, ch. 16103, 1933; CGL 1936 Supp. 5457(2); am. §1, ch. 22783, 1945.

731.03 Definitions.—In these statutes, when applied to wills and the probate thereof, descent and distribution of decedents' estates, dower, administration of decedents' estates, and practice and procedure relating thereto, where the context permits, the word, phrase or term:

(1) "Administration" refers to the administration of estates and to all probate proceedings;

(2) "Bequeath" means to dispose of personal property by will, but it may be used interchangeably with the word "devise";

(3) "Bequest" means a gift of personal property received by the beneficiary in a will, but it may refer to real estate also;

(4) "Curator" means a person appointed by the county judge to take charge of the estate of a deceased person until letters testamentary or of administration are granted;

(5) "Devise" when used as a verb, means to dispose of real estate by will, but it may be used interchangeably with the word "bequeath";

(6) "Devise" when used as a noun, means a gift of real estate by will, but it may be used interchangeably with the word "bequest";

(7) "Gift" means either devise or bequest, or both;

(8) "Heir" and "heir at law" have the same meaning as "next of kin";

(9) "Interested persons" and "persons interested in the estate" mean heirs, legatees, devisees, distributees, spouses and creditors, or others having a property right in or claim against an estate being administered; and such words mean the persons entitled to the estate of a decedent in the event of intestacy;

(10) "Legacy" has the same meaning as "bequest," hereinbefore defined;

(11) "Legatee" and "devisee" may be construed as synonymous;

(12) "Letters" means letters of administration or letters testamentary;

(13) "Personal representative" means the executor or administrator;

(14) "Probate" means not only probate proceedings pertaining to wills, but also the administration of estates;

(15) "Property" means real estate, personal-

ty, choses in action, or any interest in the same, legal or equitable.

(16) The words "attesting witnesses" and the words "subscribing witnesses" as used in these statutes shall have the same meaning, and no witness shall be considered an attesting witness or a subscribing witness to a will unless he actually signs his name to such will.

History.—§3, ch. 16103, 1933; CGL 1936 Supp. 5457(3); §1, ch. 22783, 1945; sub. §(16) comp. §1, ch. 29925, 1955.

731.04 Who may make a will.—Any person, male or female, married or single, who is eighteen years or more of age and who is of sound mind may make a will. No other person may make a will.

History.—§5, ch. 16103, 1933; CGL 1936 Supp. 5477(1); am. §1, ch. 22783, 1945.

731.05 Property which may be devised.—

(1) Any property, real or personal, held by any title, legal or equitable, with or without actual seisin, may be devised or bequeathed by will; provided, however, that whenever a person who is head of a family, residing in this state and having a homestead therein, dies and leaves either a widow or lineal descendants or both surviving him, the homestead shall not be the subject of devise, but shall descend as otherwise provided in this law for the descent of homesteads.

(2) A will becomes effective at the time of the death of the testator, and all property, real or personal, acquired by the testator after making his will is transmissible under general expressions in the will showing such to be the intention of the testator. Every will containing a residuary clause shall transmit after-acquired property unless the testator expressly states in his will that such is not his intention.

History.—§6, ch. 16103, 1933; CGL 1936 Supp. 5477(2); am. §1, ch. 22783, 1945.
cf.—§222.13, Life insurance.
§731.27, Homestead.
§731.34, Dower.

731.051 Agreements to make a will, requirements.—

(1) No agreement to make a will of real or personal property or to give a legacy or make a devise shall be binding or enforceable unless such agreement is in writing signed in the presence of two subscribing witnesses by the person whose executor or administrator is sought to be charged.

(2) This section shall apply to agreements made on, after or prior to January 1, 1958.

History.—Comp. §1, ch. 57-148.

731.06 Requisites of nuncupative wills.—No nuncupative will shall be good unless it is proved by the oaths of three witnesses present at the making thereof; nor unless it is proved by the said witnesses that the testator at the time of pronouncing the same did desire the persons present, or some of them, to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness of the deceased. Personal property only shall be subject to disposition by nuncupative wills.

History.—§7, ch. 16103, 1933; CGL 1936 Supp. 5477(3); am. §1, ch. 22783, 1945.
cf.—§§732.39, 732.40, Time of proof and probate.

731.07 Execution of wills.—Every will, other than a nuncupative will, must be in writing and must be executed as follows:

(1) The testator must sign his will at the end thereof, or some other person in his presence and by his direction must subscribe the name of the testator thereto.

(2) The testator, in the presence of at least two attesting witnesses present at the same time, must sign his will or cause his name to be signed as aforesaid or acknowledge his signature thereto.

(3) No will executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state unless it is executed in accordance with the laws of this state in force at the time of its execution, except that a will valid under the laws of the state or country in which the testator is domiciled at the time of his death is valid in this state, so far as it relates to personal property.

(4) A will executed by a resident of this state prior to October 1, 1933, is valid if executed according to the laws of this state in force at the time of its execution.

(5) All devises and bequests to subscribing witnesses are void unless there are at least two other disinterested subscribing witnesses to the will. If a subscribing witness would be entitled to any share of the estate of the testator in case the will were not established, he shall take such proportion of the devise or bequest made to him in the will as does not exceed the share of the estate which would be distributed to him if the will were not established.

(6) No particular form of words is necessary to the validity of a will if it is executed according to the formalities required by law.

(7) A codicil shall be executed with the same formalities as a will.

History.—§8, ch. 16103, 1933; CGL 1936 Supp. 5477(4); am. §1, ch. 22783, 1945.

731.08 Effect of fraud, duress, mistake or undue influence.—A will is void if the execution thereof is procured by fraud, duress, mistake, menace or undue influence. Likewise, any part of a will is void if so procured, but the remainder of the will not so procured shall be valid if the same is not invalid for other reasons.

History.—§9, ch. 16103, 1933; CGL 1936 Supp. 5477(5); am. §1, ch. 22783, 1945.

731.09 Revocation by fraud.—If the revocation of a will, or any part thereof, is procured by fraud, duress, menace or undue influence, such revocation shall be void.

History.—§10, ch. 16103, 1933; CGL 1936 Supp. 5477(6); am. §1, ch. 22783, 1945.

731.10 Marriage after execution of will.—When a person marries after making a will and the spouse survives the testator, such surviving spouse shall receive a share in the estate of the testator equal in value to that which such surviving spouse would have received if the testator had died intestate, unless provision has been made for such spouse by marriage contract or unless such spouse is provided for in the will, or unless the will discloses an intention not to make such provision. The share of the estate which is assigned to such pretermitted spouse shall be

raised in accordance with the order of appropriation of assets set forth in this law.

History.—§11, ch. 16103, 1933; CGL 1936 Supp. 5477(7); am. §1, ch. 22783, 1945.

731.101 Will void as affecting surviving divorced spouse.—All wills offered for and admitted to probate subsequent to June 11, 1951, made by husband or wife who have been divorced from each other subsequent to the date of said will, shall be made null and void by means of said divorce insofar as said will affects the surviving divorced spouse.

History.—§1, ch. 26914, 1951; tr. from §732.261, 1961.

731.11 Children born after execution of will.—When a testator omits to provide in his will for any of his children born after the making of the will and such child has not had bestowed upon him by way of advancement a portion of the testator's property equivalent to a child's part, unless it appears from the will that such omission was intentional, such child shall receive a share in the estate of the testator equal in value to that which he would have received if the testator had died intestate. The share of the estate which is assigned to such pretermitted child shall be raised in accordance with the order of appropriation of assets set forth in this law.

History.—§12, ch. 16103, 1933; CGL 1936 Supp. 5477(8); am. §1, ch. 22783, 1945.

731.12 Implied revocation by subsequent inconsistent will.—A will is revoked by a subsequent inconsistent will, even though the last will does not expressly revoke all previous wills; but such revocation extends only so far as the inconsistency exists.

History.—§13, ch. 16103, 1933; CGL 1936 Supp. 5477(9); am. §1, ch. 22783, 1945.

731.13 Revocation by written instrument.—A will or any part thereof may be revoked or altered by a subsequent written will, codicil or other writing, declaring such revocation or alteration; provided, that the same formalities required for the execution of wills under this law are observed in the execution of such will, codicil or other writing.

History.—§14, ch. 16103, 1933; CGL 1936 Supp. 5477(10); am. §1, ch. 22783, 1945.

731.14 Other revocation.—

(1) A will may be revoked by the testator himself or by some other person in his presence and by his direction, by burning, tearing, canceling, defacing, obliterating or destroying the same, with the intent and for the purpose of revocation.

(2) Neither subsequent marriage nor subsequent marriage and birth of issue shall revoke the prior will of any person; but the pretermitted child or spouse shall inherit as set forth in this law regardless of such prior will.

History.—§15, ch. 16103, 1933; CGL 1936 Supp. 5477(11); am. §1, ch. 22783, 1945.

731.15 Revival by revocation.—The revocation of a will expressly revoking a former will shall not revive the former will, even though such former will is in existence at the date of the revocation of the subsequent will.

History.—§16, ch. 16103, 1933; CGL 1936 Supp. 5477(12); am. §1, ch. 22783, 1945.

731.16 Revocation of codicil.—The revocation of a will revokes all codicils thereto previously made.

History.—§17, ch. 16103, 1933; CGL 1936 Supp. 5477(13); am. §1, ch. 22783, 1945.

731.17 Republication of wills by codicil.—The execution of a codicil referring to a previous will has the effect of republishing the will as modified by the codicil.

History.—§18, ch. 16103, 1933; CGL 1936 Supp. 5477(14); am. §1, ch. 22783, 1945.

731.18 Republication of wills by re-execution.—If a will has been revoked or if it is invalid for any other reason, it may be republished and made valid by the re-execution of the same with the formalities required by this law for the execution of wills.

History.—§19, ch. 16103, 1933; CGL 1936 Supp. 5477(15); am. §1, ch. 22783, 1945.

731.19 Charitable devises and bequests.—If a testator dies leaving issue of his body or an adopted child, or the lineal descendents of either, or a spouse, and if the will of such testator devises or bequeaths the estate of such testator, or any part thereof, to a benevolent, charitable, literary, scientific, religious or missionary institution, corporation, association or purpose, or to this state, or to any other state or country, or to a county, city or town in this or any other state or country, or to a person in trust for any such purpose or beneficiary, whether or not such trust appears on the face of the instrument making such devise or bequest, such devise or bequest shall be avoided in its entirety within eight months from the death of the testator by one or more of the above specified persons who would receive any interest in the devise or bequest so avoided, by filing written notice thereof in the probate proceedings unless said will was duly executed at least six months prior to the death of the testator, or unless testator, by his will duly executed immediately next prior to such last will and more than six months before his death, made a valid charitable bequest or devise in substantially the same amount for the same purpose or to the same beneficiary, or to a person in trust for the same person or beneficiary as was made in such last will. The making of a codicil within the six-months period before testator's death, which codicil does not substantially change a charitable devise or bequest as herein defined, shall not render such charitable gift ineffective under this section. This section shall not be construed to apply to devises or bequests made to institutions of higher learning.

History.—§20, ch. 16103, 1933; CGL 1936 Supp. 5477(16); am. §1, ch. 22783, 1945; §1, ch. 57-243.

731.20 Lapsed or void legacies or devises.—

(1) If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to such devisee or legatee lapses unless an intention appears from the will to substitute another in his place; but, when any property is devised or bequeathed to an adopted child or blood kindred of the testator, and when such devisee or

legatee dies before the testator, leaving lineal descendents, or is dead at the time the will is executed, leaving lineal descendents who survive the testator, such legacy or devise does not lapse, but such descendents take the property so given by the will in the same manner as the devisee or legatee would have done had he survived the testator.

(2) If a legacy or devise is void or lapses, it shall become a part of the residuum and shall pass to the residuary legatee or devisee unless a contrary intent is expressed by the testator in his will.

History.—§21, ch. 16103, 1933; CGL 1936 Supp. 5477(17); am. §1, ch. 22783, 1945.

731.21 Vesting of legacies or devises.—The death of the testator is the event which vests the right to legacies or devises unless the testator in his will has provided that some other event must happen before a legacy or devise shall vest.

History.—§22, ch. 16103, 1933; CGL 1936 Supp. 5477(18); am. §1, ch. 22783, 1945.

731.22 Income from legacies or devises.—The net income, interest or increase arising from property specifically devised or bequeathed shall belong to the specific legatees and devisees entitled thereto from the date of the death of the testator. From and after the time fixed by the county judge in an order of distribution, general legacies shall bear legal interest until paid.

History.—§23, ch. 16103, 1933; CGL 1936 Supp. 5477(19); am. §1, ch. 22783, 1945.

731.23 Order of succession.—The real and personal property of an intestate shall descend and be distributed as follows:

(1) To the surviving spouse and lineal descendants, the surviving spouse taking the same as if he or she were one of the children.

(2) If there are no lineal descendants, to the surviving spouse.

(3) If there is no surviving spouse, to the lineal descendants.

(4) If there is none of the foregoing, to the father and mother equally, or to the survivor of them.

(5) If there is none of the foregoing, to the brothers and sisters and the descendants of deceased brothers and sisters.

(6) If there is none of the foregoing, the estate shall be divided into moieties, one of which shall go to the paternal and the other to the maternal kindred in the following course:

(a) To the grandfather and grandmother equally, or to the survivor of them.

(b) If there is no grandfather or grandmother, to the uncles and aunts and the descendants of such of them as may be deceased.

(c) If there is no grandparent, uncle or aunt, or their descendants, to the great-grandfathers and the great-grandmothers equally, or to the survivor of them.

(d) If there is no great-grandfather or great-grandmother, then to the brothers and sisters of the grandfather and grandmother on the same side and to the descendants of such of them as may be deceased.

(e) And so in other cases without end, passing to the next lineal ancestor or ancestors, and, for want of them, to the descendants of such ancestors.

(7) Where the estate is hereinbefore directed to go by moieties to the paternal and the maternal kindred, if there are no such kindred on the one part, the whole shall go to the other part; and, if there are no kindred on either the one part or the other, the whole estate shall go to the kindred of the deceased spouse of the intestate in like course as if such deceased spouse had survived the intestate and then died entitled to the estate.

History.—§24, ch. 16103, 1933; CGL 1936 Supp. 5480(1); am. §1, ch. 22783, 1945.
cf.—§§734.02-734.04, Distribution of estate.

731.24 Half blood.—In the cases before mentioned, where the estate is directed to pass to the collateral kindred of the intestate, if part of such collateral kindred are of the whole blood to the intestate and the other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood; but, if all are of the half blood, they shall have whole portions.

History.—§25, ch. 16103, 1933; CGL 1936 Supp. 5480(2); am. §1, ch. 22783, 1945.

731.25 Inheritance per stirpes.—Descent and distribution, whether to lineal descendants or to collateral heirs, shall always be per stirpes.

History.—§26, ch. 16103, 1933; CGL 1936 Supp. 5480(3); am. §1, ch. 22783, 1945.

731.27 Descent of homesteads.—The homestead shall descend as other property; provided, however, that if the decedent is survived by a widow and lineal descendants, the widow shall take a life estate in the homestead, with vested remainder to the lineal descendants in being at the time of the death of the decedent.

History.—§28, ch. 16103, 1933; CGL 1936 Supp. 5480(5); am. §1, ch. 22783, 1945.
cf.—§734.08, Administration of exempt estates.

731.28 Alien.—

(1) An alien may devise, bequeath, inherit and transmit inheritance in real and personal property as if he were a citizen of the United States; and in making title by descent it shall be no bar to a party that the intestate or any ancestor through whom he derives his descent from the intestate is or has been an alien.

(2) When the county judge determines that any alien legatee, devisee, heir, beneficiary or distributee not residing within the territorial limits of the United States or any territory or possession thereof would not have the benefit or use or control of property due him and that special circumstances make it desirable that delivery to him be deferred, the county judge may order that such property be converted into available funds and paid into the state treasury, after such attorney's fees of the attorney for such legatee, devisee, heir, beneficiary or distributee, as the court shall set, have been paid therefrom, and said funds held in the state

treasury subject to such further orders as the said court may enter.

History.—§29, ch. 16103, 1933; CGL 1936 Supp. 5480(6); am. §1, ch. 22783, 1945; (2)n. by §1, ch. 59-128.

731.29 Illegitimate child as heir.—

(1) Every illegitimate child is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father. Such illegitimate child shall inherit from his mother and also, when so recognized, from his father, in the same manner as if the child had been born in lawful wedlock. However, such illegitimate child does not represent his father or mother by inheriting any part of the estate of the parents' kindred, either lineal or collateral, unless his parents have intermarried, in which event such illegitimate child shall be deemed legitimate for all purposes.

(2) If any illegitimate child dies intestate, without lawful issue or spouse, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

History.—§30, ch. 16103, 1933; CGL 1936 Supp. 5480(7); am. §1, ch. 22783, 1945.

731.30 Adopted child.—An adopted child, whether adopted under the laws of Florida or of any other state or country, shall be an heir at law, and for the purpose of inheritance, shall be regarded as a lineal descendant of his adopting parents, and the adopting parents shall inherit from the adopted child. The adopted child shall be regarded as the natural brother or sister of the natural children and other adopted children of the adopting parents for the purpose of inheritance from or by them. The adopted child shall inherit the estate of his blood parents, but his blood parents shall not inherit from the adopted child.

History.—§31, ch. 16103, 1933; CGL 1936 Supp. 5480(8); §1, ch. 22783, 1945; am. §1, ch. 28223, 1953.

731.31 Murderer.—Any person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or to take any portion of his estate as a legatee or devisee. The portion of the decedent's estate to which such murderer would otherwise be entitled shall pass to the persons entitled thereto as though such murderer had died during the lifetime of the decedent.

History.—§32, ch. 16103, 1933; CGL 1936 Supp. 5480(9); am. §1, ch. 22783, 1945.

731.32 Inheritance from persons of color.—

(1) Whenever, upon the death of any person of color seized or possessed of real or personal estate, there are persons in being who would inherit said property or any portion thereof under the several statutes of descent in this state but who are prevented from doing so on account of the legal incapacity of said persons of color to contract marriage in a state of slavery (which said estate would otherwise escheat to the state), all the right, title and interest of the state is vested in and waived in favor of those persons who would have inherited said estate if said parties had been competent to contract marriage.

(2) The fact that the said parties have failed to obtain a license to marry or have failed to be married according to the forms of law shall in no case affect the operations of this section, but the same shall be held to apply to all cases wherein the parties were known as husband and wife.

History.—RS 1829; GS 2305; §33, ch. 16103, 1933; CGL 1936 Supp. 5480(10); am. §1, ch. 22783, 1945.

731.33 Escheat.—

(1) Whenever any person dies leaving property and without being survived by any person entitled to the same, such property shall escheat to the state.

(2) In any such case, or in any case where doubt exists as to the existence of any person entitled to the property, the personal representative shall, within one year after letters have been issued to him, institute a proceeding for the determination of beneficiaries as provided in this law, and citation shall be served upon the attorney general of the state. If the personal representative fails to institute such proceeding within the time herein fixed, the same may be instituted by the attorney general, and it is hereby made the duty of the attorney general to secure from each county judge of the state, and the duty of each such county judge to furnish to the attorney general, on or before January 15 of each year, a list of all estates being administered in such county judge's court wherein no person appears to be entitled to the assets thereof and in which the personal representative has instituted no proceedings for the determination of beneficiaries.

(3) If the county judge determines in such proceeding that there is no person entitled to the property and that the property escheats, said property shall, within a reasonable time to be fixed by the county judge, be sold and converted into money and paid to the treasurer of the state and by him deposited in the state school fund.

(4) Any person claiming to be entitled to the property of the decedent may, at any time within twenty years after the granting of letters, by petition filed with the county judge and service of citation upon the attorney general, reopen the administration and assert his rights. If such claimant is determined to be entitled to any of the property of the decedent, the county judge shall by order fix the amount to which he is entitled, and the same shall be repaid to him without interest by the officials charged with the disbursement of state school funds. If no such claim is asserted in the manner and within the time herein fixed, the title of the state to such property and the proceeds thereof shall become absolute.

(5) The attorney general shall represent the state in all proceedings with respect to escheated estates.

(6) Except as herein provided, escheated estates shall be administered as in other cases.

History.—§33, ch. 16103, 1933; CGL 1936 Supp. 5480(10), am. §1, ch. 21994, 1943; am. §1, ch. 22783, 1945.
cf.—§734.25, Determination of beneficiaries.
§192.24, Disposition of unclaimed funds.

731.34 Dower in realty and personalty.—Whenever the widow of any decedent shall not be satisfied with the portion of the estate of her husband to which she is entitled under the law of descent and distribution or under the will of her husband, or both, she may elect in the manner provided by law to take dower, which dower shall be one third in fee simple of the real property which was owned by her husband at the time of his death or which he had before conveyed, whereof she had not relinquished her right of dower as provided by law, and one third part absolutely of the personal property owned by her husband at the time of his death, and in all cases the widow's dower shall be free from liability for all debts of the decedent and all costs, charges and expenses of administration; provided, however, that nothing herein contained shall be construed as exempting any personal property from liability for any debt secured by written assignment, pledge, mortgage or other security instrument mortgaging, assigning, or pledging, or otherwise granting, or imposing a lien upon, such personal property, whether or not possession of such property is delivered to such mortgagee, assignee, pledgee, or other security holder, and that nothing herein contained shall be construed as impairing the validity of any mortgage, pledge, assignment, or other lien so imposed or provided for in such security instrument, nor the rights therein created or provided for, and nothing herein contained shall be construed as impairing the validity of the lien of any duly recorded mortgage or the lien of any person in possession of personal property. The homestead shall not be included in the property subject to dower but shall descend as otherwise provided by law for the descent of homesteads. In any case where the dower interest of the widow shall have the effect of increasing the estate tax, her dower shall be ratably liable with the remainder of the estate for the estate taxes due by the estate of her deceased husband. Whenever the decedent has died intestate leaving no lineal descendants and the widow has duly elected dower, all property of the decedent not included in the widow's dower shall descend to her subject to the debts of the decedent except that the homestead of the decedent shall descend to her with the exemptions provided by the constitution.

History.—§35, ch. 16103, 1933; §1, ch. 17171, 1935; CGL 1936 Supp. 5507(1); §1, ch. 18066, 1937; §1, ch. 18999, 1939; §1, ch. 20844, 1941; am. §7, ch. 22000, 1943; am. §1, ch. 22783, §1, ch. 22847, 1945; §1, ch. 26582, 1951; am. §1, ch. 28222, 1953; §1, ch. 63-119.

cf.—§733.01, Possession of estate during administration.
§§733.09-733.14, Assignment of dower.
§734.041 Apportionment of estate taxes.

731.35 Election to take dower.—

(1) In order to take dower, a widow must so elect by an instrument in writing, signed by her and acknowledged or sworn to by her before any officer authorized to take acknowledgments or to administer oaths, and filed, within nine months after the first publication of the notice to creditors, in the office of the county judge in whose court the estate of the deceased husband is being administered. The county judge shall record all elections to take dower.

(2) Should the county judge extend the time in which creditors may file their claims, or should litigation occur involving the admission of the will to probate, or its validity or the construction thereof, or should any claim filed be contested, a widow shall have sixty days from the date to which such extension for filing claims is extended or from the date of a final judgment determining any litigation or contested claim or from the time allowed to the personal representative for filing his objection to any claim, in which to elect to take dower.

(3) The guardian of a widow suffering under disabilities may, at any time during which the widow might have done so, file an election on behalf of the widow to take dower in lieu of the provisions of the will of her husband or under the law of descent and distribution, and thereupon the county judge shall grant or deny such election as the best interest of the widow may require. If the widow shall die prior to the expiration of the time allowed for the filing of her election to take dower in lieu of the provisions of the will of her husband or under the law of descent and distribution, and shall not have filed such election, then the same may be filed at any time before the expiration of such period by any person who has a beneficial interest in the estate of such deceased widow, and such election shall be granted or rejected by the county judge as the best interest of the parties entitled to participate in the estate of the deceased widow may require.

History.—§36, ch. 16103, 1933; CGL 1936 Supp. 5507(2); §1, ch. 22783, 1945; §1, ch. 26948, 1951; (3) N. by §1, ch. 57-408; §§1, 2, ch. 59-123.

731.36 Articles in addition to dower.—The widow of an intestate shall be entitled to receive and retain all wearing apparel and such household goods and farming utensils, provisions and clothing as may be necessary for her maintenance and that of the family, to be set apart by the county judge either upon her petition or upon the petition of the personal representative, with citation or notice to the other, special regard being had for the ability of the widow and children to provide for and maintain themselves. Such articles shall not be considered as part of the widow's dower or inheritance in any case.

History.—§37, ch. 16103, 1933; CGL 1936 Supp. 5507(3); am. §1, ch. 22783, 1945

CHAPTER 732

FLORIDA PROBATE LAW, SECOND PART

732.01 Jurisdiction of county judge.—The county judge shall have jurisdiction of the administration, settlement and distribution of estates of decedents, of the probate of wills, of the establishment of lost or destroyed wills, of the granting of letters testamentary and of administration and of all other matters usually pertaining to courts of probate.

History.—§38, ch. 16103, 1933; CGL 1936 Supp. 5541(1); am. §2, ch. 22783, 1945.
cf.—§734.12, Jurisdiction in removal proceedings.

732.02 Court always open.—The court of the county judge, as a court of probate, shall be open at all times for the transaction of its business.

History.—§39, ch. 16103, 1933; CGL 1936 Supp. 5541(2); am. §2, ch. 22783, 1945.

732.03 Power to enforce judgments.—In all cases where the county judge is authorized to enter orders, judgments or decrees, he may issue attachments of persons or property, executions, writs of possession, and all such other writs and orders as are necessary or appropriate to enforce such orders, judgments or decrees.

History.—§40, ch. 16103, 1933; CGL 1936 Supp. 5541(3); am. §2, ch. 22783, 1945.
cf.—§§732.56, 732.57, Judgments for estates.

732.04 Disqualification of county judge.—The county judge shall be disqualified for interest in all instances in which judges generally are so disqualified and also in estates in which he is an heir of the decedent or is a legatee, devisee, trustee or executor under the will, or a witness thereto.

History.—§41, ch. 16103, 1933; CGL 1936 Supp. 5541(4); am. §2, ch. 22783, 1945.

732.05 Substitution of circuit judge.—

(1) In the case of the disqualification, absence, sickness, or other disability of the county judge, any judge of the circuit court of the county may discharge all of the duties and powers of the county judge as a probate judge. In the event such circuit judge is disqualified, absent from the circuit, sick, or under other dis-

ability, then any other circuit judge in the state who is not disqualified, may discharge such duties and powers.

(2) The county judge, when disqualified for interest, shall file a certificate thereof. In no instance may he act as judge in any matter in which he is interested. Should he presume so to do, the circuit judge may, in his supervisory jurisdiction of probate matters, upon proper petition and short notice to the county judge, revise the action of the county judge.

(3) Sickness, absence, or disability of the county judge shall be conclusively evidenced by the certificate of the clerk of the county judge's court, or otherwise evidenced prima facie by the affidavit of any interested party. No decree or order of the circuit judge in probate reciting the disqualification, sickness, absence, or disability of the county judge shall be collaterally attacked.

(4) No county judge, while holding such office, shall act as personal representative of any estate any part of which is required to be administered in his own court; provided, however, a county judge, individually in his personal capacity, on his certificate of disqualification and on appointment and continued supervision by a judge of the circuit court acting as county judge, may serve as personal representative of the estate of his deceased spouse, adoptive parent, adopted child, or the estate of any decedent related to him by lineal consanguinity.

History.—§42, ch. 16103, 1933; CGL 1936 Supp. 5541(5); am. §1, ch. 22767, 1945; §2, ch. 22783, 1945; am. §1, ch. 24294, 1947.

732.06 Venue of probate proceedings.—The venue of probate of all wills and granting of letters of administration shall be:

(1) In the county in this state where the decedent had his domicile.

(2) If the decedent had no domicile in this state, then in any county in which the decedent was possessed of any property.

(3) If the decedent had no domicile in this state and was possessed of no property in this state, then in the county where any debtor of the decedent resides.

(4) For the purpose of this section a married woman whose husband is an alien or a nonresident of Florida may establish or designate a separate domicile in this state.

History.—§43, ch. 16103, 1933; CGL 1936 Supp. 5541(6); am. §2, ch. 22783, 1945.

732.07 County judge's records.—

(1) Every county judge shall record, or cause his clerk to record, distinctly and at full length, in books kept for that purpose, all wills, testaments and codicils of which probate shall be granted, all letters testamentary and of administration, all bonds of personal representatives (exclusive of supersedeas bonds), all orders and judgments made by him and all other writings in this law especially required to be recorded.

(2) Any interested person may, at his own cost and expense, have recorded as aforesaid any document or pleading filed in the office of the county judge; provided, that the cost of recording same shall not be taxed as costs against the estate unless so ordered by the county judge. A duly certified transcript of the whole or any part of probate or administration proceedings before any court of this state or of any foreign state or country may, upon the payment of appropriate fees, be filed or recorded in the office of any county judge of this state.

(3) All such record books shall be indexed as to the various estates and as to the subject matter therein, and shall be open to the inspection of all persons.

(4) All records, files, orders, judgments and decrees of any court of this state heretofore exercising probate jurisdiction shall be taken and held to be those of the county judge as if made or rendered by said judge, and shall be placed and remain in his custody. Copies thereof certified by the county judge shall be competent evidence.

(5) A progress docket of the proceedings in connection with each estate shall be kept by each county judge, in which docket shall be noted each pleading or document filed and each order entered, with notation of book and page of record of each writing recorded; and the residence and post-office address of each party who has designated same.

(6) County judges shall, upon request and payment of their fees, make and deliver certified copies of any pleading or document filed in their offices or of any of the records of their offices.

(7) County judges, in making certified copies of letters testamentary or of letters of administration, may upon request further certify, whenever such is the fact, that the letters so certified stand unrevoked at the date of the certificate; and such certificate shall be prima facie evidence of such fact.

(8) No county judge shall permit any paper, instrument, document, pleading or file to be removed from his office or custody except under circumstances named in this law or for purposes of taking testimony.

(9) County judges may record any and all instruments entitled to record by such photographic process and with such equipment and supplies as may be recommended by the county judge and approved and designated by the board of county commissioners.

History.—§44, ch. 16103, 1933; CGL 1936 Supp. 5541(7); am. §2, ch. 22783, 1945.

732.08 Pleadings.—

(1) The pleadings before the county judge in probate matters shall be in writing and signed by the pleader or his attorney. All technical forms of pleadings are abolished. No defect of form shall impair substantial rights, and no defect in the statement of jurisdictional facts actually existing shall render void any proceedings.

(2) PETITION.—The petition shall state in short and simple manner the facts constituting jurisdiction of the court and the ground of the proceedings and shall pray for such relief as is desired. It shall be filed before any process shall issue.

(3) DEFENSE.—Defenses shall be filed on or before the return day specified in the notice or

citation. The answer shall, in short and simple manner, set up the facts constituting the defense.

(4) Upon the filing of a sufficient answer the cause shall be at issue, new matters being deemed denied; and the cause shall be tried at such early date as the county judge may direct.

(5) MOTIONS.—Either party may test the sufficiency of an adversary's pleading, or of any part thereof, by motion. Motions addressed to an answer shall be filed within ten days after the return day or within such other time as the county judge may in exceptional circumstances allow. Disposition of motions and all matters of amendment and pleading generally shall be in accordance with the direction of the county judge. Reasonable notice of not more than five days shall be given to the adversary or his counsel of the hearing of any motion. Ordinarily not more than ten days shall be allowed for further pleading.

(6) COPIES.—Copies of all pleadings shall be delivered or mailed to the adversary or his attorney.

History.—§45, ch. 16103, 1933; CGL 1936 Supp. 5541(8); am. §2, ch. 22783, 1945.

732.09 Citation and service.—

(1) In all matters pertaining to the probate jurisdiction of the county judge where process is necessary or is ordered by the county judge, parties in interest may be cited to answer any petition by a citation in substantially the following form, which may be served personally upon the respondent wherever found, within or without the state:

In the County Judge's Court
_____County, Florida
Estate of_____, Deceased.

The State of Florida to_____:

You are hereby notified that a petition has been filed in said court, a true copy of which is hereto attached; and you are hereby required to file your written defenses thereto within twenty days after service hereof. Should you fail therein, judgment will be entered in due course upon the said petition.

WITNESS my hand and the seal of said Court at_____, Florida, this_____ day of_____, A. D. 19____.

_____
County Judge

By _____
Clerk

(2) A true copy of the petition shall be attached to each copy of the citation served personally.

(3) Service may be made within the state in the manner prescribed by law for the service of summons by any sheriff, constable, deputy sheriff, deputy constable or by any other person; provided, that if service is made by other than an officer, the return of service shall be by affidavit.

(4) Service may be made without the state by any person, by the delivery to the person to be served of a true copy of the citation and of attached copy of the petition, and the return of service shall be by affidavit.

(5) Service shall be made upon a minor or insane person by the delivery of a true copy of the citation and of attached copy of petition to such minor or insane person and also to the person in whose care and custody such minor or insane person is.

(6) The return of service of citation in every case shall state the date when it was received by the person making the return, the date when it was served, the place of service, the name of the person served and the manner of service. Returns shall be amendable so as to speak the truth, upon application to the court issuing the process; and when amended shall be effective as of the date of the original return.

(7) (a) If personal service is impracticable, then upon order of the county judge so adjudicating, based upon an affidavit setting forth the reasons thereof, citation may be published once a week for four consecutive weeks, four publications being sufficient, in a newspaper published in the county where the court is located.

(b) Whenever publication of any citation, notice, pleading or other writing is required by any section of this law, and there is no newspaper conforming to the requirements of the laws of Florida in the county of the administration, then, in lieu of such publication in a newspaper, the same may be published by posting a true copy thereof at the courthouse and a true copy at each of two other public places in the county of the administration, such places to be prescribed by the county judge.

(c) Proof of publication or of posting shall be by affidavit and shall be filed in the office of the county judge.

(d) Citation to be published shall be substantially as follows:

In the County Judge's Court
_____County, Florida
Estate of_____, Deceased.

The State of Florida to_____
and all other persons concerned:

You are hereby notified that a petition has been filed in said court praying for_____, and you are hereby required to file your written defenses thereto within forty days after the first publication or posting hereof. Should you fail therein, decree will be entered in due course upon said petition.

WITNESS my hand and the seal of said Court at_____County, Florida, this_____ day of_____, A. D. 19____.

_____
County Judge

By _____
Clerk

First published or posted on_____

(8) Service of citation or of any notice may be waived in writing by any party or person interested.

(9) If any person cited fails to file his defense to the petition within the time prescribed in the citation, or within such time as the county judge, under exceptional circumstances, may allow, then the matter shall proceed ex parte as to

such person, and judgment may be entered in accordance with the right and justice of the case.

History.—§46, ch. 16103, 1933; CGL 1936 Supp. 5541(9); am. §2, ch. 22783, 1945; § (3) am. §2, ch. 29737, 1955.

732.10 Service or publication when not otherwise provided.—Whenever any citation, notice, pleading or other writing is required by any section of this law to be served or published and the manner thereof is not specified in such section, such service or publication may be made as provided in this law for the service or publication of citations.

History.—§47, ch. 16103, 1933; CGL 1936 Supp. 5541(10); am. §2, ch. 22783, 1945.

732.11 Duty to designate residence and post-office address.—

(1) Every creditor or claimant against the estate of a decedent and every heir, distributee, surviving spouse, legatee and devisee of such decedent shall file with the county judge of the county in which the estate of said decedent is in administration or in which such decedent's will may be probated a designation of the residence and post office address of such party, and, when there occurs a change of same, file likewise a designation of such change. Any party who has filed a claim, petition, answer, election or other pleading or appearance in any county judge's office in relation to any estate, without having made the aforesaid designation, shall be entitled to no notices whatever of any further proceedings with reference to such estate.

(2) Service of any citation or notice upon any party who has designated his residence and post office address as hereinabove required may, at the option of the moving party, be made by registered mail addressed to such party at the post office address designated. Proof of service by mailing may be by certificate of the county judge or by affidavit of the person mailing the citation or notice.

History.—§48, ch. 16103, 1933; CGL 1936 Supp. 5541(11); am. §2, ch. 22783, 1945.
cf.—§732.47, Nonresident representatives to appoint resident agent.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

732.12 Testimony and subpoenas.—Testimony shall ordinarily be taken in open court. The county judge shall, upon application of any party, issue subpoenas and subpoenas duces tecum for the appearance of witnesses and production of documents upon any trial or hearing.

History.—§49, ch. 16103, 1933; CGL 1936 Supp. 5541(12); am. §2, ch. 22783, 1945.

732.13 Depositions.—

(1) The testimony of any party or witness may be taken in probate proceedings by deposition de bene esse at any time either before or after issue under either of the following methods:

(a) Said testimony may be taken under the method prescribed in the "Florida rules of civil procedure."

(b) Said testimony may be taken before any notary public, not being of counsel or attorney for any of the parties. nor interested in the event of the proceedings. The depositions may be taken either upon oral interrogatories or upon written interrogatories furnished to the officer taking the depositions. Cross-interrogatories may likewise be either oral or written.

(2) Reasonable notice must first be given in writing by the party or attorney proposing to take such deposition to the opposite party or attorney, which notice shall state the names of the witnesses and the time and place of taking the testimony.

(3) The county judge shall upon application issue any necessary subpoenas running throughout the state to parties and witnesses who, upon being served, may be compelled to attend and testify as in other cases. The county judge may enforce this section by contempt or other proceedings.

(4) Any party failing to attend or to answer any lawful question or to subscribe the testimony given by him shall be liable, upon the motion of the opponent and certificate of the notary evidencing such default, to have his pleading stricken as sham and be placed in the same situation as if he had failed to file his pleading.

(5) Every witness or party deposing under this section shall be sworn to testify the whole truth. His testimony shall be reduced to writing or typewriting by the notary taking the deposition or by some person under his personal supervision and shall thereupon be subscribed by such witness or party unless subscription is waived.

(6) Every deposition taken under this section shall be retained by the magistrate taking it until he delivers it by mail or by his own hand into the court for which it is taken. Upon receipt by the court, depositions shall be filed and open to inspection of all parties. Each deposition shall contain the notice given and the certificate of the magistrate taking it, showing that he is not of counsel in the cause, not related to any of the parties and not interested in the event and showing compliance herewith.

(7) No deposition taken hereunder may be used upon the trial if it is made to appear that the deponent is within the county and able to testify at the time of trial, except that in such case any part of any deposition of any party may be used as an admission against interest, and also except that in such case any witness may be impeached by any part of any deposition.

History.—§50, ch. 16103, 1933; CGL 1936 Supp. 5541(13); am. §2, ch. 22783, 1945; §2, ch. 29737, 1955.
cf.—§732.25, Commission to prove will.

732.14 Costs.—

(1) In all probate proceedings costs may be awarded in the discretion of the county judge, ordinarily abiding the result of each particular proceeding, but otherwise when it would be unjust that the failing party pay costs.

(2) When such costs are to be paid out of the estate, the county judge may, in his discretion, direct from what portion of the estate they shall be paid.

(3) An executor, being prima facie justified in offering a will, in due form, for probate, shall generally receive his costs and attorney's fees out of the estate, even though he is unsuccessful.

History.—§51, ch. 16103, 1933; CGL 1936 Supp. 5541(14); am. §2, ch. 22783, 1945.

732.15 Right of appeal.—All orders, judgments, and decrees of the county judge finally determining rights of any party in any particular proceedings in the administration of the estate of a decedent may, as a matter of right, be appealed to the appropriate district court of appeal except those appeals which may be taken direct to the supreme court as provided by §4, Art. V of the state constitution. Appeals provided by this section shall be governed by the Florida appellate rules including the right to supersedeas.

History.—§52, ch. 16103, 1933; CGL 1936 Supp. 5541(15); §2, ch. 22767, 1945; §2, ch. 22783, 1945; §2, ch. 24294, 1947; (1) §10, ch. 26484, 1951; §31, ch. 63-559.

732.21 Curators.—

(1) The county judge, whenever it is necessary, sua sponte or upon the application of any person, may appoint a curator to take charge of the estate of any deceased person until letters are granted. If, however, the person entitled to letters is a resident of the county where the property is situated, no such curator shall be appointed until after such notice as the county judge may direct to such person so entitled to letters. Upon the appointment, the county judge shall direct the person in possession of the effects of the deceased forthwith to deliver them into the possession of the curator, and this order, when not obeyed promptly, may be enforced by attachment and imprisonment for contempt.

(2) If it is made to appear to the county judge, upon sworn petition, that there is great danger that said property or any portion of it is likely to be wasted, destroyed or removed beyond the jurisdiction of the court, and if the appointment of a curator would be delayed by giving the notice herein provided, then it shall be lawful for such judge to appoint a curator without first giving such notice.

(3) Upon special orders of the county judge from time to time, the curator may be authorized to perform any duty or function of an administrator or executor.

(4) Such bond shall be required of the curator as the county judge deems necessary to secure the property or proceeds, in case of sale, and the county judge may make an order for the sale of such portion of the property as should be sold; provided, however, that no such bond shall be required of banks and trust companies as curators.

(5) The curator shall file immediately an inventory of the property. When the personal representative qualifies, the curator shall immediately account to the personal representative and deliver to him all assets of the estate in his hands, and in default thereof shall be subject to the provisions of this law relating to removed executors or administrators.

(6) Curators shall be allowed such compensation for their services as the county judge deems reasonable.

History.—§58, ch. 16103, 1933; §6, ch. 17171, 1935; CGL 1936 Supp. 5541(140); am. §2, ch. 22783, 1945.

cf.—§732.48, Married woman as curator.
§733.08, Continuance of business by curator.

732.22 Production of wills.—

(1) The custodian of a will, within ten days after receiving information that the testator is dead, must deposit such will with the county judge having jurisdiction of the estate of the decedent. Willful failure to do so shall render such custodian responsible for all costs and damages sustained by anyone, in the event the court finds that such custodian had no just or reasonable cause for withholding the deposit of said will.

(2) By petition and citation, the custodian of any will, after ten days' notice of the death of the testator, may be compelled to produce and deposit the same as aforesaid. In such proceedings all costs, damages and a reasonable attorney's fee shall be decreed to petitioner against such delinquent custodian, in the event the court finds that such custodian had no just or reasonable cause for withholding the deposit of said will.

History.—§59, ch. 16103, 1933; CGL 1936 Supp. 5541(59); am. §2, ch. 22783, 1945.

cf.—§732.32, Production of later will after probate of prior.
§811.04, Larceny of testamentary instrument.

732.23 Petition for probate of will.—

(1) Every petition for the probate of a will shall be sworn to by the petitioner, his agent or his attorney and shall contain statements to the best of the petitioner's information and belief showing:

(a) The domicile of the decedent at the time of his death;

(b) The date of his death;

(c) The approximate value of his estate;

(d) The residence or post-office address of the petitioner; and,

(e) The names, ages and residences of the surviving spouse and heirs at law of the decedent and their respective relationships to the decedent or averments showing that reasonable search has been made and that they cannot be ascertained without delay which would adversely affect the estate.

(2) No citation need be served before the probate of a will.

History.—§60, ch. 16103, 1933; CGL 1936 Supp. 5541(21); am. §2, ch. 22783, 1945.

cf.—§732.43, Petition for letters of administration.
§734.32, Petition for administration of estate of persons believed dead.

732.24 Proof of wills.—

(1) Last wills and testaments may be admitted to probate upon the oath of any attesting witness, taken before the county judge or before his clerk, or before a commissioner as provided in §732.25.

(2) When a will is offered for probate, if it appears to the court that the attesting witnesses have gone to parts unknown or are dead or have after its execution become incompetent or their testimony cannot be obtained within a reasonable time, it may be admitted to probate upon the oath, taken as above set forth, of the executor, whether he is interested in the estate or not, or of any person having no interest in the estate under the will, that he verily believes the writing exhibited to be the true last will and testament of the deceased.

History.—§61, ch. 16103, 1933; CGL 1936 Supp. 5541(60); am. §2, ch. 22783, 1945; §5, ch. 22847, 1945.

732.25 Commission to prove will.—

(1) If any will is produced for probate and any witness attesting the same cannot without inconvenience appear before the county judge, the county judge may issue a commission to which such will or a photographic copy thereof is annexed, directed to any person who, by the laws of the state or country where such witness may be found, is authorized to administer an oath, empowering him to take proof of the attestation of such witness and certify same.

(2) If the person to whom such commission is directed duly certifies that the witness personally appeared and made written oath or affirmation. as the case may be (such written oath or affirmation to be attached to said certificate), as to the execution by the testator of the last will and testament, the original or photographic copy of which is annexed to such commission, such written oath or affirmation shall have the same operation and effect as if such written oath or affirmation had been made in the court whence the commission issued.

History.—§62, ch. 16103, 1933; CGL 1936 Supp. 5541(61); am. §2, ch. 22783, 1945.
cf.—§732.13, Depositions.

732.26 Effect of probate.—

(1) The will of any person who heretofore has died a resident of the state or any person who hereafter dies a resident of the state must be admitted to probate in an original proceeding in the state in order to establish its validity. Until so admitted to probate, such will shall be ineffective to convey title to, or the right to possession of, real or personal property of the testator; and, until such probate proceedings have been had, no personal representative shall acquire title to, or the right to possession of, any personal property owned by the decedent at the time of his death, notwithstanding that probate or administration proceedings have been had in some other state or country. None of the provisions of the two preceding sentences shall apply to or affect any will or any rights under any will admitted to probate in any other state or country prior to June 12, 1939. The title to personal property wheresoever situate of a person who hereafter dies a resident of the state shall not pass under his will to the legatee or legatees named or designated therein until after such personal property has been administered upon and distributed by the domiciliary personal representative of his estate; provided that this section shall not apply to any property as to which a valid order has been entered that no administration is necessary as to such property or as to the estate of which such property is a part.

(2) In any collateral suit or controversy relating to property, real or personal, thereby devised or bequeathed, the probate of a will in Florida, unless revoked or reversed upon appeal, shall be conclusive of the due execution of the will by a competent testator of his own free will and of the fact that such will, at the date of the testator's death, was unrevoked.

History.—§63, ch. 16103, 1933; CGL 1936 Supp. 5541(62); §1, ch. 19673, 1939; §2, ch. 22783, 1945; sub. §(1) am. §1, ch. 29892, 1955.
cf.—§732.32, Discovery of later will.
§732.38, Effect of prior foreign probate.

732.27 Establishment and probate of lost or destroyed will.—

(1) The establishment and probate of a lost or destroyed will shall be in one proceeding. Upon the probate of such a will, the county judge shall, as a part of his order admitting same to probate, recite, and thereby establish and preserve, the full and precise terms and provisions of such will.

(2) The petition for probate of a lost or destroyed will shall contain a copy of such will or the substance thereof. The testimony of each witness must be reduced to writing, signed by him and filed, and shall be evidence in any contest of the will if the witness has died or removed from the state.

(3) No probate of any lost or destroyed will shall be granted until citation has issued and been served upon those who, but for such will, would be entitled to the property thereby bequeathed or devised; or unless clearly and distinctly proved by the testimony of at least two disinterested witnesses, a correct copy being the equivalent of one witness.

History.—§64, ch. 16103, 1933; CGL 1936 Supp. 5541(63); am. §2, ch. 22783, 1945.
cf.—§732.32 Discovery of later will.

732.28 Notice of probate.—

(1) Upon the admission of a will to probate, the personal representative or any other interested party may, at his option, file in the office of the county judge a sworn statement containing the name and residence or post-office address of each legatee or devisee named in the will and of the surviving spouse and each heir at law of the decedent.

(2) Upon the filing thereof, the county judge shall cause to be duly mailed, postage prepaid, with the return address of the county judge upon each envelope, to each person named in said statement, a notice of the probate of said will. A certificate of such mailing shall be filed by the county judge.

(3) Thereupon, the county judge shall cause to be published once a week for four consecutive weeks in a newspaper published in the county, four publications being sufficient, a notice addressed to all persons interested, in substantially the following form:

In the County Judge's Court
_____County, Florida.
Estate of_____, Deceased.

The State of Florida to all persons interested in the estate of said decedent:

You are hereby notified that a written instrument purporting to be the last will and testament of said decedent has been admitted to probate in said court.

You are hereby commanded within six calendar months from the date of the first publication of this notice to appear in said court and show cause, if any you can, why the action of said court

in admitting said will to probate should not stand unrevoked.

_____
County Judge
_____County, Florida.
By _____
Clerk

First publication on_____

(4) The expense of mailing and publication shall be advanced to the county judge by the moving party and shall be taxed as costs of administration, payable out of the assets of the estate.

(5) No person who has been served with citation upon the petition for probate or who has waived such citation need be notified hereunder; but such person shall be bound by the order admitting the will to probate, unless the probate is successfully appealed from. Any person may likewise waive notice of probate by an instrument in writing filed in the office of the county judge and such waiver shall bar any action for revocation of probate.

(6) If no petition for revocation of probate is filed within the time limited aforesaid, the order admitting such will to probate shall be conclusive without further order, upon proof of publication of notice of probate's being filed and recorded in the office of the county judge. No petition for revocation of probate may be maintained unless filed within said six-month period.

History.—§65, ch. 16103, 1933; CGL 1936 Supp. 5541(64); am. §2, ch. 22783, 1945.

732.281 Educational, charitable, and religious beneficiaries to be notified.—Upon the admission to probate of any will in which an educational, religious, or charitable institution is named as a beneficiary, the personal representative shall, by registered mail, forthwith notify each such institution that it is so named. The notice herein required shall designate the court in which the will has been admitted to probate, and shall give the name and address of the personal representative.

History.—Comp. §1, ch. 29779, 1955.

732.29 Caveat; proceedings.—

(1) If any state agency which is a creditor of the estate of a decedent is apprehensive that an estate, either testate or intestate, will be administered without its knowledge, or if any heir or distributee of the estate of a decedent is apprehensive that a will may be admitted to probate without his knowledge, such agency or person may file a caveat in the office of the county judge.

(2) No caveat shall be effective unless it contains a statement of the interest of the caveator in the estate, the name and specific residence address of the caveator, and, if the caveator is a nonresident of the county, the additional name and specific residence address of some person residing in the county, designated as the agent of the caveator, upon whom service of citation may be made. After the filing of same, the county judge shall not admit the will of such decedent to probate, or discharge the personal representative of said estate without the issuance of a citation to the caveator.

(3) Such citation shall be served either upon the caveator or upon his agent named in the caveat for service of citation, whichever is stated to be a resident of the county. Upon a return that after diligent search the caveator, if he is a resident, or his resident agent, if the caveator is a nonresident, cannot be found, the county judge may proceed to admit the will to probate upon the expiration of fifteen days after mailing copies of the citation and petition to the caveator and to his agent, if any is named in the caveat, at the respective residence addresses given. Certificate of mailing shall be filed in such instances by the county judge.

(4) Upon the return day of the citation, the caveator may answer the petition for probate. In his answer he shall therein set forth his interest in the estate and the facts constituting the grounds upon which probate of the will is opposed; and the court shall, upon the issue made and the proof adduced, probate the will or deny probate, according to the law and justice of the case.

(5) Unless a will is offered for probate within thirty days after the filing of a caveat, letters of administration may be granted to those entitled to administer. Should a will be offered for probate after such letters of administration have been granted, citation shall also issue upon the petition to the administrator.

History.—§66, ch. 16103, 1933; CGL 1936 Supp. 5541(65); §2, ch. 22783, 1945; (1), (2), §§1, 2, ch. 63-456.

732.30 Revocation of probate.—

(1) Any heir or distributee of the estate of a decedent, including legatees or devisees under a prior will, except those who have been served with citation before probate or who are barred under §732.29, may, at any time before final discharge of the personal representative, make application by petition to the court in which the probate of any will may have been granted, for revocation of such probate. The petition shall set forth the interest of the petitioner in such estate and the facts constituting the grounds upon which revocation is demanded.

(2) Citation to appear and defend shall be served upon the personal representative; and the county judge shall, upon the issues made and the proof adduced, confirm or revoke the probate according to the law and justice of the case.

(3) Any legatee, devisee or other person interested in the estate shall, upon application, be permitted to appear and prosecute or defend as though he were a party to the proceedings.

(4) Pending the determination of any issue made for revocation of probate, the personal representative shall proceed with the administration of the estate as if no such issue had been made, except that no distribution may be made to legatees or devisees in contravention of the rights of those who, but for such will, would be entitled to the property disposed of thereby.

(5) Revocation of probate of a will shall not affect or impair the title to the property, real or personal, theretofore purchased in good faith for

value from the executor or administrator with the will annexed.

History.—§67, ch. 16103, 1933; CGL 1936 Supp. 5541(66); am. §2, ch. 22783, 1945.

732.31 Burden of proof in contests.—In all proceedings contesting the validity of a purported will, whether before or after such will is admitted to probate, the burden of proof, in the first instance, shall be upon the proponent thereof to establish, prima facie, the formal execution and attestation thereof, whereupon the burden of proof shall shift to the contestant to establish the facts constituting the grounds upon which the probate of such purported will is opposed or revocation thereof is sought.

History.—§68, ch. 16103, 1933; CGL 1936 Supp. 5541(67); am. §2, ch. 22783, 1945.

732.32 Discovery of later will.—Upon the discovery, pending probate proceedings, of a later will or codicil expressly revoking the probated will or impliedly revoking the same in whole or in part, any person interested may by petition offer same for probate. The proceedings shall be, as nearly as practicable, similar to those for revocation of probate generally.

History.—§69, ch. 16103, 1933; CGL 1936 Supp. 5541(68); am. §2, ch. 22783, 1945.

732.33 Discovery of will after settlement of estate.—

(1) Upon the discovery, after the termination of administration or probate proceedings and the discharge of the personal representative, of an unknown will or a later will or codicil expressly revoking the probated will or impliedly revoking the same in whole or in part, any one or more persons interested may, by suit in equity, impress a trust upon the funds or property received by an heir, legatee or distributee in the administration or probate proceedings recently terminated which, because of the newly discovered will, such recipient is not justly entitled to retain. All persons interested under the newly discovered will and all heirs, legatees or distributees under the former proceedings whose rights are affected by such new will may be made parties to one proceeding. A receiver of any or all of the property may be appointed. It shall be no objection to the complaint that it is multifarious. Such heir, legatee or distributee shall be held to account, not for the value of any such property spent or consumed by him, but only for the property actually remaining in his hands in its original form or as it may be traced into other form or property.

(2) Such proceedings shall neither invalidate any acts of the personal representatives theretofore performed in good faith nor affect the rights of bona fide purchasers for value of any of the property of the estate; nor shall any such proceeding be brought after three years from the date of the discharge of the personal representative.

History.—§70, ch. 16103, 1933; CGL 1936 Supp. 5541(69); am. §2, ch. 22783, 1945; §2, ch. 29737, 1955.

732.34 Probate of will written in foreign language.—

(1) The petition for the probate of a will written in a foreign language shall contain a true and complete English translation of the will. No probate of any will written in a foreign language shall be granted without citation to the surviving spouse, heirs at law of the testator and all beneficiaries under the will.

(2) Upon the probate of such a will, the county judge shall, in his order admitting the will to probate, establish the correct translation thereof. If possible, the original will shall also be recorded by the county judge in its original form. Any person affected may at any time and from time to time, during the administration of the estate, by petition and by the citation of all interested persons, have the correctness of the translation or of any portion thereof redetermined. No executor shall be held responsible for compliance at the time being with the English translation of the will as then established by the county judge's order.

History.—§71, ch. 16103, 1933; CGL 1936 Supp. 5541(70); am. §2, ch. 22783, 1945.

732.35 Probate of will of resident after foreign probate.—

(1) In the event that the will of any person who heretofore has died a resident of this state or of any person who hereafter dies a resident of this state is, through inadvertence, error or omission, admitted to probate in any other state or country prior to the probate thereof in this state, the same may be established and admitted to probate in this state if the original thereof might have been admitted to probate in this state, in like manner as though said will had been lost or destroyed, and the proceedings for the establishment and probate thereof shall, in all matters, be as nearly as possible similar to like proceedings in connection with the establishment and probate of lost or destroyed wills.

(2) An exemplified or a certified copy of such will, of the foreign order of probate and of the letters, if any, issued thereon, shall be filed in the office of the county judge where application is made for probate of such will, in lieu of the original will; and the same shall be prima facie evidence of its execution and admission to foreign probate.

(3) Any person cited may oppose the probate of such will as in the case of the original probate of a will in this state. Any person interested adversely may apply for the revocation of the probate of such will in this state as in the case of the original probate of a will in this state.

History.—§72, ch. 16103, 1933; §2, ch. 17171, 1935; CGL 1936 Supp. 5541(71); §1, ch. 19674, 1939; am. §2, ch. 22783, 1945.

732.36 Foreign probate prior to local probate of estate of resident decedent prohibited.—

(1) From and after the effective date of this section no person or corporation shall procure, or aid, abet or assist another in procuring, the probate of the estate or will of a person who heretofore has died a resident of this state or of a person who hereafter dies a resident of this state, in any other state or country prior to the probate of such estate or will in this state.

(2) Any person or corporation who shall knowingly and intentionally procure, or aid, abet

or assist another in procuring, the probate of the estate or a will of a person who heretofore has died a resident of this state or of a person who hereafter dies a resident of this state, in any other state or country prior to probate of such estate or will in this state, shall be guilty of a misdemeanor, and upon conviction therefor, shall be subject to a fine not exceeding five thousand dollars.

(3) This section shall not apply to any such probate proceedings or anything heretofore or hereafter done in or in connection with any such probate proceedings instituted in any other state or country prior to June 12, 1940.

History.—§§1-3, ch. 19672, 1939; CGL 1940 Supp. 5541(71A), 8135(38); am. §2, ch. 22783, 1945.

732.37 Probate of notarial will.—

(1) When a copy of a notarial will in the possession of a notary entitled to the custody thereof, in a foreign state or country (the laws of which state or country require that such will remain in the custody of such notary), duly authenticated by such notary, whose official position, signature and seal of office are further authenticated by an American consul, vice-consul or other American consular officer within whose jurisdiction such notary may be a resident, is presented by the executor or other person interested to the county judge having jurisdiction as prescribed by this law, the same may be admitted to probate if the original might have been admitted to probate in this state.

(2) Such duly authenticated copy shall be filed in the office of the county judge where application is made for probate thereof in lieu of the original will; and the same shall be prima facie evidence of its purported execution and of the facts stated in the certificate in compliance with the preceding subsection.

(3) Any person cited may oppose the probate of such foreign will as in the case of the original probate of a will in this state. Any person interested adversely may apply for revocation of probate of such foreign will as in the case of the original probate of a will in this state. All proceedings in connection with any such foreign will shall in all matters be, as nearly as possible, similar to like proceedings in connection with wills originally probated in this state.

History.—§73, ch. 16103, 1933; CGL 1936 Supp. 5541(72); am. §2, ch. 22783, 1945.

732.38 Effect of probate of will after foreign probate and of notarial will.—The probate in this state of a will admitted to probate in any foreign state or country or of a notarial will shall have the same force and effect as though the original thereof had been probated in this state.

History.—§74, ch. 16103, 1933; §3, ch. 17171, 1935; CGL 1936 Supp. 5541(73); am. §2, ch. 22783, 1945.
cf.—§734.31, Ancillary Administration.

732.39 Time of proof of nuncupative will.— No testimony shall be received to prove any nuncupative will after three months from the speaking of such testamentary words, unless the said testamentary words or the substance thereof have been reduced to writing and sworn to by the three witnesses to the will, before an officer authorized to administer oaths, within six days from the speaking of said will.

History.—§75, ch. 16103, 1933; CGL 1936 Supp. 5541(74); am. §2, ch. 22783, 1945.

732.40 Probate of nuncupative will.—

(1) No probate of any nuncupative will shall be granted until citation has issued and has been served upon those who, but for such will, would be entitled to the property thereby bequeathed.

(2) Upon the probate of a nuncupative will, the county judge shall, as a part of his order admitting same to probate, recite, and thereby establish and preserve, the full and precise terms and provisions of such will.

History.—§76, ch. 16103, 1933; CGL 1936 Supp. 5541(75); am. §2, ch. 22783, 1945.

732.41 Construction of will by probate court. —The county judge in whose court the will has been probated shall have jurisdiction to entertain direct proceedings for the construction of such will or any part thereof. Such proceedings for construction shall be by petition filed by the executor or by any other person interested in the will, with citation and service as required by this law.

History.—§77, ch. 16103, 1933; CGL 1936 Supp. 5541(76); am. §2, ch. 22783, 1945.

732.42 Construction of wills by courts of equity.—Courts of equity shall have concurrent jurisdiction with the county judges in the construction of wills or of any parts thereof, but the court first obtaining jurisdiction for construction shall retain the same. No petition or complaint for the construction of a will may be maintained in any court until the will has first been probated.

History.—§78, ch. 16103, 1933; CGL 1936 Supp. 5541(77); am. §2, ch. 22783, 1945; §2, ch. 29737, 1955.

732.43 Petition for letters of administration.—

(1) Every petition for letters of administration shall be sworn to by the petitioner, his agent or his attorney and shall contain statements to the best of petitioner's information and belief, showing the domicile of the decedent at the time of his death, the date of his death, the approximate value of the estate of the decedent, the residence and post-office address of the petitioner, and a statement that the decedent died intestate, and, if the decedent was a nonresident, whether there is a domiciliary administration pending or not, and if so, the name and post-office address of the domiciliary personal representative.

(2) Every such petition shall contain either a statement of the names, ages and residences of the surviving spouse and heirs at law of the decedent and their respective relationships to decedent, or averments showing that reasonable search has been made and that such information cannot be ascertained without delay which would adversely affect the estate.

(3) No citation need be served or notice given of the granting of letters of administration when it appears by the petition that the petitioner is entitled to preference of appointment; but, before letters shall be granted to any person who is not entitled to preference, citation shall issue to all

known persons qualified to act as administrator and entitled to preference over the person applying, unless those entitled to preference waive same in writing.

History.—§79, ch. 16103, 1933; CGL 1936 Supp. 5541(22); am. §2, ch. 22783, 1945.

cf.—§732.23, Petition for probate of will.
§734.32, Petition for administration of estate of person believed dead.

732.44 Preference in appointment of administrator.—In the granting of letters of administration, the following preference shall be observed:

(1) The surviving spouse shall first be entitled to letters.

(2) The next of kin, at the time of the death of the decedent, shall next be entitled to letters.

(3) If there are several next of kin, equally near in degree, the one selected in writing by a majority of them who are sui juris shall be appointed. If no such selection is thus made, the county judge may exercise his discretion in selecting the one best qualified for the office.

(4) If no application is made by the next of kin, the county judge in his discretion, may appoint some capable person, but no person may be appointed under this subsection who works for such county judge or who holds public office under such county judge, nor any person who is employed by or holds office under any judge exercising probate jurisdiction.

(5) Persons entitled to an estate may select a disinterested person as administrator; and if such person is otherwise qualified, he shall be appointed.

(6) After letters of administration have been granted, if any person who is entitled to preference over the person appointed and upon whom citation was not served and who has not waived his preference seeks the appointment, letters granted may be revoked, and such person may have letters of administration granted to him after citation and hearing upon his application.

(7) After letters of administration have been granted, if any will is produced and probated, the aforesaid letters shall be revoked and letters testamentary shall be granted to the executor of said will, or letters of administration cum testamento annexo shall be granted, if there is no executor ready and willing to qualify, preference being given to the person, if otherwise qualified, who is selected by the persons beneficially interested in the estate. No such will shall be probated without citation to the administrator.

History.—§80, ch. 16103, 1933; CGL 1936 Supp. 5541(23); am. §2, ch. 22783, 1945; am. §1, ch. 23722, 1947.

732.45 Individuals who may be appointed personal representatives; resident agents.—

(1) Any person sui juris who is a citizen of the United States and a resident of Florida at the time of the death of the person whose estate he seeks to administer is qualified to act as personal representative in Florida. However, a person who has been convicted of a felony or who, from sickness, intemperance or want of understanding is incompetent to discharge the duties of a personal representative, is not qualified to act as personal representative.

(2) If a resident personal representative removes his residence from the state, he shall have his new place of residence and postoffice address recorded in the office of the county judge of the county in which the administration is pending, and he shall designate some resident of said county as his agent or attorney for the service of process, whose name, residence and post-office address shall also be likewise recorded. Such designation, in whatever form it may be, shall be taken to constitute the consent of the person so designating that service of any process upon the designated agent or attorney shall be sufficient to bind the person so designating in any suit or action against such personal representative, either in his representative capacity or personally; provided, that such personal action must have accrued in the administration of such estate. Such designation must be in writing and must be filed in the office of the county judge.

History.—§81, ch. 16103, 1933; CGL 1936 Supp. 5541(24); am. §2, ch. 22783, 1945; §6, ch. 22847, 1945.

cf.—§§734.11-734.21, Removal of personal representative.

732.46 Minor not qualified.—

(1) No person who is less than twenty-one years of age shall be qualified or permitted to act as an executor or administrator. If a minor is named as executor in any last will and testament, letters testamentary shall be granted to the other executor or executors, if any is named in said will; if none other is named, letters of administration with the will annexed shall be granted to the next of kin or to such other person as the judge shall appoint according to the provisions of this law, until said minor comes of full age, when he may have letters testamentary as the executor if otherwise qualified. In such case, the letters of administration, if any have been granted, shall be revoked, and the said administrator shall render a true and faithful account of his administration to the county judge's court and surrender the estate to the said executor.

(2) The executor in such cases shall be entitled to all rights and proceedings provided for in this law for compelling an accounting from removed personal representatives.

History.—§82, ch. 16103, 1933; CGL 1936 Supp. 5541(25); am. §2, ch. 22783, 1945.

732.47 Nonresidents.—

(1) A person who is not an actual bona fide resident of the state cannot qualify as a personal representative of an estate in Florida, unless such person is a legally adopted child of the decedent, an adoptive parent or is related by lineal consanguinity to the decedent or is a spouse or a brother, sister, uncle, aunt, nephew or niece of the decedent. However, any person who has qualified in Florida as a personal representative prior to the effective date of this law may continue to serve in such capacity.

(2) Before any nonresident of Florida shall be issued letters upon any estate, such nonresident shall have his residence and postoffice address recorded in the office of the county judge

of the county in which the administration is pending, and shall designate some resident of said county as his agent or attorney for the service of process, whose name, residence, and postoffice address shall also be likewise recorded. Such designation, in whatever form it may be, shall be taken to constitute the consent of the person so designating that service of any process upon the designated agent or attorney shall be sufficient to bind the person so designating in any suit or action against such personal representative, either in his representative capacity or personally, provided, that such personal action must have accrued in the administration of such estate. Such designation must be in writing and must be filed in the office of the county judge.

(3) Any qualified personal representative appointed after May 27, 1947, who becomes disqualified to act as such after his appointment immediately thereupon shall file, in the court where his letters were granted, his petition for resignation pursuant to the terms and provisions of §734.09, and immediately thereupon shall present said petition to said court and do any and all other things necessary or proper to procure an order approving such resignation.

(4) Anything contained in any will of a person who hereafter dies a resident of the state to the contrary notwithstanding, it shall be and constitute a violation of this section for any person or corporation to apply for or act under any letters testamentary or of administration with the will annexed issued in any other state or country for or in respect of personal property of a person who hereafter dies a resident of the state and which is located elsewhere than in the state, solely because of the fact that the will of such testator purports to name, constitute or appoint such person or corporation as a purported executor or administrator with the will annexed, when such person or corporation is not qualified to receive and act under domiciliary letters testamentary or of administration with the will annexed issued in the state.

(5) Any person who fails to comply with or who acts or continues to act in violation of any of the terms and provisions of this section shall be deemed guilty of a misdemeanor and, on conviction, be fined not to exceed one hundred dollars for each day his appointment as such personal representative remains in effect contrary to any of the terms and provisions of this section.

History.—§83, ch. 16103, 1933; §1, ch. 19671, 1939; CGL 1940 Supp. 5541(26), 8135(38-a); am. §2, ch. 22783, 1945; §7, ch. 22847, 1945; am. §1, ch. 23819, 1947. §§1, 2, ch. 29961, 1955.

732.48 Married woman.—A married woman may act as personal representative or curator without the consent of her husband.

History.—§84, ch. 16103, 1933; CGL 1936 Supp. 5541(27); am. §2, ch. 22783, 1945.

732.49 Trust companies and other corporations.—

(1) All trust companies incorporated under the laws of the state and all national banking associations authorized and qualified to exercise fiduciary powers in Florida shall be entitled to act as personal representatives and curators of estates under the laws of the state.

(2) When any such corporation has been named as an executor in a will and thereafter sells its business and assets to, or consolidates or merges with, or is in any manner provided by law succeeded by, another such corporation, the successor corporation may, upon the death of the testator, qualify, and the county judge may issue letters to the successor corporation unless the will provides otherwise.

(3) A corporation authorized and qualified to act as a personal representative resulting from merger or consolidation shall, upon filing proof thereof in the county judge's court and without a new appointment, succeed to the rights and duties of all predecessor corporations as the personal representatives of estates. A purchase of substantially all the assets and the assumption of substantially all the liabilities shall be deemed a merger for the purpose of this section.

History.—§85, ch. 16103, 1933; CGL 1936 Supp. 5541(28); am. §2, ch. 22783, 1945; am. §7, ch. 24337, 1947.

732.50 Joint executors and administrators.—If several executors are named in a will, one or more qualifying shall be entitled to execute all the powers and trusts confided to all in the will unless especially prohibited by the will; if more than one qualify, all must join in discharging the functions of executor unless the county judge gives special authority to one or more of such executors to discharge such functions. Each executor shall be responsible only for his own acts, unless by his own act or gross negligence he has enabled or permitted his coexecutor to waste the estate. The foregoing shall likewise apply to joint administrators.

History.—§86, ch. 16103, 1933; CGL 1936 Supp. 5541(29); am. §2, ch. 22783, 1945.

732.51 Effect of appointment of debtor or creditor.—The appointment of a debtor or of a creditor as personal representative shall not, either in law or in equity, be construed to operate as a release or extinguishment of the debt due to or by the decedent. This section shall not be construed to prevent a testator from releasing a debtor by last will and testament.

History.—§87, ch. 16103, 1933; CGL 1936 Supp. 5541(30); am. §2, ch. 22783, 1945.

732.52 Succession of administration.—No executor of an executor shall, as such, be authorized to administer the estate of the first testator; but, on the death of the sole or surviving executor, the county judge shall appoint an administrator de bonis non to complete the administration of such estate.

History.—§88, ch. 16103, 1933; CGL 1936 Supp. 5541(31); am. §2, ch. 22783, 1945.

732.53 Executor de son tort.—No person shall be liable to a creditor of a decedent as executor de son tort, but any person taking, converting or intermeddling with the property of a decedent shall be liable to the personal representative or curator, when appointed, for the value of all the property so taken or converted and for

all damages to the estate of the deceased caused by his wrongful action; but this section shall not be construed to prevent a creditor of a deceased person from suing anyone in possession of property fraudently conveyed by such deceased person, for the purpose of setting aside such fraudulent conveyance.

History.—§89, ch. 16103, 1933; CGL 1936 Supp. 5541(141); am. §2, ch. 22783, 1945.

732.54 Guardian ad litem.—Whenever a legal guardian is appointed or qualified in this state for any infant or person non compos mentis who is interested in the estate of a decedent, such guardian shall represent his ward in all proceedings affecting such estate in the county judge's court, except as to proceedings in which the guardian is interested in his own right. The county judge shall, without notice, appoint a guardian ad litem to represent any infant or person non compos mentis where there is no legal guardian appointed or qualified in this state, or where such guardian is interested in his own right, and to represent any unknown person interested in the estate. A guardian ad litem shall, upon appointment, make and file an oath to discharge his duties faithfully. Whenever a guardian ad litem is appointed, no process need be served upon him, but he shall appear and defend as directed by the county judge.

History.—§90, ch. 16103, 1933; CGL 1936 Supp. 5541(142); am. §2, ch. 22783, 1945.

732.55 Administrator ad litem.—Whenever, in any proceeding before the county judge or in equity in the circuit court, it is necessary that the estate of a deceased person be represented and when there is no personal representative of such estate or when the personal representative is interested adversely to said estate or in such proceeding is enforcing his own debt or claim against the estate, the court in which the proceeding is pending shall appoint an adminstrator ad litem without bond for that particular proceeding. Whenever the facts authorizing such appointment appear of record or are otherwise made known to the court, the court shall without notice appoint such administrator ad litem. The administrator ad litem shall, upon appointment, make and file an oath to discharge his duties faithfully, and said proceeding shall then be further maintained, prosecuted or defended, insofar as said estate is concerned, by said administrator ad litem and in his name as such.

History.—§91, ch. 16103, 1933; CGL 1936 Supp. 5541(32); am. §2, ch. 22783, 1945.

732.56 Recovery of judgment; proceedings.—Whenever any such administrator ad litem shall recover any decree or other relief, it shall be enforced as other decrees, except that execution which shall issue shall be in favor of the administrator ad litem for the use of the estate, and the money collected shall be paid to the personal representative of the estate, or, if there is none, then to the county judge when the proceeding is before him, or into the registry of the circuit court when the proceeding is in that court; and said funds, if paid into court, shall be held to await the further order of the court.

History.—§92, ch. 16103, 1933; CGL 1936 Supp. 5541(33); am. §2, ch. 22783, 1945.

cf.—§732.03, Enforcement of judgments.

732.57 Judgment in favor of personal representative.—If the personal representative is an adverse party and in a proceeding in equity recovers a judgment or decree against the administrator ad litem, the court may grant him such relief as he may be lawfully entitled to under the provisions of this law.

History.—§93, ch. 16103, 1933; §4, ch. 17171, 1935; CGL 1936 Supp. 5541(139); am. §2, ch. 22783, 1945.

732.58 Compensation of administrator ad litem.—An administrator ad litem shall be allowed such compensation for his services as the judge in whose court the proceeding is pending deems just and reasonable, and the same shall be taxed as costs in the case unless the court thinks it equitable that the same should be paid out of the assets of the estate without reference to prevailing or losing parties in the cause.

History.—§94, ch. 16103, 1933; CGL 1936 Supp. 5541(34); am. §2, ch. 22783, 1945; am. §10, ch. 26484, 1951.

cf.—734.01, Expenses and compensation of personal representatives.

732.59 Oath of personal representative.—Before granting letters the county judge shall require the personal representative to make and file an oath in writing that he will faithfully administer the estate of the decedent, pay debts as far as the assets of the decedent will permit, make distribution of the estate according to law, and render due accounts of his administration.

History.—§95, ch. 16103, 1933; CGL 1936 Supp. 5541(35); am. §2, ch. 22783, 1945.

732.60 Oaths and affidavits.—Oaths, verifications, affirmations and affidavits required by law in probate proceedings may be made, either within or without the state, before any officer authorized by the laws of this state to administer oaths.

History.—§96, ch. 16103, 1933; CGL 1936 Supp. 5541(78); am. §2, ch. 22783, 1945.

732.61 Bond of personal representative.—

(1) Every person to whom letters testamentary or of administration are directed to issue (unless the testator waived such requirement) shall be required by the judge, before such letters issue, to execute and file in his office a bond with two or more sufficient sureties, or an authorized surety company as surety, to be approved by the county judge, in such penal sum as the county judge may deem sufficient, respect being had to the value of the estate. Said bond shall be payable to the governor and his successors in office, conditioned to perform faithfully all duties as such personal representative according to law. In form the bond must be joint and several.

(2) The requirements of this section shall not be applicable to banks and trust companies authorized by law to act as personal representatives.

History.—§97, ch. 16103, 1933; §5, ch. 17171, 1935; CGL 1936 Supp. 5541(36); am. §2, ch. 22783, 1945.

cf.—§733.29, Additional bond upon sale of assets.

732.62 Bond by a surety company.—Any surety company authorized to do business in this state may become surety upon the bonds of personal representatives, and in such cases there need be only one surety upon such bonds.

History.—§98, ch. 16103, 1933; CGL 1936 Supp. 5541(37); am. §2, ch. 22783, 1945.

732.63 Bond required of executor.—When any person interested in the estate of a decedent files with the county judge of the county wherein a last will is admitted to probate a petition, from which petition and the evidence adduced thereon it is made to appear to the county judge that there is reasonable ground to apprehend that any such executor holding the assets of such decedent is mismanaging, wasting or diverting, or will mismanage, waste or divert said assets from their proper administration, the county judge shall require such executor to give a bond with sufficient security conditioned as the law directs; and this bond may be required although the will may exempt said executor from giving the bond. The executor shall have such notice as the county judge may prescribe and the right to appear and defend the proceedings.

History.—§99, ch. 16103, 1933; CGL 1936 Supp. 5541(38); am. §2, ch. 22783, 1945.

732.64 Insufficiency of bond.—When any person interested in the estate of a decedent files with the county judge of the county wherein the administration is pending a petition, from which petition and evidence adduced thereon it is made to appear to the county judge that the sureties on any bond given by a personal representative or curator are insolvent or insufficient or that the bond is insufficient in amount, said county judge shall enter an order requiring additional sureties or an additional bond, as the circumstances may require.

History.—§100, ch. 16103, 1933; CGL 1936 Supp. 5541(39); am. §2, ch. 22783, 1945.

732.65 Liability of surety.—No surety for any personal representative or curator shall be charged beyond the assets of an estate by reason of any omission or mistake in pleading or of false pleading of such executor, administrator or curator.

History.—§101, ch. 16103, 1933; CGL 1936 Supp. 5541(40); am. §2, ch. 22783, 1945.

732.66 County judge to act on his own motion.—Whenever it is known to the county judge of a county where administration of any estate has been granted that cause exists which would authorize him upon the application of others to require a personal representative or curator to give bond or to give additional surety, said judge shall, of his own motion, without the application of any other person, make such orders as he may deem proper.

History.—§102, ch. 16103, 1933; CGL 1936 Supp. 5541(41); am. §2, ch. 22783, 1945.

732.67 Informality of bond.—No bond executed by any personal representative or curator shall be void or invalid on account of any informality in it, or of informality or illegality in the appointment of such fiduciary. Such bond shall have the same force and effect as if the appointment had been legally made and the bond executed in proper form.

History.—§103, ch. 16103, 1933; CGL 1936 Supp. 5541(42); am. §2, ch. 22783, 1945.

732.68 Release of surety.—

(1) The surety or sureties, or the personal representative of any surety or sureties, upon the bond of any executor, administrator or curator, taken under the provisions of this law, shall be entitled as a matter of right to be released from future liability upon such bond, upon application to the county judge therefor and the giving of five days' written notice of application to the principal named in the bond.

(2) Pending the hearing of such application, the county judge may, in his discretion, restrain the principal from acting in his representative capacity, except to preserve the estate.

(3) Upon the hearing, the county judge shall enter an order prescribing the terms and amount of the new bond for such fiduciary and the date when same shall be filed. If the principal fails to give the new bond, he shall be removed at once and further proceedings be had as in cases of removal.

(4) The original surety or sureties shall be liable for all acts of the fiduciary until he has given the new bond and after the giving of the new bond shall remain liable for all the fiduciary's acts to the time of the filing and approval of the new bond. The new surety shall be liable for the fiduciary's acts only from and after the filing and approval of the new bond. The costs of the proceeding shall be paid by the surety applying to be released.

History.—§104, ch. 16103, 1933; CGL 1936 Supp. 5541(43); am. §2, ch. 22783, 1945.

732.69 County judge may reduce bond.—The county judge may, for good cause shown, reduce the amount of bond of personal representatives of estates.

History.—Comp. §1, ch. 29715, 1955.

CHAPTER 733

FLORIDA PROBATE LAW, THIRD PART

733.01 Personal representative to take possession of entire estate and application of estate income.—

(1) The personal representative shall take possession of the personal property wheresoever situate of a person who hereafter dies a resident of the state, and shall take possession of the real estate (except homestead) within the state of such a deceased person, and the rents, income, issues and profits therefrom whether accruing before or after the death of the decedent, and of the proceeds arising from the sale, lease or mortgage of the same or any part thereof. The personal representative shall take possession of the real and personal property within the state of a person who hereafter dies a resident of some other state or country, and the rents, income, issues and profits therefrom whether accruing before or after the death of the decedent, and of the proceeds arising from the sale, lease or mortgage of the same or any part thereof. All such property and the rents, income, issues and profits therefrom shall be assets in the hands of the personal representative for the payment of legacies, debts, family allowance, estate and inheritance taxes, claims, charges and expenses of administration, and to enforce contribution and to equalize advancement and for distribution.

(2) The net income earned by the assets of the estate after the death of the testator, and prior to the distribution of the estate, and not used for the purposes set forth in subsection (1) above shall in the absence of specific provision in the will to the contrary be paid and applied as follows:

(a) To either specific or demonstrative legatees and devisees the net income from the property specifically or demonstratively bequeathed and devised to them respectively;

(b) To general legatees, legal interest on their respective legacies from the time fixed by the county judge in an order of distribution for the payment thereof, or if no date is fixed by the county judge, from and after thirty days from the entry of such order of distribution, except that where the general legacy provides that the net income therefrom shall be paid to or for the benefit of or accumulated for one or more beneficiaries, then such general legatee or legatees shall be entitled to that proportion of the net income which the general legacy at appraised value bears to the appraised value

of the entire probate estate, excluding specific and demonstrative legacies and devises, provided, however, that the appraised value shall be the court appraisal unless a United States estate tax return is required to be filed, in which event the appraised value shall be the value finally determined for such tax purposes.

(c) To the residuary legatees and devisees, all the rest and remainder of the net income earned after the death of the testator not hereinabove applied.

(3) If any part of the estate is bequeathed or devised to a trustee the proportion of the net income applied to such bequest or devise shall be paid by the executor to such trustee and shall be held and distributed by the trustee as income.

(4) This section shall apply to estates of all decedents dying on or after July 1, 1953.

History.—§105, ch. 16103, 1933; CGL 1936 Supp. 5541(87); § § 1, 2, ch. 20413, 1941; §3, ch. 22783, 1945; am. §1, ch. 28025, 1953; sub. §(1) am. §1, ch. 29893, 1955.
cf.—§734.07, Advancements.

733.02 Actions relating to real estate.—Personal representatives may bring and maintain actions or suits for the possession or recovery of real property of the estate, for the purpose of quieting the title thereto, for waste thereof and trespass thereon, and against cotenants of the decedent in real property for the partition thereof. Heirs and devisees of the decedent may themselves, or jointly with the personal representative, bring and maintain actions or suits for the possession or recovery of real property of the estate or for the purpose of quieting title thereto against anyone except the personal representative. In any suit to quiet title brought by an heir or devisee, the possession of the personal representative shall, for the purpose of such suit, be deemed the possession of the heir or devisee. In all actions or suits involving the title to real property, against an estate for the possession or recovery of real property or for the purpose of quieting title thereto, the personal representative and the heirs or devisees of such property shall be made parties.

History.—§106, ch. 16103, 1933; CGL 1936 Supp. 5541(88); am. §3, ch. 22783, 1945.
cf.—§734.21, Survival of actions.
§734.30, Actions by or against foreign representatives.

733.03 Inventory.—The personal representative shall file a complete inventory of the personal property wheresoever situate of a person who hereafter dies a resident of Florida, and of the real estate (except homestead) within the state of the estate of such a decedent. The personal representative shall file a complete inventory of the real and personal property within the state of a person who hereafter dies a resident of some other state or country. The inventory shall be filed within sixty days from the date of the granting of letters unless the time is extended by order of the county judge.

History.—§107, ch. 16103, 1933; CGL 1936 Supp. 5541(79); §3, ch. 22783, 1945; §1, ch. 29894, 1955.
cf.—§733.37, Inventories; interests in partnerships.

733.04 Inventories.—The county judge on granting letters testamentary or of administration shall appoint two or more competent persons not of kin to the deceased as appraisers of the property of the decedent, and said appraisers shall take oath truly and justly to view and appraise, according to the best of their ability, all the property of the decedent which to them shall be produced or which shall come to their knowledge. It shall not be necessary to appoint appraisers or to have any appraisement whenever the county judge dispenses with the appraisal of an estate.

History.—§108, ch. 16103, 1933; CGL 1936 Supp. 5541(80); am. §3, ch. 22783, 1945; §8, ch. 22847, 1945.

733.05 Duties of appraisers.—On the appointment of the appraisers they shall forthwith proceed to appraise all the property which has been produced to them and which has come to their knowledge and file the appraisal in the office of the county judge; and the appraisal thereupon made, if signed by the personal representative, may be considered as an inventory of such part of the estate.

History.—§109, ch. 16103, 1933; CGL 1936 Supp. 5541(81); am. §3, ch. 22783, 1945.

733.06 Inventories and appraisals as evidence.—Inventories and appraisals, or certified copies thereof, may be given in evidence in any suit by or against the personal representative; however, they shall not be conclusive, for or against him, as to the real value of the estate or any part thereof, or as to whether it or any part thereof was sold bona fide for more or less than the appraised amount.

History.—§110, ch. 16103, 1933; CGL 1936 Supp. 5541(82); am. §3, ch. 22783, 1945.

733.07 Compensation of appraisers.—Each appraiser shall be entitled to receive for his services reasonable compensation, to be fixed by the county judge and paid by the personal representative. Application therefor shall be accompanied by an affidavit of each appraiser showing the services rendered by him as appraiser and the reasonable value thereof, and such application may be heard upon such notice as the county judge shall fix.

History.—§111, ch. 16103, 1933; CGL 1936 Supp. 5541(83); am. §3, ch. 22783, 1945.

733.08 Continuance of business of decedent.—

(1) In every case where a person has died while engaged in any trade or business, the county judge may authorize the curator or the personal representative of the estate of such deceased person to continue and carry on such trade or business for a reasonable time under the supervision of the county judge and require such security or additional security of such curator or personal representative as the county judge may deem proper.

(2) Before any order shall be made authorizing the continuance of the trade or business of the deceased person, the curator or the personal representative of such estate, by a verified petition, shall affirmatively and clearly allege and set forth sufficient facts to make it appear to the county judge that, to prevent great loss to the

estate, it is necessary to continue such trade or business of the deceased.

(3) The order of the county judge authorizing the continuance of such trade or business of the deceased may empower the curator or the personal representative of such estate, in his representative capacity, to make such contracts as may be necessary to carry on and conduct such trade or business and to incur debts and to pay out money in the proper conduct of such trade or business, and the net profits of such trade or business only shall be assets of the said estate.

(4) In the conduct of such trade or business the curator or the personal representative shall keep full and accurate accounts of all receipts and expenditures, he shall make monthly reports thereof to the county judge, and he shall be allowed such compensation as the county judge may deem reasonable for his services in conducting such trade or business.

(5) Any person interested in the said estate at any time may apply to the county judge of the county where such order has been granted for an order requiring the curator or the personal representative of such estate to discontinue and to wind up the said trade or business, and upon due notice to the said curator or personal representative, such application shall be heard, and the county judge shall make such order thereon as he deems for the best interest of said estate.

History.—§112, ch. 16103, 1933; CGL 1936 Supp. 5541(89); am. §3, ch. 22783, 1945.

733.09 Duty to assign dower.—The personal representative shall lay off and assign dower immediately after the widow has exercised her election to take dower.

History.—§113, ch. 16103, 1933; CGL 1936 Supp. 5507(4); am. §3, ch. 22783, 1945.

733.10 Petition for assignment.—For the purpose of enabling the personal representative to lay off and assign dower, he shall file a petition therefor in the county judge's court in which the administration of the estate of the decedent is pending. Citation shall be served upon the widow and the heirs, devisees, legatees and distributees, or such of them as do not appear and join in the proceedings.

History.—§114, ch. 16103, 1933; CGL 1936 Supp. 5507(5); am. §3, ch. 22783, 1945.

733.11 Petition by widow for assignment of dower.—

(1) If the personal representative fails to file a petition for the assignment of dower, the widow may file such petition, setting forth her claim, specifying as particularly as may be known to her the property in which she claims dower and praying for the assignment of the same. Citation shall be served upon the personal representative, the heirs, devisees, legatees and distributees, or such of them as do not appear and join in the proceedings.

(2) The widow may in addition file her extraordinary petition or petitions for assignment of dower in the county judge's court of any county or counties in this state where any lands lie which her husband had before conveyed, whereof she had not relinquished her right of dower as provided by law. Citations shall be served upon all persons adversely interested. Proceedings thereupon shall be, as nearly as possible, similar to those for the ordinary assignment of dower.

History.—§115, ch. 16103, 1933; §7, ch. 17171, 1935; CGL 1936 Supp. 5507(6); am. §3, ch. 22783, 1945.

733.12 Proceedings on the petition.—

(1) The proceedings upon any petition for assignment of dower shall be informal and summary.

(2) On any petition for assignment of dower, the right of dower as well as the admeasurement thereof, shall be determined, and mesne profits from the date of the death of the decedent shall be included in the judgment. The county judge in whose court the administration of the decedent's estate is pending shall have plenary jurisdiction to assign dower in all property, real or personal, located in any county in the state. But no such judgment shall become effective in any other county until a duly certified copy thereof has been recorded in such other county in the judgment lien record.

(3) Upon written demand of any party filed twenty-four hours before trial, the question of right of dower shall be submitted to a jury of six persons. The party demanding a jury trial shall, with the filing of his demand, deposit with the county judge sufficient funds to pay for summoning the jury and the fees of the jurors. Fifteen jurors shall be summoned from the body of the county and not from bystanders.

History.—§116, ch. 16103, 1933; CGL 1936 Supp. 5507(7); am. §3, ch. 22783, 1945.

733.13 Commissioners.—If a judgment for dower is made, the county judge shall select (unless selected by mutual agreement of the parties) and appoint as commissioners three suitable persons who are entirely disinterested and not connected with the parties either by consanguinity or by affinity. Such commissioners may employ a surveyor and shall be allowed such sum as may be deemed reasonable by the county judge to be paid as part of the costs of administration of the estate. They may be removed by the county judge for good cause shown and others appointed in their places. They shall proceed, immediately upon taking oaths faithfully and impartially to execute the trust imposed in them, to allot and set off the widow's dower. All matters of mesne profits shall be decided by the court upon the pleadings and evidence; provided, however, that when the interested parties agree to the allotment of dower, or when the assets are of such value and such a nature that dower may be allotted without the appointment of commissioners, the county judge may, in his discretion, dispense with such appointment and set off and allot dower.

History.—§117, ch. 16103, 1933; CGL 1936 Supp. 5507(8); §3, ch. 22783, 1945; §1, ch. 29714, 1955.

733.14 Final judgment.—In all cases of assignment of dower, the county judge to whom application is made shall, upon hearing after notice, confirm, reject or modify the allotment or assignment made. Such judgment shall vest in

the widow a fee simple estate in the lands and the absolute ownership of the personal property allotted. She shall be entitled to writ of possession if necessary.

History.—§118, ch. 16103, 1933; CGL 1936 Supp. 5507(9); am. §3, ch. 22783, 1945.

733.15 Notice to creditors.—Every personal representative, after taking out letters testamentary or of administration, shall cause a notice to be published once a week for four consecutive weeks, four publications being sufficient, in a newspaper published in the county wherein said letters have been granted, notifying all persons having claims or demands against the estate of the decedent to file their claims in the office of the county judge granting such letters, at his office in the courthouse of said county, within six calendar months from the time of the first publication of said notice. If no newspaper conforming to the requirements of law is published in the county of the administration, then such publication shall be made by posting as provided for in this law. Proof of said publication or posting shall be filed with and recorded by the county judge.

History.—§119, ch. 16103, 1933; CGL 1936 Supp. 5541(91); §3, ch. 22783, 1945; §2, ch. 61-394.

733.16 Form and manner of presenting claims; limitation.—

(1) No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and postoffice address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within six months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom such claim may be made, whether suit be pending at the time of the death of such person or not, unless such claim be filed in the manner and within the said six months as aforesaid;

(a) Provided, however, that if suit upon any such claim or demand is filed and service of process therein had upon such personal representative within six months from the time of the first publication of the notice to creditors, the claim or demand asserted by such suit shall not be impaired or affected by failure to file in the office of the county judge granting letters a claim or demand in manner and form as hereinabove provided, but such failure shall operate to preclude the plaintiff in such suit from recovering any suit costs or attorneys fees as an incident thereto; and the personal representative shall file in the office of the county judge granting letters a suggestion of the pendency of such suit and the same shall be entered on the claim docket;

(b) Provided further, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Any suit heretofore commenced and in which service of process was had upon the personal representative within the period hereinabove specified, and which may now be pending in any court against the personal representative of any estate which has not been finally closed, shall not be subject to attack upon the ground that the claim or demand upon which such suit is based was not made in manner and form and filed in the office of the county judge granting letters, as otherwise hereinabove provided.

(c) Provided further that a creditor shall deliver a copy of such claims as recorded and filed to the county judge, who shall forthwith mail said copy to the personal representative, and note on the original such fact of mailing.

(2) Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in estate to which he may be entitled.

(3) Any claim filed in any estate during the period of time between July 1, 1961, and July 1, 1963, which was filed within eight months from the first publication of notice to creditors but after six months from the first publication of notice to creditors, may, upon just cause shown to the county judge, be allowed as if it had been filed within six months from the first publication of notice to creditors provided there had not been an order of final distribution entered prior to the actual filing of the claim or the effective date hereof and the claimant can show to the satisfaction of the county judge that the allowance of the claim as though properly filed within six months from the first publication of the notice to creditors will not materially adversely affect the orderly administration of the estate. Provided further the time for filing suit upon objections filed to claims filed under this section is extended to July 1, 1963.

History.—§120, ch. 16103, 1933; CGL 1936 Supp. 5541(92); §3, ch. 22783, 1945; §1, ch. 22889, 1945; §1, ch. 23970, 1947; (1)(c) n. §1, ch. 57-194; (1) a. §3, by 61-394; (3) n. §1, ch. 63-309.

cf.—§§734.27-734.29, Suspension of statutes of limitations. §733.35, Mortgages.

733.17 Amendment of claims.—If a bona fide attempt to file a claim is made by any creditor or other claimant but it is defective as to form, the county judge in his discretion may permit the

amendment of such claim at any time before payment.

History.—§121, ch. 16103, 1933; CGL 1936 Supp. 5541(93); am. §3, ch. 22783, 1945.

733.18 Payment of and objections to claims.

(1) No personal representative shall be compelled to pay the debts of the decedent until after the expiration of six calendar months from the granting of letters; and if any person brings any suit or action against any personal representative within said six calendar months upon any claim to which the personal representative has filed no objection, the plaintiff, although he obtains decree or judgment, shall not receive any costs of suit or attorneys' fees, nor shall such judgment change the class of such claim in any manner.

(2) On or before the expiration of eight calendar months from the first publication of notice to creditors any personal representative or other person interested in the estate may file in the office of the county judge written objection to any claim or demand filed. An objection filed to any unmatured claim matures the same for the purpose of the establishment of the validity and amount thereof by suit. If objection is filed, the person filing it shall, forthwith, but not later than thirty days after same has been filed, serve a copy of such objection by registered mail or personal service on the creditor or claimant to whose claim he objects and also on the personal representative if the objection is filed by any interested person other than the personal representative. Failure to serve copy of such objection as herein provided shall constitute an abandonment of the objection unless the time for service thereof be extended by the county judge for good cause shown. The creditor or claimant shall thereupon be limited to two calendar months from the date of such service within which to bring appropriate suit, action or proceedings upon such claim or demand. The county judge for good cause shown may extend the time for filing objection to any claim or demand or the time for serving such objection, and may likewise for good cause shown extend the time for filing appropriate suit, action or proceedings upon any such claim after objection is filed; but in any of said instances, said extension of time shall be granted only after due notice of such application. No suit, action or proceeding shall be brought against any personal representative after the time limited above. If objection is filed to the claim of any creditor and suit is brought by the creditor to establish his claim or demand, a judgment establishing such claim shall give it no priority over claims of the same general class to which it belongs.

(3) No interest shall be paid by the personal representative or allowed upon the claim of any creditor against the estate of a decedent until the expiration of eight calendar months from the granting of letters unless said claim is founded upon a written obligation of the decedent expressly providing for the payment of interest. Interest shall be allowed and paid by the personal representative upon written obligations of the decedent expressly providing for the payment of interest. Upon all other claims interest shall be allowed and paid beginning eight months from said granting of letters.

History.—§122, ch. 16103, 1933; CGL 1936 Supp. 5541(94); §3, ch. 22783, 1945; (2) §1, ch. 28209, 1953; §1, ch. 61-394; (2), §1, ch. 63-454.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

733.19 Execution and levies prohibited.—No execution shall issue upon or be levied under any judgment against a decedent or against the personal representative, nor shall any levy be made against any property, real or personal, of the estate of a decedent. Claims upon all judgments against the decedent shall be filed in the same manner as other claims against estates of decedents; provided, however, that the provisions of this section shall not be construed to prevent the enforcement of mortgages, pledges, liens or claims to specific property, real or personal.

History.—§123, ch. 16103, 1933; §8, ch. 17171, 1935; CGL 1936 Supp. 5541(95); am. §3, ch. 22783, 1945.

733.20 Order of payment of expenses of administration and claims against the estate; family allowance.—

(1) The personal representative shall pay the expenses of administration and claims against the estate in the following order:

(a) Class one. Costs, expenses of administration, compensation of personal representatives and their attorneys' fees.

(b) Class two. Reasonable funeral expenses not to exceed the sum of seven hundred fifty dollars, any excess over the sum allowed herein for funeral expenses shall be considered as included in the payments specified to be made in class eight.

(c) Class three. Expenses of last illness of the decedent, including debts for board and lodging, for hospital, physicians, surgeons', and druggists' bills, and for nursing, attendance and medicine during the last sickness of the deceased, incurred within a period of sixty days prior to the death of the decedent.

(d) Class four. If necessary for support, a family allowance of one year's support for the widow or minor, mentally or physically incompetent children of said decedent, or both such widow and children, in addition to the homestead and exempt personal property. Upon petition of the widow, if any, or of the legal guardian or of the person having the care and custody of a minor child or children, upon notice to the personal representative, a reasonable allowance shall be fixed by the county judge in personal property or money, or both, for the support of said widow and minor children, considering the needs of the family and the value of the estate. Said allowance or the portion payable in money shall be payable in equal periodic payments to be fixed by the county judge and shall be payable to the widow, if any, for the support of herself and the minor child or children, if any. If there is no widow, then the same shall be payable to the legal guardian or to the person having

the care and custody of any minor child or children. Upon the petition of any person interested in the estate, the county judge may increase, decrease, discontinue or modify the allowance; but in no event shall such allowance exceed the sum or value of twelve hundred dollars.

(e) Class five. Wages to the extent of one hundred dollars for each employee of the decedent, for work done or services rendered within sixty days prior to the death of the employer.

(f) Class six. Judgments of record in this state during the lifetime of the decedent.

(g) Class seven. Mortgages, mechanics', material-men's, laborers', employees' and other liens where the value of the property of the estate encumbered by said liens exceeds the amount thereof.

(h) Class eight. All other debts without distinction of rank.

(i) Class nine. If, upon petition of the widow or minor children of decedent, upon notice to the personal representative, it shall appear that the family allowance provided under paragraph (d) of this subsection is insufficient for the reasonable support of said widow or minor children, or both, according to their previous standard of living, then the county judge may order the payment of a supplemental family allowance from the assets of decedent's estate remaining after full provision for payment of prior claims, which in his opinion will reasonably support said petitioners; provided, however, that such supplemental allowance shall not exceed the sum of three thousand dollars. Said supplemental allowance shall be payable in such manner as the county judge shall direct, and shall be subject to discontinuance or modification in the same manner as the family allowance provided for under paragraph (d) hereof.

(j) Class ten. In case the decedent, dying testate, leaves a natural or adopted child less than eighteen years of age without a legally responsible surviving natural or adoptive parent and without adequate means for support and maintenance in its own right by will, gift or trust, such child shall be deemed a dependent orphan child of the decedent. In addition to any temporary allowance for maintenance during the period of administration as provided by paragraph (d) hereof, the court, on petition of any interested party or on its own motion, shall make such additional provision for such child until its eighteenth birthday as the court deems reasonable and just, subject to the limitations hereinafter set forth. The court may increase, discontinue or modify such allowance, but before entering any order fixing or changing any allowance hereunder the court shall require notice to all interested parties.

This provision is designed to afford reasonable protection to any dependent minor child who has been excluded from the provisions of the parents' will under circumstances which deprive it of an effective legal substitute for the continuing obligation of the parent, while living, for support and maintenance during the period of its minority. It is not intended that this provision should have the effect of creating in any child omitted from the provisions of its parent's will an estate which would exceed the value of its distributive share had the deceased parent died intestate.

The court in its discretion, and in order to conclude the administration of the estate, may order the entire allowance hereunder paid in a lump sum to a guardian of the child's property, and in fixing the amount thereof the court shall consider the net value of the estate subject to distribution and the reasonable requirements of the child prospectively in relation to its eighteenth birthday.

(2) If, after paying any preceding class, the estate shall be insufficient to pay all of the next succeeding class, the creditors or claimants of the latter class shall be paid ratably in proportion to their respective claims.

History.—§124, ch. 16103, 1933; CGL 1936 Supp. 5541(96); §3, ch. 22783, 1945; §1, ch. 25274, 1949; sub. §(1)(b), am. §1, ch. 29678, 1955; (1)(b) a. by §1, ch. 61-63; (1)(d) a. by §1, ch. 61-391.

cf.—§§734.02-734.04, Payment of legacies and distributive shares.
§734.05, Order of appropriation of assets.

733.21 Compromise and settlement.—Whenever it is proposed to compromise or settle any claim, whether in suit or not, by or against the estate of a decedent or the personal representative thereof, or to compromise or settle any question or dispute concerning the distribution of a decedent's estate, the county judge having jurisdiction of said decedent's estate, on sworn petition setting forth the facts and circumstances of such claim, question or dispute and the proposed compromise or settlement may, if satisfied that such compromise or settlement will be for the best interests of the estate, enter an order ex parte authorizing the same to be made, which order shall operate to relieve the said personal representative of any and all liability or responsibility in the premises; provided, however, that claims against the estate may not be compromised until after the time for filing objections to claims has expired and then only upon notice to those who have filed objection to the claim proposed to be compromised.

History.—§125, ch. 16103, 1933; CGL 1936 Supp. 5541(97); am. §3, ch. 22783, 1945.

733.211 Claims undisposed of after three years barred.—

(1) Whenever anyone shall have filed a claim against any estate in any probate proceedings in this state, in accordance with this chapter, and which claim has not had objection filed thereto or has not been paid, settled or otherwise disposed of and no proceeding is pending for the enforcement or compulsory payment thereof, then at the expiration of three years from the date such claim is filed such claim shall be forever barred and foreclosed and have no further force or effect and no proceeding or action shall thereafter ever be brought for enforcement or payment of same. This section

shall not affect the lien of any duly recorded mortgage or the lien of any person in possession of personal property or the right to foreclose and enforce such mortgage or lien.

(2) This section shall not apply to any claim upon which legal proceedings are brought for enforcement or compulsory payment of same on or before January 1, 1954.

History.—Comp. § § 1, 2, ch. 28180, 1953.

733.22 Sale pursuant to will.—In every case where a power is given in a will to sell or dispose of property of the estate, or any interest therein, a sale made under authority of such will shall be valid. The sale and disposition of property under such power may be made by the executors, or such of them as qualify, or by the surviving executor or executors, or by the administrator with the will annexed, or by the administrator de bonis non, if no other person is appointed in the will for such purpose, or, if the person so appointed refuses to perform the trust or dies before he has completed the same or is otherwise rendered incompetent.

History.—§126, ch. 16103, 1933; CGL 1936 Supp. 5541(98); am. §3, ch. 22783, 1945.

733.23 Sales where no power conferred.—Whenever any administrator of a decedent dying intestate, or any executor or administrator with the will annexed whose testator has not conferred upon him a power of sale or whose testator has granted such power but that power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested therein that the property of the estate be sold for distribution or for any other purpose, the personal representative may sell the same at public or private sale; provided, however, that no title shall pass until by order of the county judge the sale shall be authorized or confirmed. Sales may be authorized before made or confirmed after made. Application for authorization or confirmation of sale shall be made by the sworn petition of the personal representative setting forth the reasons for such sale, a description of the property sold or proposed to be sold, and except when authorization or confirmation of the sale at the current market of stocks or bonds listed upon an established exchange is applied for, the price and terms of such sale.

History.—§127, ch. 16103, 1933; CGL 1936 Supp. 5541(99); am. §3, ch. 22783, 1945; §9, ch. 22847, 1945.
cf.—§733.36, Sale of stocks and bonds.
§733.40, Execution of instruments by representative.

733.24 Sale on petition of interested persons.—If a personal representative neglects or refuses to sell property of an estate when it is expedient or necessary to do so or when a testator has directed a sale to be made, any person interested may, by petition, apply to the county judge for an order requiring the personal representative to sell. Notice of such petition shall be given to the personal representative and to such persons as would be entitled to notice in case of the application of the personal representative for authorization or confirmation of a sale of such property.

History.—§128, ch. 16103, 1933; CGL 1936 Supp. 5541(100); am. §3, ch. 22783, 1945.

733.25 Sale of real property when widow survives.—In any case when a decedent is survived by a widow, no sale or disposition of real property shall be made, whether pursuant to the powers contained in the decedent's will or under the provisions of this law, until it appears that the widow will not have dower assigned to her, or, if she takes dower, until after her dower has been assigned, unless the widow consents to such sale and joins with the personal representative in the execution of a deed of conveyance to the purchaser thereof.

History.—§129, ch. 16103, 1933; CGL 1936 Supp. 5541(101); am. §3, ch. 22783, 1945.

733.26 When notice of sale required.—

(1) No notice of any application for the authorization or confirmation of any sale shall be required when it shall appear that the personal property involved is perishable or rapidly depreciating.

(2) No notice of any application for the authorization or confirmation of any sale shall be required in any other case except as follows:

(a) Whenever it shall appear to the county judge that notice is necessary or desirable, notice shall be given to such persons as the county judge shall by order direct.

(b) Whenever application is made for the authorization or confirmation of the sale of property which has been specifically devised or bequeathed, notice shall be given to the devisee or legatee, unless he waive such notice or consent to such sale.

(c) Whenever any person interested in the estate shall serve upon the personal representative a written demand for notice of sale, containing the post-office address of such person, and file a copy of such demand and proof of the service thereof in the office of the county judge, notice of every application thereafter made for the authorization or confirmation of any sale shall be given to such person, unless he waive such notice or consent to such sale.

(d) Whenever the will of a decedent shall contain a direction or express a desire that any described or designated property be not sold, notice of application for the authorization or confirmation of the sale of any such property shall be given to the legatee or devisee of such property, unless he waive such notice or consent to such sale.

(e) Whenever application is made for the authorization or confirmation of the sale of any property for distribution.

History.—§130, ch. 16103, 1933; CGL 1936 Supp. 5541(102); am. §3, ch. 22783, 1945; §10, ch. 22847, 1945.

733.27 Hearing on application to sell.—Where no notice is required, the county judge may hear and determine petitions for the sale of property ex parte. Where notice is required, such hearings shall be as in other cases. At any such hearing the county judge may in his discretion require an appraisal or new appraisal of the property.

History.—§131, ch. 16103, 1933; CGL 1936 Supp. 5541(103); am. §3, ch. 22783, 1945.

733.28 Order of sale.—

(1) SALE GENERALLY.—After the hear-

ing upon a petition to sell or confirm the sale of property, the county judge shall make and enter an order thereon, and if the sale is authorized or confirmed, the order shall describe the property, and if said property is authorized to be sold at private sale, the order shall fix the price and the terms of sale. Such order shall be prima facie evidence of the validity of the proceedings and of the authority of the personal representative to make a conveyance or transfer of the property. A certified copy of such order relating to real property may be recorded in the judgment lien record in the office of the clerk of the circuit court in each county wherein such real property or any part thereof is situated. When an order authorizing a sale is obtained, it may provide for the public or private sale of any of the property described therein, in parcels or as a whole. If public sale is ordered, the personal representative shall give such notice as the order may require.

(2) SALE BY COMMISSIONER.—In the order of sale, or at any time before a sale authorized to be made by an executor or by an administrator, the county judge, whenever he deems it necessary, may appoint a commissioner to make the sale and to execute whatever instruments may be necessary to consummate it. Any sale made by such commissioner shall be in compliance with the law governing sales by executors and administrators. Any sale so made by a commissioner under such an order shall be as valid as though made by the executor or administrator.

History.—§132, ch. 16103, 1933; CGL 1936 Supp. 5541(104). am. §3, ch. 22783, 1945; §11, ch. 22847, 1945.

733.29 Additional bond upon sale.—Whenever the county judge makes an order authorizing or confirming a sale of property of an estate, he may in his discretion require the personal representative to execute a bond or an additional bond, with sureties as provided in this law, in such amount as the county judge may deem necessary, conditioned for the faithful accounting of the proceeds of such sale. No such bond shall, in any case, be required where the personal representative is a bank or trust company. All such bonds shall be recorded in the office of the county judge.

History.—§133, ch. 16103, 1933; CGL 5541(105); am. §3, ch. 22783, 1945.

cf.—§732.62, Bond by a surety company.

733.30 Sales upon terms.—When so provided by the order of the county judge authorizing or confirming a sale of property, personal representatives may sell upon such terms as the order prescribes. If credit is given, it shall be for not more than sixty per cent of the purchase price nor for longer than five years, unless the county judge, in his discretion by written order, authorizes a larger per cent of credit. The county judge, in his discretion by written order, may also enlarge the time for payment. The exercise of such discretion shall be evidenced by written order duly recorded. The deferred purchase price shall be evidenced by the promissory note of the purchaser payable to the personal representative and secured by mortgage upon the property sold, if real property, or by such security as may be approved by the court in any case. The taking of any such promissory note and mortgage or other security shall not defer the final settlement of the estate, but, in the event of final settlement before the payment in full of such note, the same, together with the mortgage or other security, may be assigned and transferred without recourse to such person or persons who, but for such sale, would have been entitled to the property so sold.

History.—§134, ch. 16103, 1933; CGL 5541(106); am. §3, ch. 22783, 1945; §12, ch. 22847, 1945.

733.31 When personal representative may purchase.—Any personal representative having an interest in the estate which he represents, either in his own right or in the right of his wife or infant child, as creditor, devisee, legatee or heir at law may, at any public sale of the real or personal property of his testator or intestate made as provided by law under the order of the county judge, become a bidder therefor; and, if such personal representative is the highest bidder at such sale, he may purchase the same, and said property shall be sold to such executor or administrator, but such sale shall always be subject to confirmation by the county judge.

History.—§135, ch. 16103, 1933; CGL 5541(107); am. §3, ch. 22783, 1945.

733.32 Conveyances pursuant to contracts of decedent.—In all cases where written agreements have been made for the sale and conveyance or transfer of real property in this state or of personal property, and the vendor has died before making such conveyance or transfer, the personal representative or person claiming the right to such conveyance or transfer may file with the county judge before whom the administration of the estate is pending a sworn petition setting forth the facts upon which the claim is predicated and annexing thereto the agreement or a copy thereof. The county judge, if he deems notice of hearing on said petition necessary or desirable, shall direct who should have the same and the manner in which it should be given. After a hearing upon such petition and the defenses, if any, made thereto, the county judge may make an order directing the personal representative to make, execute and deliver the conveyance or transfer to the person entitled to the same, or otherwise as justice may require. Such order shall describe the property to be conveyed or transferred. Said order shall be prima facie evidence of the validity of the proceedings and of the authority of the personal representative to make the conveyance or transfer. A certified copy of any such order relating to real property may be recorded in the miscellaneous records in the office of the clerk of the circuit court in any county wherein such real property or any part thereof is situated.

History.—§136, ch. 16103, 1933; CGL 5541(108); am. §3, ch. 22783, 1945; am. §1, ch. 23717, 1947.

733.33 Sale of contract to purchase.—If a decedent at the time of his death was possessed of a contract for the purchase of real property, the interest of the estate in such property and under such contract may be sold by the personal representative in the same manner as if the de-

cedent had been the owner in fee simple of such property; provided, the holder of the fee simple title to such property and of the vendor's interest thereto shall execute a release to the personal representative relieving the estate from liability upon such contract. Such release shall not be required if no claim has been filed on such contract and if the time for filing claims has expired. In lieu of such release the personal representative may, upon order of the county judge, take from the purchaser of such contract a bond approved by the county judge with sureties in a penal sum double the amount due and to become due under such contract, conditioned that the purchaser will make all payments upon such contract and perform all agreements therein contained according to the tenor thereof and indemnify and save harmless the personal representative and all persons interested in the estate against all demands, costs, charges and expenses by reason of such contract.

History.—§137, ch. 16103, 1933; CGL 1936 Supp. 5541(109); am. §3, ch. 22783, 1945.

733.34 Sale of real property subject to contract to purchase.—If a decedent at the time of his death was the owner of real property subject to a contract to sell and convey said property, the interest of the estate in such property and such contract may be sold under order of the county judge in the same manner as other real estate. No recourse shall be had against the estate or the personal representative for the nonpayment or nonperformance by the vendee under any such contract. The consent of the vendee under any such contract to the sale thereof shall discharge the estate and the personal representative from all obligations, duties and liabilities with respect to such contract, but such consent shall not be required if no claim has been filed thereon and the time for filing claims has expired.

History.—§138, ch. 16103, 1933; CGL 1936 Supp. 5541(110); am. §3, ch. 22783, 1945.

733.35 Sale of real property subject to mortgage.—The county judge may, upon petition of the personal representative and with the written consent of the holder of the mortgage, authorize the sale of real property of the estate subject to mortgage, whether such mortgage was made by the decedent, the personal representative or any other person. The consent of the mortgagee shall discharge the estate and the personal representative from liability for the mortgage indebtedness or obligation. Such consent shall not be required if no claim has been filed upon the mortgage indebtedness and the time for filing claims has expired.

History.—§139, ch. 16103, 1933; CGL 1936 Supp. 5541(111); am. §3, ch. 22783, 1945.
cf.—§733.16, Presenting claims.

733.36 Sale of stocks and bonds.—The county judge may, upon petition of the personal representative, make an order authorizing the sale, at the current market price, of any stocks or bonds which are listed upon an established stock or bond exchange, and such order need not otherwise designate the price at which such sale shall be made.

History.—§140, ch. 16103, 1933; CGL 1936 Supp. 5541(112); am. §3, ch. 22783, 1945.

733.361 Stock held in name of personal representative.—Upon entry of an order or decree of a court of competent jurisdiction, the personal representative or representatives shall have the power and authority to hold any corporate stock or mutual investment trust shares in the name of the sole personal representative or in the name of one or more of the several personal representatives, or in the name of a nominee, with or without disclosing any fiduciary relationship; but for all acts and omissions of the personal representative or representatives in whose names such property is held, and of such nominee, relating to such property, all the personal representatives shall be jointly and severally responsible.

History.—§1, ch. 61-329.

733.37 Interest in partnership.—When at the time of his death, a partnership existed between the decedent and any other person, the surviving partner shall, in the absence of a partnership agreement providing otherwise, without delay, wind up and settle the business and the affairs of the partnership, account to the personal representative and pay over to him all balances due the estate. If, however, at date of the partner's death, there existed a partnership agreement specifying the terms and conditions of termination of the partnership upon death of a partner, then such agreement shall be binding with respect to all matters, duties, rights and obligations relating to the partnership, including the determination of its final accounting period. The interest of the decedent in the partnership shall be included in the inventory of the estate. The personal representative may bring and maintain against the surviving partner any action, suit or proceeding relating to the partnership which the decedent could have brought. Any interest of an estate existing by virtue of a partnership between the decedent and any other person may be sold in the same manner as other property of the estate.

History.—§141, ch. 16103, 1933; CGL 1936 Supp. 5541(143); am. §3, ch. 22783, 1945.
Am. §1, ch. 26583, 1951.

733.38 Lease of real property.—Whenever it appears expedient and for the best interest of the estate to lease any real property of the estate, the county judge may authorize the personal representative to make such lease. The proceedings in such cases shall be, as nearly as possible, the same as in cases of application for the sale of property, except that notice shall be given to all persons interested in the estate. The personal representative may lease real property without an order of court when the tenancy is from month to month or for a term not extending beyond the time for filing claims against the estate.

History.—§142, ch. 16103, 1933; CGL 1936 Supp. 5541(113); am. §3, ch. 22783, 1945.

733.39 Borrowing money and mortgaging property.—Whenever it appears expedient or necessary and for the best interest of the estate to borrow money upon a promissory note, either unsecured or to be secured by a mortgage, pledge

or other lien upon the property of the estate or any part thereof, the county judge may by order authorize the personal representative to borrow such sum as the county judge shall deem proper. The proceedings in such cases shall be, as nearly as possible, the same as in cases of applications for the sale of property, except that notice shall be given to all persons interested in the estate. In like manner the county judge may authorize the personal representative to extend or renew any existing obligation of the estate or to extend or renew any existing mortgage, pledge or other lien. The signing of promissory notes or the execution of any agreement or other instrument creating a pledge or other lien by the personal representative, as such, shall create no personal liability against the person so signing or executing.

History.—§143, ch. 16103, 1933; CGL 1936 Supp. 5541(114); am. §3, ch. 22783, 1945.

cf.—§733.23, Sales where no power conferred.
§734.30, Mortgages held by foreign representatives.

733.40 Power of personal representative to execute instruments.—Whenever the county judge authorizes or confirms any sale, authorizes the borrowing of money or the execution of any mortgage, agreement or other instrument creating a lien or a lease, or authorizes the distribution in kind of any property, the personal representative may make, execute, sign, seal, acknowledge and deliver in his name as such personal representative all deeds, bills of sale, assignments, instruments of transfer, promissory notes, mortgages, pledges, leases or any instruments necessary or proper to carry out and give effect to such orders.

History.—§144, ch. 16103, 1933; CGL 1936 Supp. 5541(115); am. §3, ch. 22783, 1945.

733.41 Purchaser protected.—No person purchasing or leasing from, or taking a mortgage, pledge or other lien from a personal representative shall be bound or concerned to see that the money or other things of value paid to such personal representative are actually needed or properly applied; nor shall such person be otherwise obligated as to the proprieties or expediences of the acts of such personal representative. In all such transactions the acts of the personal representative pursuant to the powers of a will or the order of the county judge shall be prima facie valid.

History.—§145, ch. 16103, 1933; CGL 1936 Supp. 5541(116); am. §3, ch. 22783, 1945.

733.42 Limitation in favor of purchaser from personal representative.—The title of any purchaser, or of anyone holding under him, who has held possession for three years or more, of any property, real or personal, purchased at any sale made under this law by an executor or administrator, free from fraud, shall not be questioned by any person upon any ground.

History.—§146, ch. 16103, 1933; CGL 1936 Supp. 5541(117); am. §3, ch. 22783, 1945.

733.43 Annual returns.—A personal representative, unless otherwise ordered by the court, shall make his annual returns on or before ninety days after the expiration of the fiscal year, the election whereof he shall signify by filing notice thereof with the court within ninety days of his appointment, or, in the absence of such notice of election, on or before April first of each year for the calendar year or fraction of a calendar year expiring on December thirty-first preceding. If he fails to make such returns before the time applicable he shall, in the discretion of the county judge, forfeit all commissions on such returns so to be made; provided, however, that if the time for filing claims against the estate has expired prior to the end of the fiscal or calendar year, or shall expire within thirty days thereafter, the personal representative, may, in lieu of making annual returns, file his final returns within ninety days from the expiration of the fiscal year or on or before April 1 after expiration of the calendar year and apply for a discharge. If he fails to make his annual reports within such times as above specified, then, when such returns are made, he shall immediately give written notice of the filing of such returns to all persons interested in the estate being administered by him.

When there is a single heir or beneficiary, or where all of the heirs or beneficiaries are sui juris and consent thereto in writing, it shall not be necessary to file a final accounting, nor to advertise notice thereof, nor shall it be necessary to file annual accountings, unless required in either case by the county judge.

History.—§147, ch. 16103, 1933; CGL 1936 Supp. 5541(118); §3, ch. 22783, 1945; §13, ch. 22847, 1945; §1, ch. 26735, 1951; §2, ch. 29714, 1955; §1, ch. 59-267.

cf.—§734.15, Accounting upon removal.
§734.22, Final settlement and discharge.

733.44 Contents of returns.—A personal representative in his returns shall render a full and correct account of the receipts and expenditures of all the estate of which he may have control, and include therein a statement of the assets of the estate.

Substantiating papers shall not be filed with accountings, but pertinent substantiating papers and records shall be available at a trial of objections to accountings, and all substantiating papers and records shall be preserved by the personal representative for three years after his discharge.

History.—§148, ch. 16103, 1933; CGL 1936 Supp. 5541(119); am. §3, ch. 22783, 1945; 2nd par. n. by §2, ch. 59-267.

733.45 Objection to returns.—Upon the filing of returns with the county judge by a personal representative, any person interested as creditor, legatee, distributee, devisee or heir at law may, within thirty days after the time limited by law for filing the same, file objection in writing to the account or any item thereof, specifying the ground of objection. No item previously approved by order of the county judge upon notice shall be subject to objection. If any personal representative fails to file his annual returns on or before the first day of April in any year, any person interested in the estate may file in the office of the county judge a written demand for service of a copy of the returns, which demand shall contain the post-office address of the person filing the same. If any demand is on

file at the time the returns are filed, the personal representative shall serve a copy of the returns upon the person who filed the demand therefor and shall file proof of the service thereof in the office of the county judge. Objection may be filed to the returns at any time within thirty days after the service of copy thereof.

History.—§149, ch. 16103, 1933; §9, ch. 17171, 1935; CGL 1936 Supp. 5541(120); am. §3, ch. 22783, 1945.

733.46 Trial of objections.—If objections to accounts are filed, the personal representative or the objecting party may, after the expiration of the time limited for filing objections upon reasonable notice to the other, apply to the county judge who shall fix a day for the hearing. Upon the conclusion of the hearing, an order shall be entered by the county judge finally sustaining or overruling the objections, and he shall thereupon proceed to enter his order thereon.

History.—§150, ch. 16103, 1933; CGL 1936 Supp. 5541(121); am. §3, ch. 22783, 1945; §3, ch. 59-267.

733.47 Examination of returns not objected to.—If no objection is filed to returns within the time limited by law for filing objections, the county judge shall proceed to examine said returns and enter his order approving the same or requiring such proof of the items contained therein as the county judge shall find desirable.

History.—§151, ch. 16103, 1933; §10, ch. 17171, 1935; CGL 1936 Supp. 5541(122); am. §3, ch. 22783, 1945; §4, ch. 59-267.

733.48 Recording settlement.—There may be recorded in the office of the county judge any instrument settling an account in whole or in part, executed by the personal representative and any one or more legatees, devisees, heirs or claimants. To be entitled to record, any such instrument shall be acknowledged or sworn to by the parties before any officer authorized to take acknowledgments or to administer oaths, and the record thereof or a duly certified copy shall be admitted as prima facie evidence thereof and of its due execution without requiring proof of the execution.

History.—§152, ch. 16103, 1933; CGL 1936 Supp. 5541(123); am. §3, ch. 22783, 1945.

733.49 Order requiring returns; contempt of court.—When any personal representative fails or neglects to make the annual returns as required by this law, the county judge shall issue an order directing said personal representative to make such returns within fifteen days from the service upon him of such order, or show cause why he should not be compelled to do so. A copy of such order shall be served upon the personal representative. If the said personal representative fails, neglects or refuses without good cause shown to file such returns within the time specified by said order, the county judge shall forthwith issue a citation directed to said personal representative to show cause why he should not be adjudged in contempt of court for such failure or neglect; and if such personal representative fails to show just cause, the county judge may forthwith adjudge said personal representative to be in contempt of court, and said person shall stand committed for contempt until he makes the annual returns.

History.—§153, ch. 16103, 1933; CGL 1936 Supp. 5541(124); am. §3, ch. 22783, 1945; §5, ch. 59-267.

733.50 Compulsory settlements.—Although an executor may, by the terms of the will appointing him, be exempted from making settlements with returns to the county judge, and although no mismanagement or waste is charged against him, upon the application of any creditor, legatee, distributee, devisee, heir or surety, the county judge shall make an order directing the personal representative to file such accounts and to make such settlements and distribution in whole or in part as is deemed necessary for the proper administration of said estate. Such order may also be made by the county judge upon his own motion.

History.—§154, ch. 16103, 1933; CGL 1936 Supp. 5541(125); am. §3, ch. 22783, 1945.

cf.—§734.15-734.19, Settlement upon removal.

733.51 Production of assets.—Upon the petition of any creditor, legatee, distributee, devisee or heir at law, or upon his own motion if he deems it necessary for the proper administration of said estate, the county judge may require any personal representative to produce satisfactory evidence that the assets of the estate are in his possession or under his control and, if necessary or proper, may order the production of such assets for the inspection of such creditor, legatee, distributee, devisee or heir at law, or of said judge.

History.—§155, ch. 16103, 1933; CGL 1936 Supp. 5541(84); am. §3, ch. 22783, 1945.

733.52 Devastavit.—When an action suggesting a devastavit is brought against any personal representative, if such personal representative cannot show that he has fully administered according to law, he and his sureties shall be personally charged to the extent of assets not duly administered by him.

History.—§156, ch. 16103, 1933; CGL 1936 Supp. 5541(85); am. §3, ch. 22783, 1945.

733.53 Who may suggest devastavit.—An action suggesting devastavit may be brought against the personal representative by any person interested in the estate. When a personal representative resigns, dies or is removed, an action suggesting devastavit may also be brought against him or his executors or administrators and against his surety or sureties by the remaining or successor personal representative.

History.—§157, ch. 16103, 1933; CGL 1936 Supp. 5541(86); am. §3, ch. 22783, 1945.

733.54 Waiver of statute of limitations, internal revenue matters.—Any executor or administrator, duly appointed by any county judge in the state and qualified to act under such appointment, may enter into agreements with the proper officer or department head, commissioner or agent, of any department of the government of the United States waiving the statute of limitations with respect to the assessment and collection of any federal tax or any deficiency in any federal tax; provided, however, that any such agreement shall be first approved by the county judge having jurisdiction of the administration of the estate.

History.—Comp. §1, ch. 25108, 1949.

CHAPTER 734

FLORIDA PROBATE LAW, FOURTH PART

734.01 Expenses and compensation.—

(1) A personal representative shall be allowed all necessary expenses and attorney's fees paid in the care, management and settlement of the estate. A personal representative shall be allowed commissions upon the amount of the estate, real and personal, accounted for by him as compensation for his ordinary services as follows:

(a) For the first one thousand dollars at the rate of six per cent; all above that sum and not exceeding five thousand dollars at the rate of four per cent; and all above five thousand dollars at the rate of two and one-half per cent.

(b) In addition to the aforesaid commissions a personal representative shall be allowed such further compensation as the court may deem just and reasonable for any extraordinary services including the sale of real estate or personal property, the conduct of litigation on behalf of or against the estate, the adjustment and payment of extensive or complicated estate or inheritance taxes, the carrying on of the decedent's business pursuant to an order of court, and any other special services which may be necessary for the personal representative to perform.

(c) When provision is made by the will of the decedent for compensation to a personal representative, the compensation fixed by such will shall be in full satisfaction for his services in lieu of the compensation provided, unless by an instrument filed with the county judge he renounces all claim to the compensation given by the will.

(d) If there be more than one personal representative, each shall be allowed such compensation for his services as the court shall determine to be just and reasonable; provided, however, that the compensation allowed any one of such multiple personal representatives for ordinary services shall not exceed the compensation specified in paragraph (a), nor the total compensation allowed all such multiple personal representatives for ordinary services be less than one commission computed in accordance with paragraph (a) hereunder nor more than the sum of two such commissions.

(2) Any attorney who has rendered services to an estate or the personal representative may apply to the court by petition for an order making an allowance for attorney's fees, and, after notice to persons adversely affected, the court shall make such order with respect thereto as shall be proper.

(3) In annual and final returns, the personal representative shall be entitled to credit for such reasonable sums as he may have paid for the services rendered to the estate by an attorney and his expenses in connection therewith. Objections may be made to the allowance of such items as in other cases, unless the said items have been previously allowed by the county judge.

(4) If the personal representative is a practicing attorney at law of this state and has rendered legal services in connection with his

official duties, he shall be allowed such fees therefor as shall be just and reasonable.

History.—§158, ch. 16103, 1933; CGL 1936 Supp. 5541(90); am. §4, ch. 22783, 1945; am. §1, ch. 24295, 1947. (2) a. §10, ch. 26484, 1951; (1) (d) by §1, ch. 59-59; (1) (a) a. by §1, ch. 61-163.

cf.—§732.58, Compensation of administrators ad litem.

734.02 Delivery of legacies and distributive shares.—No personal representative shall be required to pay or deliver any legacy or distributive share or to surrender possession of any land to any heir or devisee until the expiration of eight calendar months from the granting of letters. Any payment, delivery or surrender made by the personal representative prior to that time shall be made at his risk.

History.—§159, ch. 16103, 1933; CGL 1936 Supp. 5541(127); §4, ch. 22783, 1945; §4, ch. 61-394.

cf.—§731.23, Descent and distribution; order.
§733.40, Power of representative to execute instruments.

734.03 Proceedings for the payment of legacies or distributive interest.—

(1) Before any personal representative is compelled to pay, prior to the final settlement of his accounts, any legacy in money or to deliver any specific personal property bequeathed to any person (unless such personal property is exempt personal property) which may have come into his hands, or to pay all or any part of any distributive share in the personal estate of said decedent, or to surrender any land to any heir or devisee, the heir, devisee, legatee or distributee shall file in the office of the county judge a petition setting forth the facts which entitle him to the relief prayed and stating that the property will not be required for the payment of debts, family allowance, estate and inheritance taxes, claims, charges and expenses of administration, or for providing funds for contribution or enforcing equalization in case of advancements; and citation shall be served upon or notice given to the personal representative. Upon the return day, or upon such other day as may be fixed by the county judge, he shall make appropriate order as he shall deem proper under the circumstances.

(2) An order directing the surrender of real estate or the delivery of any specific personal property shall describe the property to be surrendered or delivered; and such order, unless and until revoked or unless reversed on appeal, shall be conclusive in favor of bona fide purchasers for value from such heir, devisee, legatee or distributee as against the personal representative and all other persons claiming by, through, under or against the decedent or his estate.

(3) If the administration of the estate, except the distribution thereof, has not been completed prior to the entry of any order of distribution, the county judge in his discretion may require the person entitled to such distribution to give a bond with adequate sureties, to be approved by the county judge, conditioned to make due contribution for the payment of legacies, debts, demands and all costs which may be awarded, if any such debt or demand is duly presented within the time limited by law, and for family allowance, estate and inheritance taxes, claims, charges, expenses of administration and equalization in case of advancements.

History.—§160, ch. 16103, 1933; CGL 1936 Supp. 5541(128); am. §4, ch. 22783, 1945.

734.04 Distribution.—After the time for filing claims against the estate has expired and all debts, claims, estate and inheritance taxes, family allowance, charges and expenses of administration have been paid or provision made for the payment thereof, and before the final settlement of the accounts of the personal representative, he may apply by petition for an order authorizing him to surrender the possession of any designated or described real estate to the heir or devisee or to deliver any specific property or to make any distribution of the assets of the estate, and an order entered upon such petition shall have the same effect as though entered upon the petition of the heir or devisee as hereinbefore provided. Upon the approval of the final accounts of the personal representative, he shall surrender the possession of all real estate to the heir or devisee entitled thereto and pay over and distribute all personal property to those entitled thereto. An order of final discharge of the personal representative shall be evidence of such surrender or distribution, and unless revoked or unless reversed on appeal, shall be conclusive as to the rights of all heirs, devisees, legatees and distributees.

History.—§161, ch. 16103, 1933; CGL 1936 Supp. 5541(129); am. §4, ch. 22783, 1945.

734.041 Apportionment of estate taxes.—

(1) Any estate, inheritance, or other death tax levied or assessed under the provisions of the tax laws of this or any other state or of any United States revenue act, with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, shall be apportioned in the following manner:

(a) If any portion of the estate passed under the will of a decedent as a specific bequest or devise, or general legacy, or in any other nonresiduary form (exclusive of property over which the decedent had a power of appointment as defined from time to time under the estate tax laws of the United States), the net amount of the tax attributable thereto shall, except as otherwise directed by the will, be charged to and paid from the residuary estate of the testator without requiring contribution from persons receiving such interests. In the event the residuary estate is insufficient to pay the tax attributable to such interests, any balance of such tax shall, except as otherwise directed by the will, be equitably apportioned among the recipients of such interests in the proportions that the value of each such interest included in the measure of such tax bears to the total of all such interests so included.

(b) If any portion of the estate passed under the will of the decedent as a residuary interest (exclusive of property over which the decedent had any such power of appointment), the net amount of the tax attributable thereto shall, except as otherwise directed by the decedent's will, be equitably apportioned among the residuary beneficiaries in the proportions that

the value of the residuary interest of each included in the measure of such tax bears to the total of all residuary interests so included.

(c) If any portion of the property with respect to which such tax is levied or assessed is held under the terms of any trust created inter vivos or is subject to such a power of appointment, the net amount of the tax attributable thereto shall, except as otherwise directed by the trust instrument with respect to the fund established thereby, or by the decedent's will, be charged to and paid from the corpus of the trust property or the property subject to such power of appointment, as the case may be, and shall not be apportioned between temporary and remainder estates.

(d) Real property homesteads which are exempt from execution as defined by the laws of Florida shall be exempt from apportionment of taxes. Persons taking an interest in such homesteads shall not be liable for apportionment of taxes on account of such homesteads. The net amount of the tax attributable to such homestead property shall be paid from other assets of the probate or intestate estate in the order provided by §734.05, and the homestead shall not be subjected to contribution to such tax until the estate's assets are exhausted.

(e) The balance of the net amount of the tax, including, but not limited to, any tax imposed with respect to gifts in contemplation of death, jointly held properties passing by survivorship, property passing by intestacy, or insurance, shall, except as otherwise directed by the decedent's will, be equitably apportioned among and charged to and paid by the recipients and beneficiaries of such properties or interests in the proportion that the value of the property or interest of each included in the measure of such tax bears to the total value of all such properties and interests included in the measure of such tax; provided, that where any such property or interest is an interest in income or an estate for years or for life or other temporary interest, the amount so charged to such recipients or beneficiaries shall not be apportioned between temporary and remainder estates but shall be charged to and paid out of the corpus of such property or fund.

(2) As used in this section:

(a) The net amount of tax attributable to the interests encompassed by any one of paragraphs (a) through (e) of subsection (1) shall be such portion of the net amount of the tax as finally determined, together with interest thereon, as the value of interests included in the measure of such tax and included in such paragraph bears to the amount of the net estate.

(b) The term net estate shall mean the gross estate as defined by the estate tax laws of the United States less the deductions, other than the specific exemption, allowed by such laws. All proportions based on net estate shall be determined without regard to any diminution in deductions resulting from the charge of any portion of the tax to a deductible interest.

(c) The term included in the measure of such tax shall not include any property or interest whether passing under the will or not to the extent such property or interest is exempt, or is initially deductible from the gross estate, without regard to any subsequent diminution of such deduction by reason of the charge of any portion of the tax to such property or interest.

(d) The word value shall mean the pecuniary worth of the interest involved as finally determined for purposes of federal estate tax without regard to any diminution thereof by reason of the charge of any portion of tax thereto.

(3) Unless otherwise directed by the will of the decedent, the tax shall be paid by the executor or administrator out of the estate. In all cases in which any property required to be included in the gross estate does not come into the possession of the executor or administrator, he shall, in cases where property of a trust created inter vivos or property subject to a power of appointment is included in such gross estate, be entitled, and it shall be his duty, to recover from the fiduciary in possession of the corpus of such trust or of property subject to such power of appointment, and in all other cases from the recipients or beneficiaries of property or interests with respect to which such tax is levied or assessed, the proportionate amount of such tax payable by such fiduciary or persons with which they are chargeable under the provisions of this act, unless relieved of such duty as provided in subsection (6); provided that this subsection shall not authorize the recovery of any taxes hereunder from any company issuing any policy of insurance included in the gross estate, or from any bank, trust company, savings and loan association, or similar institution with respect to any account of which it is a depositary standing in the names of the decedent and any other person or persons which passed by operation of law on the death of the decedent. In any case where the fiduciary brings an action to recover a share of tax apportioned to an interest not within his control, any judgment he may obtain may, in the discretion of the court, include costs and reasonable attorney's fees.

(4) No executor, administrator, or other fiduciary shall be required to transfer any property until the amount of any tax due from the transferee is paid, or, if the apportionment of tax has not been determined, adequate security is furnished for such payment; provided, that in no event shall the fiduciary be required to distribute assets which he reasonably anticipates may be necessary to pay any state or federal taxes.

(5) After the amount of all estate, inheritance and death taxes is finally determined, the executor, administrator or other fiduciary shall petition the county judge's court having jurisdiction of the estate for an order of apportionment and shall give notice of such petition and the hearing thereon by publication once a week for four consecutive weeks, such hearing to be at least twenty-eight days after the first date of such publication, except that where all persons

affected by such order are sui juris or properly represented by a natural or legal guardian and consent thereto in writing, such notice shall not be necessary. The fiduciary shall be entitled to, and it shall be his duty (except as provided in subsection (6)), to attempt to effect apportionment as determined by the order entered upon such hearing, and such apportionment shall be prima facie correct in proceedings in any court or jurisdiction. The fiduciary shall not be required to seek collection of any portion of tax attributable to any interest not within his control until after the entry of such order of apportionment.

(6) Any executor, administrator, or other fiduciary who shall have the duty under this act of collecting the apportioned tax from persons interested in the estate, may be relieved of such duty to collect the tax or to attempt to collect the same if the county judge enters an order, after notice and hearing as provided in subsection (5), on a petition filed by such fiduciary finding one or more of the following:

(a) That the estimated court costs and attorney fees in collecting the apportioned tax from a person interested in the estate will approximate the amount of the recovery.

(b) That the person interested in the estate is a resident of a foreign country other than Canada and refuses to pay the apportioned tax on demand.

(c) That it is impracticable to enforce contribution of the apportioned tax against any person interested in the estate in view of the improbability of obtaining a judgment or the improbability of collection under any judgment that might be obtained, or otherwise.

Provided, that in no event shall the fiduciary be liable for failure to attempt to enforce such collection if such attempt would in fact have been economically impracticable; and provided, further, that nothing herein contained shall limit the right of any person who shall have been charged with more than the amount of the tax apportionable to him to obtain contribution from those who shall not have paid the full amount of the tax apportionable to them, respectively, which right is hereby expressly conferred.

In the event the fiduciary obtains an order as hereinabove contemplated, the share of tax to which it refers shall be paid from assets of the probate or intestate estate in the order provided by §734.05. Any apportioned tax which is not collected shall also be paid from such assets in such order.

(7) This section shall apply:

(a) To estates of decedents dying after the effective date hereof;

(b) To estates of decedents dying after May 13, 1957, provided such decedent had by will directed apportionment of taxes to nonprobate assets consistent with the provisions hereof, and, provided, further, either that the taxes on such estate had been charged and paid consistent with such provision, or that such estate is still in the process of administration and the estate tax has not been finally determined and paid.

History.—§§1-4, ch. 25435, 1949; §1, ch. 57-87; §1, ch. 57-1976; §1, ch. 63-106.

cf.—§198.26 No discharge of executor until tax is paid.
§731.34 Dower in realty and personalty.

734.05 Order in which assets are appropriated.—

(1) If a testator makes provision by his will or designates the funds or property to be used for the payment of debts, estate and inheritance taxes, family allowance, charges and expenses of administration and legacies, the same shall be paid out of the funds, or from the property or proceeds thereof, as provided or designated by the will so far as sufficient. If no provision is made nor any fund designated, or if it is insufficient, the property of the estate shall be used for such purposes and to raise the shares of pretermitted spouse and children in the following order:

(a) Property not disposed of by the will.

(b) Property devised or bequeathed to the residuary legatee or legatees.

(c) Property not specifically bequeathed or devised.

(d) Property specifically bequeathed or devised.

(2) No priority shall exist as between real and personal property.

History.—§162, ch. 16103, 1933; CGL 1936 Supp. 5541(130); am. §4, ch. 22783, 1945; (1) by §24, ch. 57-1.

cf.—§733.20, Order of payment of claims.

734.06 Abatement and contribution.—Whenever the assets of a testate estate are insufficient for the full payment of debts, estate and inheritance taxes, family allowance, charges and expenses of administration, devises and legacies and when the will directs or discloses an intention as to the order of abatement, effect shall be given to such directions or intentions. Unless such directions are given or such intention appears, residuary legacies and devises shall first abate; general legacies and devises shall next abate, and specific and demonstrative legacies and devises shall abate last. Demonstrative legacies shall be classed as general legacies, upon the failure or insufficiency of fund or property out of which payment should be made, to the extent of such insufficiency. Legacies or devises to the decedent's widow given in satisfaction of or in lieu of her dower or statutory rights in the estate shall not abate until other legacies and devises of the same class are exhausted. Legacies and devises given for a valuable consideration shall abate with other legacies of the same class only to the extent of the excess thereof over the amount of value of the consideration until all others of the same class are exhausted. Except as herein provided, legacies and devises shall abate equally and ratably and without preference or priority as between real and personal property. When property, real or personal, which has been specifically devised or bequeathed or charged with a legacy is sold or taken by the personal representative, other legatees or devisees shall contribute according to their respective interests to the legatee or devisee whose legacy or devise has been sold or taken, and the county judge shall,

before distribution, determine the amounts of the respective contributions, and the same shall be paid or withheld before distribution is made.

History.—§163, ch. 16103, 1933; CGL 1936 Supp. 5541(131); am. §4, ch. 22783, 1945.
cf.—§733.01, Possession of estate of decedent.

734.07 Advancements.—When any person has received any advancements from an intestate in his lifetime and any of the next of kin, by petition, alleges that such advancement has been made, the same shall be determined by the county judge upon hearing after citation or notice to the personal representative and other persons interested and, unless the person to whom such advancement was made or those claiming through him renounce his or their interest in the estate, such advancement as of the value at the time made, without interest, shall be taken into account in determining the distribution of the estate and charged against the person to whom such advancement was made or those claiming through him. No personal representative shall be held responsible for having made distribution before such a petition has been filed and citation served upon or notice given to him. The statute of limitations shall not apply to advancements.

History.—§164, ch. 16103, 1933; CGL 1936 Supp, 5541(132); am. §4, ch. 22783, 1945.

734.08 Exempt estates.—If at any time during the course of administration it is made to appear to the county judge by petition that the estate consists of no more than the homestead and exempt personal property of the decedent, or in the event the allegations of said petition are denied by trial of the issues made, he may thereupon direct and order the distribution of said estate among the persons entitled to receive the same, and upon said distribution, may thereupon enter his order relieving, releasing and discharging the personal representative.

History.—§164, ch. 16103, 1933; CGL 1936 Supp. 5541 (132); am. §4, ch. 22783, 1945.
cf.—§731.27, Homesteads.
§731.34, Dower.
§§735.01-735.051, When administration unnecessary.

734.09 Resignation of personal representative.—Any personal representative may, upon petition to and with the approval of the county judge of the county where letters were granted, resign and be relieved of his office; provided, that notice is given to all interested persons of the filing of said petition; and provided, further, that before making an order relieving the personal representative from the duties and obligations as such the county judge shall require him to make and file a true and correct account of his administration and to pay over and deliver to his successor or to his coexecutor or coadministrator or both, as the case may be, any and all of the property of the deceased and all books of account, bonds, notes or other securities, documents, papers or other property of or concerning the estate, together with all the sums of money due the estate by him; and provided, always, that the acceptance of such resignation shall not be construed to exonerate any personal representative or his sureties from any liabilities previously incurred. The county judge, before making such order, shall be satisfied that the interest of the estate will not be placed in jeopardy by such action.

History.—§166, ch. 16103, 1933; CGL 1936 Supp. 5541(44); am. §4, ch. 22783, 1945.

734.10 Appointment of successor upon resignation.—When there is no coexecutor or coadministrator, a successor must be appointed and duly qualified before a personal representative shall be relieved of his duties and obligations as provided in §734.09.

History.—§167, ch. 16103, 1933; CGL 1936 Supp. 5541(45); am. §4, ch. 22783, 1945.

734.11 Causes of removal of personal representative.—Any personal representative may be removed and his letters revoked for any of the following causes, and such removal shall be in addition to, and not in lieu of, any other penalties prescribed by law:

(1) Insanity.
(2) Habitual drunkenness or continued sickness rendering him incapable of the discharge of his duties.
(3) Failure to comply with any order of the county judge, unless such order has been superseded on appeal.
(4) Failure to return schedules of property sold or accounts of sales of property, real or personal, or to produce and exhibit the assets of the estate when so required.
(5) The wasting, embezzlement or other maladministration of the estate.
(6) Failure to give bond or security for any purpose, when so required by the county judge in accordance with the requirements of law.
(7) Conviction of a felony.
(8) Failure of the resident personal representative removing from the state to designate a resident agent or representative with his residence and post-office address.
(9) The appointment of a receiver or liquidator for any corporate executor or administrator.
(10) Conflicting or adverse interest held by the personal representative against the estate, but this shall not apply to the widow because of electing to take dower or claiming family allowance or exemptions.

History.—§168, ch. 16103, 1933; CGL 1936 Supp. 5541(46); §4, ch. 22783, 1945; sub. §(10), comp. §1, ch. 29716, 1955.
cf.—§§732.45-732.49, Who may be appointed personal representative.

734.12 Jurisdiction in removal proceedings.—Petition for removal must be made to the court from which the letters were issued.

History.—§169, ch. 16103, 1933; CGL 1936 Supp. 5541(47); am. §4, ch. 22783, 1945.
cf.—§732.01, Jurisdiction generally.

734.13 Proceedings for removal.—Proceedings for removal may be instituted by the county judge of his own motion or by any creditor, legatee, devisee, heir, distributee, coexecutor, coadministrator or by any surety upon the bond of the personal representative. Such notice shall be given to the personal representative as the county judge may direct.

History.—§170, ch. 16103, 1933; CGL 1936 Supp. 5541(48); am. §4, ch. 22783, 1945.

734.14 Administration following removal.—When a personal representative is removed for any cause and there is a remaining executor or administrator, no other executor or administrator shall be appointed; but such remaining executor or administrator shall complete the administration of the estate. If the executor or administrator so removed is a sole executor or administrator, the county judge shall appoint an administrator cum testamento annexo de bonis non, or an administrator de bonis non, as the case may require, in which event a bond shall be required as in the case of an original administration, the condition of the bond being modified to suit the nature of the case.

History.—§171, ch. 16103, 1933; CGL 1936 Supp. 5541(49); am. §4, ch. 22783, 1945.

734.15 Accounting upon removal.—A removed personal representative shall file a true, perfect and final account of his administration in the court of the county judge within twenty days after his removal.

History.—§172, ch. 16103, 1933; CGL 1936 Supp. 5541(50); am. §4, ch. 22783, 1945.
cf.—§733.43, Annual returns.

734.16 Surrender of assets upon removal.—The remaining executor or administrator with the will annexed of the property not administered or the administrator of the property not administered shall demand of the removed executor or administrator or of his heirs, personal representatives or sureties, all of the property of the deceased and all books of account, bonds, notes or other securities, documents, papers or other property of or concerning the estate, together with all the sums of money due the estate by him. The removed personal representative, his heirs, personal representatives or sureties shall turn over to his successor all said property, upon qualification of his successor and upon demand made as aforesaid.

History.—§173, ch. 16103, 1933; CGL 1936 Supp. 5541(51); am. §4, ch. 22783, 1945.

734.17 Proceedings for commitment.—If a removed executor or administrator fails or refuses to file a true, perfect and final account of his administration as required, or fails to turn over to his successor all the goods, property and effects of the deceased, and all books of accounts, bonds, notes or other securities or documents and papers that are in his control and which concern the estate, upon demand, or fails to pay over to such new administrator, or remaining executor or administrator all the sums of money due the estate by him, the county judge, in any event, shall issue an order addressed to such personal representative, directing a compliance with the laws in the respects mentioned, or any of them, as the case may be, within ten days after service of a copy of the order. In case of failure or neglect of the removed personal representative to comply with this order within the time required, the judge may—and when such default is not attributable to a cause which is justifiable, he shall—commit such removed personal representative until he complies fully with the requirements of the law in the respects indicated. If sufficient cause is shown for the default, the judge shall then indicate a reasonable time in which a compliance with the law shall be required; and upon failure of the removed personal representative to comply with this or any subsequent like order, the judge may commit the party in default until he does comply.

History.—§174, ch. 16103, 1933; CGL 1936 Supp. 5541(52); am. §4, ch. 22783, 1945.

734.18 Commitment proceedings; by whom instituted.—Proceedings for the commitment of such defaulting personal representative may be instituted by the county judge sua sponte or by any creditor, legatee, devisee, heir or distributee, or by the sureties of any of them; or, in the case of a sole personal representative, such proceedings may be instituted by his successor in office as well as the parties above named. In cases where there is more than one personal representative such proceedings may be instituted by the one remaining in office, or, if more than one remain in office, then by any or all remaining.

History.—§175, ch. 16103, 1933; CGL 1936 Supp. 5541(53); am. §4, ch. 22783, 1945.

734.19 Order on proceedings for commitment.—If proceedings for commitment are instituted by the county judge sua sponte, the order so entered, addressed to such personal representative, directing compliance with the law, shall be sufficient of itself. If proceedings are instituted by a person or persons other than the county judge, they shall be by written petition filed with the county judge, stating the facts upon which the proceedings are based and shall be sworn to by the person so proceeding. Upon the filing of such petition under oath, the county judge shall, if he deems the facts stated sufficient, issue his said order and proceed in accordance with the provisions of this law.

History.—§176, ch. 16103, 1933; CGL 1936 Supp. 5541(54); am. §4, ch. 22783, 1945.

734.20 Proceedings on bond of removed personal representatives.—In all cases where a personal representative is removed and he is in default for thirty days, either in the delivery of any portion of the estate or in the payment of the balances due to the new personal representative or the remaining personal representative, the bond of such removed personal representative shall be put in suit. In all cases where there is no bond, the new personal representative or the remaining personal representative shall institute an action for the recovery of the money due or of the value of the property retained, or both, as the case may be. In either of the cases stated, an attachment may issue against the property of the removed personal representative upon the affidavit of the new or remaining personal representative, his agent or his attorney, that the removed personal representative is in default for thirty days in delivering any portion of the estate, specifying what portion and its value, or in the payment of the balance due, specifying the amount. When this attachment is issued, bond shall be given as in other cases of attachment.

History.—§177, ch. 16103, 1933; CGL 1936 Supp. 5541(55); am. §4, ch. 22783, 1945.

734.21 Survival of action upon resignation or removal.—All cases pending before any court in favor of or against two or more personal rep-

resentatives, if one or more is removed, resigns or dies, shall survive to or against the remaining personal representative, if any, and if there is none, then to or against the successor or successors of such personal representatives; but no remaining or successor personal representative shall be liable for any default on the part of any predecessor nor for any amount beyond the value of the property or assets coming into the hands of the remaining or successor personal representative.

History.—§178, ch. 16103, 1933; CGL 1936 Supp. 5541(56); am. §4, ch. 22783, 1945.

734.22 Final settlement and discharge.—When a personal representative has completed the administration and nothing remains to be done except to make distribution, he shall file his final report and make application for discharge. After filing a report of his accounts as aforesaid and his application for discharge, the personal representative shall then publish a notice once a week for four consecutive weeks, four publications being sufficient, notifying all persons of the filing of his report and of his application for discharge. After filing the proof of publication, if no objection is filed and if it appears to the county judge that said applicant has faithfully administered the estate, he shall be entitled to an order approving his accounts and shall be directed to make distribution. No distribution of estate assets to a testamentary trustee shall be authorized until proof of qualification of the trustee under the law of the state wherein the testamentary trust is to be administered has been obtained and filed unless it is made to appear to the satisfaction of the county judge that there is no trust qualification law in existence in the state wherein the testamentary trust is to be administered. If objection is filed, trial shall be had as provided in this law for the trial of objections to annual returns. Said personal representative may retain from the funds in his hands before making distribution a sufficient amount to pay the expenses accrued since the filing of his final report and his application for discharge.

It shall not be necessary to file an annual accounting, a final accounting, nor to advertise notice of the filing of final accounting, petition for distribution and discharge when there is a single heir or beneficiary of an estate or where all of the heirs or beneficiaries are sui juris and such heir or heirs consent thereto in writing. When the interest of a minor heir or beneficiary does not exceed the amount authorized by Florida law to be received by his natural guardian, such natural guardian may execute a valid written consent to the foregoing for and on behalf of such minor heir or beneficiary. The county judge in his discretion may require the filing of an annual or final accounting and the advertisement of notice thereof and of petition for distribution and discharge, notwithstanding the waivers aforesaid.

History.—§179, ch. 16103, 1933; CGL 1936 Supp. 5541(126); §4, ch. 22783, 1945; §2, ch. 29716, 1955; §1, ch. 63-262.

734.23 Effect of discharge.—Upon the filing of evidence satisfactory to the county judge that distribution has been made as ordered, the county judge shall enter an order of discharge. Such discharge so obtained shall operate as a release from the duties of personal representative of the estate and as a bar to any suit against said personal representative as such, or as an individual or corporation, and his surety or sureties, unless such suit is commenced within one year from the date of the discharge.

History.—§180, ch. 16103, 1933; CGL 1936 Supp. 5541(57); am. §4, ch. 22783, 1945; §1, ch. 57-124.

734.24 Suit upon bond.—Any bond given by a personal representative or a curator, upon the breach thereof may be put in suit and prosecuted from time to time by the party damaged, in the name of the governor of the state for the use of the party damaged, until the whole penalty of said bond is recovered. The county judge shall deliver to any person on request and on payment of his legal fees for the same, a true copy of any bond given by any personal representative or curator, and such copy certified by said judge, with the seal of the court annexed, shall be prima facie proof of the bond.

History.—§181, ch. 16103, 1933; CGL 1936 Supp. 5541(58); am. §4, ch. 22783, 1945.

734.25 Determination of beneficiaries.—

(1) Whenever property passes by the laws of descent and distribution or under a will to a person not sufficiently identified in such will, and the personal representative is in doubt as to who is entitled to receive said property, or any part thereof, or if he is in doubt as to shares and amounts which any person is entitled to receive, such personal representative may file with the county judge of the court out of which his letters were issued, his sworn petition setting forth the names, residences and post-office addresses, so far as known or ascertainable by diligent search and inquiry, of all persons in interest, except creditors of the decedent or the estate, and the nature and character of their respective interests and claims so far as known, designating those who are believed by him to be minors or non compos mentis, and stating whether those so designated are under legal guardianship in this state. If the personal representative believes that there are or may be persons who have claims against or interest in such estate as next of kin, distributees, legatees or beneficiaries whose names are not known to him, the petition shall so state.

(2) Upon the filing of such petition, the county judge shall appoint a guardian or guardians ad litem if necessary and shall issue a citation to all claimants and persons in interest whose names are set forth in said petition.

(3) If said petition sets forth that there are or may be persons whose names are not known who have claims against or interests in such estate, citation shall be published, directed to all persons claiming any beneficial interest in the estate of such decedent. Such publication of citation may also include all persons whose names are known and set forth in said petition but who cannot be personally served.

(4) After a hearing upon such petition and defenses thereto and upon such testimony and

evidence as may be produced before the court, the county judge shall make and enter an order finding and adjudging who are entitled to such property and the shares and amounts which they, respectively, are entitled to receive. Any personal representative who makes distribution or takes any other action pursuant to such an order shall be fully protected thereby.

(5) Whenever it is necessary to determine who are or were the heirs, legatees or devisees of a deceased person, on the petition of any interested party or like proceedings, the county judge may make a determination thereof, irrespective of whether the estate of such deceased person is administered, or if administered whether the administration of the estate has been closed or the personal representative discharged.

History.—§182, ch. 16103, 1933; CGL 1936 Supp. 5541(134); am. §4, ch. 22783, 1945.

734.26 Subsequent administration. — The final settlement of an estate and the discharge of the personal representative shall not prevent a revocation of the order of discharge or the subsequent issuance of letters testamentary or of administration if other property of the estate is discovered or if it becomes necessary or proper for any cause that further administration of the estate be had.

History.—§183, ch. 16103, 1933; CGL 1936 Supp. 5541(144); am. §4, ch. 22783, 1945.

734.27 Suspension of statutes of limitations in favor of personal representative.—If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives, the action may be commenced by his personal representative after such expiration and within twelve months from the granting of letters.

History.—§184, ch. 16103, 1933; CGL 1936 Supp. 5541(135); am. §4, ch. 22783, 1945.

734.28 Suspension of statutes of limitations in favor of claimants.—If a person against whom a cause of action exists dies before the expiration of the time limited for commencement thereof and the cause of action survives, claim shall be filed thereon and like proceedings had as in the case of other claims against the estate.

History.—§185, ch. 16103, 1933; CGL 1936 Supp. 5541(136); am. §4, ch. 22783, 1945.

734.29 Limitations against unadministered estates.—

(1) After three years from the death of any person his estate shall not be liable for any obligation or upon any cause of action if no letters testamentary or of administration with respect thereto have been taken out in Florida within said three years, or if such letters have been taken out but neither proof of publication of notice to creditors, nor the claim of any creditor has been filed in the office of the county judge within said period; provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of any personal property of the decedent, and the right to foreclose and enforce the same with respect to the property encumbered thereby, shall not be impaired by said limitation.

(2) Where a nonresident decedent leaves property in this state, the domiciliary personal representative of his estate, in order to determine the question of claims in Florida before the expiration of said three year period, may file in the office of the county judge of the county where any such property may be situated a duly certified or exemplified transcript of so much of the domiciliary proceedings as will show:

(a) In a testate estate, the probated will and all probated codicils of the decedent and the order admitting same to record, the letters testamentary or the equivalent thereof, and such portion of the record as will show the names of the legatees, devisees and heirs of the decedent, or an affidavit of the domiciliary representative reciting that said names are not shown or fully disclosed by the domiciliary record and specifying the same.

Upon petition and presentation of such transcript and any supporting affidavit of the domiciliary representative, the county judge shall make and enter an order admitting the said will and codicils, if any, to probate and record if he finds that the same complies with the laws of Florida so as to entitle them to probate in this state, and said transcript shall be recorded.

(b) In an intestate estate, the certified letters of administration or the equivalent thereof, shall be included in the transcript of domiciliary proceedings, together with such portions of the record as will show the names of the heirs of the decedent, which names in case of necessity may be supplied by affidavit of the domiciliary representative as provided in paragraph (a) hereof. Upon petition and presentation of such transcript and any supporting affidavit of the domiciliary representative, the county judge shall cause the same to be filed and recorded.

(3) After complying with the foregoing requirements, with respect to any testate or intestate estate, as the case may be, the domiciliary representative may cause a notice to be published once a week for four consecutive weeks, four publications being sufficient, in a newspaper published in said county, notifying all persons having claims or demands against the estate of such decedent to file same in the office of the county judge within six calendar months from the date of the first publication of said notice.

(4) Any claims against said estate must be filed in the form and manner prescribed by law with respect to the regular administration of estates in Florida. If any claim is filed within the period of six months aforesaid, the county judge shall, upon application of any claimant or other person interested in the estate and after ten days written notice by registered mail to the domiciliary representative at his address as shown by the records, appoint an administrator for the estate according to law. If no claim is filed within said period of six months, the property of the decedent in this state shall not be liable for any obligation of said decedent or upon any cause of action

against the decedent other than duly recorded mortgages and liens, and claims of persons in possession of property of the decedent as pledgees, lienors or purchasers.

(5) If no claims are filed against the estate, within six months as herein limited, the county judge shall enter an order adjudging that notice to creditors has been duly published, filed and recorded and that no claims have been filed against the estate.

History.—§186, ch. 16103, 1933; §1, ch. 19552, 1939; CGL 1936 Supp. 5541(137); am. §4, ch. 22783, 1945; §14, ch. 22847, 1945; §7, ch. 22858, 1945; §1, ch. 25031, 1949; (3)-(5) a. by §5, ch. 61-394.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

734.30 Foreign personal representatives.—(1) Personal representatives who produce probate of wills or letters of administration duly obtained in any of the states or territories in the United States and authenticated under the act of congress of May 26, 1790, shall be authorized to maintain actions in the several courts of this state under the same rules and regulations as other plaintiffs.

(2) Personal representatives appointed in any state or country may be sued in this state with reference to property, real or personal, in this state, and may defend any suit, action or proceeding in any court of this state.

(3) Debtors who have received no written demand for payment from a personal representative or curator appointed in this state, within three months after the appointment of a personal representative in any state or country other than this state, and whose property in Florida is subject to a mortgage or other lien securing such debt held by such foreign personal representative may make payment to the foreign personal representative after the expiration of three months from the date of his appointment. A proper satisfaction of such mortgage or lien executed and acknowledged by the foreign personal representative after said three months has expired, in the manner and form entitling the same to record in this state, with a duly authenticated copy of the letters or other evidence of authority of such foreign personal representative attached thereto, may be recorded in the public records of this state in like manner as other satisfactions, and when so recorded, shall constitute an effective discharge of any such mortgage or lien, irrespective of whether the debtor making payment had received such written demand before paying the same.

(4) All persons indebted to the estate of a decedent or having possession of personal property, either tangible or intangible, belonging to the estate of a decedent, who have received no written demand from a personal representative or curator appointed in this state, for payment of such indebtedness or the delivery of such property, are authorized to make payment of such indebtedness or to deliver such personal property to the foreign personal representative after the expiration of three months from the date of his appointment.

History.—§187, ch. 16103, 1933; §11, ch. 17171, 1935; CGL 1936 Supp. 5541(138); am. §4, ch. 22783, 1945.

cf.—§660.10 Trustees, powers and duties.

734.31 Ancillary administration.—(1) Upon the death of a nonresident of this state leaving assets in this state, credits due him from residents of this state, or liens upon property in this state, the domiciliary personal representative of such decedent may, upon application, have ancillary letters issued to him, if qualified to act. Otherwise, the preference of appointment prescribed in this law shall be applicable. If ancillary letters are applied for by other than the domiciliary personal representative, citation shall be served upon the domiciliary personal representative.

(2) To entitle such applicant to ancillary letters, there shall be filed with the petition a duly certified copy of so much of the domiciliary proceedings as will show either (a) the will, petition for probate, order admitting the will to probate and letters testamentary, if there are such; or, (b) the petition for letters of administration and letters of administration.

(3) Upon the filing of a certified copy of a probated will, including any probated codicils thereto, and of the parts of the record of the domiciliary proceedings as aforesaid, the county judge may, upon petition therefor being filed, if he finds that the said will and codicils, if any, comply with the laws of this state so as to entitle them to probate, make and enter an order admitting said will and codicils, if any, to probate and record in this state.

(4) The ancillary personal representative shall give like bond as personal representatives generally, and all proceedings for appointment and in the administration of the estate shall be, as nearly as possible, similar to those in original administrations.

(5) After the payment of all expenses of administration and claims against the estate in accordance with this law, the county judge may, upon petition, order the remaining personal property in the hands of the ancillary personal representative to be transferred to the domiciliary personal representative.

(6) Ancillary personal representatives shall have the same rights, powers and authority as other personal representatives in Florida with reference to the management and settlement of the estate, and in addition, may sell, lease or mortgage local property in the manner provided in this law, to raise funds for the payment of debts, claims and legacies in the domiciliary jurisdiction. Provided, however, that no such property shall be sold, leased or mortgaged to pay any debt or claim which is barred by any statute of limitation, or of nonclaim, of this state.

History.—§188, ch. 16103, 1933; CGL 1936 Supp. 5541(145); am. §4, ch. 22783, 1945; §1, ch. 22890, 1945.

cf.—§732.26, Effect of prior foreign probate.
§§732.35-732.36, Probate of will after foreign probate.
§732.47, Nonresidents as personal representatives.

734.32 Application for administration upon estates of persons believed to be dead.—Letters of administration on the estate of any person believed to be dead, on account of absence for seven years or more from the place of his last domicile, may be applied for; and if the county

judge (of the county in which the estate of such person could be administered were the supposed decedent known to be dead) is satisfied that the applicant would be entitled thereto were such supposed decedent known to be dead, he shall order a notice to be published as provided in this law, giving notice therein that on the day of said application said county judge will hear evidence concerning the alleged absence of the supposed decedent and the circumstances and duration thereof.

History.—§189, ch. 16103, 1933; CGL 1936 Supp. 5541(146); am. §4, ch. 22783, 1945.

cf.—§732.09, Process and service.
§§732.23. 732.43. Petition for letters.

734.33 Evidence of presumption.—At the hearing, the county judge shall take such evidence as shall be offered, for the purpose of ascertaining whether the presumption of death is established, and no person shall be disqualified to testify by reason of his relationship as husband or wife to the supposed decedent or of his interest in the estate of the person believed to be dead.

History.—§190, ch. 16103, 1933; CGL 1936 Supp. 5541(147); am. §4, ch. 22783, 1945.

734.34 Order of presumption.—If satisfied, upon the hearing, that the legal presumption of death is established, the county judge shall so order, and shall forthwith cause notice thereof to be published as provided in this law, and also once a week for four consecutive weeks in a newspaper published at or nearest the place where the supposed decedent was last heard from. The said notice shall require the supposed decedent, if alive, or any person for him, to produce, within three months from the date of its first insertion, satisfactory evidence of his continuance in life.

History.—§191, ch. 16103, 1933; CGL 1936 Supp. 5541(148); am. §4, ch. 22783, 1945.

734.35 Letters of administration; force and effect.—If, within the said period of three months, evidence satisfactory to the county judge of the continuance of life of the said decedent has not been produced, the county judge shall issue letters to the party entitled thereto; and the said letters, until revoked, and all acts done in pursuance thereof and in reliance thereupon, shall be as valid as if the supposed decedent were dead.

History.—§192, ch. 16103, 1933; CGL 1936 Supp. 5541(149); am. §4, ch. 22783, 1945.

734.36 Revocation of letters on proof that supposed decedent is alive.—The county judge, upon application of the supposed decedent, shall revoke the said letters at any time, on due and satisfactory proof that the supposed decedent is in fact alive; after which revocation all the powers of the administrator shall cease, but all receipts or disbursements of assets and other acts previously done by the administrator shall remain valid; and the administrator shall settle an account of his administration to the time of such revocation and shall transfer all assets remaining in his hands to the person as whose administrator he had acted, or to his duly authorized agent or attorney; provided, nothing herein contained shall validate the title of any person to any money or property received as widow, next of kin or heir of such supposed decedent, but the same may be recovered from such person in all cases in which said recovery would be had if there had been no such administration.

History.—§193, ch. 16103, 1933; CGL 1936 Supp. 5541(150); am. §4, ch. 22783, 1945.

734.37 Substitution of supposed decedent in actions.—After revocation of the letters of administration, the person erroneously supposed to be dead may, on suggestion filed of record of the proper fact, be substituted as plaintiff in all actions brought by the administrator, whether prosecuted to judgment or otherwise. He may, in all actions previously brought against his administrator, be substituted as defendant, on proper suggestion filed by himself or by the plaintiff therein, but shall not be compelled to go to trial in less than three months from the time of such suggestion filed. Judgments at law and decrees in equity against the administrator, before revocation, as aforesaid, of the letters, may be opened, on application by the supposed decedent made within three months from the said revocation and supported by affidavit, denying specifically, on the knowledge of the affiant, the cause of action or specifically alleging the existence of facts which would be a valid defense; but, if within the said three months such application is not made, or, if being made, the facts exhibited are adjudged an insufficient defense, the judgment or decree shall be conclusive to all intents, saving the defendant's right to have it reviewed, as in other cases, by appropriate appellate proceedings. After the substitution of the supposed decedent as defendant in any proceeding in which any judgment or decree may be procured as aforesaid, the said judgment or decree shall become a lien with like effect as other judgments.

History.—§194, ch. 16103, 1933; CGL 1936 Supp. 5541(151); am. §4, ch. 22783, 1945.

734.38 Probate of will of person believed to be dead.—After letters of administration have been granted upon the estate of a person believed to be dead, the person having the custody of any will which may have been left by such person may produce said will in the county judge's court of the county in which the proceedings to establish the presumptive death of the supposed decedent have been held, and proceedings may be had as in the case of other wills.

History.—§195, ch. 16103, 1933; CGL 1936 Supp. 5541(152); am. §4, ch. 22783, 1945.

734.39 Notice to administrator and other persons.—Upon the filing of such petition, the county judge shall issue a citation to the person to whom letters of administration have been issued, as aforesaid, and to the surviving spouse and next of kin of the decedent, entitled under the laws of descent and distribution to his estate, to appear and show cause why the said alleged will should not be admitted to probate.

History.—§196, ch. 16103, 1933; CGL 1936 Supp. 5541(153); am. §4, ch. 22783, 1945.

734.40 Letters to executor of will of supposed decedent.—Upon the hearing, if it ap-

pears that the proposed will was in fact the last will and testament of the supposed decedent, the said will shall be admitted to probate, and said will shall be annexed to the letters of administration theretofore issued; and thereafter the administrator shall execute the said will according to its terms; provided, that nothing herein shall prevent the county judge from revoking the said letters, and in case of such revocation the powers of the personal representative and the rights of the legatees and devisees under said will shall cease, and all receipts and disbursements of assets, and other acts previously done by them shall remain as valid as if the said letters were unrevoked; and provided, further, that legatees and devisees may be called upon at any time by the supposed decedent to account for any property which they may have received, in the same manner as is provided in this law, and the administrator may be called upon to render an accounting as to all assets which have come into his custody or control; and provided, further, that if upon probate of the last will and testament of the decedent it appears that an executor is named in the will, the letters of administration shall be revoked and letters testamentary shall be issued to the executor named in said last will and testament.

History.—§197, ch. 16103, 1933; CGL 1936 Supp. 5541(154); am. §4, ch. 22783, 1945.

CHAPTER 735

SMALL ESTATES; ADMINISTRATION UNNECESSARY IN CERTAIN ESTATES

735.01 Small estates.—Any testate or intestate estate having a gross value of not more than three thousand dollars, exclusive of the property exempt under the constitution and statutes of the state or any estate of a decedent who has been dead for more than three years, may be administered or not administered as set forth in this chapter; provided that proof satisfactory to the county judge, by affidavit or otherwise, is first produced to show that the estate to be administered comes within said value except where the decedent has been dead for more than three years.

History.—§1, ch. 16992, 1935; CGL 1936 Supp. 5541(155); §15, ch. 22847, 1945; am. §1, ch. 23716, 1947.

735.02 May be administered in the same manner as other estates.—Such estate may be administered in the same manner and under the same rules and regulations as provided by law for the administration of any other estate, or it may be administered as provided in the next section of this chapter.

History.—§2, ch. 16992, 1935; CGL 1936 Supp. 5541(156); §15, ch. 22847, 1945.

735.03 Certain administrative steps may be dispensed with.—

(1) In the administration of such an estate the county judge may in his discretion dispense with any steps and proceedings in the administration of such estate which are merely procedural or administrative and which do not affect the substantial rights of the heirs, devisees, legatees and creditors.

(2) The county judge may dispense with the appointment of appraisers and the filing of a warrant of appraisement and may require the personal representative to give a surety bond or a personal bond without sureties. The county judge may authorize notice to creditors to be published in a newspaper, as elsewhere provided by the probate act, or may authorize the notice to creditors to be published by notices posted at the front door of the courthouse and at two or more public places in the county, to be designated by the county judge. He shall require presentation of claims and demands within six calendar months from the time of such posting. He may also relieve the personal representative from filing annual returns and may require the personal representative to file only final returns. He may also authorize the notice of final discharge to be published in a newspaper as elsewhere provided in the probate act, or he may authorize the notice of final discharge to be published by notices posted at the front door of the courthouse and at two or more public places in the county to be designated by the county judge.

(3) The procedural steps which may be eliminated by the county judge as set forth above shall not be construed as exclusive, as it is intended hereby to vest broad powers of discretion in the county judge to the end that he may, in the interest of economy, dispense with any procedural step in the administration of small estates, as defined above, when such step appears to him not to be essential to proper and safe administration and to due process of law. Cases pending on the effective date of this act may be concluded under prior law or under this section.

History.—§2, ch. 16992, 1935; CGL 1936 Supp. 5541(156); §15, ch. 22847, 1945; (2) §31, ch. 63-572.

735.04 When administration unnecessary; testate or intestate estates.—The county judge may dispense with administration upon the estate of any testate or intestate:

(1) When such testate or intestate died a resident of this state and the entire estate is exempt from the claims of creditors under the constitution and statutes of the state; or,

(2) When such testate or intestate died a resident or nonresident of this State and the estate is not indebted and does not, in the judgment of the county judge, exceed in the aggregate five thousand dollars in value in this State, exclusive of property exempt under the constitution and statutes of the state, and there is a sole heir or surviving spouse, or the surviving spouse, if any, and all the heirs agree upon the distribution of the estate, or in case the decedent died testate and the beneficiaries and the widow, if any, agree upon the distribution of the estate upon the probate of the will; or,

(3) When the decedent, whether he died testate or intestate and whether he died a resident or nonresident of this state, has been dead for more than three years and no letters testamentary or letters of administration have been issued on his estate, and his last will and testament, if any, has not been admitted to probate

in this state or elsewhere and there is a sole heir or surviving spouse, or the surviving spouse, if any, and all the heirs agree upon the distribution of the estate, or in case the decedent died testate and the beneficiaries and the widow, if any, agree upon the distribution of the estate upon the probate of the will.

History.—§2, ch. 16992, 1935; CGL 1936 Supp. 5541(156); §15, ch. 22847, 1945; §2, ch. 23716, 1947.

Am. §1, ch. 25010, 1949.

735.05 Petition for order of administration unnecessary.—

(1) INTESTATE ESTATES.—The petition for an order of administration unnecessary on an intestate estate shall be signed and sworn to by all the heirs who are sui juris and by the surviving spouse of the decedent and by the guardians of heirs not sui juris. The petition shall be filed in the office of the county judge of the county where the decedent resided at the time of his death, and shall set forth the name, residence, date and place of death of the decedent; the names, ages and residences of the heirs and surviving spouse of the decedent and their respective relationships to the decedent; a detailed schedule of all the decedent's property, real and personal, showing the cash value of each item, and a statement of the agreed distribution of same among the petitioners; and if the entire estate is claimed to be exempt under the constitution and statutes of the state, the names and addresses of all known general creditors and judgment creditors of the decedent.

(2) TESTATE ESTATES.—The petition for an order of administration unnecessary on a testate estate may be filed only after the will has been probated, and shall be filed in the same case in which the will was probated. The petition shall be sworn to by the widow and by all the legatees and devisees who are sui juris and by the guardian of any of those who are not sui juris. The petition shall be filed in the office of the county judge of the county where the decedent resided at the time of his death, and shall set forth the same information as that specified in the preceding subsection of this section for petitions relating to intestate estates, except that, in lieu of the names, ages and residences of the heirs and the surviving spouse, the petition shall set forth the names, ages and residences of the legatees, devisees and the widow, if any, of the decedent.

(3) GUARDIAN AS PETITIONER.—If any heir, legatee or devisee of the decedent is not sui juris, the legal guardian of the estate of such incompetent shall be a party to the petition and shall have power to accept such distribution as the county judge may order, in full satisfaction and discharge of the interest of such incompetent in the estate. Natural guardians of a minor are authorized to act for such minor in the same manner as a legal guardian appointed by the county judge, where the interest of the minor in the estate does not exceed the amount authorized by the laws of Florida to be received by a natural guardian.

History.—§4, ch. 16992, 1935; CGL 1936 Supp. 5541(158); §15, ch. 22847, 1945.

735.051 Filing of petition.—The petition for an order of administration unnecessary may be filed at any stage of the administration of any estate in accordance with the procedure as set forth in §735.05 and an order for administration unnecessary entered in accordance with §735.07 if it appears that at the time of such petition the estate would qualify for such an order of administration unnecessary.

History.—§1, ch. 59-308.

735.06 Hearing by county judge.—Upon the filing of the petition, if it appears that the entire estate of the decedent is claimed to be exempt under the constitution and statutes of the state, the county judge shall promptly notify each known creditor of the decedent, by registered mail, of the entry of his order, and shall make and file a certificate of such mailing.

History.—§3, ch. 16992, 1935; CGL 1936 Supp. 5541(157); §15, ch. 22847, 1945.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

735.07 Order of administration unnecessary.—

(1) After the hearing the county judge, if fully satisfied that the estate is entitled to the special benefits of this law, that the averments of the petition are true, and that there has been no concealment of material facts, shall make and enter his order that administration of the estate of the decedent is unnecessary. Such order shall contain a finding by the county judge of the true cash value of the estate.

(2) In such order, if the estate is an intestate estate, he shall set forth (a) the names and residences of the heirs and surviving spouse of the decedent who are entitled to have distribution of the estate without administration; (b) what particular properties shall be distributed to each; and, (c) if the entire estate is exempt, of what the estate consists and what debts are known to exist against the estate.

(3) If the estate is a testate estate, the order shall set forth (a) the names and residences of the legatees, devisees and the widow, if any; (b) what particular properties shall be distributed to each; and, (c) if the entire estate is exempt, of what the estate consists and what debts are known to exist against the estate.

History.—§15, ch. 22847, 1945.

735.08 County judge's discretion to deny petition.—The county judge in his discretion may deny the petition and forthwith appoint an administrator of the intestate estate in any case in which he has doubt as to the truth of the averments of the petition; and in the case of a testate estate, if he has doubt as to the truth of such averments, he may order the executor of the will, or his successor, to proceed with the administration.

History.—§15, ch. 22847, 1945.

735.09 Legal effect of order of administration unnecessary.—The county judge's order that administration of the estate of the decedent is unnecessary shall have the following effect:

(1) Those to whom specified portions of the decedent's estate may be assigned by the order

shall be entitled to receive and collect the same and to have the same transferred to them; they may maintain suits to enforce such rights.

(2) Debtors of the decedent, those holding property of the decedent and those with whom securities or other property of the decedent are registered, are authorized and empowered to comply with such order by paying, delivering and transferring to those specified in the order the respective portions of the decedent's estate assigned to them by the order, and such persons shall not be accountable to anyone else for such property.

(3) From and after the entry of such order, bona fide purchasers for value from those respectively to whom properties of the decedent may be assigned by the order shall take the same free, clear and discharged of all claims and demands of creditors of the decedent and all rights of the widow of the decedent and all other heirs, legatees, devisees and claimants against the estate.

(4) Property of the decedent (not exempt from forced sale under process) remaining in the hands of those to whom it may be assigned by such order shall continue to be liable for the debts of the decedent and for all the other claims whatsoever against the estate of the decedent, if any such claims exist, until barred as herein elsewhere provided.

(5) The petitioners for an order of administration unnecessary shall, if the petition is granted, thereby become personally liable, jointly and severally, for all lawful claims and demands against the estate of the decedent, but only to the aggregate gross value of the estate of the decedent, exclusive of the property exempt from process under the constitution and statutes of Florida.

(6) After three years from the death of the decedent, his estate and those to whom it may be assigned shall not be liable for any obligation or liability of the decedent unless in the meantime proceedings are taken for the enforcement of same.

(7) Claimants against the estate of the decedent, if any, shall thenceforth be limited to the remedies prescribed in §735.11

History.—§15, ch. 22847, 1945.

735.10 Optional publication of notice of entry of order.—

(1) Those who shall have procured the entry of the order of administration unnecessary, or any one or more of them may, at their election, publish a notice to all persons having claims or demands against the estate of the decedent, that an order of administration unnecessary has been entered by the county judge. Such notice shall specify the total cash value of the estate and the names and addresses of those to whom it has been assigned by such order. Such notice, if published, shall be published once a week for four consecutive weeks in a newspaper published in the county wherein such order was entered, and proof of publication of such notice shall be filed with the county judge.

(2) If proof of publication of such notice is duly filed in the office of the county judge, all claims and demands of creditors against the estate of the decedent shall be forever barred unless such claims and demands are duly sworn to and filed in the office of the county judge within six months of the first publication of such notice.

History.—§15, ch. 22847, 1945; (2), §1, ch. 63-146.

735.11 Rights and remedies of those affected by order of administration unnecessary.—

(1) Any creditor or claimant against the estate of a decedent may by bill in chancery, filed at any time within three years from the death of the decedent, or within six months of the first publication of the notice of entry of the order of administration unnecessary, if same shall have been duly published and proof of publication filed, impress a trust upon all property of the decedent (exclusive of property exempt under the constitution and statutes of Florida and exclusive of the widow's exemption) remaining in the possession of the heirs, legatees, devisees and surviving spouse; require such parties to account for the value of all such property alienated, consumed, spent or donated by them, and have deficiency decrees to the extent of the undischarged liability of such parties, together with legal interest from the date of the filing of suit, and costs.

(2) Such suit or suits may be brought by one or more claimants or creditors; other claimants or creditors may intervene and share ratably in the recovery, and any one directly or indirectly affected by the order of administration unnecessary may also intervene in the proceeding or himself institute suit for his own protection. Any one or more of the petitioners who procured the order of administration unnecessary may be made party defendant. Any such defendant may implead other heirs, legatees or devisees for contribution or exoneration. A receiver may be appointed as a matter of course. It shall be no objection that the bill or other pleading is multifarious. Such suits may be brought only in the county in which the order of administration shall have been entered. If more than one suit is brought, such suits shall be consolidated.

(3) Any heir, legatee or devisee of the decedent who was lawfully entitled to share in the estate but who was excluded by the order of administration unnecessary may enforce his rights against those who procured such order in the manner hereinabove prescribed for creditors and claimants; or he may intervene in the suit of a creditor for the enforcement of his rights, subject, however, to the superior rights of creditors.

(4) In all such cases plaintiffs shall be awarded reasonable attorneys' fees as an element of costs.

History.—§15, ch. 22847, 1945; (1) a. by §6, ch. 61-394.

735.12 Will subsequently discovered.—If, after the entry of an order of administration unnecessary on an intestate estate, a will of the decedent is discovered, proceedings may be had in accordance with §732.33. But in such cases, those who have procured the entry of the order of administration unnecessary shall be ac-

countable, jointly and severally, not only for the property of the decedent remaining in their hands but also for the proceeds of that which they have alienated and for the value of that which they have consumed, spent or donated.

History.—§15, ch. 22847, 1945.

735.13 County judge's fees.—The county judge shall receive a fee of seven dollars and fifty cents for all proceedings to and including the entry of an order of administration unnecessary, and fifty cents for each notice given by registered mail, and such fees as are allowed in probate proceedings for any other subsequent services.

History.—§15, ch. 22847, 1945
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

735.14 Joinder of heirs, etc., in small estates.—That whenever any heir, devisee, legatee, widow or surviving spouse is authorized or required under chapter 735, to join in any agreement or petition and any such person shall have died or shall have become incompetent or shall be a minor or shall have conveyed or transferred all of his or her interest in the property of the estate, then the heirs, devisees, legatees and surviving spouse, if any, and the executor or administrator, if any, of the estate of any such deceased person or the guardian of any such incompetent or minor or the grantee or tranferee of any such person, as the case may be, shall be authorized to join in such agreement or petition in lieu of any such heir, devisee, legatee, widow or surviving spouse.

History.—§1, ch. 23872, 1947.

CHAPTER 736

MISCELLANEOUS PROBATE AND SIMILAR PROVISIONS

736.01 Receipts for debts due minors; effect.—If any executor, administrator or trustee receives and gives discharges for debts, rents, dues or sums of money belonging to any orphan or minor, for whom the said executor, administrator or trustee is acting, all such discharges and receipts shall be binding upon the orphan or minor and his heirs, when he shall come to full age, and shall be effectual in law to discharge the person taking the same. But nothing herein contained shall discharge the executor, administrator or trustee from accounting to the orphan or minor where such receipt or discharge has not been legally given, or has been given for a fraudulent purpose.

History.—§40, Nov. 20, 1828; RS 1869; GS 2355; RGS 3678; CGL 5542; am. §5, ch. 22783, 1945.

736.02 Compulsory settlement by persons holding interests of minors.—The county judge may award process to cause to come before him every person who as executor or administrator, tutor, trustee or otherwise is or may be concerned and entrusted or in anywise accountable for any estate, real or personal, belonging to any orphan or minor, to cause him to make within a reasonable time true and perfect inventories of said estate and to render just and true accounts of the same.

History.—§37, Nov. 20, 1828; RS 1879; GS 2371; RGS 3693; CGL 5558; am. §5, ch. 22783, 1945.

736.03 Enforcement of order for compulsory settlement.—If any person directed neglects to account to said court, the court shall immediately issue an attachment against such person, to be executed by the sheriff of the county where such person lives, which sheriff shall, together with his return, produce the delinquent who shall pay all the costs of the attachment; and said person shall stand committed for contempt until he makes such account.

History.—§1880 RS 1892; GS 2372; RGS 3694; CGL 5559; am. §5, ch. 22783, 1945.

736.04 Mortgaging property of certain estates for the purpose of paying existing mortgages and liens.—In estates of decedents in the process of administration on June 10, 1935, who died prior to October 1, 1933, leaving real estate encumbered by mortgage, lien or taxes, when it is made to appear to the county judge having charge of the administration of such estate, at any time before the final settlement of such estate, that it is expedient or necessary and for the best interests of the estate to borrow money upon a mortgage upon the real estate belonging to the estate or any part thereof, in order to pay off and discharge such mortgages or liens upon the real estate of the deceased, the county judge may by order authorize the personal representative to borrow such sum as the judge shall deem proper or necessary for such purpose and to execute such mortgage as may be necessary to secure the same. Such mortgage, when so executed by such authority, shall be effective in law to bind the real estate described therein as effectually as the same was bound by the mortgage or lien which is discharged and paid off by such loan, with the same rights, equities and priorities as existed in favor of the debts and liens so discharged.

History.—§1, ch. 17105, 1935; CGL 1936 Supp. 5541(114A); am. §5, ch. 22783, 1945.

736.041 Presumption of order of death.—When there is no sufficient evidence of the order in which the deaths of two or more persons occurred, no one of such persons shall be presumed to have died first; provided, however, that where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence of the order in which the deaths of such persons occurred, the provisions of §736.05 shall control.

History.—§2, ch. 63-183.

736.05 Uniform simultaneous death law.—(1) NO SUFFICIENT EVIDENCE OF SURVIVORSHIP.—Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this law.

(2) BENEFICIARIES OF ANOTHER PERSON'S DISPOSITION OF PROPERTY.—Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there

are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(3) JOINT TENANTS OR TENANTS BY THE ENTIRETY.—Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) INSURANCE POLICIES.—Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) NOT RETROACTIVE.—This law shall not apply to the distribution of the property of a person who has died before June 12, 1941.

(6) DOES NOT APPLY IF DECEDENT PROVIDES OTHERWISE.—This law shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this law.

(7) UNIFORMITY OF INTERPRETATION.—This law shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

(8) SHORT TITLE.—This section may be cited as the uniform simultaneous death law.

History.—§§1-8, ch. 20884, 1941; am. §5, ch. 22783, 1945.

736.06 Foreign wills; record and effect after three years from death of testator.—

(1) A duly authenticated copy of any will, including any codicils thereto, of a nonresident, which devises real property in this state, or any right, title or interest therein, and which conforms to the laws of this state as to form and manner of execution, when duly proved and admitted to probate in the proper court of any other state, territory or country, when accompanied by a duly authenticated copy of the petition for probate and order admitting it to probate, may be admitted to record in the office of the county judge of any county of this state in which such real property is situated, at any time after three years from the death of the testator or at any time after the domiciliary personal representative has been discharged, when there has been no probate of such will in this state. Provided, however, if in the jurisdiction where the will of the nonresident was probated no petition is required as a prerequisite to the probate of a will, upon proof by affidavit or certificate of the judge of said court that no such petition is required in such jurisdiction, a duly authenticated copy of any such will, when accompanied by a duly authenticated copy of the order admitting it to probate, may be admitted to record, as herein provided, without being accompanied by duly authenticated copy of petition for probate, and the order of court admitting such will to record in Florida shall recite that in the state of original probate no petition was required.

(2) The said duly authenticated copies of will, codicil and order admitting to probate, may be admitted to record by the county judge upon the petition of any person. If the court finds that the will and any codicils thereto conform to the laws of this state as to form and manner of execution and that the said copies are duly authenticated, he shall, by short order, admit the same to record.

(3) All orders heretofore made for the record of such wills and codicils and all proceedings had under §736.06 unaccompanied by an authenticated copy of the petition for probate are hereby validated and such wills and codicils shall be as valid and effectual to pass title to the real property therein described or referred to as if said wills and codicils had been accompanied by an authenticated copy of the petition for probate.

(4) When so admitted to record, such will and any codicils thereto, and all such as may have heretofore been recorded in the office of the county judge, whether admitted by order of the county judge or not, shall be as valid and effectual to pass title to real property, and any right, title or interest therein, as if such will had been duly proved and admitted to probate in the proper court in this state.

(5) The record of such copy, or a duly certified transcript thereof shall be presumptive evidence of the authority of any person authorized by such will, or any codicil thereto, to convey or otherwise dispose of any such real property or any right, title or interest therein.

History.—§1, ch. 22884, 1945; am. §1, ch. 24341, 1947.

736.07 Effect of chapter 22783, acts 1945.—Laws passed at the regular session of the legislature of 1945 shall not be repealed or affected by chapter 22783, acts of 1945 (revision of chapters 731, 732, 733, 734 and 736) but shall have full effect as if passed after the enactment of said chapter.

History.—§6, ch. 22783, 1945.

736.08 Eyes; donation for eyesight restoration.—Persons desiring to donate and give their eyes for eyesight restoration purposes may do so by a written instrument declaring such gift, or by their last will and testament, as in §736.11 provided.

History.—§1, ch. 23805, 1947.

736.09 Eye bank; establishment and maintenance.—Any state, county, district, or other public hospital may purchase and provide the necessary facilities and equipment to establish and maintain an eye bank for restoration of sight purposes.

History.—§2, ch. 23805, 1947.

736.10 Donee of eyes may be designated.—Persons so donating and bequeathing their eyes for eyesight restoration purposes may designate

the donee, but such shall not be necessary. If no donee is named by the donor in such written instrument or last will and testament, then any hospital in which the donor may depart this life, or any available physician or surgeon shall be considered the donee and have full authority to take and remove the eyes of the donor upon his death, and thereafter to use such donated eyes for restoration of sight of the person designated by the donor, or if such donee be not available, or no donee named by the donor, then the use of such eyes for said restoration of eyesight purposes shall be made available to any person in need thereof. No consent shall be required of the personal representative or heirs of the deceased nor shall any physician, hospital or institution have any liability for the removal of any eyes so donated by any subsequent invalidation by any court of the written instrument declaring such gift, or any last will and testament.

History.—§3, ch. 23805, 1947; §1, ch. 61-346.

736.11 Written statement required to effect donation.—No particular form or words shall be necessary or required but any such written statement or last will and testament or codicil shall be liberally construed to effectuate the intent and purpose of the persons wishing to donate and bequeath their eyes for eyesight restoration purposes.

The following shall be held and considered sufficient and legal for any person to give and donate their eyes for eyesight restoration purposes, to wit:

"DONATION OF EYES FOR EYESIGHT RESTORATION PURPOSES

I, the undersigned, desiring that my eyes may be made available upon death for eyesight restoration purposes, do hereby give and donate my eyes for said purpose to _____,
Name
_____,
Address Telephone Number
if living, and if not, then my eyes may be used for such purpose by any person.

I hereby authorize any physician, surgeon, or hospital to remove and use my eyes for said purpose.

_____
Name
„
_____
Address Telephone Number

Such written statement need not be witnessed or acknowledged and the said donor may execute more than one copy thereof.

History.—§4, ch. 23805, 1947.

736.12 More than one person signing written statement.—Such written statement so donating and giving eyes for eyesight restoration purposes may be signed by more than one person. Hospitals and other institutions and organizations are hereby authorized to prepare and have made available such written statements in the form of an eye bank register for persons desiring to give and donate their eyes for such purpose.

History.—§5, ch. 23805, 1947.

736.13 Donation of eyes by will.—Persons may by their last will and testament or codicil bequeath their eyes for eyesight restoration purposes and any such provision in any last will and testament or codicil, but no other, shall become effective immediately upon death of the testator.

History.—§6, ch. 23805, 1947.

736.14 Authority for use of eyes.—The authority for any hospital, physician or surgeon to so remove, and thereafter use the eyes of any person so donating or bequeathing their eyes shall be such written statement or last will and testament or codicil.

History.—§7, ch. 23805, 1947.

736.15 Cost to donee for eyes.—No charge or cost whatsoever shall be made to the donee for such eyes to be so used for eyesight restoration purposes, provided that nothing herein shall be construed to prohibit the payment of a reasonable fee to any physician or surgeon for performing an operation whereby the donee of such eyes has his or her eyesight restored.

History.—§8, ch. 23805, 1947.

736.16 Registration of persons in need of eyesight restoration.—The Florida council for the blind is hereby authorized to help and assist in the execution and furtherance of the purposes of §§736.08-736.16, and may provide for the registration of persons in need of having their eyesight restored.

The Florida council for the blind may have prepared, printed, and thereafter distributed:

(1) Said written statement,

(2) Said eye bank register, and

(3) Wallet cards reciting such written statement.

History.—§9, ch. 23805, 1947.
cf.—§413.011, Creating Florida council for the blind.

736.17 Bequests and devises to trustee.—

(1) An otherwise valid bequest or devise may be made to the trustee of a trust which is evidenced by a written instrument in existence at the time of the making of the will or by a written instrument subscribed concurrently with the making of the will, provided that such written instrument is identified in the will.

(2) Such devise or bequest shall not be invalid for any or all of the following reasons:

(a) Because the trust is amendable or revocable or both by any person whomsoever; or

(b) Because the trust has been amended or revoked in part after execution of the will or codicil thereto; or

(c) Because the trust instrument or any amendment thereto was not executed in the manner required for wills; or

(d) Because the possible expectancy of receiving benefits as named beneficiary of a life insurance policy deposited, or to be deposited with the trustee is the only trust res, and even though the testator or other person has reserved any or all rights of ownership in such insurance contracts, including the right to change the beneficiary.

(3) Such devise or bequest shall operate to

dispose of property under the terms of the instrument which created the trust as theretofore or thereafter amended.

(4) An entire revocation of the trust by an instrument in writing prior to the testator's death shall invalidate the devise or bequest.

(5) Unless the will provides otherwise, the property so devised or bequeathed shall not be deemed held under a testamentary trust of the testator and thus shall not be subject to the terms of chapter 737, Florida trust accounting law, but shall become a part of the principal of the trust to which it is devised or bequeathed.

(6) This section shall not be construed as repealing or amendatory of, but as cumulative to, all laws touching upon the subject matter hereof and now in force and effect.

(7) This act shall take effect immediately upon the date the same becomes law and shall be applicable to wills executed before and after said date by persons who are living on or after said date.

History.—§1, ch. 59-57; §§2, 3, ch. 61-427.
Note: §1, ch. 61-427 repeals this section and §2 reenacts the same section.

736.18 Donation or bequest of parts of body.—

(1) Any person may donate or bequeath to another person any part of his body for grafting or transplantation by written instrument or by his last will and testament, and may further by such written instrument or his last will and testament donate and give his body or any part thereof for experimentation and scientific research purposes.

(2) Any state, county or district hospital or medical school may use and expend public moneys, donations and devises for the necessary facilities and equipment to establish and maintain banks and repositories for any part of the human body and also for experimentation and scientific research. Donations and devises may also be made for the same purpose to private hospitals, medical schools and body banks.

(3) Any state, county or district hospital or medical school may expend public moneys, donations and devises for experimentation and scientific research designed to find ways and means whereby various parts and components of the human body may be grafted and transplanted from a living or deceased donor or testator to a living person. Donations and devises may also be made for the same purpose to private hospitals, medical schools and body banks.

(4) The following form of written instrument shall be sufficient and legal for any person to donate and give his body or any part thereof for the purposes recited in this act:

I, the undersigned, desiring that my eyes, ears, bones or any other part of my body be made available upon my death for grafting and transplantation purposes, do hereby donate and give any needed part of my body to _____ of
(name)
_____ _____
(address) (telephone)
if living at the time of my death, or to _____ hospital or to _____
(name) (name)
medical school or to _____
(name of eye
_____ bank. I do
or other body bank)
hereby donate any part of my body for immediate grafting and transplantation purposes if so needed and if not, then the same may be, if possible, reposited and banked for future use, otherwise any part or all of my body may be used for experimental and scientific research purposes as provided by the laws of the state.

If no donee is named in this written instrument, then any part of my body may be made available and used by any person needing the same for grafting or transplantation and/or used for experimental and scientific research purposes.

I do hereby authorize any physician, surgeon, hospital or medical school to remove and dismember any part of my body for said uses and purposes, and do further authorize any such physician, surgeon, hospital or medical school to examine and, if necessary, make copies of my medical history and records.

_____ _____
(name of donor) (address)

(It is suggested that the donor keep one copy of this written instrument and give signed copies to named donee, his physician, hospital and next of kin.)

(5) Said written statement need not be witnessed or acknowledged, and the donor may execute more than one copy thereof. The written statement may be in the form and size of wallet cards. No particular form or wording shall be necessary and said written instrument or last will and testament shall be liberally construed to effectuate the intended purpose of the person wishing to make any such donation or devise. The written instrument may be in such form and so worded that more than one person may sign the same. The donor may deliver signed copies of such written instrument to the donee, donor's physician, hospital or available body bank.

(6) All hospitals, doctors, surgeons, civic clubs, welfare organizations and the state board of health are hereby authorized to prepare and make available for free use and distribution copies of such written instrument and copies of this act.

(7) Any person may by his last will and testament devise any part of his body for grafting and transplantation. The testator may designate the beneficiary but if the testator names no beneficiary, or if such beneficiary be deceased or unavailable, then the part of the testator's body authorized to be used for grafting and transplantation may be made available for any person needing the same, or it may be banked and reposited, if possible, for future use.

The testator may authorize, by his last will and testament, the use of his body or any part thereof for experimental and scientific research purposes as provided in this act.

(8) It shall not be necessary for any person so donating or devising his body, or any part thereof for the purposes designated in this act, to name the donee thereof. If no person is so named by the donor or testator, or if the named person is deceased or unavailable, then the hospital where the donor or testator dies, or any physician or surgeon shall have full authority to remove the designated part of the body of the donor or testator for said grafting and transplantation purposes, and if not then needed therefor, the same may be so used for experimentation and scientific research purposes unless such can be expediently reposited and banked for future use.

(9) Said written instrument or said last will and testament shall be full authority for any such bank, hospital, medical school, physician or surgeon to act and proceed under the terms of any such written instrument or last will and testament. No consent or permission from the personal representative or the heirs of the deceased shall be required for such bank, hospital, medical school, physician or surgeon to so proceed and act under the terms of this act.

(10) The judgment by any court of competent jurisdiction declaring any such written instrument or last will and testament to be invalid shall not create a liability against such bank, hospital, medical school, physician or surgeon who acts and proceeds under the terms and provisions of any such written instrument or last will and testament.

(11) All donations and devises for the furtherance and purposes of this act shall constitute a charitable public trust for the welfare and benefit of the public and as such shall be exempt from all taxation.

(12) This act shall not prevent, limit or restrict civic organizations, clubs and chartered nonprofit corporations from continuing and furthering eyebank and eyesight restoration projects and programs.

(13) This act shall not repeal or limit chapter 245 and shall be held and construed to be supplemental thereto. No provision or section of said chapter 245 shall be held to restrict or limit the terms and provisions of this act.

(14) This act shall not repeal or limit §§736.08 to 736.16 inclusive and shall be held and construed to be supplemental and in addition thereto.

History.—§§1-14, ch. 63-386.

CHAPTER 737

TRUST ACCOUNTING LAW

737.01 Definitions.—In this chapter, where the context requires or permits, the words "person," "trustee" and "beneficiary" and pronouns related thereto shall include both the singular and plural and individuals and corporations. The word "trustee" shall mean any person or corporation designated in a will to perform trust functions and also shall include a temporary or successor trustee. The word "executor" shall include administrator cum testamento annexo. The word "trust" shall include trust estate and trust fund. The word "beneficiary" shall mean any person or corporation having any interest, vested or contingent, in the trust fund, including the guardian or other representative of any beneficiary. The words "supervisory proceeding" shall mean the proceeding in the circuit court required by this chapter. The words "incompetent beneficiary" shall include a minor, a person legally adjudged incompetent, an unknown person and an unborn person.

History.—Comp. §1, ch. 26656, 1951.

737.02 Testamentary trustees to establish qualifications.—

(1) Every person named as trustee under a will admitted to original probate in Florida shall, before he is entitled to receive any part of the property devised or bequeathed to him as such trustee, apply by petition to the circuit court of the county in which the decedent was domiciled, or in which the trustee is domiciled or has his principal place of business, to establish his qualifications as trustee and to submit the administration of the trust to the supervision of the court; provided, however, that if the trustee is a nonresident individual or a corporation organized under the laws of some other jurisdiction and having its principal place of business in some other state or country and where it appears from the will that the testator intended the trust to be administered in and subject to the laws of the jurisdiction in which the individual trustee resides or the corporate trustee has its principal place of business, such individuals or corporate trustee shall be exempt from the provisions of this chapter and the county judge shall authorize distribution of any property devised or bequeathed to the trustee without requiring such individual or corporate trustee to establish his qualifications hereunder.

(2) The court costs, costs of premium of the surety bond of the trustee and the initial fee of legal counsel incurred in first establishing the qualifications of the first trustees hereunder shall be paid as administration expenses by the executor of the estate of the decedent whose will created the trust.

History.—Comp. §2, ch. 26656, 1951.

737.03 Requisites of petition.—The petition shall conform substantially to the following requirements. It shall be entitled "In re: Trust under Will of _____, deceased," and shall contain:

(1) the name and address of the trustee and a statement showing his qualifications as trustee;

(2) the name of the decedent, the date of his death, the date upon which his will was admitted to probate, the court admitting the will to probate, a copy of the will, and the status of the administration of the decedent's estate;

(3) an inventory and itemized statement of the value of the trust, insofar as this information is available;

(4) the name, address and status of each beneficiary and a description of their respective interests in the trust; and

(5) a prayer for a decree determining that the trustee is qualified to act, fixing the amount of his bond, if any, assuming judicial supervision of the trust and a prayer for instructions as to any other matters presented by the petition.

History.—Comp. §3, ch. 26656, 1951.

737.04 When petition to be filed.—The petition shall be filed and the qualifications of the trustee duly established before the trustee shall be authorized to receive any of the trust funds or assets. If the trustee fails to file the

petition within sixty days after notification by the executor that he is ready to make distribution of the trust, a similar petition may be filed by any beneficiary or by the executor of the will.

History.—Comp. §4. ch. 26656, 1951.

737.05 **Respondents.**—The executor of the will shall be made a respondent to the petition unless such executor is also a petitioning trustee, and each beneficiary of the trust shall also be made a respondent to the petition. If the petition is not filed by the trustee, he shall be made a respondent. Each respondent shall be served with process as in suits in equity; provided, however, that any respondent may, by answer signed, waive service of process upon himself. Unknown and unborn beneficiaries need not in express terms be made parties respondent to the proceedings; but in any event such beneficiaries, whether named as parties or not, shall be deemed parties to the proceedings; represented, as the case may be, in the manner provided by §§737.06 and 737.07, but the testator may waive notice to any or all of the beneficiaries, or he may limit the notice to certain of the beneficiaries, or to direct beneficiaries, and in such case notice need be given only to those beneficiaries required to be served, but such beneficiaries, if sui juris, may waive such notice in writing.

History.—§5, ch. 26656, 1951; §1, ch. 29924, 1955.

737.06 **Representation of incompetent beneficiary.**—The guardian of the property of any incompetent beneficiary shall represent such incompetent beneficiary in the supervisory proceedings. Any incompetent beneficiary for whose property no guardian has qualified, including any unknown or unborn beneficiary, may be represented by a competent living member of the class to which said beneficiary belongs or would belong or by a guardian ad litem as the court shall determine, except in such cases as come within the purview of §737.07. A guardian ad litem may appear and plead without service of process upon him. If the trustee is serving also as guardian of the property of an incompetent beneficiary, the court shall appoint a guardian ad litem to represent such incompetent beneficiary.

History.—§6, ch. 26656, 1951; §2, ch. 29924, 1955.

737.07 **Representation in case of remainder to a class.**—Where an interest in the trust has been limited in any contingency to the persons who shall compose a class upon the happening of a future event, it shall be sufficient to make parties to the supervisory proceeding the persons in being who would constitute the class if such event had happened immediately before the commencement of the supervisory proceeding, and all decrees entered therein shall be conclusive on all present and future members of the class. Where an interest in the trust has been limited to a person who is a party to the supervisory proceeding, and the same interest has been further limited upon the happening of a future event to persons who are or may be the distributees, heirs, issue or other kindred of such party, it shall not be necessary to make such distributees, heirs, issue or other kindred parties to the supervisory proceeding, and all decrees entered therein shall be conclusive upon them.

History.—Comp. §7, ch. 26656, 1951.

737.08 **Who may qualify as trustees.**—Generally, any person sui juris or any corporation authorized under the laws of Florida to receive testamentary bequests in trust may qualify as such trustee; but no person who has been convicted of a felony or who, from sickness, intemperance or want of understanding, is incompetent to discharge the duties of a trustee, shall be permitted to qualify.

History.—§8, ch. 26656, 1951.

737.09 **Resident agent.**—Before any person may qualify as trustee hereunder, he shall file in the supervisory proceeding the name and address of an agent residing in the county in which the proceeding is brought, with the consent in writing of such resident agent, the service of process upon whom shall bind such person in his representative capacity and personally; provided, however, that any liability sought to be imposed in any such action must have accrued in the administration of the trust, and provided further that service of process upon such resident agent may be made only when the trustee, whether a resident or nonresident of Florida, is not amenable to service of process within the state. Inability to effect personal service on the trustee may be evidenced by return of the sheriff.

This section does not apply to corporations authorized to exercise trust functions in Florida or to trustees exempt from the provisions of this chapter under §737.02.

History.—Comp. §9, ch. 26656, 1951.

737.10 **Hearing and decree.**—If, at the hearing on the petition, the trustee is found qualified to act, the court shall determine the amount of his bond, if any, and the time within which it must be filed. Upon qualification of the trustee and giving of bond as required, the court shall enter a decree declaring the trustee qualified to act and the court shall thereupon assume supervisory jurisdiction of the trust. The decree may also contain any other appropriate provisions concerning the administration of the trust. If the trustee fails to qualify, the court shall appoint some other suitable person who upon qualifying shall be appointed to serve as trustee. No oath of the trustees shall be required as evidence of acceptance of the trust or the undertaking of faithful performance thereof.

History.—Comp. §10, ch. 26656, 1951.

737.11 **Bond of trustee.**—When any person interested in the trust estate files with the circuit court having jurisdiction of such trust estate a petition, from which petition and the evidence adduced thereon it is made to appear

to the court that there is reasonable ground to apprehend that the trustee is mismanaging, wasting or diverting, or will mismanage, waste or divert the assets of said trust estate from their proper administration, the court shall require such trustee to give a bond with sufficient security conditioned as the law directs; and this bond may be required although the will may exempt said trustee from giving the bond. The trustee shall have such notice as the court may prescribe, and the right to appear and defend the proceedings. No bond shall be required of any corporation qualified to exercise trust powers in Florida, and whenever a corporate trustee is a cotrustee with one or more individuals and such corporate trustee certifies to the court that it has the custody of all of such assets, no bond shall be required of such individual, cotrustee or trustees.

History.—Comp. §11, ch. 26656, 1951.

737.12 Annual accounts, authority to appoint examiners and auditors.—

(1) Every trustee shall file an annual account within ninety days after the expiration of the immediately preceding full calendar or fiscal year of the administration of the trust; providing, however, that where the value of the trust property or the volume of transactions of the trust is small, the court may, in its discretion, authorize the trustee to file periodic accounts covering two or more years each. Each annual or other periodic account shall contain an inventory of the trust fund at the end of the accounting period, a statement of the trustee's principal and income, receipts and disbursements during the accounting period, whether in cash or other property, and any other information which the trustee may desire to submit. All disbursements and distributions shown upon the account shall be supported by receipts or vouchers showing the purpose therefor whenever the court or any beneficiary shall so request. The trustee may withdraw such receipts or vouchers from the court files upon order of the court and whenever all of the beneficiaries are sui juris and shall file in such action their several consents in writing waiving the filing of an accounting, the trustee shall then be relieved of filing such accounting unless required by the court, until one or more of the beneficiaries shall file a withdrawal in writing of such consent and waiver, or files a request in writing for an accounting. This shall not prevent any trustee from filing an accounting at any time.

(2) The court may examine or audit the accounts, or may appoint an examiner or auditor to examine and audit such accounts and report thereon to the court.

(3) The cost of the audit or examination shall be paid out of the trust estate or as the decree of the court shall otherwise direct.

History.—§12, ch. 26656, 1951; §3, ch. 29924, 1955; (2), (3)n. by §1, ch. 59-376.

737.13 Notice of filing annual accounts.— The trustee need not, but may, at his option, give notice of the filing of an annual account, but the notice, if given, shall state that it is an application for the approval of all annual accounts then on file not previously approved. Such notice may be by registered mail with return receipt, by personal service, or by delivery made by any person within or without the state, or by such other method as the court may authorize; but service on an attorney of record shall not be sufficient, nor shall the entry of a decree pro confesso against any beneficiary on the original petition constitute notice to such beneficiary under this section.

History.—Comp. §13, ch. 26656, 1951.
cf.—§1.01(13) Defines registered mail to include certified mail with return receipt requested.

737.14 Objections to annual accounts.— Objections to any unapproved annual account may be filed by any beneficiary at any time. If notice of filing an annual account is given, objections to any unproved account must be filed within sixty days after the notice is given or mailed; if notice of filing such account is waived, objections must be filed within sixty days after the filing of the account. Objections shall be tried and determined by the court upon the application of any party in interest, including the trustee, after due notice to all other parties.

History.—Comp. §14, ch. 26656, 1951.

737.15 Order on trustee's account.— If notice of the filing of an annual account has been given or waived, the court may, after the time for filing objections has expired, or at the hearing on any objections, enter an appropriate order on such account and on all unapproved annual accounts previously filed.

History.—Comp. §15, ch. 26656, 1951.

737.16 Final account.— Prior to the final distribution of the trust, the trustee shall file a final account in the same form as an annual account, and give notice thereof to all beneficiaries as prescribed in §737.13. Objections to a final account shall be filed and determined as prescribed for annual accounts. If the court finds that the trustee has properly administered the trust, an order shall be entered approving the final account and all unapproved annual accounts and directing distribution; and upon filing of proper receipts showing distribution as directed, an order shall be entered finally discharging the trustee and the sureties on his bond, which order shall be conclusive, subject only to the right of appeal.

History.—Comp. §16, ch. 26656, 1951.
cf.—§1.01(13) Defines registered mail to include certified mail with return receipt requested.

737.17 Declaratory relief.— The supervisory proceeding is hereby declared to be a continuing proceeding and service or waiver of process based upon the original petition shall be sufficient to give the court jurisdiction of all parties thereto for the purpose of granting any declaratory or other relief authorized by chapter 87. Application for any such relief may be made by the trustee or any beneficiary

and due notice of the application shall be given. Such notice may be given as provided in §737.13, but the applicant at his option may make service of process thereon as in suits in equity.

History.—Comp. §17, ch. 26656, 1951.
cf.—§1.01(13) Defines registered mail to include certified mail with return receipt requested.

737.18 Removal of trustee.—The trustee may be removed for good cause on the petition of any beneficiary or by the court on its own motion after due notice to the trustee and all other beneficiaries. The court may appoint a temporary trustee to administer the trust estate until final determination of removal proceedings.

History.—Comp. §18, ch. 26656, 1951.

737.19 Vacancy in trust.—In the event of a vacancy in the office of trustee from any cause, the court shall appoint a successor trustee, upon whose qualification the supervisory proceeding shall proceed as if the trustee so appointed had been named in the will. Upon the resignation, removal or death of a trustee, the court may enter all necessary orders with reference to the filing of accounts by the resigned or removed trustee or by the personal representative of the deceased trustee and the delivery of the trust to the successor trustee. Such orders may be enforced by commitment or contempt proceedings.

History.—Comp. §19, ch. 26656, 1951.

737.20 Powers of court.—All provisions of the Florida guardianship law with reference to devastavit, production of assets, and proceedings on the bond of a removed guardian, shall, where relevant, apply to trustees in the supervisory proceedings.

History.—Comp. §20, ch. 26656, 1951.

737.21 Penalties.—Any executor who makes distribution of any trust assets or any person who, as trustee or purporting to act as trustee, accepts distribution of any property under the will of a decedent prior to the entry of a decree establishing the trustee's qualifications, as required by this chapter, shall forfeit the right to his office, shall forfeit all compensation for his services, and shall be personally liable to the beneficiaries for the value of all property so distributed or received together with the income therefrom subsequent to the date of distribution. The trustee shall be subject to all the penalties provided by law for perjury for any wilfully false statement of a material fact made in any petition or account filed by him even though such petition or account is not verified. When a trustee fails to comply with any of the provisions of this chapter or with any order of the court entered in the supervisory proceeding, he may be removed or his compensation may be reduced or forfeited, or both, in the discretion of the court.

History.—Comp. §21, ch. 26656, 1951.
cf.—§837.01, Perjury.

737.22 Expenses and compensation.—The trustee shall be allowed reasonable compensation for his services, and all necessary expenses, including attorney's fees, incurred by him in the management of the trust estate.

History.—Comp. §22, ch. 26656, 1951.

737.23 Waiver of accounting.—The court shall have discretionary power to require the filing of annual and final accountings, notwithstanding any waiver thereof by the testator in his will or by the beneficiaries of the trust. The court may also require any additional accounting to be filed at any time.

History.—Comp. §23, ch. 26656, 1951.

737.24 Application to inter vivos trusts.—This chapter shall not apply to inter vivos trusts, but the creator of an inter vivos trust, by provision in the trust instrument, may require the trustee to comply with the provisions of this chapter, in which event the trustee and the administration of said trust shall be subject to the provisions hereof in all respects as if said trust had been created by will. The trustee under an existing active inter vivos trust shall not be required to comply with this chapter by reason of any testamentary bequest or devise to him as such trustee unless such compliance is expressly required by the will, and in such circumstances only the property so bequeathed shall be subject to administration under the provisions hereof.

History.—Comp. §24, ch. 26656, 1951.

737.25 Practice and procedure.—Except as otherwise expressly provided herein, practice and procedure in the supervisory proceedings shall be as prescribed by law for suits in equity. Appeals shall be governed by the statutes and court rules applicable to equity cases.

History.—Comp. §25, ch. 26656, 1951.

737.251 Charitable trusts where beneficiaries unknown; representative.—In all proceedings under this chapter involving charitable trusts with unknown or unascertainable beneficiaries, the state's attorney for the judicial circuit having original jurisdiction of said trust shall be deemed to be the representative of such beneficiaries for all the purposes of this chapter.

History.—Comp. §1, ch. 57-149.

737.26 Short title.—This chapter shall be cited as the Florida trust accounting law.

History.—Comp. §26, ch. 26656, 1951.

737.27 Effective date.—This chapter shall take effect on May 19, 1951 and shall apply only to trusts created by wills dated on or after January 1, 1952; provided, however, that the trustee under any testamentary trust created by the will of a decedent dying prior thereto may, at his option, subject such trust to the provisions of this chapter.

History.—Comp. §27, ch. 26656, 1951.

737.28 Inapplicability of chapter 737.—Notwithstanding the provisions of chapter 737 or any other law requiring a testamentary trustee to qualify and account to any court, any person

who in his last will and testament shall hereafter appoint a testamentary trustee, may in such will and testament or any codicil thereto, waive compliance by the trustee with the provisions of chapter 737 as such chapter now exists or may hereafter be amended and may also specifically or by general terms waive compliance with any other law requiring qualification, administration or accounting by such trustee to any court and in any such instance the testamentary trustee shall be relieved of compliance therewith; provided, however, this section shall not prevent any beneficiary, or other interested party, instituting suit and obtaining an accounting of the administration of the trust or instituting any other suit against the trustee in connection with the administration or disposition of the trust.

History.—§1, ch. 63-434.

TITLE XLII

DOMESTIC RELATIONS

CHAPTER 741

HUSBAND AND WIFE

741.01 County judge to issue marriage license.—Every marriage license shall be issued by the county judge of the county wherein the woman resides, under his hand and seal, and said county judge shall issue such license, upon payment of his fee of two dollars, if there appear to be no impediment to the marriage.

History.—§2, Nov. 2, 1829; §2, ch. 3720, 1887; §1, ch. 3890, 1889; RS 2055; GS 2574; RGS 3933; CGL 5848.

741.02 Additional license fee.—Upon the issuance of each and every marriage license issued by any county judge in the state, such county judge shall, in addition to the fee allowed by §741.01, collect and receive an additional fee of one dollar, to be distributed as provided by §382.24.

History.—§1, ch. 11869, 1927; CGL 5851; am. §7, ch. 22000, 1943.

741.03 County judge not to send out marriage license signed in blank.—It is unlawful for any county judge in the state to send out of his office any marriage license signed in blank to be issued upon application to persons not in the office of the county judge.

History.—§1, ch. 7828, 1919; CGL 5849.

741.04 Marriage license issued.—No county judge in this state shall issue a license for the marriage of any person, unless there shall be first presented and filed with him an affidavit in writing, signed by both parties to the marriage, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties, and unless both such parties shall be over the age of twenty-one years; provided, that if either of such parties shall be under the age of twenty-one years, such county judge shall not issue a license for the marriage of such party unless there shall be first presented and filed with him the written consent of the parents or guardian of such minor to such marriage, acknowledged before some officer authorized by law to take acknowledgments and administer oaths; provided, this section shall not apply in any case where both parents of such minor shall be deceased at the time of making application for such marriage license; but no minor who has been before married shall be required to produce evidence of consent of parents or guardian as aforesaid; and provided, further, no marriage license shall be issued by any county judge in this state after application therefor until after expiration of three days,

including day application is made to county judge by the parties seeking to be married, for the issuance of a marriage license, and it shall be the duty of the county judge to post a true copy of said application at the front door of the court house in the county where said application was made for a period of three days prior to the issuance of said marriage license, which said three days shall include day of application therefor.

History.—§2, Nov. 2, 1829; §2, ch. 3720, 1887; §1, ch. 3890, 1889; RS 2055; GS 2574; §2, ch. 7828, 1919; RGS 3933; CGL 5850; §1, ch. 22643, 1945; am. §1, ch. 28103, 1953.
cf.—§741.06, When license may issue to minors.
§741.08, Necessity of license.

741.05 Penalty for violation of laws regulating issuance of marriage license. — Any county judge, or other person, who shall violate any provision of §§741.03 and 741.04, shall, upon conviction thereof, be deemed guilty of a felony, and shall be punished by imprisonment in the state prison for a period of not more than one year, or by fine not to exceed five hundred dollars.

History.—§3, ch. 7828, 1919; CGL 7517.
cf.—§775.06, Alternative punishment.

741.051 Marriage licenses; conditions precedent to issuance; certificate of physician.— After October 1, 1945, every person making application for license to marry shall file with the county judge, as a condition precedent to the issuance of any such license, a certificate from a duly licensed physician, which certificate shall state that the applicant has been given such physical examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than thirty days prior to the date of application for such marriage license, and that the applicant is not infected with syphilis, or if so infected is not in a stage of that disease which is or may become communicable to the marital partner.

History.—§§1, 15, ch. 22738, 1945.

741.052 Same; serological tests.—The certificate of the duly licensed physicians, as aforesaid, shall be accompanied by a statement by the person making the standard serological test or from the person in charge of the laboratory making the test, setting forth the name of the test, the result of the test, the date it was made, the name and address of the physician who submitted the sample of blood for the test, and the name and address of the person whose blood was tested. In submitting the blood specimen the physician shall designate that this is a premarital test and the statement from the laboratory shall show that this was a premarital test.

History.—§2, ch. 22738, 1945.

741.053 Same; forms to be prescribed.— The certificate of a physician and the statement constituting the laboratory report on the serological test shall each be on a form to be provided by the Florida state board of health and distributed to the offices of all county judges and to all laboratories, hospitals and/or clinics in the state approved by the Florida state board of health.

History.—§3, ch. 22738, 1945.

741.054 Same; making of tests.—For the purpose of this law a standard serological test shall be a test for syphilis approved by the Florida state board of health, and an approved laboratory shall be the state board of health laboratory, any of its branches, or any other laboratory licensed or operated in accordance with the laws of this state or of the state in which it is located; provided, however, that the serological test or tests shall be such as will exclude the possibility that the disease as shown by said test or tests is some other disease than syphilis.

History.—§4, ch. 22738, 1945.

741.055 Same; affidavit of positive report.— In any case where such examinations and tests have been made and certificate or certificates have been refused because one or both of the applicants have been found to be infected with syphilis, the county judge shall nevertheless be authorized and empowered on application of both parties to such marriage to issue the license without the certificate of a physician if the judge is satisfied by affidavit or other proof that the female is pregnant; providing, that all other requirements of the marriage laws have been complied with and that the public health and welfare will not be injuriously affected thereby. In every such case, however, the county judge shall transmit to the state board of health a transcript of the court record and file a copy of the order of the court in lieu of the physician's certificate. The court when it is deemed necessary may, to the extent authorized by law or rules of court, order all the proceedings instituted under the provisions of this section to be confidential and private. There shall be no fee for the court proceedings authorized in this section.

History.—§5, ch. 22738, 1945.

741.056 Same; no charge for laboratory test.—All serological tests required by this law on blood specimens submitted to the laboratory of the Florida state board of health or to any of its authorized branches shall be made without charge. The fee of the physician for making the examinations and issuance of the certificate required by this law shall not exceed the sum usually charged for office visits.

History.—§6, ch. 22738, 1945.

741.057 Same; filing of certificates.—The physician's certificate and the laboratory report shall be filed with the transcripts of court proceedings in the office of the county judge for a period of not less than sixty days, after which time they may be destroyed at the discretion of the county judge.

History.—§7, ch. 22738, 1945; §1, ch. 61-17.

741.058 Same; limitation on licenses.— From and after the effective date of this law, marriage licenses shall be valid only for a period of thirty days after issuance, and no person shall perform any ceremony of marriage after the expiration date of such license. The county judge shall recite on each marriage license the final date that such is so valid.

History.—§8, ch. 22738, 1945.

741.059 Same; use of information by state board of health.—The state board of health shall be authorized to use the information derived from premarital serological tests for such follow-up procedures as are required by law or deemed necessary by said board for the protection of the public health.

History.—§9, ch. 22738, 1945.

741.0510 Penalties for violation of law.—Any applicant for a marriage license, physician or representative of a laboratory who shall misrepresent his identity or any of the facts called for by the certificate form or laboratory report form as provided for in §741.053; or any county judge or his deputy who shall issue a marriage license without having received the physician's certificate, laboratory report or order from the court, or who shall have reason to believe that any of the facts have been misrepresented and shall nevertheless issue a marriage license; or any person who shall otherwise fail to comply with the provisions of this law shall be guilty of a misdemeanor.

History.—§10, ch. 22738, 1945.

741.0511 Same; reports confidential.—Physicians' certificates, laboratory reports and court orders and all information therein contained shall be confidential and shall not be divulged to or open to inspection by any person outside the office of the county judge other than the state or local health officers or their duly authorized representatives. Any person who shall divulge such information or open for inspection such certificates, laboratory reports or court orders, without authority, to any person not by law entitled to the same, shall be guilty of a misdemeanor.

History.—§11, ch. 22738, 1945.
cf.—§775.07, Misdemeanor, punishment.

741.0512 Effective date of law.—From and after October 1, 1945, any person who enters into the contract of marriage without having first complied with §§741.051-741.0511, shall be guilty of a misdemeanor and upon conviction therefor shall be punished as prescribed by law.

History.—§12, ch. 22738, 1945.
cf.—§775.07, Misdemeanor, punishment.

741.06 When marriage license may be issued to persons under twenty-one years.—The county judge of any county in the state may, in the exercise of his discretion, issue a license to marry to any male or female under the age of twenty-one years, upon sworn application of both applicants under oath that they are the parents or expectant parents of a child. The consent of the parents or guardian of such applicants shall not be required for the issuance of a license to marry under the provisions of this section. No license to marry shall be granted to any male under the age of eighteen years, nor to any female under the age of sixteen years, with or without the consent of their parents except as hereinabove provided.

History.—§1, ch. 18021, 1937; CGL 1940 Supp. 5850(1); §1, ch. 63-238.

741.07 Persons authorized to solemnize matrimony.—All regularly ordained ministers of the gospel or elders in communion with some church, and all judicial officers and notaries public of this state may solemnize the rights of matrimonial contract, under the regulations prescribed by law. Provided that any marriage which may be had and solemnized among the people called quakers, or friends, in the manner and form used or practiced in their societies, according to their rites and ceremonies, shall be good and valid in law; and wherever the words "minister" and "elder" are used in this chapter they shall be held to include all of the persons connected with the society of friends, or quakers, who perform or have charge of the marriage ceremony according to their rites and ceremonies.

History.—§1, Nov. 2, 1829; §2, ch. 1127, 1861; RS 2056; GS 2575; RGS 3934; CGL 5853; am. §1, ch. 28104, 1953.

741.08 Marriage not to be solemnized without a license. — Before any of the persons named in §741.07 shall solemnize any marriage, he shall require of the parties a marriage license issued according to the requirements of §741.01, and within ten days after solemnizing the marriage he shall make a certificate thereof of the license, and shall transmit the same to the office of the county judge from which it issued.

History.—§§ 2, 3, Nov. 2, 1829; §1, ch. 3890, 1889; RS 2057; GS 2576; RGS 3935; CGL 5854.

741.09 Record of license and certificate.—The county judge shall keep in good and substantially bound books a correct record of all marriage licenses issued, with the names of the parties and the date of issuing, and upon the return of the license and certificate he shall enter therein the name of the person solemnizing the marriage and the date of marriage and of the return.

History.—§3, Nov. 2, 1829; §1, ch. 3890, 1889; RS 2058; GS 2577; RGS 3936; CGL 5855.

741.10 Proof of marriage where no certificate available.—When any marriage is or has been solemnized by any of the persons named in §741.07, and such person has not made a certificate thereof of the marriage license as required by §741.08, or when the marriage license has been lost, or when by reason of death or other cause the proper certificate cannot be obtained, the marriage may be proved by affidavit before any officer authorized to administer oaths made by two competent witnesses who were present and saw the marriage ceremony performed, which affidavit may be filed and recorded in the office of the county judge from which the marriage license issued, with the same force and effect as in cases in which the proper certificate has been made, returned and recorded.

History.—§1, ch. 3126, 1879; RS 2059; GS 2578; RGS 3937; CGL 5856.

741.11 Marriages between white and negro persons prohibited. — It is unlawful for any white male person residing or being in this state to intermarry with any negro female per-

son; and it is in like manner unlawful for any white female person residing or being in this state to intermarry with any negro male person; and every marriage formed or solemnized in contravention of the provisions of this section shall be utterly null and void, and the issue, if any, of such surreptitious marriage shall be regarded as bastard and incapable of having or receiving any estate, real, personal or mixed, by inheritance.

History.—§ §1, 2, Jan. 23, 1832; RS 2063; GS 2579; RGS 3938; CGL 5857.
cf.—§1.01, Definition of negro.

741.12 Penalty for intermarriage of white and negro persons.—If any white man shall intermarry with a negro, or if any white woman shall intermarry with a negro, either or both parties to such marriage shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars.

History.—§1, ch. 3283, 1881; RS 2606; §1, ch. 5140, 1903; GS 3529; RGS 5419; CGL 7562.
cf.—§775.06, Alternative punishment.
§1.01, Definition of negro.

741.13 County judges not to issue licenses for white and negro intermarriages. — All county judges are prohibited from knowingly issuing a license to any person to intermarry against whom the disabilities in §741.11 specified may or do attach, under the penal sum of one thousand dollars, to be recovered by action of debt in any court of record having jurisdiction, for the use of the school fund.

History.—§3, Jan. 23, 1832; RS 2065; GS 2581; RGS 3940; CGL 5859.
cf.—§1.01, Definition of negro.

741.14 Penalty for violation of §741.11.—If any county judge shall knowingly and willfully issue a marriage license for a white person to marry a negro, he shall be punished by imprisonment not exceeding two years, or by fine not exceeding one thousand dollars.

History.—§2, ch. 3283, 1881; RS 2067; GS 3530; RGS 5420; CGL 7563.
cf.—§775.06, Alternative punishment.
§1.01, Definition of negro.

741.15 Marriage between white and negro persons not to be performed.—Any of the persons described in §741.07, who shall knowingly perform the ceremony of marriage between any persons who by the provisions of §741.11 are prohibited to intermarry shall in like manner forfeit and pay the penal sum of one thousand dollars, to be recovered in like manner as in §741.13 for the use of the school fund.

History.—§4, Jan. 23, 1832; RS 2066; GS 2582; RGS 3941; CGL 5860.
cf.—§798.04, White persons and negroes living in adultery.
§1.01, Definition of negro.

741.16 Penalty for marrying white and negro persons.—If any judge, justice of the peace, notary public or minister of the Gospel, clergyman, priest or any person authorized to solemnize the rites of matrimony, shall willfully and knowingly perform the ceremony of marriage for any white person with a negro, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§3, ch. 3283, 1881; RS 2608; GS 3531; RGS 5421; CGL 7564.
cf.—§775.06, Alternative punishment.
§1.01, Definition of negro.

741.17 Marriage laws to apply to negro persons. — From and after the eleventh day of October, 1866, all laws applicable to or regulating the marriage relation between white persons shall apply to the same relation between the colored population of the state.

History.—§5, ch. 1469, 1866; RS 2067; GS 2583; RGS 3942; CGL 5861.

741.18 Certain marriages by judge of probate validated.—In all cases where marriages have been solemnized by a judge of probate prior to the tenth day of January, 1849, the same shall be held as valid in every respect, as if the said marriages had been solemnized after the passage of the act entitled "An act to authorize the several judges of probate to solemnize the rites of matrimony and for other purposes," approved the day and year aforesaid.

History.—§2, ch. 253, 1849; RS 2061; GS 2584; RGS 3943; CGL 5862.

741.19 Certain marriages between white and negro persons valid.—In all cases where marriages have been contracted and solemnized between white persons and persons of color prior to the twelfth day of January, 1866, and where the parties continued to live as man and wife up to that date, the said marriages shall be held valid to all intent and purpose.

History.—§2, ch. 4168, 1849; RS 2062; GS 2585; RGS 3944; CGL 5863.
cf.—§1.01, Definition of negro.

741.20 Certain cohabitations declared marriage.—In all cases where persons of African blood have, prior to January first, A. D. 1866, cohabited and lived together as husband and wife, and have prior to said date, recognized each other before the world, and were recognized as husband and wife, they shall in law be deemed, taken and held to have been lawfully husband and wife so long as such relationship existed between them, as fully and effectually for all purposes as if the marriage between them had been solemnized by a proper officer thereto lawfully authorized; and all children, the issue of any such marriage, are legitimized and made heirs of their parents and of their blood relatives generally in the ascending, descending and collateral lines of inheritance according to the general laws of descent in force in this state, as fully as if they had been born in legally recognized wedlock.

History.—§1, ch. 4749, 1899; GS 2586; RGS 3945; CGL 5864; am. §7, ch. 22858, 1945.

741.21 Incestuous marriages prohibited. — A man may not marry any woman to whom he is related by lineal consanguinity, nor his sister, nor his aunt, nor his niece. A woman may not marry any man to whom she is related by lineal consanguinity, nor her brother, nor her uncle, nor her nephew.

History.—§2602, RS 1892; GS 3525; RGS 5415; CGL 7558.

741.22 Punishment for incest. — Persons within the degrees of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who intermarry or commit adultery or fornication with each other, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the county jail not exceeding one year.

History.—§7, sub-ch. 8, ch. 1637, 1868; RS 2601; GS 3524; RGS 5414; CGL 7557.

741.23 Husband not liable for wife's torts. —The common law rule whereby a husband is liable for the torts of his wife is hereby abrogated.

History.—Comp. §1, ch. 26829, 1951.

CHAPTER 742

BASTARDY

742.011 Bastardy proceedings; circuit court jurisdiction.—Any unmarried woman who shall be pregnant or delivered of a bastard child, may bring proceedings in the circuit court, in chancery, to determine the paternity of such child.

History.—Comp. §1, ch. 26949, 1951.

742.021 Same; venue, process, complaint.—The proceedings shall be by verified complaint filed in the circuit court of the county in which the woman resides or of the county in which the alleged father resides. The complaint shall aver sufficient facts charging the paternity of the child. Process directed to the defendant shall issue forthwith requiring the defendant to file his written defenses to the complaint in the same manner as suits in chancery. Upon application and proof under oath, the court may issue a writ of ne exeat against the defendant on such terms and conditions and conditioned upon bond in such amount as the court may determine.

History.—Comp. §2, ch. 26949, 1951.

742.031 Same; hearings; court orders, support, hospital expenses, etc.—Hearings for the purpose of establishing or refuting the allegations of the complaint and answer shall be held in the chambers and may be restricted to such persons, in addition to the parties involved and their counsel, as the judge in his discretion may direct. The court shall determine the issues of paternity of the child, and the ability of the parents and each of them to support the child and if the court shall find the defendant to be the father of the child he shall so order and shall further order the defendant to pay the complainant, her guardian or such other person assuming responsibility for the child as the judge may direct, such sum or sums as shall be sufficient to pay reasonable attorney's fee, hospital or medical expenses, cost of confinement and any other expenses incident to the birth of such child. In addition the court shall order the defendant to pay periodically for the support of such child such sums as shall be fixed by the court in accordance with the provisions of this act, and also all taxable costs of the proceedings. Upon request of either party, the issue of the paternity of such child may be tried by jury and the chancellor shall transfer the cause for the determination of such issue.

History.—§3, ch. 26949, 1951; §1, ch. 59-45.

742.041 Same; monthly contributions.—The court shall order the defendant to pay monthly for the care and support of such child the following amounts:

From date of birth to 6th birthday—$40 per month

From 6th birthday to 12th birthday—$60 per month

From 12th birthday to 15th birthday—$90 per month

From 15th birthday to 18th birthday—$110 per month

Such amounts may be increased or reduced by the judge in his discretion depending upon the circumstances and ability of the defendant.

History.—Comp. §4, ch. 26949, 1951.

742.06 Same; jurisdiction retained for future orders.—The court shall retain jurisdiction of the cause for the purpose of entering such other and further orders as changing circumstances of the parties may in justice and equity require.

History.—Comp. §5, ch. 26949, 1951.

742.07 Effect of adoption.—Upon the adoption of a child, for whom support has been ordered, by some person other than the father, the liability of the father for the support of the child shall be terminated.

History.—Comp. §6, ch. 26949, 1951.

742.08 Default of support payments.—Upon default in payment of any moneys ordered by the court to be paid, the court may enter a judgment for the amount in default which shall be a lien upon all property of the defendant both real and personal. Willful failure to comply with an order of the court shall be deemed a contempt of the court entering the order and shall be punished as such. The court may require bond of the defendant for the faithful performance of his obligation under the order of the court in such amount and upon such conditions as the court shall direct.

History.—Comp. §7, ch. 26949, 1951.

742.09 Publishing names; penalty.—It shall be unlawful for the owner, publisher, manager or operator of any newspaper, magazine, radio station or other publication of any kind whatsoever, or any other person responsible therefor, or any radio broadcaster, to publish the name of any of the parties to any court proceeding instituted or prosecuted under this act; and any person violating this provision shall be guilty of a misdemeanor and be punished by imprisonment in the county jail not exceeding twelve months or by fine not exceeding one thousand dollars or both.

History.—Comp. §8, ch. 26949, 1951.

742.091 Marriage of parents. — If the mother of any bastard child and the reputed father shall at any time after its birth intermarry, the child shall in all respects be deemed and held legitimate, and upon the payment of all costs and attorney fees as determined by the court, the cause shall be dismissed and the bond provided for in §742.021 shall be void. The record of the proceedings in such cases shall be sealed against public inspection in the interests of the child.

History.—Comp. §1, ch. 57-267.

742.10 Chapter in lieu of other proceedings. —This chapter shall be in lieu of any other proceedings provided by law for the determination of paternity and support of bastard children.

History.—§9, ch. 26949, 1951; am. §10, ch. 27991, 1953.

CHAPTER 743

DISABILITY OF NONAGE OF MINORS REMOVED

743.01 Married male minors' disability removed.—The disability of nonage of all male minors who are married, who have been married, or who may hereafter become married, is removed, and all such persons may assume the management of their estate, contract and be contracted with, sue and be sued, and do and perform any and all acts, matters and things that he could do if he were twenty-one years of age.

History.—§1, ch. 7364, 1917; RGS 3962; CGL 5881; am. §1, ch. 22750, 1945.

cf.—§62.23, Removal of minor's disabilities.

743.02 Applied to divorced persons, etc.—The provisions of §743.01 shall apply to all such persons who may have obtained a decree of divorce, or who may hereafter obtain a decree of divorce, or whose wife may have died before such person has reached his majority.

History.—§2, ch. 7364, 1917; RGS 3963; CGL 5882.

743.03 Removal of disabilities of female minors.—The disabilities of nonage of all female minors who are married, who have been married, or who may hereafter become married, including those divorced or hereafter divorced, and those who are or who may hereafter become widows, are removed, and hereafter all such female minors may assume the management of their estate, contract and be contracted with, sue and be sued, and do and perform any and all acts, matters and things that she could do if she were twenty-one years of age.

History.—§1, ch. 9286, 1923; CGL 5883.

743.04 Removal of disabilities of persons entitled to benefits of servicemen's readjustment act.—Any person under the age of twenty-one years authorized to participate in the rights, privileges and benefits conferred by the "servicemen's readjustment act of 1944," being chapter 268 of the 78th congress, and the infant wife of any such person, are hereby authorized to make and execute any and all contracts necessary to the full realization of the rights, privileges and benefits conferred under that act provided that such persons shall be otherwise competent to enter into agreements and contracts. Contracts so entered into by any such persons under twenty-one years of age shall have the same force and effect as though they were the obligations of persons over twenty-one years of age.

History.—§1, ch. 23873, 1947.

743.05 Removal of disabilities of minors; borrowing money for educational purposes.—For the purpose of borrowing money for their own higher educational purposes, and for such purposes only, the disabilities of nonage of minors are removed for all persons, whether male or female, who are between the ages of sixteen years and twenty-one years. Any person between the ages of sixteen years and twenty-one years is authorized to make and execute any and all promissory notes, contracts, or other instruments necessary to be executed by him in order to borrow money for his own higher educational purposes. Any promissory note, contract, or other instrument entered into by any such person pursuant to the provisions of this section shall have the same force and effect as though they were the obligations of persons over the age of twenty-one years; provided, that no such obligation shall be valid if the rate of interest thereon exceeds six per cent per annum, simple interest.

History.—§1, ch. 59-268.

CHAPTER 744

FLORIDA GUARDIANSHIP LAW, FIRST PART

744.01 Short title. — This chapter, together with chapters 745 and 746 next following, is known and may be cited as the Florida guardianship law.

History.—§1, ch. 8478, 1921; CGL 5884; §1, ch. 22750, 1945.

744.02 Application.—This Florida guardianship law shall take effect on January 1, 1946, at 12:01 o'clock in the morning, and thereafter shall govern all matters pertaining to guardians and wards and the property of such wards, whether the guardianship exists at the time this law takes effect or arises thereafter; provided, however, that all guardianships and curatorships pending in the circuit courts at the time this law takes effect shall be completed in such courts according to the laws heretofore existing.

History.—§50, Nov. 20, 1828; RS 2087; GS 2604; RGS 3965; §1, ch. 8478, 1921; CGL 5885; am. §1, ch. 22750, 1945.

744.03 Definitions.—When used in this law, unless the context requires otherwise:

(1) A "guardian" is one to whom the law has entrusted the custody and control of the person or of the property, or of both, of an incompetent. "Guardian" may mean curator, conservator or committee where the context indicates a general, and not a particular, use of the term.

(2) A "guardian ad litem" is one appointed by a court, in which particular litigation is

pending, to represent a ward in that particular litigation.

(3) A "foreign guardian" is one appointed in another state or country.

(4) A "testamentary guardian" is one appointed for the person of a minor child by the will of its parent.

(5) An "incompetent" is any person who, because of minority, senility, lunacy, insanity, imbecility, idiocy, drunkenness, excessive use of drugs or other physical or mental incapacity, is incapable of either managing his property or caring for himself, or both.

(6) An "infant" or a "minor" is a person under twenty-one years of age whose disabilities have not been removed by marriage or otherwise according to law.

(7) "Probate court" means county judge's court.

(8) "Property" means realty, personalty, choses in action or any interest in the same, legal or equitable, and also claims or rights of action arising in tort.

(9) A "ward" is an incompetent for whom a guardian has been appointed.

History.—§50, Nov. 20, 1828; RS 2088; GS 2605; RGS 3966; §1, ch. 8478, 1921; CGL 5886; am. §1, ch. 22750, 1945.

744.04 Liberal construction.—This law shall be liberally construed to the end that controversies and the rights of the parties may be speedily and finally determined; and the rule that statutes in derogation of the common law shall be strictly construed does not apply.

History.—§2089, RS 1892; GS 2606; RGS 3967; CGL 5887; am. §1, ch. 22750, 1945.

744.05 Guardians of incompetent world war veterans.—The provisions of this law shall extend to incompetent world war veterans, specifically provided for in chapters 293 and 294, or any amendment or revision thereof. The provisions of this law shall be cumulative to the provisions of said chapters. However, any conflict arising between provisions in said chapters 293 and 294, or any amendment or revision thereof, and this law shall be resolved by giving effect to the law as stated in said chapters.

History.—§1, Nov. 20, 1828; RS 2090; GS 2607; RGS 3968; CGL 5888; am. §1, ch. 22750, 1945.

744.06 Jurisdiction.—

(1) COUNTY JUDGE. — (a) The county judge shall have jurisdiction over all matters pertaining to guardians and wards and to the management and the administration of the property of wards, regardless of the origin or cause of the incompetency of the ward.

(b) The county judge may appoint a guardian of the person or of the property, or of both, of an incompetent. The county judge may hear and determine complaints of wards against their guardians, require of guardians security or additional security when necessary, displace them, and make such orders as to the said county judge may seem equitable and right relating to the estates of wards. The county judge may require of guardians, from time to time, inventories of their wards' estates, and accounts of receipts and disbursements, and shall make such orders as to him shall seem just. He may enforce his orders in a summary way by attachment for contempt and by imprisonment.

(c) All orders of the county judge in guardianship matters shall be in writing and shall be filed and recorded in the office of the county judge.

(d) In a conflict as to jurisdiction between county judges' courts, the first to obtain lawful jurisdiction shall retain it.

(2) DISTRICT COURTS OF APPEAL*.—In guardianship proceedings the district courts of appeal shall have no jurisdiction except the appellate and the supervisory jurisdiction authorized by §5, art V, of the constitution of Florida.

(3) COURT OF EQUITY. — No court of equity shall be deprived of its inherent jurisdiction to appoint or to remove guardians or require of them accountings of their trusts or to administer the estates of wards in cases in which equitable intervention is necessary for complete and adequate relief.

History.—§1, ch. 3887, 1889; RS 2091; GS 2608; RGS 3969; CGL 5889; am. §1, ch. 22750, 1945.

* See §5 (3), Art. V state const. as amended (1955) re jurisdiction of district courts of appeal.

744.07 Court always open.— The court of the county judge, for the exercise of its jurisdiction in all guardianship matters, shall be open at all times for the transaction of business.

History.—§2092, RS 1892; GS 2609; RGS 3970; CGL 5890; am. §1, ch. 22750, 1945.

744.08 Disqualification of county judge.— The county judge shall be disqualified in all instances in which judges generally are so disqualified in Florida.

History.—§2093, RS 1892; GS 2610; RGS 3971; CGL 5891; am. §1, ch. 22750, 1945.

744.09 Substitution of circuit judge.—A circuit judge may be substituted for the county judge in guardianship proceedings in the same manner as provided for the substitution of circuit judges in probate proceedings by §732.05.

History.—§2094, RS 1892; GS 2611; RGS 3972; CGL 5892. Am. §1, ch. 22750, 1945.

744.10 Change of domicile of ward.—The domicile of a resident ward is the county in which the guardian of the person was lawfully appointed. The county judge may, upon good cause shown by petition of the guardian of the person and proof of the allegations therein contained, authorize a change of the domicile of the ward.

History.—§35, Nov. 20, 1828; §1, ch. 1560, 1866; RS 2095; GS 2612; RGS 3973; CGL 5893. Am. §1, ch. 22750, 1945.

744.11 Venue. — The venue in proceedings for the appointment of any guardian shall be as follows:

(1) If the incompetent is a resident of this state, the venue shall be in the county where the incompetent resides.

(2) If the incompetent is not a resident of this state, then the venue shall be in any county

in Florida in which property of the incompetent is located.

(3) If the incompetent is not a resident of this state and owns no property located or situated in this state, then the venue shall be in the county where any debtor of the incompetent resides.

(4) Whenever the domicile of an incompetent is changed to another county, the guardian of said incompetent may, by filing a petition, in which the facts concerning said change of domicile are stated, have the venue of said guardianship changed to the county of the acquired domicile.

History.—§1, ch. 14733, 1931; CGL 1936 Supp. 5893(1); am. §1, ch. 22750, 1945; (4) n. by §1, ch. 61-114.

744.12 Guardian ad litem.—Whenever an incompetent is made a party to any litigation pending in any court in this state and has no guardian, or when his interest is adverse to that of his guardian, such court shall appoint, with or without notice, a guardian ad litem for such incompetent. A guardian ad litem shall be responsible to such incompetent for his conduct in connection with such litigation in the same manner as if he were a regularly qualified guardian. A guardian ad litem shall make and file an oath to discharge his duties faithfully; however, this oath shall not be jurisdictional. The guardian ad litem may appear and plead without service of process upon him, and he shall appear and plead without service of process upon him if directed to do so by the court appointing him.

History.—§3, ch. 868, 1859; RS 2097; GS 2613; RGS 3974; CGL 5894; am. §1, ch. 22750, 1945.
cf.—§744.03(2), Definition.

744.13 Natural guardians.—

(1) The mother and father jointly are natural guardians of their own children and of their adopted children during infancy. If one parent dies, the natural guardianship shall pass to the surviving parent, and such right shall continue even though the surviving parent remarries. In the event of a divorce between the parents, the natural guardianship shall belong to the parent to whom the custody of the children was awarded. If the parents are given joint custody, then both shall continue as natural guardians. In the event a divorce is granted, and neither the father nor the mother is given custody of the children, then neither can act as natural guardian of the children. The mother of an illegitimate child is the natural guardian of such child.

(2) The mother and father jointly, or the survivor, may, without appointment, authority or bond, collect, receive, manage and dispose of any personal property inherited by, or otherwise accruing to the benefit of the child during infancy, when the amount involved in any instance does not exceed one thousand dollars; provided, however, that in case of a personal injury or other tort claim the power and authority of a natural guardian may be exercised only when the amount of any settlement or compromise of such claim does not exceed the sum of five hundred dollars.

(3) All receipts, bills of sale, releases or other instruments executed by a natural guardian under the powers provided for in subsection (2) of this section shall be binding upon the ward.

History.—§5, ch. 868, 1859; RS 2098; GS 2614; RGS 3975; CGL 5895; §1, ch. 22750, 1945; (2) a. by §1, ch. 61-395.

744.14 Testamentary guardian.— A surviving father or a surviving mother may by will name a guardian for the person of his or her minor child to serve during such child's minority or any part thereof. Such guardian shall be subject to the provisions of law in the same manner as other guardians.

History.—§2099, RS 1892; GS 2615; RGS 3976; CGL 5896; am. §1, ch. 22750, 1945.
cf.—§744.03(4), Definition.

744.15 Foreign guardians.—

(1) Foreign guardians who produce orders appointing them guardians, curators, conservators or committees, duly obtained in any state, territory or country and certified or exemplified according to law, shall be authorized to maintain actions in the several courts in this state under the same rules and regulations as other plaintiffs.

(2) Guardians appointed in any state, territory or country may be sued in this state with reference to property, real or personal, in this state, and may defend any suit, action or proceeding in any court of this state.

(3) Debtors who have received no written demand for payment from a guardian appointed in this state within three months after the appointment of a guardian, curator, conservator or committee in any state, territory or country other than this state, and whose property in Florida is subject to a mortgage or other lien securing such debt held by such foreign guardian, curator, conservator or committee, may make payment to the foreign guardian, curator, conservator or committee after the expiration of three months from the date of his appointment. A proper satisfaction of such mortgage or lien executed and acknowledged by the foreign guardian, curator, conservator or committee after said three months has expired, in the manner and form entitling the same to record in this state, with a duly certified or exemplified copy of the letters or other evidence of authority of such foreign guardian, curator, conservator or committee attached thereto, may be recorded in the public records of this state in like manner as other satisfactions; and when so recorded shall constitute an effective discharge of any such mortgage or lien, irrespective of whether the debtor making payment had received such written demand before paying the same.

(4) All persons indebted to a ward or having possession of personal property, either tangible or intangible, belonging to a ward, who have received no written demand for payment of such indebtedness or the delivery of such property from a guardian appointed in this state, are authorized to make payment of such indebtedness or to deliver such personal prop-

erty to the foreign guardian, curator, conservator or committee after the expiration of three months from the date of his appointment.

History.—§ § 1924, 2100, RS 1892; GS 2616; RGS 3977; CGL 5897; am. §1, ch. 22750, 1945.

744.16 Foreign guardian may manage the property of nonresident ward.—

(1) A guardian of the property of a nonresident ward, duly appointed by a court of another state, territory or country, who desires to manage any part or all of the real and personal property located in Florida of such nonresident ward, shall file a petition in the office of the county judge of the county wherein such property is located, setting forth his appointment, describing the property involved, stating the estimated value thereof, showing, to the best of his knowledge and belief, the indebtedness, if any, existing against the ward in this state and setting forth his desires with reference to such property.

(2) Such guardian shall also designate a resident agent as required by §744.46.

(3) Such guardian shall file with such petition, certified or exemplified copies of his letters of guardianship and of his bond or other security. Evidence satisfactory to said county judge shall be produced showing that the foreign bond or other security is sufficient to guarantee the faithful management of the ward's property in this state. The county judge in his discretion may require a new guardian's bond in this state in such amount as he deems necessary, to be executed in accordance with the laws of this state and to be conditioned for the proper management and application of the property of the ward coming into the custody of said guardian in this state. The county judge may make such order or orders with reference to said petition as he deems appropriate.

(4) This section shall apply to and be operative in all cases in which the guardian of a nonresident ward is appointed by a court, or is made such guardian by virtue of the laws of another state, territory or country. In cases in which, by virtue of the laws of such state, territory or country, a person becomes the guardian of an estate of an incompetent domiciled therein, without an appointment by a court, or is not required to give bond or other security as such guardian, then the production of copies of letters of guardianship and bond or other security, and the evidence referred to in this section, shall not be required; provided, that satisfactory proof to the county judge is produced that such guardianship exists under the laws of such state, territory or country; and provided, further, that bond may be required by the county judge in such amount as he may deem necessary.

History.—§1, ch. 5144, 1903; GS 2617; RGS 3978; CGL 5898; am. §1, ch. 22750, 1945.

744.17 Sale, mortgage or lease by foreign guardian of nonresident ward. — A foreign guardian of a nonresident ward may sell, mortgage or lease real or personal property of his ward in this state in the same manner as provided in this law for the sale, lease or mortgage of real or personal property by a resident guardian; provided, however, that such foreign guardian must designate a resident agent as required by §744.46; and provided, further, that the county judge having jurisdiction may require of such foreign guardian bond for the proper application of the funds arising from such sale, lease or mortgage, as in his discretion he may deem necessary to protect the interests of the ward and to protect the Florida creditors of the ward. Any deed, lease or mortgage executed by a foreign guardian of a nonresident ward under the provisions of this law, when authorized or confirmed by the county judge, shall be effective to convey, lease or mortgage the right, title and interest of the ward in the property involved.

History.—§1, ch. 5904, 1909; RGS 3979; CGL 5899; §1, ch. 14837, 1931; CGL 1936 Supp. 5902(1); am. §1, ch. 22750, 1945.

744.18 Resident guardian of the property of nonresident incompetent.—The county judge of a county in which property, real or personal, of a nonresident incompetent is located, which requires the care of a guardian, may appoint a resident of Florida as guardian of the incompetent's property upon the petition of a relative, next friend or creditor of such incompetent, regardless of whether he has a foreign guardian or not. The foreign guardian, if there is one, may also petition for the appointment of such resident guardian.

History.—§2, ch. 5144, 1903; GS 2618; RGS 3980; CGL 5900; am. §1, ch. 22750, 1945.

744.19 Petition for appointment of resident guardian for the property of nonresident incompetent.—

(1) The petition for the appointment of a resident guardian for the property of a nonresident incompetent shall be in writing, and shall be prepared in accordance with the requirements of §744.30.

(2) If it is alleged that the incompetency is due to mental or physical incapacity, the petition shall be accompanied by a duly certified or exemplified copy of the adjudication of unsoundness of mind or of physical incapacity from the qualified authorities in the state, territory or country where such incompetent is domiciled, and shall state whether said incompetent is in the custody of any person or institution, and if so, shall give the name and post-office address of the custodian. Said adjudication shall constitute prima facie proof of such incompetency.

(3) If the question as to the mental or physical incapacity of a nonresident is presented while he is temporarily residing in Florida, and if he is not under an adjudication of incompetency made in some other state, territory or country, the procedure for the appointment of a resident guardian of his property shall be the same as though he were a citizen of Florida.

(4) The county judge may, if he deems it advisable, require the petitioner to execute and file a bond with good and sufficient sureties in a penal sum to be fixed by the judge and

conditioned to pay the costs of such proceedings.

History.—§1, ch. 12042, 1927; CGL 5901; am. §1, ch. 22750, 1945.
cf.—§744.26, Bond, oath and duties.
§744.30, Petition for appointment of guardian.

744.20 Guardian ad litem for property of nonresident incompetent.—After the filing of the application for appointment of a resident guardian of the property of a nonresident incompetent, the county judge shall make an order in writing appointing an attorney at law as guardian ad litem to defend the interest of the person alleged to be incompetent, who shall take oath and traverse the allegations of the application and defend the interests of the person alleged to be incompetent.

History.—§2, ch. 12042, 1927; CGL 5902; am. §1, ch. 22750, 1945.

744.21 Notice of hearing on petition for appointment of resident guardian of the property of nonresident incompetent.—When the ground for the appointment of such guardian is minority or is incompetency previously adjudicated in another state, territory or country, notice of the hearing shall be served personally or by registered mail on such incompetent and his legal custodian, if any, and also on one or more members of his family or relatives, if any are known to the petitioner, at least ten days before the hearing.

History.—§1, ch. 14836, 1931; CGL 1936 Supp. 5902(2); am. §1, ch. 22750, 1945.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

744.22 Hearing on petition for appointment of resident guardian of the property of nonresident incompetent.—Upon the day set for the hearing on the petition for appointment of a resident guardian of the property of a nonresident incompetent, or on the date until which the hearing is adjourned for cause, the county judge, after hearing the evidence, shall issue an order granting or denying the relief sought in the petition.

History.—§2101, RS 1892; §1, ch. 4134, 1893; GS § § 2619, 2620; RGS 3981, 3982; CGL 5903, 5904; am. §1, ch. 22750, 1945.

744.23 Costs on appointment of resident guardian of the property of nonresident incompetent.—

(1) The county judge shall fix the compensation of the guardian ad litem and shall tax such compensation as costs in the case.

(2) If the petition is granted, the judgment for costs shall be against the guardian of the property of the nonresident incompetent, to be satisfied out of said property. If the petition is denied, the costs shall be against the applicant, or against the applicant and the obligors on the bond for costs, when such bond has been required.

History.—§2102, RS 1892; GS 2621; RGS 3983; CGL 5905; am. §1, ch. 22750, 1945.

744.24 Testimony at hearing on appointment of resident guardian of the property of nonresident incompetent.—Testimony to be used at the hearing on the petition for the appointment of a resident guardian of the property of a nonresident incompetent may be taken and filed, as provided in this law for the taking of testimony in other guardianship proceedings.

History.—§1, ch. 4720, 1899; GS 2629; RGS 3991; CGL 5913; am. §1, ch. 22750, 1945.

744.25 Preference in appointment as resident guardian of the property of nonresident incompetent. — In the appointment of such guardian the county judge shall be governed by the provisions of §744.35.

History.—§2, ch. 4720, 1899; GS 2630; RGS 3992; CGL 5914; am. §1, ch. 22750, 1945.

744.26 Bond, oath, duties and powers of resident guardian of the property of nonresident ward.—When a resident guardian of the property of a nonresident ward has been appointed, his duties as to oath and bond, and his other duties, powers and liabilities as to the custody, control, management and disposition of his ward's property, and as to his removal, accounting and discharge shall be governed by the laws of this state pertaining to resident guardians of property of resident wards.

History.—§2, ch. 1554, 1866; RS 2110; GS 2631; RGS 3993, CGL 5915; am. §1, ch. 22750, 1945.

744.27 Who may be appointed guardian of a resident incompetent.—

(1) RESIDENT.—(a) Any resident of Florida who is sui juris is qualified to act as guardian of the person or of the property, or of both, of an incompetent; provided, however, that no person who has been convicted of a felony, or who, from sickness, intemperance or want of understanding, is incompetent to discharge the duties of guardian, shall be appointed to act as guardian. A married woman may act as guardian in Florida without the consent of her husband. The guardian of the person and the guardian of the property may be the same person, or they may be different persons.

(b) No county judge shall act as guardian after this law becomes effective, except in cases in which he has qualified prior to his election as county judge and in cases in which he is related to his ward by blood, marriage or adoption. When any county judge is a guardian, he shall make his settlement as such guardian with a judge of the circuit court of the county where he resides in the same manner as other guardians are required by this law to make their settlements with the county judge.

(2) NONRESIDENT. — Any nonresident who is sui juris may be appointed guardian of the person but not of the property of a resident incompetent; provided, such nonresident complies with the laws of Florida relating to guardianship of incompetents.

(3) TRUST COMPANY OR NATIONAL BANK.—A trust company incorporated under the laws of Florida or a national banking association authorized and qualified to exercise fiduciary powers in Florida may act as guardian of the property of any incompetent.

History.—§1, ch. 1554, 1866; RS 2111; GS 2632; RGS 3994; CGL 5916; am. §1, ch. 22750, 1945.

744.28 Pleadings.—The pleadings before the county judge in guardianship matters shall be in writing and shall be signed by the pleader or

his attorney. All technical forms of pleading are abolished in guardianship matters. No defect of form shall impair substantial rights; and no defect in the statement of jurisdictional facts actually existing shall render void any proceedings. The pleadings and procedure with reference thereto shall be as nearly as possible the same as the pleadings and procedure under the probate law, as specified in §732.08.

History.—§1, ch. 9285, 1923; CGL 5933; am. §1, ch. 22750, 1945.

744.29 Notice and service.—

(1) Whenever a notice or citation is required to be published in a newspaper by any of the provisions of this law, unless otherwise specified by law, publication shall be once a week for four weeks in a newspaper authorized to publish legal notices in the county of the guardianship, four publications being sufficient. If no newspaper is published in the county of the guardianship, then such notice may be published as aforesaid in a newspaper authorized to publish legal notices in any adjoining county. In lieu of publication in a newspaper in an adjoining county, such notice or citation may be by posting at not fewer than three public places in the county of the guardianship, one of which shall be at the courthouse, such other places to be prescribed by the county judge.

(2) Proof of publication or of posting shall be by affidavit, and such proof shall be filed in the office of the county judge.

(3) Whenever notice or citation is required by any of the provisions of this law and the manner and duration of such notice or citation is not specified, such notice or citation may be in such manner and for such length of time before the hearing as the county judge in his discretion may deem proper.

(4) Service may be made within the state in the manner prescribed by law for the service of any summons by any official of this state, or service may be made by any person by delivery of a true copy of a notice or citation to the person to be served. The return of service when made by a person other than an officer shall be by affidavit. Serving of notice or citation may be made outside the state by any official authorized to make service in the state, territory or country where the person to be served resides or can be found, or such service may be made by any person; provided, that if service is made by a person other than an officer, the return shall be made by affidavit. Whenever it is necessary to make service upon an incompetent, the notice or citation shall be served upon such incompetent and also on the person in whose care and custody such incompetent may be.

(5) The return of service in every case shall state the date when the notice or citation was received by the person making the return, the date it was served, the place of service, the name of the person served and the manner of service. Returns shall be amendable so as to speak the truth, and when amended, shall be effective as of the date of the original return.

(6) Service of notice or citation may be waived in writing by any interested person who is sui juris.

(7) If any person upon whom notice or citation is served fails to respond within the time prescribed in the notice or citation or within such time as the county judge, under exceptional circumstances, may allow, then the matter shall proceed ex parte as to such person, and judgment may be entered in accordance with the right and justice of the case.

History.—§1, ch. 4034, 1891; GS 2633; RGS 3995; CGL 5917; am. §1, ch. 22750, 1945.

744.30 Petition for appointment of guardian. —Every petition for the appointment of a guardian shall be sworn to by the petitioner, his agent or his attorney, and shall be filed in the probate court having jurisdiction. The petition shall contain statements, to the best of petitioner's knowledge and belief, showing the name, age, residence and post-office address of the alleged incompetent, the nature of his incapacity, the approximate value and description of his property, the residence and post-office address of the petitioner, the names and addresses of the persons most closely related to the incompetent, or averments showing that reasonable search has been made and that such information cannot be ascertained without delay which would adversely affect the incompetent named in the petition, or his property.

History.—§2, ch. 4034, 1891; GS 2634; RGS 3996; CGL 5918; am. §1, ch. 22750, 1945.

744.31 Petition for appointment of guardian for a person mentally or physically incompetent.—No guardian of the person or of the property, or of both, of a person alleged to be mentally or physically incompetent can be appointed until after such person has been adjudicated to be incompetent in separate proceedings instituted for that purpose in accordance with §§394.20 to 394.22, inclusive, relating to the adjudication of incompetency. After such adjudication, a petition may be filed for the appointment of a guardian of either the person or of the property, or of both, of such person, and the general guardianship laws of this state shall apply to such petition and to all subsequent proceedings thereon. Any guardian appointed as a result of the filing of such petition shall be subject to the general guardianship laws of this state.

History.—§3, ch. 4034, 1891; GS 2635; RGS 3997; CGL 5919; am. §1, ch. 22750, 1945.

744.32 Subpoenas and depositions. — The county judge, upon application of any party, shall issue subpoenas and subpoenas duces tecum for the appearance of witnesses and the production of documents at any hearing. Depositions of witnesses in guardianship proceedings shall be taken, as nearly as possible, in the same manner as depositions are authorized to be taken under the probate law of Florida.

History.—§1, ch. 6943, 1915; RGS 3998; CGL 5920; am. §1, ch. 22750, 1945.

744.33 Notice of hearing on petition for appointment of guardian for an incompetent.—

(1) When the petition alleges that the na-

ture of the incapacity is minority, if the petitioner is not the parent and if the parents of the minor are living, reasonable notice of the hearing shall be given to them. When a parent applies for appointment as guardian of his minor child, no notice is necessary unless the other parent is living and refuses to consent to such appointment.

(2) When the petition for the appointment of a guardian alleges that the person named therein as respondent has been adjudicated to be physically or mentally incompetent, or both, the county judge shall hear the petition without notice if it is filed at the conclusion of the hearing in which such person was so adjudicated. If it is filed on a later date, then reasonable notice of the hearing shall be served on the respondent and also on one or more members of his family or relatives, if any can be found within the jurisdiction of the county judge, or if no such person can be found within the jurisdiction, then notice shall be given by such publication or otherwise as the county judge may think proper.

History.—§2, ch. 6943, 1915; RGS 3999; CGL 5921; am. §1, ch. 22750, 1945.

744.34 Order of appointment.—

(1) Upon the day fixed for the hearing on the petition for the appointment of a guardian, the county judge shall hear the evidence on the question of the competency of the person who is the subject of the hearing. An order of the county judge previously adjudicating a person to be incompetent shall constitute conclusive proof of such incompetency until reversed or set aside or until the competency of such person has been restored as provided by law. The county judge may hear testimony on the question as to who is entitled to preference in the appointment as guardian. Any person interested may intervene in such proceedings with leave of the county judge. If the county judge, on such hearing, is satisfied that the person who is the subject of the hearing is incompetent, he shall appoint a guardian of the person or of the property, or of both, as he may deem necessary. The order shall state the specific nature of the incapacity found to be existing. The order of appointment shall also specify the amount of the bond to be given by the guardian.

(2) The testimony adduced at the hearing may be transcribed and filed at the request of any of the parties or upon the direction of the county judge.

History.—§3, ch. 6943, 1915; RGS 4000; CGL 5922; am. §1, ch. 22750, 1945.

744.35 Preference in appointment.—In the appointment of a guardian the county judge shall give due consideration to the appointment of one of the next of kin of said incompetent who is a fit and proper person and qualified to act, and likewise to any person designated as guardian in any will in which the incompetent is a beneficiary. The county judge may in his discretion appoint any person who is qualified to act as guardian, whether related to the ward or not.

History.—§4, ch. 6943, 1915; RGS 4001; CGL 5923; am. §1, ch. 22750, 1945.

744.36 Oath of guardian.—Every guardian, before exercising his authority as guardian, shall take oath that he will faithfully perform his duties as guardian and that he will render true accounts whenever required according to law, which oath may be administered by any officer authorized to administer oaths under the laws of this state and shall be filed in the office of the county judge. This oath is not jurisdictional.

History.—§6, ch. 6943, 1915; RGS 4003; CGL 5925; am. §1, ch. 22750, 1945.

744.37 Oaths and affidavits. — Oaths, affirmations, verifications and affidavits required by law in guardianship proceedings may be made, either within or without the state, before any officer authorized by the laws of this state to administer oaths.

History.—§5, ch. 6943, 1915; RGS 4002; CGL 5924; am. §1, ch. 22750, 1945.

744.38 Bond of guardian.—

(1) Every person appointed a guardian of the property of a ward in Florida, before entering on his duties as guardian, shall be required by the county judge to execute and file in his office a bond with two or more sufficient sureties to be approved by the county judge, or an authorized surety company as surety. Such bond shall be payable to the governor of the state and his successors in office, conditioned to perform faithfully all duties as such guardian according to law. In form the bond must be joint and several.

(2) All bonds required in guardianship proceedings, whether original bonds or additional bonds, shall be filed in the office of the county judge having jurisdiction and shall be recorded by him.

(3) The requirements of this section shall not be applicable to banks and trust companies authorized by law to act as guardians.

(4) Signatures of principals and sureties other than surety companies on a guardian's bond shall be witnessed by two competent witnesses, but the failure to have such a signature witnessed shall not affect the validity of the bond.

(5) When the sureties on a bond are persons (and not a surety company), the guardian shall be required to file with his annual returns proof satisfactory to the county judge that the sureties are alive and solvent.

(6) The penal sum of a guardian's bond shall be fixed by the county judge in his discretion, and it must be in an amount not less than the full amount of the cash on hand and on deposit belonging to the ward, plus the value of the notes and bonds owned by the ward which are payable to bearer.

(7) The county judge, for good cause shown, may reduce the amount of bond of any guardian.

History.—§8, ch. 6943, 1915; RGS 4005; CGL 5927; am. §1, ch. 22750, 1945; sub. §(7), comp. §1, ch. 29717, 1955.

744.39 Bond of surety company.—Any surety company authorized to do business in this state may become surety upon the bond of a guardian;

and in such case, there need be only one surety on such bond.

History.—§7, ch. 6943, 1915; RGS 4004; CGL 5926; am. §7, ch. 22000, 1943; am. §1, ch. 22750, 1945.

744.40 **Letters of guardianship.**—While letters of guardianship are not necessary to the validity of an order appointing the guardian, the county judge may issue such letters to the guardian of the person or of the property or of both, and he must issue the same whenever a request is made by the guardian for such letters, and the cost of the issuance of such letters of guardianship shall be paid by the estate of the ward.

History.—§9, ch. 6943, 1915; RGS 4006; CGL 5928; am. §1, ch. 22750, 1945

744.41 **Insufficiency of bond.**—If any person files with the county judge having jurisdiction a petition alleging that the sureties on any bond given by a guardian are insolvent or insufficient or that the bond is insufficient in amount and substantiates the same with evidence satisfactory to the county judge, after notice to the guardian and his sureties and hearing on the petition, said judge may enter an order requiring additional sureties or an additional bond, as the circumstances require. If the county judge has such knowledge, though no petition has been filed, he may, after notice, enter such order sua sponte as the circumstances require.

History.—§10, ch. 6943, 1915; RGS 4007; CGL 5929; am. §1, ch. 22750, 1945.

744.42 **Validity of bond.**—No bond executed by any guardian shall be invalid because of informality in it or because of informality or illegality in the appointment of such guardian. Such bond shall have the same force and effect as if the bond had been executed in proper form and the appointment had been legally made.

History.—§11, ch. 6943, 1915; RGS 4008; CGL 5930; am. §1, ch. 22750, 1945.

744.43 **Liability of surety.**—No surety for any guardian shall be charged beyond the assets of the ward's property because of any omission or mistake in pleading or because of the false pleading of such guardian.

History.—§12, ch. 6943, 1915; RGS 4009; CGL 5931; am. §1, ch. 22750, 1945.

744.44 **Suit upon bond.**—A bond given by any guardian, upon the breach thereof, may be from time to time put in suit and prosecuted by or on behalf of the person damaged by such breach, until the whole penalty of such bond has been recovered. The county judge shall deliver to any person, on request and payment of his legal fees for the same, a true copy of any bond given by any guardian, and such copy duly certified, with the seal of the court affixed, shall be prima facie proof of the bond.

History.—§13, ch. 6943, 1915; RGS 4010; CGL 5932; am. §1, ch. 22750, 1945.
cf.—§746.10, Suit on removed guardian's bond.

744.45 **Release of surety.** — The surety or sureties, or the personal representative of any surety or sureties, on the bond of any guardian shall be released by the same procedure and on the same conditions as provided in §732.68, for the release of a surety in probate matters.

History.—§1, ch. 22750, 1945.

744.46 **Resident agent.**—

(1) Every foreign guardian who seeks to sell, lease, manage, control or mortgage any of his ward's property, real or personal, in the state, shall have his residence and post-office address recorded in the office of the county judge and designate in writing, which shall likewise be filed, some resident of the county where the guardianship property is located as his agent or attorney for the service of process, whose name, residence and post-office address shall likewise be recorded.

(2) A resident guardian removing his residence from the state shall also comply with the foregoing requirements.

(3) The aforesaid designation, in whatever form it may be, shall be taken to constitute the consent of the person so designating that service of any process upon the designated agent or attorney shall be sufficient to bind the person so designating in any suit or action against such person either in his representative capacity or personally; provided, only, that such personal action must have accrued in the administration of the guardianship estate.

History.—§1, ch. 22750, 1945.

744.47 **Costs.**—In all guardianship proceedings costs may be awarded in the sound judicial discretion of the county judge, and shall ordinarily abide the result of each particular proceeding unless, under the special circumstances of a particular case, it would be unjust that the losing party pay the costs. When the costs are to be paid out of the estate of the ward, the county judge may, in his discretion, direct from what portion of the estate such costs shall be paid.

History.—§1, ch. 22750, 1945; §13, ch. 59-1.

744.48 **Duties of guardian of the person.**—It is the duty of the guardian of the person to take care of the person of the ward, to treat him humanely, and if he is a minor, to see that he is properly educated and that he has the opportunity to learn a trade, occupation or profession.

History.—§1, ch. 22750, 1945.

744.49 **Powers of guardian of the person.**—The guardian of the person shall be entitled to the custody of the ward. Such guardian shall not have power to bind the ward or his property or to represent him in any legal proceedings pertaining to his property.

History.—§1, ch. 22750, 1945.

744.50 **Payments to guardian of the person.**—If the guardian of the person of the ward is other than the guardian of the property, either guardian may apply by petition to the county judge, upon reasonable notice to the other, for an order directing the guardian of the property to pay to the guardian of the person an amount

weekly, monthly, quarterly, semiannually, annually, or as the county judge may direct, to be expended in the support, care, maintenance and education of the ward, which amount may be increased or decreased from time to time in the discretion of the county judge. The decision upon such petition shall be in the discretion of the county judge. If such order is made, the receipt of the guardian of the person for payments made in pursuance thereof shall be a sufficient acquittance to the guardian of the property, and he shall not be bound to see to the application thereof.

History.—§1, ch. 22750, 1945.

744.51 **Duties of guardian of the property.**—It is the duty of the guardian of the property of the ward to protect and preserve it, to invest it prudently, to apply it as provided in §744.64, to account for it faithfully, to perform all other duties required of him by law, and at the termination of the guardianship, to deliver the assets of the ward to the person or persons lawfully entitled thereto.

History.—§1, ch. 22750, 1945.

744.52 **Guardian to take possession of all property.**—The guardian of the property shall take possession of all of the ward's property, real and personal, and of the rents, income, issues and profits therefrom, whether accruing before or after his appointment, and of the proceeds arising from the sale, lease or mortgage of the same or any part thereof. All such property and the rents, income, issues and profits therefrom shall be assets in the hands of the guardian for the payment of debts, taxes, claims, charges and expenses of the guardianship, and for the care, support, maintenance and education of the ward or his dependents, as may be authorized or approved by the county judge.

History.—§1, ch. 22750, 1945.

744.53 **Duty to file inventory.**—Within sixty days after his appointment the guardian of the property shall file with the county judge a complete verified inventory of the real and personal estate which has come to his knowledge and of any cause of action on which his ward has a right to sue or on which he has the right to sue in behalf of his ward. Said inventory shall be recorded in the office of the county judge having jurisdiction.

History.—§1, ch. 22750, 1945.

744.54 **Appointment and qualification of appraisers.**—Whenever the county judge deems it necessary, he may appoint two persons of discretion not related to the ward or to the guardian and not interested in the property, authorizing them to appraise the property of the ward that may come to their knowledge. The form of the warrant of appraisal shall be substantially that prescribed for the appointment of appraisers of the estates of decedents. On the death or on the neglect or refusal to act of an appraiser, another may be appointed by the county judge to act in his place. Before making the appraisal, the appraisers shall make and subscribe an oath or affirmation before any person authorized to administer oaths, substantially in the following form:

"We solemnly swear or affirm that without partiality we will truly appraise the estate of the ward (giving his name) so far as it may come to our knowledge, and that in all respects we will perform our duties as appraisers to the best of our ability."

History.—§1, ch. 22750, 1945.

744.55 **Form and return of appraisal.**—The appraisers shall list every article or parcel of property owned by the ward with its value in dollars and cents. When the appraisal is completed, but in any event within sixty days from the date of the warrant, unless the time is extended by the county judge, the appraisers shall certify it under their hands and seals and shall deliver it to the county judge.

History.—§1, ch. 22750, 1945.

744.56 **Compensation of appraisers.** — Each appraiser shall be entitled to receive for his services reasonable compensation to be fixed by the county judge after reasonable notice to the guardian of the property. Such compensation shall be paid by the guardian of the property from the estate of the ward.

History.—§1, ch. 22750, 1945.

744.57 **When appraisal unnecessary.**—If the whole estate of the ward consists of money, no appraisal thereof shall be necessary. The county judge may dispense with the appraisal of any estate whenever he deems an appraisement unnecessary.

History.—§1, ch. 22750, 1945.

744.58 **Inventory or appraisal as evidence.**—An inventory or appraisal may be used as evidence in any suit, by or against the guardian of the property, but it shall not be conclusive, for or against him, as to the real value of the estate, or that it was sold bona fide for more or less than the appraised amount.

History.—§1, ch. 22750, 1945.

744.59 **Subsequently discovered or acquired property.**—If the guardian learns of any property which is not included in the previous inventories or appraisals, such property shall be inventoried in like manner within sixty days after the discovery or acquisition thereof. Upon any subsequent appraisals the same or different persons may be appointed as appraisers.

History.—§1, ch. 22750, 1945.

744.60 **Compromise and settlement.**—Whenever it is proposed to compromise or settle any claim by or against the guardian or the ward, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the county judge, on sworn petition by the guardian setting forth the facts and circumstances of such claim, question or dispute and the proposed compromise or settlement, and on such evidence, if any, as may be introduced, if satisfied that

such compromise or settlement will be for the best interest of the ward, may enter an order authorizing the settlement or compromise to be made, which order shall operate to relieve the guardian from any further responsibility or liability in connection with such claim or dispute when such compromise or settlement has been made in accordance with said order. The order authorizing the compromise may also determine whether an additional bond is required, and if it is required, shall fix the amount thereof, but no such bond shall be required when the guardian is a bank or trust company. In making any compromise or settlement under court order, as provided in this section, the guardian is authorized and empowered to execute any release or waiver which may be necessary to effect the compromise or settlement. The execution of such instrument shall operate as a full and complete release to the person, firm or corporation making the settlement; provided, however, that compromise and settlement of a tort claim, not exceeding one hundred dollars, and other claims not exceeding five hundred dollars, may be had under this section or under §744.13.

History.—§1, ch. 22750, 1945.

744.61 Suits by and against guardian or ward.—All suits, actions or proceedings to establish the validity and amount of claims against the estate of the ward shall be brought jointly against the guardian and the ward, and in any such suit no guardian ad litem need be appointed. Suits to enforce or to declare rights of the ward shall be brought jointly in the name of the guardian and the ward. If suit is brought by the guardian against the ward or vice versa or if the interest of the guardian is adverse to that of his ward, then a guardian ad litem shall be appointed by the court to represent the ward in that particular litigation. Judgments in favor of the ward shall, upon termination of guardianship, become the property of the ward without the necessity for any assignment by the guardian or receipt by the ward. The guardian may receive payment and satisfy any judgment in behalf of the ward without any joinder of the ward.

History.—§1, ch. 22750, 1945.

744.62 Suspension of statutes of limitations in favor of guardian.—If a person entitled to bring an action is declared incompetent before the expiration of the time limited for the commencement thereof and the cause of the action survives, the action may be commenced by the guardian after such expiration and within twelve months from the date of the order appointing him.

History.—§1, ch. 22750, 1945.

744.63 Suspension of statutes of limitations in favor of claimants. — If a person against whom a cause of action exists is declared incompetent before the expiration of the time limited for commencement thereof and the cause of action survives, the action may be commenced against the guardian after such expiration and within twelve months from the date of the order appointing him.

History.—§1, ch. 22750, 1945.

744.64 Application of income of property of ward.—

(1) The county judge may authorize the guardian of the property to apply the income of the ward's property, first to his care, support, education and maintenance, and then any surplus, as far as the county judge deems necessary, for the care, support, education and maintenance of the dependents, if any, of such ward. If the income is not sufficient for such purposes, the county judge may authorize the expenditure of such portion of the principal as he deems necessary from time to time for such purposes.

(2) If the ward is a minor and his parents are able to care for him and to support, maintain and educate him, the guardian of the property of such minor shall not be required so to use his ward's property unless directed or authorized to do so by the county judge.

History.—§1, ch. 22750, 1945.

744.65 Petition for support of ward's dependents.—Any person lawfully entitled to support from the ward may apply by petition, personally, or if he is incompetent, by his guardian, to the county judge appointing the guardian for an order directing the guardian of the ward's property to contribute to the support of the applicant from the property of the ward in his possession or from the income therefrom. The county judge may enter an order for the suitable support and education of the applicant out of the ward's property or the income thereof. Such order may be appealed by the guardian or the applicant, or by the ward if the guardianship is terminated before the expiration of the time for taking an appeal. The granting or denial of such order for support, or the expiration of time for appeal therefrom, shall not preclude a further application for increase, decrease, modification or termination of such allowance for support by either the applicant or the guardian. Such order for support shall be valid as to payments made in pursuance thereto, but no valid payments can be made thereunder after the termination of the guardianship. The receipt of the applicant shall be a sufficient acquittance to the guardian for any payments made in pursuance of such order for support. If the property of the ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance or other benefits made directly to the guardian by the veterans' administration, notice of the application for support shall be given by the applicant to the chief attorney for the administrator of veterans' affairs in this state at least ten days before the hearing on the application.

History.—§1, ch. 22750, 1945.

744.66 Continuance of business. — In all cases where it is necessary, in the opinion of the county judge, to continue the business of

a ward, such business may be continued by the guardian of the property under the supervision of the county judge, and according to the rules and regulations specified in §733.08 under which a personal representative is allowed to continue the business of a decedent.

History.—§1, ch. 22750, 1945.

744.67 Cultivation of lands.—A guardian of the property may cultivate his ward's lands, hire labor, and make contracts for the purpose of such cultivation; provided, that the county judge first authorizes the cultivation of such land.

History.—§1, ch. 22750, 1945

CHAPTER 745

FLORIDA GUARDIANSHIP LAW, SECOND PART

745.01 Leases of ward's property.— The guardian may lease all or any of the ward's property, except for exploration and exploitation of oil, gas or mineral rights, upon such terms and for such length of time as the county judge may authorize or confirm. Proceedings in such cases shall be, as nearly as possible, as in cases of applications to sell property of the ward.

History.—§3, ch. 868, 1859; RS 2103; GS 2622; RGS 3984; CGL 5906; am. §2, ch. 22750, 1945.

745.02 Leases of oil, gas, or mineral rights. —The guardian of the property of the ward may make oil, gas or mineral leases upon the real estate of the ward under the following rules:

(1) The guardian shall file a sworn petition with the county judge appointing him for authority to make any such oil, gas or mineral lease, and the county judge who hears such application shall require proof as to the necessity or advisability of such lease; and if he approves the same, he shall enter an order authorizing the guardian to make such oil, gas or mineral lease. Such order shall set out the consideration for which such land may be leased for oil, gas or mineral purposes, shall give the name of the lessee, and shall contain a copy of said oil, gas or mineral lease authorized to be made. It shall not be necessary to state in said petition, nor in any order entered thereon, nor in any lease executed in pursuance of such order, the exact interest of the ward in the property.

(2) Previous notice thereof shall be given by the guardian for one week prior to the time the county judge shall hear such petition, by publishing the same in some newspaper of general circulation in the county in which leases are to be issued, and in the county where the land is located, one issue of the paper in each county being sufficient. Said notice shall state when and where such petition will be heard. If no such newspaper is published in the county or counties where such notice is required to be given, then said notice shall be posted at the courthouse door and at two other conspicuous places in each such county, as may be specified by the order of the county judge, for seven days next preceding the date of such hearing. No citation or notice, other than that provided in this subsection, shall be necessary to give the court jurisdiction over the subject matter and the parties.

(3) The hearing may be continued by the county judge from time to time, or the petition may be heard at any time after the date specified in the notice, whether formally continued by the court or not.

(4) If such petition is granted, the guardian shall be authorized to make the oil, gas or mineral lease upon the real estate of the ward in accordance with the order of authorization, but such oil, gas or mineral lease shall not be valid until the guardian files a good and sufficient bond with surety in double the amount of the cash bonus that may be paid for such leases, or in the event that no cash bonus is paid, then such sum as may be fixed by the county judge.

(5) Any lease made by a guardian under the authority of this section may provide for the pooling or unitization of the leased land, or any part or parts thereof, and of any mineral or royalty interest therein, with land adjoining or in the vicinity of the leased land, or any mineral or royalty interest therein, so as to form a unit for development and purpose of operation. Operations on any such unitized area shall have the same effect as operations on the leased land. The lease may provide for payment of a proportionate part of the royalties on production from any such unitized area to the guardian in lieu

of the royalties provided in the lease as to the area so unitized.

History.—§5, ch. 868, 1859; RS 2104; GS 2623; RGS 3985; CGL 5907; am. §2, ch. 22750, 1945.

745.03 Investments by guardian of the property.—

(1) A guardian shall exercise the prudence of an ordinary business man in keeping the funds of his ward invested. In the investment of the funds of his ward, a guardian shall be governed by the provisions of chapter 518, except as hereinafter noted in this section.

(2) The court may authorize the purchase of the entire fee simple title to real estate in Florida in which the guardian has no interest, but such purchase can be made only for a home for the ward, or to protect the home of the ward or his interest, or if he is not a minor, then as a home for his dependent family. Such purchase of real estate shall not be made except upon an order of the county judge after hearing upon a verified petition.

(3) The guardian may, with the approval of the county judge, exercise any option contained in any policy of insurance payable to or inuring to the benefit of the ward.

History.—§3, ch. 2014, 1874; RS 2105; GS 2624; RGS 3986; CGL 5908; am. §2, ch. 22750, 1945.

cf.—§518.01 et seq., Investment of fiduciary funds.

745.04 Encumbering property of ward.—

(1) Whenever it appears expedient or necessary and for the best interest of the ward to borrow money upon a promissory note or notes, either unsecured or to be secured by a mortgage, pledge or other lien upon the property of the ward or any part thereof, including crops then planted and growing or thereafter to be planted and grown, the county judge may by order authorize the guardian of the property to borrow such sum as the county judge deems proper. The proceedings in such cases shall be, as nearly as possible, the same as in cases of applications for the sale of the ward's property. In like manner the county judge may authorize the guardian to extend or renew any existing obligation of the ward, or any mortgage, pledge, lien or other security therefor. The signing of promissory notes or the execution of any agreement or other instrument creating a pledge or lien by the guardian as such, pursuant to an order obtained in accordance with the provisions of this section, shall create no personal liability against the guardian so signing or executing.

(2) To secure the payment of any loan made for the benefit of the ward, the guardian may execute a mortgage or other lien on the property of the ward or any part thereof, and the same shall be valid when authorized or confirmed by the county judge. The indebtedness so secured shall be the obligation of the estate of the ward.

(3) If, as an incident to the borrowing of money, the purchase of stock in the lending agency is required, the county judge may authorize such purchase in whatever amount he deems necessary.

History.—§4, ch. 2014, 1874; RS 2106; GS 2625; RGS 3987; CGL 5909; am. §2, ch. 22750, 1945.

745.05 Sale.—When the guardian of the property deems it expedient, necessary or for the best interest of the ward for part or all of the property to be sold, he may sell at public or private sale, but no title shall pass until the sale is authorized or confirmed by order of the county judge; provided, however, that the guardian may sell without authorization or confirmation by the county judge any notes or bonds payable to bearer, and any sale so made shall convey all right, title and interest of the ward in the intangible personalty so sold; and provided, further, that inchoate right of dower of the ward shall be conveyed only as provided in §745.15.

History.—§5, ch. 2014, 1874; RS 2107; GS 2626; RGS 3988; CGL 5910; am. §2, ch. 22750, 1945.

745.06 Petition for leave to sell.—Application for authorization or confirmation shall be made by the petition of the guardian setting forth with particularity in facts showing the expediency or necessity for such sale, a description of the property sold or proposed to be sold, and except when authorization or confirmation of the sale at current market of stocks, bonds or other securities listed upon an established exchange is applied for, the price and terms of such sale. If the petition seeks authorization for the sale of property at public sale, it shall state the minimum price for which it is desired to sell the property and shall state that, if the sale takes place, it shall be sold to the highest bidder, if any, above such minimum price. Applications for sale may be heard by the county judge ex parte, except as provided in §§745.07 and 745.08. The petition must be sworn to by the guardian, his agent or his attorney.

History.—§6, ch. 2014, 1874; RS 2108; GS 2627; RGS 3989; CGL 5911; am. §2, ch. 22750, 1945.

745.07 Notice of hearing on petition to sell.—No notice of any petition for the authorization or the confirmation of any sale of perishable personal property or of property rapidly deteriorating shall be required. No notice of any petition for the authorization or the confirmation of any sale of any kind of property shall be required unless the county judge deems it necessary or desirable, and then only such notice shall be given, personally or by publication, as the county judge may direct.

History.—§7, ch. 2014, 1874; RS 2109; GS 2628; RGS 3990; CGL 5912; am. §2, ch. 22750, 1945.

745.08 Hearing.—When no notice is required, the county judge may hear and determine petitions for the sale of the ward's property ex parte. When notice is required, such hearing shall be as in other cases. At such hearing the county judge may in his discretion require a new appraisal of the property.

History.—§2, ch. 22750, 1945.

745.09 Order of sale.—After the hearing upon a petition to sell property or to confirm the sale of property, the county judge shall make and enter an order thereon, and if the sale is authorized or confirmed, the order shall describe the property; and if the property is authorized to be sold at private sale, the order shall

fix the price and the terms of sale. If the sale is to be public, then the order shall state the minimum price for which the property is to be sold and shall specify that the sale shall be made to the highest bidder above such price, if any. The order may also determine whether an additional bond is required, and if it is required, shall fix the amount thereof, but no such bond shall be required when the guardian is a bank or trust company. Such order shall be prima facie evidence of the validity of the proceedings and of the authority of the guardian to make a conveyance or transfer of the property. A certified copy of such order relating to real property may be recorded in the judgment lien record in the office of the clerk of the circuit court in any county wherein such real property or any part thereof is situated. An order of sale may provide for the sale of any of the property described therein, either publicly or privately, in parcels or as a whole.

History.—§2, ch. 22750, 1945.

745.10 Notice of sale.—When a guardian of the property has been authorized to sell any of his ward's property at public sale, the guardian shall give such notice as the order requires. No notice of a sale of property to be made at private sale is necessary unless the county judge so orders.

History.—§2, ch. 22750, 1945.

745.11 Sale upon terms.—The guardian must sell upon such terms as the order prescribes. If credit is given, it shall not be for more than seventy-five per cent of the purchase price nor for longer than five years, unless the county judge, in his discretion by written order, authorizes a larger per cent of credit. The county judge, in his discretion by written order, may also enlarge the time for payment. The exercise of such discretion shall be evidenced by written order duly recorded. The maturity of credit may extend beyond the duration of the incompetency of the ward.

The deferred purchase price shall be evidenced by the negotiable promissory note of the purchaser payable to the guardian and secured by mortgage or pledge, which shall be a first lien upon the property sold, or by such other security as may be approved by the county judge in any case. If the guardianship terminates before the payment in full of such note, the note and mortgage or other security may be assigned and transferred without recourse to the person entitled thereto. The taking of a mortgage securing a note or the taking of other security shall not defer the final settlement and discharge of the guardian.

History.—§2, ch. 22750, 1945; §1, ch. 61-184.

745.12 Sale of stocks and bonds.—The county judge may, upon petition of the guardian, make an order authorizing the sale at the current market price of any stocks or bonds which are listed upon an established stock or bond exchange, and such order need not otherwise designate the price at which such sale shall be made.

History.—§2, ch. 22750, 1945.

745.121 Stock held in name of personal representative.—Upon entry of an order or decree of a court of competent jurisdiction, the guardian or guardians shall have the power and authority to hold any corporate stock or mutual investment trust shares in the name of the guardian or in the name of one or more of the joint guardians, or in the name of a nominee, with or without disclosing any fiduciary relationship; but for all acts and omissions of the guardian or guardians in whose names such property is held, and of such nominee, relating to such property, all the guardians shall be jointly and severally responsible.

History.—§1, ch. 61-327.

745.13 Sale by commissioner.—In any order of sale or at any time before the sale, the county judge, whenever he deems it necessary, may appoint a commissioner to make the sale and to execute the deed consummating it. Any sale made by a commissioner shall be in compliance with the provisions of this law governing sales. Any sale so made and any deed executed by a commissioner on such an order shall be as valid as though made by the guardian.

History.—§2, ch. 22750, 1945.

745.14 Guardian forbidden to purchase.—No guardian shall ever purchase property of the ward, unless sold at public sale, and then only if the guardian is a spouse, parent, child, brother or sister of the ward and is a cotenant of the ward in the property to be sold.

History.—§2, ch. 22750, 1945.

745.15 Conveyance of various property rights; inchoate dower; joinder on behalf of incompetent husband or wife; estates by entirety; determination of values.—A guardian of the property may, on petition and order and upon such terms as the order directs, execute and deliver a deed, lease or mortgage in the name of the ward, conveying, leasing, mortgaging or releasing any actual or apparent right or interest of the ward in any property, real or personal, and in all cases the value, if any, of the ward's right or interest shall be preserved and protected by the court's order.

(1) A guardian of the property of an adjudged incompetent wife may, without monetary consideration and with or without court order, join with the husband in the sale, mortgage or lease of any of the husband's property in which the wife has no interest other than her inchoate right to dower, to the same extent and effect as if such joinder were by the wife herself sui juris.

In case an incompetent wife has no estate of value requiring active administration but has only an inchoate right of dower in her husband's property, which property he desires to sell, mortgage or otherwise convey, the court may, on proper petition, enter an order appointing the husband or other qualified person as the wife's property guardian without bond, and the court may in the same order make appropriate findings and may authorize said guardian, as

such, to join with the husband without monetary consideration for the purpose of releasing the wife's dower in the husband's property described in the petition and order, and such joinder shall be to the same extent and effect as if by the wife herself sui juris.

(2) A guardian of an adjudged incompetent husband may without consideration and with or without court order join with the wife in the sale, mortgage or lease of any of the wife's separate estate, real or personal, to the same extent and effect as if such joinder were by the husband himself sui juris.

In case an incompetent husband has no estate of value requiring active administration but has only the right of joinder with respect to conveyances of his wife's separate estate, the court may, on proper petition, enter an order appointing the wife or other qualified person as her husband's property guardian without bond, and the court may in the same order make appropriate findings and may authorize said guardian, as such, to join with the wife without monetary consideration for the purpose of effectuating the conveyance of her separate property as described in the petition and order, and such joinder shall be to the same extent and effect as if by the husband himself sui juris.

(3) (a) All interests, whether legal or equitable, in real estate and in personal property and in intangible property in this state, owned by the entirety by any married man or married woman who has been adjudged insane or mentally or physically incompetent and for whom a guardian has been appointed, may be sold and conveyed upon the application of his or her guardian in the same manner as other property of said person adjudged incompetent may be sold and conveyed; provided, however, that the husband and wife, who is not incompetent, shall join in the sale or conveyance of any property sold or conveyed under the authority hereof.

(b) In ordering or approving sale and conveyance of such real, personal or intangible property the court shall provide that one-half of the net proceeds derived therefrom shall go to the guardian of the property of the incompetent and the other one-half of the net proceeds shall go to the husband or wife who is not incompetent.

(c) The guardian of the property of the incompetent shall collect all payments coming due on intangible property, such as notes and mortgages and other like securities, and shall retain one-half of all principal and interest payments so collected and shall pay the other one-half of such collections to the husband or wife who is not incompetent.

(d) The guardian of the property of the incompetent shall collect all payments coming due for rents on real estate held as an estate by the entireties and after paying all charges against said property such as taxes, insurance, up-keep and repairs, shall retain one-half of all the net rents so collected and shall pay the other one-half of such net rents so collected to the husband or wife who is not incompetent.

(4) In determining the value of life estates or remainder interests, the American experience mortality tables may be used.

(5) Nothing contained in this section shall be construed to apply to homesteads under §1, article X, of the constitution of Florida.

History.—§2, ch. 22750, 1945; am. §1, ch. 23715, 1947. Sub. §(3) am. §1, ch. 26917, 1951.

745.16 Conveyance pursuant to contract of ward.—In all cases where written agreements have been made for the sale and conveyance or transfer of real property in this state, or personal property, and the vendor has been placed under guardianship before making such conveyance or transfer, the guardian or the person claiming the right to such conveyance or transfer may file with the county judge issuing the order of appointment a sworn petition setting forth the facts upon which the claim is predicated and annexing thereto the agreement or a copy thereof. The petitioner shall serve upon the guardian or the claimant, as the case may be, reasonable notice of the hearing. After the hearing upon such petition and the defenses, if any, made thereto, the county judge may make an order directing the guardian to make, execute and deliver the conveyance or transfer of the ward's interest to the person entitled to it, or otherwise as justice may require. Such order, if the conveyance or transfer is directed, shall describe the property to be conveyed or transferred. Such order shall be prima facie evidence of the validity of the proceedings and of the authority of the guardian to make the conveyance or transfer. A certified copy of any such order relating to real property may be recorded in the judgment lien record in the office of the clerk of the circuit court in any county wherein such real property or any part thereof is situated.

History.—§2, ch. 22750, 1945.

745.17 Sale of contract to purchase.—If the ward, at the time of the appointment of the guardian, possesses a contract for the purchase of real or personal property, his interest therein may be sold by the guardian in the same manner as if the ward had been the owner in fee simple or absolute owner of such property; provided, the owner of the interest or estate in such property which the ward has contracted to purchase and of the vendor's interest thereto shall execute a release to the guardian and the ward relieving them and the ward's property from liability upon such contract. In lieu of such release the guardian may, upon order of the county judge, take from the purchaser of such contract a bond to be approved by the county judge with sureties in a penal sum double the amount due and to become due under such contract, payable to the guardian, conditioned that the purchaser will make all payments upon such contract and perform all agreements therein contained according to the tenor thereof and indemnify and save harmless the guardian and the ward against all demands, costs, charges and expenses by reason of such contract.

History.—§2, ch. 22750, 1945.

745.18 Sale of property subject to contract to purchase.—If the ward, at the time of the appointment of the guardian, is the owner of real or personal property subject to a contract to sell and convey such property, the interest of the ward in such property and such contract may be sold under the order of the county judge in the same manner as guardians may make other sales. No recourse shall be had against the guardian or the ward for the nonpayment or nonperformance by the vendee under any such contract. The consent of the vendee under said contract shall discharge the guardian and the ward from all obligations, duties and liabilities with respect to such contract.

History.—§2, ch. 22750, 1945.

745.19 Sale of property subject to mortgage.—The county judge may, upon petition of the guardian and with or without the written consent of the holder of the mortgage, authorize the sale of any property owned by the ward in this state subject to mortgage, whether such mortgage was made by the guardian, the ward or some other person. The written consent of the mortgagee shall discharge the guardian and the ward from liability for the mortgage indebtedness or obligation.

History.—§2, ch. 22750, 1945.

745.20 Power of guardian to execute instruments.—The guardian shall have power to execute and deliver in his name as guardian any instrument necessary or proper to carry out and give effect to the orders of the county judge.

History.—§2, ch. 22750, 1945.

745.21 Purchasers and lenders protected.—No person purchasing or leasing from, or taking a mortgage, pledge or other lien from, a guardian shall be bound or concerned to see that the money or other things of value paid to such guardian are actually needed or properly applied; nor is such person otherwise bound as to the proprieties or expediencies of the acts of such guardian. In all such transactions the acts of the guardian shall prima facie be valid.

History.—§2, ch. 22750, 1945.

745.22 Certain sales validated.—Any sale of real estate heretofore made by any guardian and any deed made pursuant thereto under an order of the circuit court or county judge is made as valid and effectual as if the law had authorized such sale and deed to be made under such order by the guardian conducting the same; provided, such sale was made three years prior to January 1, 1946.

History.—§2, ch. 22750, 1945.

745.23 Power of election and of appointment.—The county judge, on his own motion or upon the petition of the guardian or of any person whose property interest might be affected thereby, may enter an order that any election, whether to dissent from a will or to exercise any other choice which the ward might exercise himself if sui juris or competent, shall be exercised or not exercised, or exercised in a particular manner or at a particular time, as the best interest of the ward may require. The county judge, on his own motion or on the petition of the guardian or of any person who is or may become an heir, legatee, devisee or successor in interest of or to the ward, may enter an order that the guardian, acting for the ward, shall do such act or acts or execute such documents as may be necessary or proper, to exercise, consummate or execute any power of appointment or other power which the ward might have lawfully exercised, consummated or executed if sui juris or competent, as the best interest of the ward requires. No order shall be entered under the authority of this section, except upon such notice or citation as the county judge may require, to all persons whose property interest might be affected thereby.

History.—§2, ch. 22750, 1945.

745.24 Annual returns.—A guardian, unless otherwise ordered by the county judge, shall make his annual returns on or before April 1 of each year, for the calendar year or fractional calendar year expiring December 31 preceding. If he fails to make such returns before such time, he may in the discretion of the county judge forfeit all commission on such returns so to be made.

History.—§2, ch. 22750, 1945; §1, ch. 59-322.

745.25 Contents of returns.—A guardian in his returns shall render a full and correct account of the receipts and disbursements of all his ward's property of which he has control, and he shall include therein a statement of the ward's assets. The guardian shall also file with his returns evidence satisfactory to the county judge that the sureties on his bond, if individuals, are alive and solvent.

Substantiating papers shall not be filed with accountings, but pertinent substantiating papers and records shall be available at a trial of objections to accountings, and all substantiating papers and records shall be preserved by the guardian for three years after his discharge.

History.—§2, ch. 22750, 1945; 2nd par. n. by §2, ch. 59-322.

745.26 Objections to returns.—

(1) Upon the filing of returns with the county judge by the guardian as provided in this law, any person interested as creditor or otherwise, after the filing of such returns, may file objections in writing thereto or to any item thereof within thirty days after April 1st of each year, specifying the grounds of objection. No item previously approved by order of the county judge upon notice shall be subject to objection.

(2) If any guardian fails to file his annual returns on or before the first day of April in any year, any person interested in the estate may file in the office of the county judge a written demand for service of a copy of the returns, which demand shall contain the post-office address of the person filing it. If any demand is on file at the time the returns are filed, the guardian shall serve a copy of the returns upon the person who filed the demand therefor and

shall file proof of service thereof in the office of the county judge. Objections may be filed to the returns at any time within thirty days after the service of a copy thereof.

History.—§2, ch. 22750, 1945.

745.27 Hearing of objections.—If objections to the returns are filed, the guardian or the objecting person, after the expiration of the time limited for filing objections and upon reasonable notice to the other, may apply to the county judge for a hearing. After the hearing, the county judge shall enter an order finally sustaining or overruling the objections, and he shall thereupon proceed to enter his order thereon.

History.—§2, ch. 22750, 1945; §3, ch. 59-322.

745.28 Examination of returns not objected to.—If no objection is filed to any returns within the time limited by law for filing objections, the county judge shall proceed to examine said returns and enter his order approving the same or requiring such proof of the items contained therein as the county judge shall find desirable.

History.—§2, ch. 22750, 1945; §4, ch. 59-322.

745.29 Order requiring returns; contempt.—When any guardian fails or neglects to make the annual returns as required by this law, the county judge shall issue an order directing said guardian to make such returns within fifteen days from the service upon him of such order or show cause why he should not be compelled to do so. A copy of such order shall be served upon the guardian or upon his resident agent. If the said guardian fails, neglects or refuses without good cause shown to file his returns within the time specified by said order, the county judge shall forthwith issue a citation directed to said guardian to show cause why he should not be adjudged in contempt of court for such failure or neglect, and if such guardian fails to show just cause, the county judge may forthwith adjudge said guardian to be in contempt of court, and said person shall stand committed for contempt until he makes the annual returns.

History.—§2, ch. 22750, 1945; §5, ch. 59-322.

745.30 Production of assets.—Upon the petition of any creditor or other interested person or upon his own motion, the county judge may require any guardian to produce satisfactory evidence that the assets of the ward are in his possession or under his control. If he deems it necessary or proper, the county judge may order the guardian to produce such assets for the inspection of such creditor or other interested person, or of said judge.

History.—§2, ch. 22750, 1945.

745.31 Devastavit.—

(1) An action suggesting devastavit may be brought against the guardian of the property and his surety, jointly or separately, by any person interested in the ward or his property. When a guardian dies, resigns or is removed, an action suggesting devastavit may be brought also against him or his executor or administrator and against his surety by the remaining or successor guardian.

(2) When an action suggesting devastavit is brought against any guardian, if such guardian cannot show that he has fully administered according to law, he and his sureties shall be personally charged to the extent of assets not duly administered by him.

History.—§2, ch. 22750, 1945.

745.32 Expenses and compensation. — A guardian of the property of a ward shall be allowed all necessary expenses and attorney's fees paid in the care, management and settlement of the ward's property. A guardian shall be allowed such compensation as the county judge may deem just and reasonable for his services, including services rendered in the sale of real or personal property, the conduct of litigation on behalf of or against the ward or his property, the carrying on of the ward's business pursuant to orders of the court and for any other services which may be found by the county judge to have been proper and necessary.

History.—§2, ch. 22750, 1945.

745.33 Attorney's fees and expenses.—

(1) An attorney who has been employed by a guardian and who has rendered service to the ward or to the guardian in the ward's behalf, may apply to the county judge by petition for an order making an allowance for attorney's fees. After notice to the guardian, the county judge shall make such order with respect thereto as he shall deem proper.

(2) In annual and final returns the guardian shall be entitled to credit for such reasonable sums as he may have paid to an attorney for expenses and services rendered to the ward or to the guardian in behalf of the ward and to credit for his own reasonable expenses in connection with the guardianship. Objections may be made to the allowance of such items in the manner specified in §745.26, unless such items have been previously allowed by the county judge.

(3) If the guardian is a practicing attorney at law in this state and has rendered legal services in connection with his guardianship duties, he shall be allowed just and reasonable fees therefor in addition to his expenses and compensation provided by law for him as guardian.

History.—§2, ch. 22750, 1945.

CHAPTER 746

FLORIDA GUARDIANSHIP LAW, THIRD PART

746.01 Resignation of guardian. — Any guardian, upon petition to and with the approval of the county judge of the county where the guardianship is pending, may resign and be relieved of his guardianship after such notice as the county judge in his discretion may require; provided, that such notice shall also be served upon the surety or sureties on the bond of the guardian; and provided, further, that before making an order relieving the guardian from his duties and obligations as such, the county judge shall require him to make and file a true and correct account of his guardianship and to deliver to his successor guardian any and all property of the ward and all books of account, cash, bonds, notes or other securities, documents or other papers concerning the property of the ward, together with all the sums of money due by him. The county judge, before making such order, shall be satisfied that the interest of the ward will not be placed in jeopardy by such action; provided, always, that the acceptance of such resignation shall not be construed to exonerate any guardian or his surety from any liability previously incurred.

History.—§1, ch. 17976, 1937; CGL 1940 Supp. 5919(1); §1, ch. 20928, 1941; am. §3, ch. 22750, 1945.

746.02 Appointment of successor.—A successor guardian must be appointed and duly qualified before a guardian shall be relieved of his duties and obligations as provided in the preceding section.

History.—§2, ch. 17976, 1937; CGL 1940 Supp. 5919(2); §2, ch. 20928, 1941; am. §3, ch. 22750, 1945.

746.03 Reasons for removal of guardian.—Any guardian may be removed and the order appointing him revoked for any of the following reasons, and such removal shall be in addition to, and not in lieu of, any other penalties prescribed by law:

(1) Fraud in obtaining his appointment.
(2) Failure to discharge his duties.
(3) Abuse of his powers.
(4) Insanity or other incompetency.
(5) Habitual drunkenness or continued sickness rendering him incapable of the discharge of his duties.
(6) Failure to comply with any order of the county judge unless such order has been superseded on appeal.
(7) Failure to return schedules of property sold or accounts of sales of property or to produce and exhibit the ward's assets when so required.
(8) Wasting or embezzlement or other mismanagement of the ward's property.
(9) Failure to give bond or security for any purpose when so required by the county judge in accordance with the requirements of the law or failure to file with his annual returns the evidence required by §744.38 that the sureties on his bond are alive and solvent.
(10) Conviction of a felony.
(11) Appointment of a receiver or liquidator for any corporate guardian.
(12) Failure of a resident guardian who removes from Florida to designate a resident agent with the residence and post-office address of such agent.

History.—§3, ch. 17976, 1937; CGL 1940 Supp. 5919(3); am. §3, ch. 22750, 1945.

746.04 Jurisdiction and proceedings for removal.—Proceedings for removal may be instituted by the county judge on his own motion or by any surety or other interested person. A petition for the removal of a guardian must be sworn to and filed in the office of the county judge having jurisdiction of the guardianship at the time the petition is filed. Reasonable notice shall be given to the guardian. Upon the hearing the county judge may enter such order as he deems proper under the pleadings and the evidence.

History.—§4, ch. 17976, 1937; CGL 1940 Supp. 5919(4); am. §3, ch. 22750, 1945.

746.05 Accounting upon removal.—A removed guardian shall file, within twenty days after his removal, unless for good cause shown the time is extended by the county judge, a true, complete and final account of his guardianship in the office of the county judge removing him.

History.—§5, ch. 17976, 1937; CGL 1940 Supp. 5919(5); am. §3, ch. 22750, 1945.

746.06 Surrender of assets upon removal.—The successor guardian shall demand of the removed guardian, or his heirs, personal representative or surety all the property of the ward and all books of account, cash, bonds, notes or other securities, documents or other papers concerning the property, together with all sums of money due the ward by him. The removed guardian, or his

heirs, personal representative or surety shall turn over to his duly qualified successor all said property upon qualification of his successor and upon demand made as aforesaid.

History.—§6, ch. 17976, 1937; CGL 1940 Supp. 5919(6); am. §3, ch. 22750, 1945.

746.07 Proceedings for commitment.—If a removed guardian fails or refuses to file a true, complete and final account of his guardianship as required, or if he fails to turn over, on demand, to his successor all the property of his ward and all the books of account, cash, bonds, notes, securities, documents and other papers which are in his control and which concern the property of the ward, or if he fails to pay over to such successor guardian all the sums of money due the ward by him, it shall be within the discretion and power of the county judge, and it shall be his duty when such default is not attributable to a cause which is justifiable, to commit such removed guardian until he complies fully with the requirements of the law in the respects indicated. If sufficient cause is shown for the default, the county judge shall then indicate a reasonable time within which compliance with the law shall be required; and upon failure to comply with this or any subsequent like order, the defaulting removed guardian may be committed by the county judge until said guardian does comply.

History.—§7, ch. 17976, 1937; CGL 1940 Supp. 5919(7); §3, ch. 20928, 1941; am. §3, ch. 22750, 1945.

746.08 Commitment proceedings instituted by whom.—Proceedings for the commitment of such defaulting guardian may be instituted by the county judge sua sponte, or by any creditor, surety or other interested party, or by a successor guardian.

History.—§7, ch. 17976, 1937; CGL 1940 Supp. 5919(7); §3, ch. 20928, 1941; am. §3, ch. 22750, 1945.

746.09 Order on proceedings for commitment.—If the proceedings for commitment are instituted by the county judge sua sponte, the order so entered addressed to such defaulting removed guardian directing compliance with the law shall be sufficient of itself. If proceedings are instituted by a person other than the county judge, they shall be by written petition filed with the county judge, stating the facts upon which the proceedings are based; the petition shall be sworn to by the petitioner, his agent or his attorney. Upon the filing of such petition under oath, the county judge, after notice to the removed guardian and a hearing on the petition, may issue his order of commitment and proceed in accordance with the provisions of this law.

History.—§7, ch. 17976, 1937; CGL 1940 Supp. 5919(7); §3, ch. 20928, 1941; am. §3, ch. 22750, 1945.

746.10 Proceedings on bond of removed guardian.—In any case when a guardian is removed and when he is in default for thirty days either in the delivery of any part of the property or in the payment of the balances due the successor guardian, the bond of such removed guardian may be put in suit.

History.—§7, ch. 17976, 1937; CGL 1940 Supp. 5919(7); §3, ch. 20928, 1941; am. §3, ch. 22750, 1945.

746.11 Survival of action upon resignation or removal.—All cases pending before any court by or against a guardian who is removed, or who resigns or dies, shall survive to or against the successor guardian, but no successor guardian shall be liable for any default on the part of any predecessor nor for any amount beyond the value of the property coming into his custody.

History.—§8, ch. 17976, 1937; CGL 1940 Supp. 5919(8); am. §3, ch. 22750, 1945.

746.12 Termination of guardianship upon removal of ward's incapacity; exhaustion of assets.—When a ward becomes sui juris or when the property of a ward has been lawfully exhausted, the guardian of the property of such ward shall make final settlement and receive his discharge as provided in this law; provided, however, that before the county judge discharges such guardian, said county judge may require whatever proof of the removal of such incompetency or of the need of the continuance of the guardianship he may deem necessary.

History.—§8, ch. 17976, 1937; CGL 1940 Supp. 5919(8); am. §3, ch. 22750, 1945.

746.121 Termination of guardianship on change of domicile of resident ward.—When the domicile of a resident ward has lawfully been changed in accordance with §744.10, and the foreign court having jurisdiction over the ward at his new domicile has appointed a guardian of the property of such ward and said guardian has qualified and posted in such foreign jurisdiction a bond in an amount deemed reasonable by the county judge, the Florida guardian of the property of such ward may thereupon file his accountings and proceed to close the Florida guardianship if, in the opinion of the county judge, the transfer of such guardianship proceedings to the new domicile of the ward is deemed advisable and in the best interest of said ward, and provided further, however, that at the time of the filing of his accounting the Florida guardian shall cause to be published once a week for four consecutive weeks, four publications being sufficient, in a newspaper of general circulation published in the county, or where there is no newspaper of general circulation published in the county, by posting a copy thereof in three different places in said county, one of which shall be at the front door of the courthouse, of the fact that he has filed his accounting and will apply on a day certain, which shall not be less than twenty-eight nor more than sixty days from the date of the first publication of said notice, of his intent to apply for discharge, and therein stating that jurisdiction of said ward will be transferred to the state of foreign jurisdiction. If objection be filed to the termination of the Florida guardianship, the county judge, on the day set forth in said notice, shall proceed to hear said objection, and enter his order either sustaining or overruling said objection. Upon the disposition of any or all objections filed, or, if no objection be filed, final settlement shall be made by the Florida guardian and upon proof, acceptable to the county judge, that the remaining assets in such guardianship have been transferred to

and received by the foreign guardian, the Florida guardian may be discharged and the Florida guardianship terminated. Provided further, however, that the entry of such order terminating the Florida guardianship shall not be construed to exonerate the guardian, or his surety, from any liability previously incurred thereto.

History.—§1, ch. 61-393.

746.13 Final returns and application for discharge; hearing.—

(1) When the need for a guardianship terminates, the guardian shall promptly file his final returns and his application to the county judge for discharge. If no objections are filed and if it appears to the county judge that said applicant has made full and complete distribution to his ward and has otherwise faithfully discharged his duties, said county judge may approve the applicant's final returns. If objections are filed, the county judge shall conduct a hearing under the same conditions as provided in this law for a hearing on objections to annual returns.

(2) The guardian applying for discharge is authorized to retain from the funds in his possession a sufficient amount to pay the final costs of administration accruing between the filing of his final returns and the order of discharge.

History.—§8, ch. 17976, 1937; CGL 1940 Supp. 5919(8); am. §3, ch. 22750, 1945.

746.14 Order of discharge.—Upon the consideration of the application for discharge and of the objections thereto, if any, and of the evidence, if the county judge is satisfied that the guardian has faithfully and completely discharged his duties and has rendered complete and accurate final returns and has delivered the assets of the ward to the person entitled thereto, the county judge shall enter an order of discharge. Such discharge shall operate as a release from the duties of the guardianship and as a bar to any suit against said guardian or his surety, unless such suit is commenced within one year from the date of the discharge.

History.—§9, ch. 17976, 1937; CGL 1940 Supp. 5919(9); am. §7, ch. 22000, 1943; am. §3, ch. 22750, 1945.

746.15 Letters of discharge.—Any time after the discharge of a guardian the county judge may issue letters of discharge to the guardian of the person or of the property, or of both, and he shall issue them whenever a request is made by the guardian for such letters, and the costs of the letters of discharge shall be paid by the estate of the ward. Letters of discharge shall not be necessary to the validity of the discharge.

History.—§10, ch. 17976, 1937; CGL 1940 Supp. 5919(10); am. §3, ch. 22750, 1945.

746.16 Appeals and supersedeas.—All orders, judgments and decrees of the county judge finally determining rights of any party in any proceeding in guardianship matters may as a matter of right be appealed to the appropriate district court of appeal, except those appeals which may be taken to the supreme court as provided by §4, Art. V of the state constitution, in the manner and within the time provided by the Florida appellate rules.

History.—§3, ch. 22750, 1945; §33, ch. 63-559.

746.17 Effective date.—Chapters 744, 745 and 746, as amended, shall take effect on January 1, 1946.

History.—§5, ch. 22750, 1945.

CHAPTER 747

ABSENTEES, INCOMPETENTS, ETC., AND THE CONSERVATION OF THEIR PROPERTY

747.01 Who are absentees under this law.—(1) Any person serving in or with the armed forces of the United States, in or with the red cross, in or with the merchant marines, or otherwise, in connection with the war effort of the United States or any of her allies, during any period of time when a state of war exists between the United States and any other power and for one year thereafter, who has been reported or listed as missing in action, interned in a neutral country, beleaguered, besieged or captured by the enemy, shall be an "absentee" within the meaning of this law; and,

(2) Any resident of this state, or any person owning property herein, who disappears under circumstances indicating that he may have died, either naturally, accidentally or at the hand of another, or may have disappeared as the result of mental derangement, amnesia or other mental cause, shall also be an "absentee" within the meaning of this law.

History.—§1, ch. 22888, 1945.

747.02 Conservation of the property of absentees.—When any absentee, as defined in §747.01, has an interest in any form of property in this state, or is a legal resident of this state and has not provided an adequate power of attorney authorizing another to act in his behalf with regard to such property or interest, the county judge of the county of such absentee's legal residence, or of the county where such property is situate, shall have jurisdiction, upon the filing of a petition by any person who would have an interest in the property of the absentee were such person deceased, alleging the facts and showing the necessity for providing care for the property of such absentee, or on the court's own motion, after notice to, or on receipt of proper waivers from, the heirs and next of kin of the absentee, as defined by §731.23, and upon good cause shown, to appoint a conservator to take charge of the absentee's estate under the supervision and subject to the further orders of the court.

History.—§2, ch. 22888, 1945.

747.03 Qualification of conservator; powers.—The court shall have full discretionary authority to appoint any suitable person as such conservator and may require said conservator to post an adequate surety bond and to make such reports as the court may deem necessary. The conservator shall have powers and authority similar to that of the guardian of the property of an infant or incompetent and shall be considered as an officer or arm of the court.

History.—§3, ch. 22888, 1945.

747.04 Termination of conservatorship.—(1) At any time upon petition signed by the absentee, or on petition of an attorney in fact acting under an adequate power of attorney granted by the absentee, the court shall direct the termination of the conservatorship and the transfer of all property held thereunder to the absentee or to the designated attorney in fact.

(2) Likewise, if at any time subsequent to the appointment of a conservator it shall appear that the absentee has died and an executor or administrator has been appointed for his estate, the court shall direct the termination of the conservatorship and the transfer of all property of the deceased absentee held thereunder to such executor or administrator.

History.—§4, ch. 22888, 1945.

747.06 Petition for.—The jurisdiction of the court shall be invoked by the filing of a petition in the circuit court of the county of his or her residence by the person for whose property a curator is sought; or by either the father, mother, brother, sister, husband, wife or child or next of kin of such person; and, if any such relative fails to act, then by the sheriff of the county of the domicile or residence of such person, which petition shall set forth the facts and reasons why it is proper, appropriate or reasonably necessary for the best interest of such person that such appointment be made. The petition shall state names and addresses of all members of the immediate family and the names and addresses of husband or wife and next of kin, as particularly as is known to the petitioner.

History.—Comp. §2. ch. 25376, 1949.

747.07 Hearing; notice and order.—(1) The appointment shall be made only after a hearing upon due notice to one or more members of his or her family; or, if not a member of a family, to one or more relatives, or after such personal or such published notice as may be required by an order of court.

(2) The court shall by order determine what members of the family or relatives shall be given notice of the hearing and may determine the manner of giving such notice.

History.—Comp. §3, ch. 25376, 1949.

747.08 Hearings; testimony; decree.—

(1) The person against whom the petition is presented shall attend or be summoned to attend or be given notice of the hearing of the petition before the court.

(2) At such hearing the court may take the testimony of all the parties in interest who shall appear and such witnesses as any member of his family whom he may see fit to call or summons.

(3) If the court on such hearing shall find that the petition is well founded, then the court shall appoint a curator of the estate of such person, herein referred to as a ward. Any person interested may intervene in such proceedings with leave of court.

(4) The testimony adduced at the hearing shall be transcribed and filed unless the court shall find it to be unnecessary, and so order.

History.—Comp. §4, ch. 25376, 1949.

747.09 Appointment of guardian ad litem.— The court may in its discretion appoint a guardian ad litem to represent at the hearing the person against whom the proceedings are taken.

History.—Comp. §5, ch. 25376, 1949.

747.10 Appointment of committee of inquiry.—The court shall appoint a committee consisting of two practicing physicians to inquire into the report of its findings upon the question of the disability of such person.

History.—Comp. §6, ch. 25376, 1949.

747.11 Effect of decree.—From and after the rendition of the decree appointing a curator, such person for whom appointed shall be a ward of the court appointing such curator, and the ward shall be wholly incapable of making any contract or gift whatever, or any instrument in writing, of legal force and effect, except after leave of court is granted upon a hearing after notice to the curator and such next of kin as the court shall order given notice of application.

History.—Comp. §7, ch. 25376, 1949.

747.12 Bond of curator.—

(1) The curator so appointed shall, before entering upon his duties, file with the clerk of the court a good and sufficient bond, approved by the clerk, with such surety or sureties as required of a guardian's bond, payable to the governor of the state and his successors in office, in such penal sum as the court shall determine by order and conditioned to faithfully perform his duties according to the requirements of law and orders of the court.

(2) The court may at any time require of the said curator such additional or larger bond as may seem to be proper or necessary to protect the interests of the ward.

History.—Comp. §8, ch. 25376, 1949.

747.13 Court to direct allowance for ward.— The court appointing such curator shall have full power over the estate of the ward and allowances to or for the said ward, and may allow and assess against the estate of the ward all reasonable costs incurred in procuring the appointment of said curator and during the curatorship; and shall have full power to enter a decree for the selling, mortgaging, or leasing of the real or personal property of the said ward, after the court shall have made an affirmative finding that a mortgage, sale or lease for such purposes is reasonably necessary or expedient (1) for the maintenance and support of the ward or to secure advances for the same or (2) to discharge existing liens, or (3) to protect the ward's estate; such sale, mortgaging or leasing shall be upon such terms and rates as shall be approved by the court, but no property of the ward shall be mortgaged at a rate of interest greater than six per cent per annum.

History.—Comp. §9, ch. 25376, 1949.

747.14 Special curator.—After a curator is appointed and qualified he may move the court for the appointment of a "special curator," to prosecute any causes of action, suits or claims or to recover any property or other assets of the ward or to establish any rights in respect to the ward's estate, and such appointee shall have such powers, duties and responsibilities in respect thereto as the court shall prescribe, to the same extent and with the same limitations as would the principal curator.

History.—Comp. §10, ch. 25376, 1949.

747.15 Curator's account; procedure for confirmation.—Every curator shall file annually, and as often as otherwise ordered, in the court making said appointment, a full accounting of the administration of said trust. The curator shall present his accounts to the court in debit and credit form and shall petition the court to have them examined, approved and confirmed finally. The court shall by order direct to whom and what notice, if any, shall be given of the hearing of the petition or motion for approval.

History.—Comp. §11, ch. 25376, 1949.

747.16 Audit and examination of accounts.—

(1) After filing proof of the service of the notice, the court may thereupon examine or audit the accounts, or may appoint an examiner or auditor to examine and audit such accounts and report thereon to the court.

(2) After the examination or audit of any accounting is completed, the court shall approve or disapprove the same, or any item thereof; and the court may at any time before the curator has been finally discharged, after notice, enter judgment against the curator and his sureties for failing to comply with or abide by the terms and conditions of his bond.

(3) The cost of the audit or examination shall be paid out of the estate, as the decree of the court shall otherwise direct.

(4) Upon the death or restoration to legal capacity of the ward, the curator shall file in the office of the clerk of the circuit court a full and complete account of such items and matters as were not included in any former account confirmed finally.

History.—Comp. §§12, 13, ch. 25376, 1949.

747.17 Curator and guardian, if any, to be

discharged upon recovery.—If, at any time the ward shall become able to properly care for himself or his property, he may petition the court, setting forth such fact; and, after a hearing, of which due notice shall be given to the curator and some one or more of the family or next of kin of the said person, as the court shall order, and after the appearance of the ward before the court, if the court shall find that the said person has regained the ability to properly care for his property, the court shall decree accordingly, and shall thereafter discharge the curator upon the rendition of a proper accounting and after same has been confirmed after notice and hearing.

History.—Comp. §14, ch. 25376, 1949.

747.18 **Curators, powers and duties.**—Except as herein otherwise provided, a curator shall have the powers and be subject to the same duties over and concerning the property of a ward as may be by law had and exercised by the guardians of the property of infants, and the court shall have and exercise the same powers touching such curator and the property of such person as may be by law had and exercised touching the guardian of the property of infants.

History.—Comp. §15, ch. 25376, 1949.

747.19 **Appeals.**—Any orders or decrees of the circuit court relating to a curatorship may be reviewed as are other orders and decrees in equity, and such an appeal may be taken by any person as next friend of the ward after obtaining leave of the chancellor or by the curator or by the petitioner.

History.—Comp. §16, ch. 25376, 1949.

TITLE XLIII

TORTS

CHAPTER 767

DAMAGE BY DOGS

767.01 Owners responsible. — Owners of dogs shall be liable for any damage done by their dogs to sheep or other domestic animals or livestock, or to persons.

History.—RS 2341; ch. 4979, 1901; GS 3142; RGS 4957; CGL 7044.

767.02 Sheep-killing dogs not to roam about. —It is unlawful for any dog known to have killed sheep to roam about over the country unattended by a keeper. Any such dog found roaming over the country unattended shall be deemed a run-about dog, and it is lawful to kill such dog.

History.—§1, ch. 4185, 1893; GS 3143; RGS 4958; CGL 7045.

767.03 Good defense for killing dog.—In any action for damages or of a criminal prosecution against any person for killing or injuring a dog, satisfactory proof that said dog had been or was killing sheep shall constitute a good defense to either of such actions.

History.—§1, ch. 4938, 1901; GS 3144; RGS 4959; CGL 7046.

767.04 Liability of owners.—The owners of any dog which shall bite any person, while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of such dogs, shall be liable for such damages as may be suffered by persons bitten, regardless of the former viciousness of such dog or the owners' knowledge of such viciousness. A person is lawfully upon private property of such owner within the meaning of this act when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States, or when he is on such property upon invitation, expressed or implied, of the owner thereof; provided, however, no owner of any dog shall be liable for any damages to any person or his property when such person shall mischievously or carelessly provoke or aggravate the dog inflicting such damage; nor shall any such owner be so liable if at the time of any such injury he had displayed in a prominent place on his premises a sign easily readable including the words "Bad Dog."

History.—Comp. §1, ch. 25109, 1949

CHAPTER 768
NEGLIGENCE

768.01 Right of action for death.—

(1) Whenever the death of any person in this state shall be caused by the wrongful act, negligence, carelessness or default of any individual or individuals, or by the wrongful act, negligence, carelessness or default of any corporation, or by the wrongful act, negligence, carelessness, or default, of any agent of any corporation, acting in his capacity of agent of such corporation (or by the wrongful act, negligence, carelessness or default of any ship, vessel or boat or persons employed thereon), and the act, negligence, carelessness or default, is such as would, if the death had not ensued, have entitled the party injured thereby to maintain an action (or to proceed in rem against the said ship, vessel or boat, or in personam against the owners thereof, or those having control of her) and to recover damages in respect thereof, then and in every such case the person or persons who ,or the corporation (or the ship, vessel or boat), which would have been liable in damages if death had not ensued shall be liable to an action for damages (or if a ship, vessel or boat, to a libel in rem, and her owners or those responsible for her wrongful act, negligence, carelessness or default, to a libel in personam), notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony.

(2) The right of action as set forth in subsection (1) above shall extend to and include actions ex contractu and ex delicto.

History.—§1, ch. 3429, 1883; RS 2342; GS 3145; §1, ch. 6913, 1915; RGS 4960; CGL 7047; am. §1, ch. 28280, 1953.

cf.—Ch. 440, Workmen's compensation law.
§95.11, Limitation of actions.

768.02 Parties; damages; proviso. — Every such action shall be brought by and in the name of the widow or husband, as the case may be, and where there is neither widow nor husband surviving the deceased, then the minor child or children may maintain an action; and where there is neither widow nor husband, nor minor child or children, then the action may be maintained by any person or persons dependent on such person killed for a support; and where there is neither of the above classes of persons to sue, then the action may be maintained by the executor or administrator, as the case may be, of the person killed. In case of the death of any person solely entitled, or of all the persons jointly entitled to sue, before action brought or before the recovery of a final judgment in action brought by him or them, the right of action or the action as the case may be, shall survive to the person or persons next entitled to sue under this section, and in case of the death of one or more persons jointly entitled to sue before action brought or before the recovery of a final judgment in an action brought by them, the right of action or the action, as the case may be, shall survive to the survivor of such persons so jointly entitled to sue; and in every such action the jury shall give such damages as the party or parties entitled to sue may have sustained by reason of the death of the party killed; provided, that any person or persons to whom a right of action may survive under the provisions of this act shall recover such damages as by law such person or persons are entitled in their own right to recover, irrespective of the damages recoverable by the person or persons whom he or they may succeed.

History.—§2, ch. 3439, 1883; RS 2343; GS 3146; §1, ch. 5648, 1907; RGS 4961; CGL 7048.

768.03 Parties in actions for death of minor child; damages.—

(1) Whenever the death of any minor child shall be caused by the wrongful act, negligence, carelessness or default of any individual, or by the wrongful act, negligence, carelessness or default of any private association or persons, or by the wrongful act, negligence, carelessness or default of any officer, agent or employee of any private association of persons, acting in his capacity as such officer, agent or employee, or by the wrongful act, negligence, carelessness or default of any corporation, or by the wrongful act, negligence, carelessness or default of any officer or agent, or employee of any corporation acting in his capacity as such officer, agent or employee, the father of such minor child, or if the father be not living, the mother may maintain an action against such individual, private association of persons, or corporation, and may recover, not only for the loss of services of such minor child, but in addition thereto, such sum for the mental pain and suffering of the parent (or both parents) if they survive, as the jury may assess.

(2) The right of action as set forth in subsection (1) shall extend to and include actions ex contractu and ex delicto.

History.—§1, ch. 4722, 1899; GS 3147; §1, ch. 6487, 1913; RGS 4962; CGL 7049; (2) n., §1, ch. 63-469.

768.04 Limitation of action.—All actions provided for by §768.03 shall be barred, unless brought within two years from the time the cause of action accrued.

History.—§2, ch. 6487, 1913; RGS 4963; CGL 7050.
cf.—Ch. 95, Limitations, generally.

768.05 Liability of railroad company. — A railroad company shall be liable for any damage done to persons, stock or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employ and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company.

History.—§§1, 2, ch. 3744, 1887; §1, ch. 4071, 1891; GS 3148; RGS 4964; CGL 7051.
cf.—§356.04, Railroad killing livestock.
§860.02, Negligence of carrier.

768.06 Comparative negligence.—No person shall recover damages from a railroad company for injury to himself or his property, where the same is done by his consent, or is caused by his own negligence. If the plaintiff and the agents of the company are both at fault, the former may recover, but the amount of recovery shall be such a proportion of the entire damages sustained, as the defendant's negligence bears to the combined negligence of both the plaintiff and the defendant.

History.—§§1, 2, ch. 3744, 1887; §2, ch. 4071, 1891; GS 3149; RGS 4965; CGL 7052.

768.07 Liability for injury to employees.—If any person is injured by a railroad company by the running of the locomotives or cars, or other machinery of such company, he being at the time of such injury an employee of the company, and the damage was caused by negligence of another employee, and without fault or negligence on the part of the person injured, his employment by the company shall be no bar to a recovery. No contract which restricts such liability shall be legal or binding.

History.—§3, ch. 4071, 1891; GS 3150; RGS 4966; CGL 7053.
cf.—§769.06, Contracts limiting liability.

768.08 Liability of corporations having relief department for injury to employees; contracts in violation of act void.—Any person, association of persons, or corporations that has, or shall hereafter have, a relief department for the benefit of their or its employees, or which shall contribute any money or other thing of value to any relief society or association for the benefit of their or its employees, to which such employee may also contribute any money, or other thing of value, shall not be relieved of liability to such employee, or in case of his death to any person authorized by law to sue for such death, for the negligent injury or killing of such employee, because such employee may have been a member of or contributed to any such relief department, or received any benefits therefrom, but such employee, and in case of his death any person or persons authorized by law to sue for such death, shall be entitled to demand, sue for and recover any benefit that such employee may have been entitled to receive by reason of having been a member of or contributed to any such relief department, society or association, and such employee, and in case of his death any person authorized by law to sue for such death, shall be entitled to institute suit against any such person, association of persons or corporations, and to recover for any injury suffered by such employee and for the death of such employee, suffered through the negligence of such person, association of persons, or corporation, and any contract, stipulation or provision in violation of this section is declared to be null and void.

History.—§1, ch. 6520, 1913; RGS 4967; CGL 7054.

768.09 Examination of injured party in personal damage cases.—In any action in which the mental or physical injury of a party or injury to property is in controversy, the court in which the action is pending may, in advance of the trial, order such party to submit to a physical or mental examination by a physician or other such qualified expert, or may order an examination of the property alleged to have been damaged or injured by the defendant or his agent, or of the party alleged to have caused the damage or injury. The compensation of the examining physician shall be fixed by the court in each particular case, and shall be in the first instance paid by the party petitioning for such examination, but shall be taxed up as a part of the costs of the case subject to the final disposition of the same.

History.—§§1, 2, 3, ch. 4719, 1899; GS 3151; RGS 4968; CGL 7055; §30, ch. 29737, 1955.
cf.—§458.16 Furnishing copies of mental or physical examination reports.

768.10 Pits and holes not to be left open.—It is not lawful for any company or individual to leave open any pit or other hole outside of an enclosure of a greater depth and breadth than two feet; provided, however, such pit or hole may be left open by enclosing the same with a fence or other enclosure that would be a safeguard against horses, cattle or other domestic animals falling into the same; provided further, that this section shall not apply to pits or holes made by any company or individual while bona fide engaged in actual mining operations, such pits and holes to be enclosed as herein provided when said mining operations shall cease or be discontinued.

History.—§1, ch. 4051, 1891; GS 3152; RGS 4969; CGL 7056.

768.11 Pits and holes; measure of damages.—Any company or individual who may leave open pits or other holes contrary to the provisions of §768.10 shall be liable in damages to any person injured thereby in an amount double the actual damages sustained, which may be recovered in any court of competent jurisdiction.

History.—§2, ch. 4051, 1891; GS 3153; RGS 4970; CGL 7057.

768.12 Motor vehicle colliding with any animal at large on a public highway.—That whenever a motor vehicle collides with any animal at large on a public highway of this state, and the operator of the motor vehicle dies as a result of the collision, the owner of such animal shall have no cause of action against the personal representative of the estate of the said deceased operator on account of any injuries to, or the death of, such animal, resulting from the collision.

History.—§1, ch. 21018, 1941.

cf.—§356.04 et seq., Railroads killing stock.
§768.05, Liability of railroad.

CHAPTER 769

HAZARDOUS OCCUPATIONS

769.01 Employers affected by fellow servant act.—This chapter shall apply to persons engaged in the following hazardous occupations in this state; namely, railroading, operating street railways, generating and selling electricity, telegraph and telephone business, express business, blasting and dynamiting, operating automobiles for public use, boating, when boat is propelled by steam, gas or electricity.

History.—§1, ch. 6521, 1913; RGS 4971; CGL 7058.
cf.—Ch. 440, Workmen's compensation law.

769.02 Liability of certain persons and corporations for injuries from negligence of fellow servants.—The persons mentioned in §769.01 shall be liable in damages for injuries inflicted upon their agents and employees, and for the death of their agents and employees caused by the negligence of such persons, their agents and servants, unless such persons shall make it appear that they, their agents and servants have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against such persons.

History.—§2, ch. 6521, 1913; RGS 4972; CGL 7059.

769.03 Recovery for injuries where employee and employer both at fault; damages; negligence of fellow servant. — The persons mentioned in §769.01 shall not be liable in damages for injuries to their agents and employees, or for the death of such agents and employees, where same is done by their consent, or is caused by their own negligence. If the employees or agents injured or killed, and the persons mentioned in §769.01, or their agents and employees are both at fault, there may be a recovery, but the amount of the recovery shall be such a proportion of the entire damages sustained, as the defendant's negligence bears to the combined negligence of both the plaintiff and the defendant; provided, that damages shall not be recovered for injuries to an employee injured in part through his own negligence and in part through the negligence of another employee, when both of such employees are fellow servants, where the former and latter are jointly engaged in performing the act causing the injury and the employer is guilty of no negligence contributing to such injury.

History.—§3, ch. 6521, 1913; RGS 4973; CGL 7060.

769.04 Doctrine of assumption of risk abrogated.—The doctrine of assumption of risk shall not obtain in any case arising under the provisions of this chapter, where the injury or death was attributable to the negligence of the employer, his agents or servants.

History.—§4, ch. 6521, 1913; RGS 4974; CGL 7061.

769.05 Proceeds of recovery for injuries exempt from garnishment and execution. — Writs of garnishment, execution or other processes, shall not issue out of any court to reach any money due or likely to become due as damages under the provisions of this chapter.

History.—§5, ch. 6521, 1913; RGS 4975; CGL 7062.

769.06 Contracts limiting liability invalid. —Any contract, contrivance or device whatever, having the effect to relieve or exempt the persons mentioned in §769.01 from the liability prescribed by this chapter shall be illegal and void.

History.—§6, ch. 6521, 1913; RGS 4976; CGL 7063.

CHAPTER 770

CIVIL ACTIONS FOR LIBEL

770.01 Notice condition precedent to action or prosecution for libel.—Before any civil action is brought for publication, in a newspaper or periodical, of a libel, the plaintiff shall, at least five days before instituting such action, serve notice in writing on defendant, specifying the article, and the statements therein, which he alleges to be false and defamatory.

History.—§1, ch. 16070, 1933; CGL 1936 Supp. 7064(1).
cf.—§836.07, Criminal prosecution for libel.

770.02 Correction, apology, or retraction by newspaper.—If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then the plaintiff in such case shall recover only actual damages.

History.—§2, ch. 16070, 1933; CGL 1936 Supp. 7064(2).
cf.—§836.08, Criminal provision.

770.03 Civil liability of radio broadcasting stations, etc.—The owner, lessee, licensee or operator of a radio broadcasting station shall have the right, but shall not be compelled, to require the submission of a written copy of any statement intended to be broadcast over such station twenty-four hours before the time of the intended broadcast thereof; and when such owner, lessee, licensee or operator has so required the submission of such copy, such owner, lessee, licensee or operator shall not be liable in damages for any libelous or slanderous utterance made by or for the person or party submitting a copy of such proposed broadcast which is not contained in such copy; but this section shall not be construed to relieve the person or party, or the agents or servants of such person or party, making any such libelous or slanderous utterance from liability therefor.

History.—§§1-3, ch. 19616, 1939; CGL 1940 Supp. 7064(4); §1, ch. 20869, 1941; am. §7, ch. 22858, 1945.

770.04 Civil liability of radio or television broadcasting stations; care to prevent publication or utterance required.—The owner, licensee, or operator of a radio or television broadcasting station, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio or television broadcast, by one other than such owner, licensee or operator, or general agent or employees thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator, general agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcasts, provided, however, the exercise of due care shall be construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.

History.—§1, ch. 23802, 1947.
Am. §1, ch. 25278, 1949.

CHAPTER 771

ACTIONS FOR ALIENATION OF AFFECTIONS, ETC.

771.01 Certain tort actions abolished.—The rights of action heretofore existing to recover sums of money as damage for the alienation of affections, criminal conversation, seduction or breach of contract to marry are hereby abolished.

History.—§1, ch. 23138, 1945.

771.04 No act done in state to give cause of action.—No act hereafter done within this state shall operate to give rise, either within or without this state, to any of the rights of action abolished by this law. No contract to marry hereafter made or entered into in this state shall operate to give rise, either within or without this state, to any cause or right of action for the breach thereof.

History.—§4, ch. 23138, 1945.

771.05 Unlawful to file certain causes of action.—It shall hereafter be unlawful for any person, either as a party or attorney, or an agent or other person in behalf of either, to file or serve, cause to be filed or served or threaten to file or serve, or to threaten to cause to be filed or served, any process or pleading, in any court of the state, setting forth or seeking to recover a sum of money upon any cause of action abolished or barred by this law, whether such cause of action arose within or without the state.

History.—§5, ch. 23138, 1945.

771.06 Validity of certain contracts.—All contracts and instruments of every kind, name, nature or description, which may hereafter be executed within this state in payment, satisfaction, settlement or compromise of any claim or cause of action abolished or barred by this law, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public policy of this state and absolutely void. It shall be unlawful to cause, induce or procure any person to execute such a contract or instrument; or cause, induce or procure any person to give, pay, transfer or deliver any money or thing of value in payment, satisfaction, settlement or compromise of any such claim or cause of action; or to receive, take or accept any such money or thing of value as such payment, satisfaction, settlement or compromise. It shall be unlawful to commence or cause to be commenced, either as party or attorney, or as agent or otherwise in behalf of either, in any court of this state, any proceeding or action seeking to enforce or recover upon any such contract or instrument, knowing it to be such, whether the same shall have been executed within or without this state; provided, however, that this section shall not apply to the payment, satisfaction, settlement or compromise of any causes of action which are not abolished or barred by this law, or any contracts or instruments heretofore executed, or to the bona fide holder in due course of any negotiable instrument which may be hereafter executed.

History.—§6, ch. 23138, 1945.

771.07 Penalties.—Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment in the discretion of the court.

History.—§7, ch. 23138, 1945.

771.08 Construction of law.—This law shall be liberally construed to effectuate the objects and purposes thereof and the public policy of the state as hereby declared. This law shall supersede all laws and parts of laws, inconsistent with this law, to the extent of such inconsistency, but in all other respects shall be deemed supplemental to such laws and parts of laws. Nothing contained in this law shall be construed as a repeal of any of the provisions of the penal law or the code of criminal procedure or of any other law of this state relating to criminal or quasi-criminal actions or proceedings.

History.—§§8, 9, ch. 23138, 1945.

TITLE XLIV

CRIMES

CHAPTER 775

DEFINITIONS; GENERAL PENALTIES; REGISTRATION OF CRIMINALS

775.01 Common law of England.—The common law of England in relation to crimes, except so far as the same relates to the modes and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject.

History.—§1, Nov. 6, 1829; §1, Feb. 10, 1832; RS 2369; GS 3194; RGS 5024; CGL 7126.
cf.—§2.01, Common law in force.
§817.29, Punishment for common law fraud or cheat.

775.02 Punishment of common law offenses.—When there exists no such provision by statute, the court shall proceed to punish such offense by fine or imprisonment, but the fine shall not exceed five hundred dollars, nor the imprisonment twelve months.

History.—§1, Nov. 6, 1829; RS 2370; GS 3195; RGS 5025; CGL 7127.
cf.—§775.06, Alternative punishment.

775.03 Benefit of clergy.—The doctrine of benefit of clergy shall have no operation in this state.

History.—§75, Feb. 10, 1832; RS 2371; GS 3196; RGS 5026; CGL 7128.

775.04 What penal acts or omissions not public offenses.—Acts or omissions to which a pecuniary penalty is attached, recoverable by action by a person for his own use or for the use, in whole or in part, of the state or of a county or a public body, or of a corporation, are not public offenses within the meaning of these statutes.

History.—§2349, RS 1892; GS 3173; RGS 5002; CGL 7101.

775.05 "Crimes" include misdemeanors.—The word "crimes" shall include all misdemeanors.

History.—§2350, RS 1892; GS 3174; RGS 5003; CGL 7102.

775.06 Punishments.—Whenever punishment by imprisonment is prescribed, and the said imprisonment is not expressly directed to be in the state prison, it shall be taken and held to be imprisonment in the county jail, and whenever the punishment is prescribed to be fine or imprisonment (whether in the state prison or county jail), in the alternative, the court may, in its discretion, proceed to punish by both fine and such imprisonment.

History.—§2351, RS 1892; GS 3175; RGS 5004; CGL 7103.

775.07 Punishment for misdemeanors where not otherwise provided.—The punishment for commission of crimes other than felonies in this state, when not otherwise provided by statute, or when the penalty provided by such statute is ineffectual because of constitutional provisions, or because the same is otherwise illegal or void, shall be a fine not exceeding two hundred dollars or imprisonment not exceeding ninety days; and where punishment by fine alone is provided the court may, in his discretion, sentence the defendant to serve not exceeding sixty days in default of the payment of the said fine.

History.—§1, ch. 5920, 1909; §1, ch. 6222, 1911; RGS 5005; CGL 7104; §1, ch. 17910, 1937.

775.08 Felonies and misdemeanors defined.—Any crime punishable by death, or imprisonment in the state prison, is a felony, and no other crime shall be so considered. Every other offense is a misdemeanor.

History.—§1(11), ch. 1637, 1868; §2352, RS 1892; GS 3176; RGS 5006; CGL 7105.

775.09 Punishment for second conviction of felony.—A person who, after having been convicted within this state of a felony or an attempt to commit a felony, or under the laws of any other state, government or country, of a crime which, if committed within this state would be a felony, commits any felony within this state is punishable upon conviction of such second offense as follows: If the subsequent felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then such person must be sentenced to

imprisonment for a term no less than the longest term nor more than twice the longest term prescribed upon a first conviction. If the subsequent felony is such that upon a first conviction the offender would be punishable by imprisonment for life or for a term of years, in the alternative, then such person must be sentenced to imprisonment for life or for any number of years not less than twenty years.

History.—§1, ch. 12022, 1927; CGL 7106; §1, ch. 57-764.

cf.—§811.10, Second conviction of larceny.
§811.12, Second conviction of horse or cattle stealing.
§811.15, Larceny of hogs; second offense.
§811.18, Second and third conviction of receiving stolen goods.
§831.10, Second conviction of uttering forged bills.
§849.13, Second conviction of violation of lottery laws.
§849.23, Second conviction of violation of slot machine law.

775.10 Punishment for fourth conviction of felony.—A person who, after having been three times convicted within this state of felonies or attempts to commit felonies, or under the law of any other state, government or country of crimes which, if commited witnin this state, would be felonious, commits a felony within this state shall be sentenced upon conviction of such fourth or subsequent offense to imprisonment in the state prison for the term of his natural life. A person to be punishable under this and the preceding section need not have been indicted and convicted as a previous offender in order to receive the increased punishment therein provided, but may be proceeded against as provided in the following section.

History.—§2, ch. 12022, 1927; CGL 7107.

775.11 Procedure in prosecutions for second and subsequent offenses.—If at any time after sentence or conviction it shall appear that a person convicted of a felony has previously been convicted of crimes as set forth either in §775.09 or §775.10 the prosecuting attorney of the county in which such conviction was had, shall file an information accusing said person of such previous convictions, whereupon the court in which such conviction was had shall cause said person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in such information and of his right to be tried as to the truth thereof, according to law, and shall require such offender to say whether he is the same person as charged in such information or not.

If he says he is not the same person or refuses to answer or remains silent, his plea, or the fact of his silence, shall be entered of record and a jury shall be empaneled to inquire whether the offender is the same person mentioned in the several records as set forth in such information. If the jury finds that he is the same person or if he acknowledges or confesses in open court after being duly cautioned as to his rights that he is the same person the court shall sentence him to the punishment prescribed in §775.09 or §775.10 as the case may be, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated.

Whenever it shall become known to any warden or prison, probation, parole or police officer or other peace officer, that any person charged with or convicted of a felony has been previously convicted within the meaning of §775.09 or §775.10 he shall forthwith report the facts to the prosecuting attorney of the county.

History.—§3, ch. 12022, 1927; CGL 7108.

775.12 Limitation of repeal as to criminal cases.—No offense committed, and no penalty and forfeiture incurred, prior to the taking effect of these statutes, shall be affected thereby, and no prosecution had or commenced, shall be abated thereby, except that when any punishment, forfeiture or penalty shall have been mitigated by the provisions of these statutes, such provisions shall apply to and control any judgment or sentence to be pronounced, and all prosecutions shall be conducted according to the provisions of law in force at the time of such further prosecution and trial applicable to the case.

History.—§2353, RS 1892; GS 3177; RGS 5007; CGL 7109.

775.13 Registration of convicted felons, exemptions; penalties.—

(1) Any person who has been convicted of a felony in any court of this state shall within forty-eight hours after entering any county in this state, register with the sheriff of said county and shall be fingerprinted, photographed and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation.

(2) Any person who has been convicted of a crime in any federal court or in any court of a state other than Florida, or of any foreign state or country, which crime if committed in Florida would be a felony, shall forthwith within forty-eight hours after entering any county in this state register with the sheriff of said county, in the same manner as provided for in subsection (1) of this section.

(3) Any person who is presently within any county of the state as of the effective date of this section, shall likewise be required to register with the sheriff of such county within thirty days after the effective date of this section, if such person would be required to register under the terms of subsections (1) or (2), hereof, if he or she were entering such county.

(4) In lieu of registering with the sheriffs of the several counties of the state as required by this section, such registration may be made with the Florida sheriffs' bureau, and shall be subject to the same terms and conditions as required for registration with the several sheriffs of the state. Any person so registering with the Florida sheriffs' bureau shall not be required to make further registration in any county in the state.

(5) The provisions of this law shall not apply to any person who:

(a) Has had his civil rights restored; or

(b) Has received a full pardon for the offense for which convicted, or

(c) Whose conviction of a felony was more than ten years prior to the time provided for registration under the provisions of this law, and who has been lawfully released from incarceration under a felony conviction and sentence for more than five years prior to such time for registration unless such person is a fugitive from justice on a felony charge, or

(d) Is a parolee or probationer under the supervision of the Florida parole commission, or is a probationer under the supervision of any county probation officer of the state, or who has been lawfully discharged from such parole or probation.

(e) Is a parolee or probationer under the supervision of the United States parole commission which parole commission knows of and consents to the presence of such person in Florida, or is a probationer under the supervision of any federal probation officer in the state, or who has been lawfully discharged from such parole or probation.

(6) Failure of any such convicted felon to comply with this section upon conviction shall be punished by imprisonment of not more than 6 months in county jail and fine of not more than $500, or both.

(7) All laws and parts of laws in conflict herewith are hereby repealed, provided that nothing in this section shall be construed to affect any law of this state relating to registration of criminals where the penalties are in excess of those imposed by this section.

History.—§§1-7, ch. 57-19; (5)(d) §1, ch. 57-371; (5)(e) n. §1, ch. 63-191.

775.14 Limitation on withheld sentences.—Any person receiving a withheld sentence upon conviction for a criminal offense, and such withheld sentence has not been altered for a period of five years, shall not thereafter be sentenced for the conviction of the same crime for which sentence was originally withheld.

History.—Comp. §1, ch. 57-284.

CHAPTER 776

PRINCIPALS AND ACCESSORIES; ATTEMPTS

776.011 Principal in first degree.—Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, is a principal in the first degree and may be charged, convicted and punished as such, whether he is or is not actually or constructively present at the commission of such offense.

History.—Comp. §1, ch. 57-310.

776.03 Accessory after the fact.—Whoever, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that he has committed a felony or been accessory thereto before the fact, with intent that he shall avoid or escape detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and be punished by imprisonment in the state prison not exceeding seven years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§6, sub-ch. 11, ch. 1637, 1868; RS 2356; GS 3180; RGS 5010; CGL 7112.

cf.—§806.10, Obstructing extinguishment of fire.
§932.13, Jurisdiction and venue; accessory after the fact.

776.04 Attempts, generally.—Whoever attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such an offense, but fails in the perpetration, or is intercepted or prevented in the execution of the same, shall, when no express provision is made by law for the punishment of such attempt, be punished as follows:

(1) If the offense attempted to be committed is punishable with death, the person convicted of such attempt shall be punished by imprisonment in the state prison not exceeding ten years.

(2) If the offense attempted to be committed is punishable by imprisonment in the state prison for life, or for five years or more, the person convicted of such attempt shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year.

(3) If the offense attempted to be committed is punishable by imprisonment in the state prison for a term of less than five years, or by imprisonment in the county jail, or by fine, the person convicted of such attempt shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars.

In no case shall the punishment by imprisonment exceed one-half of the greatest punishment which might have been inflicted if the offense attempted had been committed.

History.—§8, sub-ch. 11, ch. 1637, 1868; RS 2594; GS 3517; RGS 5408; CGL 7544.

cf.—§806.04, Arson, fourth degree.
§806.05, Certain acts constituting attempts to burn.

CHAPTER 779

TREASON AND OFFENSE AGAINST THE GOVERNMENT

779.01 Treason.—Treason against the state shall consist only in levying war against the same, or in adhering to the enemies thereof, or giving them aid and comfort. Whoever commits treason against this state shall be punished by imprisonment in the state prison for life at hard labor.

History.—§§1, 2, sub-ch. 2, ch. 1637, 1868; RS 2372; GS 3197; RGS 5027; CGL 7129.

779.02 Misprision of treason. — Whoever having knowledge of the commission of treason conceals the same and does not, as soon as may be, disclose and make known such treason to the governor or one of the justices of the supreme court or a judge of the circuit court, shall be judged guilty of the offense of misprision of treason. and be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars.

History.—§2, sub-ch. 2, ch. 1637, 1868; RS 2373; GS 3198; RGS 5028; CGL 7130.

779.03 Combination to usurp government.—If two or more persons shall combine by force to usurp the government of this state, or to overturn the same, or interfere forcibly in the administration of the government or any department thereof, the person so offending shall be punished by imprisonment in the state prison not exceeding ten years.

History.—§5, sub-ch. 2, ch. 1637, 1868; RS 2374; GS 3199; RGS 5029; CGL 7131.

779.04 Combination against part of the people of the state.—If two or more persons shall combine to levy war against any part of the people of this state, or to remove them forcibly out of this state, or to remove them from their habitations to any other part of the state by force, or shall assemble for that purpose, every person so offending shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars.

History.—§6, sub-ch. 2, ch. 1637, 1868; RS 2375; GS 3200; RGS 5030; CGL 7132.

779.05 Inciting insurrection.—If any person shall incite an insurrection or sedition amongst any portion or class of the population of this state, or shall attempt by writing, speaking or by any other means to incite such insurrection or sedition, the person so offending shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§3, ch. 1466, 1866; RS 2376; GS 3201; RGS 5031; CGL 7133.

779.06 Definitions.—As used in §§779.06-779.19:

"Highway" includes any private or public street, way or other place used for travel to or from property.

"Highway commissioners" means any individual, board or other body having authority under then existing law to discontinue the use of the highway which it is desired to restrict or close to public use and travel.

"Public utility" includes any pipe line, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation, communication or other system, by whomsoever owned or operated for public use.

History.—§1, ch. 20252, 1941.

779.07 Intentional injury to or interference with property.—Whoever intentionally destroys, impairs, injures, interferes or tampers with real or personal property and such act hinders, delays or interferes with the preparation of the United States or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war, or with the prosecution of war by the United States, shall be punished by death, or by imprisonment in the state prison for not more than twenty years; provided, if such person so acts with the intent to hinder, delay or interfere with the preparation of the United States or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war, or with the prosecution of war by the United States, the minimum punishment shall be in the state prison for not less than one year.

History.—§2, ch. 20252, 1941.

779.08 Intentionally defective workmanship.—Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that such article or thing is intended to be used in connection with the preparation of the United States or of any country with which the United States shall then maintain friendly relations, or any of the states for defense or for war, or for the prosecution of war

by the United States, or that such article or thing is one of a number of similar articles or things, some of which are intended so to be used, shall be punished by imprisonment in the state prison for not more than ten years, or a fine of not more than ten thousand dollars, or both; provided, if such person so acts or so fails to act with the intent to hinder, delay or interfere with the preparation of the United States or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war, or with the prosecution of war by the United States, the minimum punishment shall be imprisonment in the state prison for not less than one year.

History.—§3, ch. 20252, 1941.

779.09 Attempts.—Whoever attempts to commit any of the crimes defined by this law shall be liable to one-half the punishment by imprisonment, or by fine, or both, as prescribed in §779.08 hereof. In addition to the acts which constitute an attempt to commit a crime under the law of this state, the solicitation or incitement of another to commit any of the crimes defined by this law not followed by the commission of the crime, the collection or assemblage of any materials with the intent that the same are to be used then or at a later time in the commission of such crime, or the entry, with or without permission, of a building, enclosure or other premises of another with the intent to commit any such crime therein or thereon shall constitute an attempt to commit such crime.

History.—§4, ch. 20252, 1941.

779.10 Conspirators.—If two or more persons conspire to commit any crime defined by this law, each of such persons is guilty of conspiracy and subject to the same punishment as if he had committed the crime which he conspired to commit, whether or not any act be done in furtherance of the conspiracy. It shall not constitute any defense or ground of suspension of judgment, sentence or punishment on behalf of any person prosecuted under this section, that any of his fellow conspirators has been acquitted, has not been arrested or convicted, is not amenable to justice or has been pardoned or otherwise discharged before or after conviction.

History.—§5, ch. 20252, 1941.

779.11 Witnesses' privileges. — No person shall be excused from attending and testifying, or producing any books, papers, or other documents before any court, magistrate, referee or grand jury upon any investigation, proceeding or trial, for or relating to or concerned with a violation of any section of this law or attempt to commit such violation, upon the ground or for the reason that the testimony or evidence, documentary or otherwise required by the state may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him, upon any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court, based upon the giving or producing of such testimony.

History.—§6, ch. 20252, 1941.

779.12 Unlawful entry on property.—Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in, or preparing to engage in, the manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war or in the prosecution of war by the United States, or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings, may post around his or its property at each gate, entrance, dock or railway entrance and every one hundred feet of water front a sign reading "No Entry Without Permission." Whoever without permission of such owner shall willfully enter upon premises so posted shall be punished by imprisonment for not more than ten days, or a fine of not more than fifty dollars, or both.

History.—§7, ch. 20252, 1941.

779.13 Questioning and detaining suspected persons.—Any peace officer or any other person employed as watchman, guard, or in a supervisory capacity on premises posted as provided in §779.12 may stop any person found on any premises to which entry without permission is forbidden by §779.12 and may detain him for the purpose of demanding, and may demand, of him his name, address and business in such place. If said peace officer or employee has reason to believe from the answers of the person so interrogated that such person has no right to be in such place, said peace officer shall forthwith release such person or he may arrest such person without a warrant on the charge of violating the provisions of §779.12; and said employee shall forthwith release such person or turn him over to a peace officer, who may arrest him without a warrant on the charge of violating the provisions of §779.12.

History.—§8, ch. 20252, 1941.

779.14 Closing and restricting use of highway.—Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in or preparing to engage in the manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations or any of the

states for defense or for war or in the prosecution of war by the United States, or in the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, who has property so used which he or it believes will be endangered if public use and travel is not restricted or prohibited on one or more highways or parts thereof upon which such property abuts, may petition the highway commissioners of any city, town or county to close one or more of said highways or parts thereof to public use and travel or to restrict by order the use and travel upon one or more of said highways or parts thereof.

Upon receipt of such petition, the highway commissioners shall set a day for hearing and give notice thereof by publication in a newspaper having general circulation in the city, town or county in which such property is located, such notice to be at least seven days prior to the date set for hearing. If after hearing the highway commissioners determine that the public safety and the safety of the property of the petitioner so require, they shall by suitable order close to public use and travel or reasonably restrict the use of and travel upon one or more of said highways or parts thereof; provided, the highway commissioners may issue written permits to travel over the highways so closed or restricted to responsible and reputable persons for such term, under such conditions and in such form as said commissioners may prescribe. Appropriate notices in letters at least three inches high shall be posted conspicuously at each end of any highway so closed or restricted by such order. The highway commissioners may at any time revoke or modify any order so made.

History.—§9, ch. 20252, 1941.

779.15 Penalty for going upon closed or restricted highway. — Whoever violates any order made under §779.14 shall be punished by imprisonment for not more than ten days, or a fine of not more than fifty dollars, or both.

History.—§10, ch. 20252, 1941.

779.16 Rights of labor.—Nothing in this law shall be construed to impair, curtail or destroy the rights of employes and their representatives to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

History.—§11, ch. 20252, 1941.

779.17 Relation to other statutes.—All laws and parts of laws inconsistent with §§779.06-779.20 are hereby suspended in their application to any proceedings under said sections. If conduct prohibited by said sections is also made unlawful by another or other laws, the offender may be convicted for the violation of said sections or of any other law or laws.

History.—§14, ch. 20252, 1941.

779.18 Construction.—§§779.06-779.20 shall be construed to the end that the greatest force and effect may be given to its provisions for the promotion of national and state safety.

History.—§15, ch. 20252, 1941.

779.19 Effective period of law.—All orders made under the provisions of §§779.06-779.20 shall be in full force until May 15, 1945, and thereafter whenever the United States is at war; provided, any violation of said sections, committed while they are in force, may be prosecuted and punished thereafter, whether or not said sections are in force at the time of such prosecution and punishment.

History.—§16, ch. 20252, 1941.

779.20 Short title.—§§779.06-779.20 may be cited as the Florida sabotage prevention law.

History.—§18, ch. 20252, 1941.

CHAPTER 782

HOMICIDE

782.01 Homicide generally.—The killing of a human being is either justifiable or excusable homicide, or murder or manslaughter, according to the facts and circumstances of each case.

History.—§1, sub-ch. 3, ch. 1637, 1868; RS 2377; GS 3202; RGS 5032; CGL 7134.

782.02 Justifiable homicide. — Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either in obedience to any judgment of a competent court, or when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty, or when necessarily committed in retaking felons who may have been rescued or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

Homicide is justifiable when committed by any person in either of the following cases: (1) When resisting any attempt to murder such person, or to commit any felony upon him, or upon or in any dwelling house in which such person shall be; or (2) when committed in the lawful defense of such person of his or her husband, wife, parent, grandparent, mother-in-law, son-in-law, daughter-in-law, father-in-law, child, grandchild, sister, brother, uncle, aunt, niece, nephew, guardian, ward, master, mistress or servant, when there shall be a reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished; or (3) when necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

History.—§§4, 5, sub-ch. 3, ch. 1637, 1868; RS 2378; ch. 4967, 1901; §1, ch. 4964, 1901; GS 3203; RGS 5033; CGL 7135.

782.03 Excusable homicide. — Homicide is excusable when committed by accident and misfortune in lawfully correcting a child or servant, or in doing any other lawful act by lawful means with usual ordinary caution, and without any unlawful intent, or by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any dangerous weapon being used and not done in a cruel or unusual manner.

History.—§6, sub-ch. 3, ch. 1637, 1868; RS 2379; GS 3204; RGS 5034; CGL 7136.

782.04 Murder.—The unlawful killing of a human being, when perpetrated from a premeditated design to effect the death of the person killed or any human being, or when committed in the perpetration of or in the attempt to perpetrate any arson, rape, robbery, burglary, abominable and detestable crime against nature or kidnaping, shall be murder in the first degree, and shall be punishable by death.

When perpetrated by any act imminently dangerous to another, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, it shall be murder in the second degree, and shall be punished by imprisonment in the state prison for life, or for any number of years not less than twenty years.

When perpetrated without any design to effect death, by a person engaged in the commission of any felony, other than arson, rape, robbery, burglary, the abominable and detestable crime against nature, or kidnaping, it shall be murder in the third degree, and shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§2, sub-ch. 3, ch. 1637, 1868; RS 2380; GS 3205; RGS 5035; §1, ch. 8470, 1921; CGL 7137; am. §1, ch. 28023, 1953.
cf.—§§801.02, 801.03, Child molester law.

782.05 Killing in duel.—Killing by fight in single combat, commonly called a duel, with deadly weapons, shall be murder in the first degree.

History.—§2, ch. 3755, 1887; RS 2381; GS 3206; RGS 5036; CGL 7138.
cf.—§783.01, Dueling.

782.06 Killing by interfering with railway trains, aircraft.—Any person who willfully, (a) by moving, misplacing or in any manner interfering with any railway switch, or by loosening, removing or displacing a rail from any railway track, or by any other interference, wrecks, destroys or so injures any car, tender, locomotive or railway train, or part thereof, while moving upon any railway in this state; or (b) by removing or tampering with its mechanism, or any part thereof, or by any other interference,

wrecks, destroys or so injures any aircraft; and death to any person shall result thereby, the person guilty of the act described in (a) or (b) shall be deemed guilty of murder in the first degree.

History.—§2, ch. 3755, 1887; RS 2382; GS 3207; RGS 5037; CGL 7139; am. §1, ch. 28274, 1953.
cf.—§782.04 (1st par.) Murder in the first degree.

782.07 Manslaughter.—The killing of a human being by the act, procurement or culpable negligence of another, in cases where such killing shall not be justifiable or excusable homicide nor murder, according to the provisions of this chapter, shall be deemed manslaughter, and shall be punished by imprisonment in the state prison not exceeding twenty years, or imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars.

History.—§2384, RS 1892; GS 3209; RGS 5039; CGL 7141.
cf.—§860.01, Death caused by operation of motor vehicle while intoxicated.

782.08 Assisting self-murder.—Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter.

History.—§9, sub-ch. 3, ch. 1637, 1868; RS 2385; GS 3210; RGS 5040; CGL 7142.

782.09 Killing of unborn child by injury to mother.—The willful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed manslaughter.

History.—§10, sub-ch. 3, ch. 1637, 1868; RS 2386; GS 3211; RGS 5041; CGL 7143.

782.10 Abortion.—Every person who shall administer to any woman pregnant with a quick child any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter.

History.—§11, sub-ch. 3, ch. 1637, 1868; RS 2387; GS 3212; RGS 5042; CGL 7144.
cf.—§797.01, Performing abortion.

782.11 Unnecessary killing to prevent unlawful act.—Whoever shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter.

History.—§13, sub-ch. 3, ch. 1637, 1868; RS 2388; GS 3213; RGS 5043; CGL 7145.

782.12 Killing by mischievous animal.—If the owner of a mischievous animal, knowing its propensities, shall willfully suffer it to go at large, or shall keep it without ordinary care, and such animal while so at large or not confined kills any human being, who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be deemed guilty of manslaughter.

History.—§16, sub-ch. 3, ch. 1637, 1868; RS 2389; GS 3214; RGS 5044; CGL 7146.

782.13 Drowning in overloaded vessel.—Any person navigating any boat or vessel for gain who shall willfully or negligently receive so many passengers or such a quantity of lading, that by reason thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter.

History.—§17, sub-ch. 3, ch. 1637, 1868; RS 2390; GS 3215; RGS 5045; CGL 7147.

782.14 Death from racing steamboat.—If the captain or any other person having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat or of any other apparatus for the generation of steam, shall, from ignorance or gross negligence, or for the purpose of excelling any other boat in speed, create or allow to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person shall be killed, every such captain, engineer or other person, shall be deemed guilty of manslaughter.

History.—§18, sub-ch. 3, ch. 1637, 1868; RS 2391; GS 3216; RGS 5046; CGL 7148.

782.15 Killing by intoxicated physician.—If any physician, while in a state of intoxication, shall without a design to effect death, administer any poison, drug or medicine, or do any other act to another person which shall produce the death of such other person, he shall be deemed guilty of manslaughter.

History.—§19, sub-ch. 3, ch. 1637, 1868; RS 2392; GS 3217; RGS 5047; CGL 7149.

782.16 Concealing death of bastard child.—If any woman conceals the death of any issue of her body, which if born alive would be a bastard, so that it may not be known whether such child was born alive or not, or whether or not it was murdered, she shall be punished by imprisonment not exceeding one year, or by fine not exceeding one hundred dollars.

History.—§11, sub-ch. 3, ch. 1637, 1868; RS 2393; GS 3218; RGS 5048; CGL 7150.

782.17 Indictment and verdict.—Any woman indicted for the murder of her infant bastard child may also be charged in the same indictment with the offense described in §782.16 and if upon the trial she be acquitted of the murder, she may be found guilty of the concealment.

History.—§12, sub-ch. 3, ch. 1637, 1868; RS 2394; GS 3219; RGS 5049; CGL 7151.

CHAPTER 783

DUELING

783.01 Dueling without homicide; challenging to fight duel.—Whoever engages in a duel with a deadly weapon, although no homicide ensues, or challenges another to fight such duel, or sends or delivers a written or verbal message purporting or intended to be such challenge, although no duel ensues, shall be punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding ten thousand dollars, and shall be incapable of holding or of being elected or appointed to any place of honor, profit or trust, under the constitution or laws of this state, and shall not vote at any election for the term of twenty years after such conviction.

History.—§27, sub-ch. 3, ch. 1637, 1868; RS 2412; GS 3247; RGS 5078; CGL 7180.
cf.—§782.05, Killing in duel.

783.02 Accepting or delivering challenge, acting as aid.—Whoever accepts such challenge, or knowingly carries or delivers any such challenge or message, whether a duel ensues or not, and whoever is present at the fighting of a duel with deadly weapons, as an aid, second or surgeon, or advises, encourages or promotes such duel, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars, and shall be disqualified, as mentioned in the preceding section, for the term of five years after such conviction.

History.—§28, sub-ch. 3, ch. 1637, 1868; RS 2413; GS 3248; RGS 5079; CGL 7181.

783.03 Publishing another as a coward for not fighting or accepting challenge to fight.—Whoever posts another, or in writing or in print publishes or proclaims another person as a coward, or uses any other reproachful or contemptuous language, for not fighting a duel, or for not sending or accepting a challenge to fight a duel, shall be punished by imprisonment not exceeding six months, or by fine not exceeding three hundred dollars.

History.—§29, sub-ch. 3, ch. 1637, 1868; RS 2414; GS 3249; RGS 5080; CGL 7182.

CHAPTER 784

ASSAULT AND BATTERY; MAYHEM; CULPABLE NEGLIGENCE

784.01 Mayhem.—Whoever, with malicious intent to maim or disfigure, cuts out or maims the tongue, puts out or destroys an eye, cuts or tears off an ear, cuts, slits or mutilates the nose or lip, or cuts off or disables a limb or member of any other person, and whoever is privy to such intent, or present, aiding or abetting in the commission of such offense, shall be punished by imprisonment in the state prison not exceeding twenty years or by fine not exceeding five thousand dollars.

History.—§33, sub-ch. 3, ch. 1637, 1868; RS 2395; GS 3220; RGS 5050; CGL 7152.

784.02 Punishment of assault.—Whoever commits a bare assault shall be punished by a fine not exceeding one hundred dollars.

History.—§5, Feb. 10, 1832; RS 2400; GS 3226; RGS 5059; CGL 7161.

cf.—§231.06, Assault upon school teacher.

784.03 Punishment of assault and battery.—Whoever commits assault and battery shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§5, Feb. 10, 1832; RS 2401; §1, ch. 5135, 1903; GS 3227; RGS 5060; CGL 7162.

784.04 Aggravated assault.—Whoever assaults another with a deadly weapon, without intent to kill, shall be guilty of an aggravated assault, and shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not exceeding one year or by fine not exceeding three thousand dollars, or by both such fine and imprisonment.

History.—§2, ch. 3275, 1881; RS 2402; GS 3228; RGS 5061; CGL 7163; §1, ch. 29709, 1955; §1, ch. 57-345.

784.05 Punishment for culpable negligence.—Whoever through culpable negligence, or a reckless disregard for the safety of others, inflicts any personal injury or injuries upon another, not resulting in death, shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars.

History.—§1, ch. 5212, 1903; GS 3229; RGS 5062; CGL 7164.

cf.—§775.06, Alternative punishment.

784.06 Assault with intent to commit felony.—Whoever commits an assault on another, with intent to commit any felony punishable with death or imprisonment for life, shall be punished by imprisonment in the state prison not exceeding twenty years. An assault with intent to commit any other felony shall be punished to an extent not exceeding one-half the punishment which could have been inflicted had the crime been committed.

History.—§2403, RS 1892; GS 3230; RGS 5063; CGL 7165.

CHAPTER 785

FIGHTING; MARATHONS

785.01 Fighting by appointment.—Whoever by previous appointment or arrangement meets another person and engages in a fight shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§30, sub-ch. 3, ch. 1637, 1868; RS 2415; GS 3250; RGS 5081; CGL 7183.

cf.—§548.01, Pugilistic exhibitions.
§783.01, Dueling.

785.02 Aiders and abettors.—Whoever is present at such fight as an aid, second or surgeon, or advises, encourages or promotes such fight, shall be punished by imprisonment not exceeding six months, or by a fine not exceeding five hundred dollars.

History.—§31, sub-ch. 3, ch. 1637, 1868; RS 2416; GS 3251; RGS 5082; CGL 7184.

785.03 Fighting outside of state by appointment made therein.—Whoever, being an inhabitant or resident of this state, by previous appointment or arrangement made therein, leaves the state and engages in a fight with another person, without the limits thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§32, sub-ch. 3, ch. 1637, 1868; RS 2417; GS 3252; RGS 5083; CGL 7185.

785.04 Endurance contests prohibited.—No person shall maintain, operate, promote, conduct, or advertise, or aid in maintaining, operating, promoting, conducting, or advertising, or participate in any "marathon", "marathon dance", "walkathon", "skatathon", "bikathon", or any other mental or physical endurance contest or performance of a like or similar character or nature under any name whatsoever; provided, that this section shall not apply to bona fide athletic contests commonly known as cross-country races or marathon races held on extended outdoor cross-country courses over a limited number of miles.

Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment not exceeding twelve months.

History.—§§1, 2, ch. 17094, 1935; CGL 1936 Supp. 7849(1).

cf.—§1.01(3), "Person" defined.
§775.06, Alternative punishment.

CHAPTER 790

WEAPONS AND FIREARMS

790.01 Carrying concealed weapons.—Whoever shall secretly carry arms of any kind on or about his person, or whoever shall have concealed on or about his person any dirk, pistol, metallic knuckles, slung shot, billie or other weapon, except a common pocket knife, shall be punished by imprisonment for not less than three months nor exceeding six months, or by fine of not less than one hundred dollars nor exceeding five hundred dollars; provided, that nothing in this section shall be considered as applying to sheriffs, deputy sheriffs, city or town marshals, policemen, constables or United States marshals or their deputies.

History.—§1, ch. 4929, 1901; GS 3262; RGS 5095; CGL 7197.

790.02 Officer to arrest without warrant.—The carrying of concealed weapons is declared a breach of peace, and any officer authorized to make arrests under the laws of this state may make arrests without warrant of persons violating the provisions of the preceding section.

History.—§1, ch. 4929, 1901; GS 3263; RGS 5096; CGL 7198.
cf.—§901.15, Arrest without warrant.

790.03 Indictments and informations for carrying concealed weapons.—The several grand juries, in their respective counties, may return indictments, and the several state attorneys, in their respective circuits, may file informations against parties for carrying any pistol, razor, or dirk, or other deadly weapon, except a common pocket knife, secretly on or about their person.

History.—§1, ch. 4926, 1901; GS 3264; RGS 5097; CGL 7199.
cf.—§906.01, Indictment and information.

790.04 Indictments, where tried.—All indictments or informations mentioned in §790.03 shall be by the clerk of the circuit court transmitted and certified to the county judge for trial, except in counties where criminal courts of record and county courts have been established. In such counties all such indictments and informations shall be transmitted and certified to criminal courts of record or to the county court for trial.

History.—§2, ch. 4926, 1901; GS 3265; RGS 5098; CGL 7200.

790.05 Penalty for carrying pistol or repeating rifle without first obtaining license.—Whoever shall carry around with him, or have in his manual possession, in any county in this state, any pistol, winchester rifle or other repeating rifle, without having a license from the county commissioners of the respective counties of this state, shall, upon conviction thereof, be punished by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days; provided, this section shall not apply to sheriffs, deputy sheriffs, city or town marshals, policemen, constables or United States marshals or their deputies as to the carrying of concealed weapons.

History.—§1, ch. 4147, 1893; §1, ch. 4928, 1901; GS 3267; RGS 5100; CGL 7202.

790.06 How license procured.—The county commissioners of the respective counties of this state may at any regular or special meeting grant a license to carry a pistol, winchester or other repeating rifle, only to such persons as are over the age of twenty-one years and of good moral character, for a period of two years, upon such person giving a bond payable to the governor of the state in the sum of one hundred dollars, conditioned for the proper and legitimate use of said weapons, with sureties to be approved by the county commissioners. The commissioners shall keep a record of

the names of the persons taking out such a license, the name of the maker of the firearm so licensed to be carried, and the caliber and number of the same.

History.—§2, ch. 4147, 1893; §1, ch. 5139, 1903; GS 3268; RGS 5101; CGL 7203.

790.07 Persons engaged in criminal offense, having weapons.—Whoever, when lawfully arrested while committing a criminal offense or a breach or disturbance of the public peace, is armed with or has on his person any slung shot, metallic knuckles, billies, firearms or other dangerous weapon, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.

History.—§10, sub-ch. 7, ch. 1637, 1868; RS 2423; §2, ch. 4124, 1893; GS 3269; RGS 5102; CGL 7204.
cf.—§775.06, Alternative punishment.

790.08 Taking possession of weapons and arms; disposition; custody.—

(1) Every officer making an arrest under the preceding section, or under any other law or municipal ordinance within the state, shall take possession of any weapons or arms mentioned in the preceding section, found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.

(2) If the person arrested as aforesaid be convicted of violating §790.07, or of a similar offense under any municipal ordinance, or any other offense involving the use or attempted use of such weapons or arms, such weapons or arms shall become forfeited to the state, without any order of forfeiture being necessary although the making of such an order shall be deemed proper, and shall be forthwith delivered by the sheriff or chief of police having custody thereof to the adjutant general of the military department of the state, who is hereby made the custodian of such weapons and arms for the state.

(3) If the person arrested as aforesaid be acquitted of the offenses mentioned in the preceding subsection, the said weapons or arms taken from him as aforesaid shall be returned to him; provided, however, if he fails to call for or receive the same within sixty days from and after his acquittal or the dismissal of the charges against him, the same shall be delivered to the adjutant general as aforesaid to be held by him as hereinafter provided. This subsection shall likewise apply to persons and their weapons who have heretofore been acquitted or the charges against them dismissed.

(4) All such weapons and arms now in, or hereafter coming into, the hands of any of the peace officers of this state or any of its political subdivisions, which have been found abandoned or otherwise discarded, or left in their hands and not reclaimed by the owners shall, within sixty days, be delivered by such peace officer to the adjutant general as aforesaid.

(5) Weapons and arms coming into the hands of the adjutant general pursuant to subsections (3) and (4) aforesaid shall, unless reclaimed by the owner thereof within six months from the date the same come into the hands of the said adjutant general, become forfeited to the state and no action or proceeding for their recovery shall thereafter be maintained in this state.

(6) Weapons and arms coming into the hands of the adjutant general as aforesaid shall be listed, kept and held by him as custodian for the state. Any or all of such arms suitable for use by the military department of the state may be so used under the direction of the adjutant general; and all such weapons and arms not needed by the said military department may be loaned to other departments of the state, or to any county or municipality having use for such weapons and arms. The adjutant general shall take the receipt of such other state department, county or municipality for such weapons and arms loaned to them. All weapons and arms which are not needed and are useless or unfit for use shall be destroyed or otherwise disposed of under the direction of the adjutant general, who shall make and preserve a list of such weapons destroyed or otherwise disposed of.

History.—§3, ch. 3620, 1885; RS 2424; GS 3270; RGS 5103; CGL 7205; am. §1, ch. 22049, 1943.

790.09 Manufacturing or selling slung shot.—Whoever manufactures or causes to be manufactured, or sells or exposes for sale any instrument or weapon of the kind usually known as slung shot, or metallic knuckles, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.

History.—§11, sub-ch. 7, ch. 1637, 1868; RS 2425; §3, ch. 4124, 1893; GS 3271; RGS 5104; CGL 7206.

790.10 Improper exhibition of dangerous weapons.—If any person having or carrying any dirk, dirk-knife, sword, sword-cane, gun, pistol or other deadly weapon, shall in the presence of one or more persons exhibit the same in a rude, careless, angry or threatening manner, not in necessary self-defense, the person so offending shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.

History.—§1, ch. 4532, 1897; GS 3272; RGS 5105; CGL 7207.

790.11 Carrying firearms in national forests prohibited.—No person without first having obtained a valid hunting license, and within the season covered by such hunting license, shall carry on or about his person, or in any vehicle in which such person may be riding, or on any animal which such person may be using, within the limits of a national forest area within the state, any gun or firearm of any description whatever, without first having obtained a permit as hereinafter prescribed; provided, that the provisions of §§790.11, 790.12 and 790.14 shall not apply to the Choctawhatchee national forest.

History.—§1, ch. 17911, 1937; CGL 1940 Supp. 7203(5).

790.12 Permit may be granted by county commissioners.—The board of county commissioners of the county, or counties, where such national forest area is located, may grant spe-

cial permit for the carrying of firearms to be specifically described in such permit, when the granting of such permit shall have been recommended in writing by the officer or employee of the United States government in charge of such national forest area; and where such area lies in more than one county, such permit must be granted by the board of county commissioners of each of the several counties involved before the same shall be valid.

History.—§2, ch. 17911, 1937; CGL 1940 Supp. 7203(6).

790.14 Penalty for violation of §§790.11 and 790.12.—Any person violating the provisions of §§790.11 and 790.12 shall upon conviction be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period not to exceed six months.

History.—§4, ch. 17911, 1937; CGL 1940 Supp. 7203(8); am. §7, ch. 22858, 1945.

cf.—§775.06, Alternative punishment.

790.15 Discharging firearms in public.—Any person who discharges firearms in any public place or on any paved public road, highway or street or whosoever knowingly discharges any firearms over any paved public road, highway or street or occupied premises, shall be punished by imprisonment not exceeding six months or by fine not exceeding $500.00 or both. This section shall not apply to a person lawfully defending life or property or performing official duties requiring the discharge of firearms.

History.—§1, ch. 3289, 1881; RS 2683; GS 3626; RGS 5557; CGL 7743; §1, ch. 61-334.

cf.—Ch. 16,249 acts 1933, Discharging firearms upon Tamiami Trail.

790.16 Throwing bombs; discharging machine guns; penalty.—It is unlawful for any person to throw any bomb or to shoot or discharge any machine guns upon, across or along any road, street or highway in the state, or upon or across any public park in the state, or in, upon or across any public place where people are accustomed to assemble in the state. The casting of such bomb or the discharge of such machine gun in, upon or across such public street, or in, upon or across such public park, or in, upon or across such public place, whether indoors or outdoors, including all theatres and athletic stadiums, with intent to do bodily harm to any person or with intent to do damage to the property of any person, shall be a felony and shall be punishable by death.

This section shall not apply to the use of such bombs or machine guns by any United States or state militia, or by any sheriffs, deputy sheriffs, marshals, constables, chief of police or police officer while in the discharge of their lawful duty in suppressing riots and disorderly conduct, and in preserving and protecting the public peace or in the preservation of public property, or where said use shall be authorized by law.

A majority of the jurors trying said cause may in their discretion recommend the defendant to the mercy of the court in which event the penalty shall be changed from death to life imprisonment.

The circuit judge before whom said cause shall be tried, should he deem the circumstances under which said offense was committed of such nature and character as to justify clemency, may, in his discretion, change the penalty from death to imprisonment in the penitentiary for life.

History.—§1, ch. 16111, 1933; CGL 1936 Supp. 7748(1).

cf.—§822.02, Throwing explosive with intent to injure building.

790.161 Throwing, placing or discharging any bomb or other deadly explosive or attempt so to do, felony; penalties.—It shall be unlawful for any person to throw, place, discharge, or attempt to discharge any bomb, dynamite, or other deadly explosive with intent to do bodily harm to any person or with intent to do damage to the property of any person and any person convicted thereof shall be guilty of a felony and punished in the following manner:

(1) When such action, or attempt at such action, results in the death of the person intended, or any person, the person so convicted of such felony shall be punished by death, unless a majority of the jurors trying said cause shall request mercy, in which event the penalty shall be changed from death to life imprisonment in the state prison.

(2) When such action, or attempt at such action, results not in the death of any person, but does result in personal injury to a person or in damage to the property of any person, the person convicted of such felony shall be punished by imprisonment in the state prison for life, or for any number of years not less than twenty years.

History.—§1, ch. 59-29.

790.162 Threat to throw, place or discharge bomb or other deadly explosive, felony; penalty.—It shall be unlawful for any person to threaten to throw, place, or discharge any bomb, dynamite, or other deadly explosive with intent to do bodily harm to any person or with intent to do damage to any property of any person and any person convicted thereof shall be guilty of a felony and punished by imprisonment in the state penitentiary for not more than twenty years.

History.—§2, ch. 59-29.

790.163 False reports of bombing, etc., felony; penalty.—It shall be unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive and any person convicted thereof shall be guilty of a felony and punished by imprisonment in the state penitentiary for not more than ten years.

History.—§3, ch. 59-29.

790.17 Furnishing weapons to minors, etc.—Whoever sells, hires, barters, lends or gives any minor under sixteen years of age any pistol, dirk, or other arm or weapon, other than an ordinary pocket knife, or a gun or rifle used for hunting, without permission of the parent of such minor, or the person having charge of

such minor, or sells, hires, barters, lends or gives to any person of unsound mind any dangerous weapon, other than an ordinary pocket knife, shall be punished by imprisonment not exceeding three months, or by fine not exceeding fifty dollars.

History.—§§1, 2, ch. 3285, 1881; RS 2684; GS 3627; RGS 5558; CGL 7744.

790.18 Selling arms to minors by dealers.—It is unlawful for any dealer in arms to sell to minors any pistol, springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles or sling shot, and every person violating this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of fifty dollars or by imprisonment in the county jail not more than six months.

History.—§11, ch. 6421, 1913; RGS 5559; CGL 7745.

790.19 Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, street cars or other vehicles.—Whoever, wantonly or maliciously shoots at, within, or into, or throws any missile which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private buses, or any railroad car or locomotive, street car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship or barge lying in or plying the waters of this state, or aircraft flying through the air space of this state, shall be punished by imprisonment in the state prison not more than ten years or by imprisonment in the county jail for not more than five years, or by fine not more than five thousand dollars.

History.—§2, ch. 3281, 1881; RS 2696; §§1, 2, ch. 4987, 1901; §§1, 2, ch. 4988, 1901; GS 3628; RGS 5560; CGL 7746. §1, ch. 59-458.

790.21 Duty of sheriff in such cases.—Any sheriff, deputy sheriff or constable of any county where a river or water is the dividing line between two counties, or of such county in which the violation occurred, may board any passenger boat, with or without warrant, if he has reason to believe that any person on board said passenger boat has violated any of the provisions of the preceding section, and take into his custody any and all persons violating or who have violated any of the provisions thereof. Said sheriff, deputy sheriff or constable shall as soon as practical thereafter appear before the proper court and cause a formal charge to be made. The trial of any persons violating the provisions of said section may be had in the county wherein the arrest was made.

History.—§4, ch. 5169, 1903; GS 3630; RGS 5562; CGL 7748.

cf.—§11, Declaration of rights, Florida constitution.

790.22 Use of BB guns and rifles by child under sixteen; limitation.—

(1) The use for any purpose whatsoever of BB guns, air rifles, and 22-calibre rifles by any child under the age of sixteen years is prohibited unless such use is under the supervision and in the presence of an adult.

(2) Any adult responsible for the welfare of any child under the age of sixteen years who knowingly permits such child to use or have in his possession any BB gun, air rifle or 22-calibre rifle in violation of the provisions of subsection (1) of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars or by imprisonment for not longer than thirty days.

History.—Comp. §§1, 2, ch. 26946, 1951.

790.23 Felons; possession of firearms unlawful; exception; penalty.—

(1) It is unlawful for any person who has been convicted of a felony in the courts of this state, or convicted of an offense in any other state, territory or country which if committed in Florida would be deemed a felony, to own or to have in his care, custody, possession or control any pistol, sawed-off rifle or sawed-off shotgun. A sawed-off rifle or sawed-off shotgun is defined for the purposes of this section as being any rifle or shotgun with a caliber greater than twenty-two caliber and with a barrel less than sixteen inches long.

(2) This section shall not apply to a person having been convicted of a felony whose civil rights have been restored.

(3) Any person convicted of violating this section shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for not more than ten years.

History.—§§1-3, ch. 29766, 1955; §1, ch. 63-31.

790.24 Report of medical treatment of gunshot wounds; penalty for violation.—Any physician, nurse or employee thereof and any employee of a hospital, sanitarium, clinic, or nursing home knowingly treating any person suffering from a gunshot wound or other wound indicating violence, or receiving a request for such treatment shall report the same immediately to the sheriff's department of the county in which said treatment is administered or request therefor received. Any such person wilfully failing to report such treatment or request therefor shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a period not to exceed six months or by fine not to exceed one hundred dollars.

History.—§1, ch. 59-35.

CHAPTER 791

SALE OF FIREWORKS

791.01 Fireworks defined.—

(1) The term "fireworks" shall mean and include any combustible or explosive composition, or any substance or combination of substances, or, except as hereinafter provided, any article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.

(2) The term "fireworks" shall not include sparklers, toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times.

History.—§1, ch. 20445, 1941; §1, ch. 57-338.

791.02 Sale of fireworks regulated; rules and regulations.—Except as hereinafter provided it shall be unlawful for any person, firm, co-partnership or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided that the board of county commissioners shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks by fair associations, amusement parks, and other organizations or groups of individuals when such public display is to take place outside of any municipality; provided, further, that the governing body of any municipality shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks within the boundaries of any municipality. Every such display shall be handled by a competent operator to be approved by the chiefs of the police and fire departments of the municipality in which the display is to be held, and shall be of such a character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, shall not be hazardous to property or endanger any person. Application for permits shall be made in writing at least fifteen days in advance of the date of the display. After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

History.—§2, ch. 20445, 1941; §1, ch. 61-312.

791.03 Bond of licensees.—The board of county commissioners shall require a bond deemed adequate by the board of county commissioners from the licensee in a sum not less than five hundred dollars conditioned for the payment of all damages which may be caused either to a person or to property by reason of the licensee's display, and arising from any acts of the licensee, his agents, employees or subcontractors.

History.—§3, ch. 20445, 1941; §1, ch. 61-312.

791.04 Sale at wholesale, etc., exempted.—Nothing in this chapter shall be construed to prohibit any resident wholesaler, dealer, or jobber to sell at wholesale such fireworks as are not herein prohibited; or the sale of any kind of fireworks provided the same are to be shipped directly out of state; or are to be used by a person holding a permit from any board of county commissioners at the display covered by such permit, or the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or for blasting or other industrial use, or the sale or use of blank cartridges for a show or theatre, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or organizations composed of the armed forces of the United States; provided, nothing in this chapter shall be construed as barring the operations of manufacturers, duly licensed, from manufacturing, experimenting, exploding and storing such fireworks in their compounds or proving grounds.

History.—§4, ch. 20445, 1941; §1, ch. 61-312.

791.05 Seizure of illegal fireworks.—Each sheriff, or his appointee, or any other police officer, shall seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

History.—§5, ch. 20445, 1941.

791.06 Penalties.—Any person, firm, co-partnership, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or in the case of individuals, the members of a partnership and the responsible officers and agents of an association or corporation, by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment.

History.—§6, ch. 20445, 1941.

791.07 Agricultural and fish hatchery use.—Nothing in this chapter shall prohibit the importation, purchase, sale or use of firecrackers used or to be used solely and exclusively in frightening birds from agricultural works and fish hatcheries and such use shall be governed entirely by the rules and regulations prescribed by the commissioner of agriculture.

History.—§1, ch. 29780, 1955; §1, ch. 57-336.

CHAPTER 794

RAPE

794.01 Rape and forcible carnal knowledge; penalty.—Whoever ravishes and carnally knows a female of the age of ten years or more, by force and against her will, or unlawfully or carnally knows and abuses a female child under the age of ten years, shall be punished by death, unless a majority of the jury in their verdict recommend mercy, in which event punishment shall be by imprisonment in the state prison for life, or for any term of years within the discretion of the judge. It shall not be necessary to prove the actual emission of seed, but the crime shall be deemed complete upon proof of penetration only.

History.—§40, sub-ch. 3, ch. 1637, 1868; RS 2396; GS 3221; RGS 5051; CGL 7153; am. §1, ch. 24285, 1947.
cf.—§741.22, Incest; §§801.02, 801.03, Child molester law.

794.02 Capability to be determined by the jury.—The common law rule "that a boy under fourteen years of age is conclusively presumed to be incapable of committing the crime of rape" shall not be in force in the state; the capability of a person to commit the crime of rape shall be determined by the jury.

History.—§1, ch. 4964, 1901; GS 3222; RGS 5052; CGL 7154.

794.03 Unlawful to publish name of female raped, etc.—No person shall print and publish or cause to be printed and published in any newspaper, magazine, periodical or any other publication in the state the name or identity of any female raped or upon whom an assault with intent to commit rape has been committed or may be committed.

History.—§1, ch. 6226, 1911; RGS 5053; CGL 7155.

794.04 Punishment for violation of §794.03.—Whoever is convicted of the violation of the provisions of §794.03 shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than twelve months.

History.—§2, ch. 6226, 1911; RGS 5054; CGL 7156.
cf.—§775.06, Alternative punishment.

794.05 Carnal intercourse with unmarried person under eighteen years.—

(1) Any person who has unlawful carnal intercourse with any unmarried person, of previous chaste character, who at the time of such intercourse is under the age of eighteen years, shall be punished by imprisonment in the state prison for not more than ten years, or by fine of not exceeding $2,000.

(2) It shall not be a defense to a prosecution under this section that the prosecuting witness was not of previous chaste character at the time of the act when the lack of previous chaste character in the prosecuting witness was caused solely by previous intercourse between the defendant and the prosecuting witness.

History.—§2598, RS 1892; §1, ch. 4965, 1901; GS 3521; §1, ch. 6974, 1915; §1, ch. 7732, 1918; RGS 5409; §1, ch. 8596, 1921; CGL 7552; §1, ch. 61-109.
cf.—§775.06, Alternative punishment.

794.06 Carnal intercourse with unmarried female idiot.—Any male person who has carnal intercourse with an unmarried female, with or without her consent, who is at the time an idiot, lunatic or imbecile, shall be deemed guilty of a felony, and, on conviction, shall be punished by imprisonment in the state prison at hard labor for not exceeding ten years.

History.—§1, ch. 5909, 1909; RGS 5410; CGL 7553.

CHAPTER 795

ENTICING AWAY UNMARRIED WOMEN

795.01 Enticing away for clandestine marriage.—Whoever fraudulently and deceitfully entices away any unmarried person under the age of eighteen years from her father's house, or wherever else she may be found, without the consent of the parent or guardian, if any, under whose care and custody such person is living, for the purpose of effecting a clandestine marriage of such person without such consent, shall be punished by imprisonment in the state penitentiary not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§1, sub-ch. 8, ch. 1637, 1868; RS 2599; GS 3522; RGS 5411; §1, ch. 8595, 1921; CGL 7554.
cf.—§775.06, Alternative punishment.

795.02 Enticing away for prostitution.—Whoever fraudulently and deceitfully entices or takes away an unmarried woman of a chaste life and conversation from her father's house, or wherever else she may be found, for the purpose of prostitution at a house of ill-fame, assignation or elsewhere, and whoever aids and assists in such abduction for such purpose, shall be punished by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§2, sub-ch. 8, ch. 1637, 1868; RS 2600; GS 3523; RGS 5412; §2, ch. 8595, 1921; CGL 7555.
cf.—§796.03, Procuring female under sixteen for prostitution.

795.03 Enticing female to come into state or to leave her home for immoral purposes.—Whoever shall induce, entice or procure to come into this state or to leave her home or other place where she may be residing in this state, any woman or girl for the purpose of prostitution or concubinage or for other immoral purposes, or to enter any house of prostitution in this state, shall upon conviction be imprisoned in the state penitentiary for a period of not more than five years, or be fined not exceeding one thousand dollars.

History.—§1, ch. 6225, 1911; RGS 5413; CGL 7556.
cf.—§775.06, Alternative punishment.
§796.03, Procuring female under sixteen for prostitution.

CHAPTER 796

PROSTITUTION

796.01 Keeping house of ill fame.—Whoever keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment not exceeding one year.

History.—§13, sub-ch. 8, ch. 1637, 1868; RS 2615; GS 3535; RGS 5433; CGL 7576.

cf.—§823.05, House of ill fame declared nuisance.
§64.11, Abatement of nuisance.
§823.01, Removal of nuisance by justice of the peace.

796.02 Lease of house to expire on conviction.—When the lessee of a dwelling house is convicted of the offense mentioned in the preceding section, the lease or contract for letting the house shall, at the option of the lessor, become void, and the lessor shall have the like remedy to recover the possession as against a tenant holding over after the expiration of his term.

History.—§14, sub-ch. 8, ch. 1637, 1868; RS 2616; GS 3536; RGS 5434; CGL 7577.

796.03 Procuring female under age of sixteen for prostitution.—Whoever procures for prostitution, or causes to be prostituted, any unmarried female who is under the age of sixteen years shall be punished by imprisonment in the state prison not exceeding ten years.

History.—§2617, RS 1892; GS 3537; RGS 5435; CGL 7578.

cf.—§795.02, Enticing away unmarried female for prostitution.
§795.03, Enticing female to come into state or leave home for immoral purposes.

796.04 Prostitute; forcing, etc., one to become, unlawful.—

(1) After May 1, 1943, it shall be unlawful for anyone to force, compel or coerce another to become a prostitute.

(2) Anyone violating this section shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars, or by imprisonment not to exceed five years in the state penitentiary, or by both such fine and imprisonment in the discretion of the judge.

History.—§§1, 2, ch. 21661, 1943.

cf.—§§384.06-384.20, Venereal diseases.

796.05 Prostitute; living on earnings.—

(1) After May 1, 1943, it shall be unlawful for anyone to live off the earnings of any other person with the knowledge or reasonable cause to believe that such earnings are derived from prostitution.

(2) Anyone violating this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment in the discretion of the judge.

History.—§§1, 2, ch. 21662, 1943.

796.06 Prostitution, etc.; renting space.—

(1) After May 1, 1943, it shall be unlawful to let or rent any place, structure or part thereof, trailer or other conveyance, with the knowledge that such place, structure, trailer or conveyance will be used for the purpose of lewdness, assignation or prostitution.

(2) Anyone violating this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment in the discretion of the judge.

History.—§§1, 2, ch. 21663, 1943 and §§1, 2, ch. 22025, 1943.

796.07 Prohibiting prostitution, etc.; evidence; penalties.—

(1) As used in this section, unless the context clearly requires otherwise:

(a) The term "prostitution" shall be construed to include the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for licentious sexual intercourse without hire.

(b) The term "lewdness" shall be construed to include any indecent or obscene act.

(c) The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

(d) The term "prostitution" as used in paragraph (a) shall be construed so as to exclude sexual intercourse between a husband and his wife.

(2) After May 1, 1943, it shall be unlawful in the state:

(a) To keep, set up, maintain or operate any place, structure, building or conveyance for the purpose of lewdness, assignation or prostitution.

(b) To offer, or to offer or agree to secure, another for the purpose of prostitution, or for any other lewd or indecent act.

(c) To receive, or to offer or agree to receive, any person into any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or to permit any person to remain there for such purpose.

(d) To direct, take or transport, or to offer or agree to take or transport, any person to any place, structure or building, or to any other person, with knowledge or reasonable cause to be-

lieve that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation.

(3) It shall further be unlawful in the state:

(a) To offer to commit, or to commit, or to engage in, prostitution, lewdness or assignation.

(b) To solicit, induce, entice or procure another to commit prostitution, lewdness or assignation with himself or herself.

(c) To reside in, enter or remain in, any place, structure or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness or assignation.

(d) To aid, abet or participate in the doing of any of the acts or things enumerated in subsections (2) and (3) of this section.

(4) In the trial of any persons charged with the violation of any of the provisions of this section, testimony concerning the reputation of any place, structure, building or conveyance involved in said charge, and of the person or persons who reside in, operate or frequent the same, and of the defendant, shall be admissible in evidence in support of the charge.

(5) Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

History.—§§1-5, ch. 21664, 1943.

CHAPTER 797

ABORTION

797.01 Performing abortion; punishment.—Whoever with intent to procure miscarriage of any woman unlawfully administers to her, or advises or prescribes for her, or causes to be taken by her, any poison, drug, medicine or other noxious thing, or unlawfully uses any instrument or other means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman does not die in consequence thereof, be punished by imprisonment in the state prison not exceeding seven years, or by fine not exceeding one thousand dollars.

History.—§9, sub-ch. 8, ch. 1637, 1868; RS 2618; GS 3538; RGS 5436; CGL 7579.

cf.—§782.10, Abortion; death of child.

797.02 Advertising drugs, etc., for abortion.—Whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or the name of any person, real or fictitious, from whom, or to any place, house, shop or office where any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be punished by imprisonment in the state prison not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§10, sub-ch. 8, ch. 1637, 1868; RS 2619; GS 3539; RGS 5437; CGL 7580.

CHAPTER 798

ADULTERY AND FORNICATION

798.01 Living in open adultery.—Whoever lives in an open state of adultery shall be punished by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars. Where either of the parties living in an open state of adultery is married, both parties so living shall be deemed to be guilty of the offense provided for in this section.

History.—§1, ch. 1986, 1874; RS 2595; GS 3518; RGS 5406; CGL 7549.

cf.—§741.22, Incest.

798.02 Lewd and lascivious behavior.—If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open and gross lewdness and lascivious behavior, they shall be punished by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding three hundred dollars.

History.—§6, sub-ch. 8, ch. 1637, 1868; RS 2596; GS 3519; RGS 5407; CGL 7550.

798.03 Fornication.—If any man commits fornication with a woman, each of them shall be punished by imprisonment not exceeding three months, or by fine not exceeding thirty dollars.

History.—§8, sub-ch. 8, ch. 1637, 1868; RS 2597; GS 3520; RGS 5408; CGL 7551.

798.04 White persons and negroes living in adultery.—If any white person and negro, or mulatto, shall live in adultery or fornication with each other, each shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding one thousand dollars.

History.—§§2609, 2610, RS 1892; GS 3532; RGS 5422; CGL 7565.

cf.—§1.01, "Negro," "mulatto" defined.
§741.11, Marriage between white person and negro prohibited.

798.05 Negro man and white woman or white man and negro woman occupying same room.—Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall each be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars.

History.—§§2, 4, ch. 8282, 1881; RS §§2612, 2613; GS 3533; RGS 5423; CGL 7566.

cf.—§1.01, "Negro" defined.

CHAPTER 799

BIGAMY

799.01 Bigamy; punishment. — Whoever, having a husband or wife living, marries another person, or continues to cohabit with such second husband or wife in this state, shall (except in the cases mentioned in §799.02) be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§4, sub-ch. 8, ch. 1637, 1868; RS 2603; GS 3526; RGS 5416; CGL 7559.
cf.—§741.22, Incest.

799.02 Exceptions.—The provisions of §799.01 shall not extend to any person whose husband or wife has been continually remaining beyond sea, or has voluntarily deserted the other and remained absent for the space of three years continuously, the party marrying again not knowing the other to be living within that time, nor to any person divorced from the bonds of matrimony.

History.—§5, sub-ch. 8, ch. 1637, 1868; RS 2604; §1, ch. 4963, 1901; GS 3527; RGS 5417; CGL 7560.

799.03 Knowingly marrying husband or wife of another.—Whoever knowingly marries the husband or wife of another person shall be punished by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§39, Feb. 10, 1832; RS 2605; GS 3528; RGS 5418; CGL 7561.

CHAPTER 800

CRIME AGAINST NATURE; INDECENT EXPOSURE

800.01 Crime against nature; punishment.—Whoever commits the abominable and detestable crime against nature, either with mankind or with beast, shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§17, sub-ch. 8, ch. 1637, 1868; RS 2614; GS 3534; RGS 5424; CGL 7567.
cf.—§§801.02, 801.03, Child molester law.

800.02 Unnatural and lascivious act.—Whoever commits any unnatural and lascivious act with another person shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding six months.

History.—§1, ch. 7361, 1917; RGS 5425 ;CGL 7568.
cf.—§775.06, Alternative punishment; §§801.02, 801.03, Child molester law.

800.03 Exposure of sexual organs.—It shall be unlawful for any person to expose or exhibit his sexual organs in any public place or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose or exhibit his person in such place, or to go or be naked in such place. Provided, however, this section shall not be construed to prohibit the exposure of such organs or the person in any place provided or set apart for that purpose. Any person convicted of a violation hereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for a period of not more than six months, or by both such fine and such imprisonment, in the discretion of the court.

History.—§1, ch. 7360, 1917; RGS 5445; CGL 7588; §1, ch. 61-51.
cf.—§775.06, Alternative punishment.

800.04 Lewd, lascivious or indecent assault or act upon or in presence of child.—Any person who shall handle, fondle or make an assault upon any male or female child under the age of fourteen years in a lewd, lascivious or indecent manner, or who shall knowingly commit any lewd or lascivious act in the presence of such child, without intent to commit rape where such child is female, shall be deemed guilty of a felony and punished by imprisonment in the state prison or county jail for not more than ten years.

History.—§1, ch. 21974, 1943; am. §1, ch. 26580, 1951.
cf.—§§801.02, 801.03, Child molester law.

CHAPTER 801

CHILD MOLESTER LAW

801.01 Short title.—This chapter shall be known as the "child molester act."

History.—Comp. §1, ch. 26843, 1951.

801.02 Definitions.—An offense under the provisions of this chapter shall include attempted rape, sodomy, attempted sodomy, crimes against nature, attempted crimes against nature, lewd and lascivious behavior, incest and attempted incest, assault (when a sexual act is completed or attempted) and assault and battery (when a sexual act is completed or attempted), when said acts are committed against, to, or with a person fourteen years of age or under.

History.—§2, ch. 26843, 1951; am. §1, ch. 28158, 1953. Am. §1, ch. 29923, 1955; §1, ch. 57-1990.

801.03 Powers and duties of judge after convictions.—

(1) When any person has been convicted of an offense within the meaning of this chapter, it shall be within the power and jurisdiction of the trial judge to:

(a) Sentence said person to a term of years not to exceed twenty-five years in the state prison at Raiford.

(b) Commit such person for treatment and rehabilitation to the Florida state hospital, or to the hospital or the state institution to which he would be sent as provided by law because of his age or color provided the hospital or institution possesses a maximum security facility as prescribed by the board of commissioners of state institutions. When, as provided for in this law, there shall have been created and established a Florida research and treatment center then the trial judge shall, instead of committing a person to the Florida state hospital, commit such person instead to the Florida research and treatment center. In any such case the court may, in its discretion, stay further criminal proceedings or defer the imposition of sentence pending the discharge of such person from further treatment in accordance with the procedure as outlined in this chapter.

(2) When a person has been convicted of an offense within the meaning of this chapter and the trial judge shall determine to follow the procedure prescribed in subsection (1) (b), the trial judge shall order a psychiatric and psychological examination and require written reports on the person so convicted prior to committing said person or passing sentence on said person. In the event said person is committed under subsection (1) (b), the clerk of the court where such commitment is made shall transmit certified copies of the examiners' reports to each of the following: The superintendent of the Florida state prison, the chief psychiatrist of the Florida research and treatment center, the chairman of the Florida mental health staff board of review and the board of commissioners of state institutions.

(3) When a person has been committed to an institution for treatment under the provisions of this chapter and the superintendent of such institution certifies to the committing court that such person is not insane and further that institution has exhausted its curative abilities upon such person, such person shall be returned to the committing court for further disposition of his case by said court. The superintendent of such institution shall also return with said committed person all records and data pertaining to said person. The superintendent of such institution shall make to the committing court in such cases a report on the treatment received by such person while in the institution. Said report shall contain a diagnosis of the person's condition, a prognosis and the report of the superintendent of such institution as to whether or not such person is dangerous to society.

History.—§§ 3, 4, ch. 26843, 1951; sub.§§(1)(a),(2) am. §§ 2, 3, ch. 28158, sub.§(3) comp. §6, ch. 28158, 1953; (1) (b) and (2) by §2, ch. 57-1990.

cf.—§965.01 Creation of divisions of correction and mental health.

801.04 Court to designate psychiatrist; reports.—Psychiatric and psychological examinations and written reports on a defendant shall be made by a psychiatrist and clinical psychologist designated by the court, provided, however, that where possible said psychiatrist shall have had not less than five years exclusive practice in the diagnosis and treatment of mental dis-

orders and said psychologist shall have had not less than five years experience in diagnostic testing. Psychiatrists and psychologists with the above qualifications are to be called by the court for examinations within the purview of this chapter wherever possible.

History.—§5, ch. 26843, 1951; §3, ch. 57-1990.

801.05 Requirements of written reports.—Written reports made for the court under this section shall include the defendant's social history, criminal record, if any, the circumstances of the offense, a physical and mental examination and all facts and findings necessary to assist the judge in passing sentence, including likelihood of repetition of the offense.

History.—Comp. §5, ch. 26843, 1951.

801.06 Examinations by psychiatrists; where made.—Psychiatrists and clinical psychologists designated by the court shall forthwith examine the defendant. Examinations may be made in the place where the defendant is detained, or, upon recommendation of the pychiatrist the court may commit the defendant for a reasonable period for observation and examination to another place of detention or to such hospital as may be designated by the psychiatrist. When the defendant is committed to a hospital, the court may require the sheriff of the county where the defendant is tried or other properly constituted officer to furnish sufficient personnel to guard such defendant.

History.—§6, ch. 26843, 1951; §4, ch. 57-1990.

801.07 Examination fees; payment.—Each psychiatrist and clinical psychologist designated to examine a defendant shall receive a reasonable fee for each examination of the defendant which fee shall be fixed by the trial judge, plus reasonable traveling expenses; such fees, traveling expenses and the costs of sending a defendant to another place of detention or to a hospital for examination, and expense of the defendant's maintenance therein and returning him, when approved by the court, shall be a charge on the county in which the defendant is being tried. The county may recover such fees, traveling expense and costs from the estate of the defendant. If a psychiatrist or clinical psychologist employed by the state is designated to examine the defendant, the state shall be entitled to reimbursement by the county wherein the defendant is tried in the reasonable amount fixed by the trial judge for each examination, plus reasonable traveling expenses.

History.—§6, ch. 26843, 1951; §5, ch. 57-1990.

801.08 Execution of judgment may be suspended; probation; requirements.—

(1) The trial judge under whose jurisdiction a conviction is obtained may suspend the execution of judgment and place the defendant upon probation.

(2) The trial court placing a defendant on probation may at any time revoke the order placing such defendant on probation and impose such sentence or commitment as might have been imposed at the time of conviction.

(3) No defendant shall be placed on probation or continue on probation until the court is satisfied that the defendant will take regular psychiatric, psychotherapeutic or counseling help, and the individual helping the defendant shall make written reports at intervals of not more than six months to the court and the probation officer in charge of the case. The costs, fees and charges for treatment of a defendant on probation shall not be a charge of the county where the defendant was tried.

History.—§7, ch. 26843, 1951; sub.§(3) am. §4, ch. 28158, 1953. (2) by §6, ch. 57-1990.

801.09 Recovery of cost of treatment.—The cost of treatment of a person committed under this chapter and confined in a state institution may be recovered by the state, from the estate, if any, of the defendant.

History.—Comp. §8, ch. 26843, 1951.

801.10 Examination; petition for, court order.—When any person is charged with an offense within the purview of this chapter, said person may petition the court for a psychiatric and psychological examination as heretofore set out and the written report shall be filed with the clerk of the court having jurisdiction of the offense for the purpose of assisting the court in the trial of the case. The court may, of its own initiative, or upon petition of an interested person, order such examination and report as heretofore set out.

History.—§9, ch. 26843, 1951; §7, ch. 57-1990.

801.101 Examination of complaining witness upon request of defendant.—A defendant may ask the court for a psychiatric-psychological examination of the complaining witness before trial. The court may order such examinations and written reports in accordance with the procedure in §§801.04 and 801.10.

History.—§11, ch. 57-1990.

cf.—§801.16 Florida research and treatment center; treatment of persons not committed under child molester act.

801.11 Committed persons; supervision and treatment.—A chief psychiatrist, chief clinical psychologist and chief psychiatric social worker, comprising a psychiatric-psychological team shall administer and supervise psycho-therapy treatments at the Florida research and treatment center of persons committed under this chapter. They shall make recommendations from time to time for extending treatment, improving facilities and they shall conduct research into the nature and causes of psychiatrically deviated sex behavior and criminal sexual psychopathic behavior and into methods for preventing the fashioning of such mental and emotional disorders and into improved methods of treating such mental and emotional disorders. They shall make such recommendations and report the progress of such research to the board of commissioners of state institutions and to the citizens therapy advisory board. The chief psychiatrist shall be in complete charge of the therapy and research programs under

the jurisdiction of the board of commissioners of state institutions. The chief psychiatrist and all personnel of the Florida research and treatment center shall serve subject to the approval of the citizens therapy advisory board, as provided for under the terms of this chapter.

History.—§10, ch. 26843, 1951; §8, ch. 57-1990.

801.12 Assignment of psychiatrists, etc.; records, availability. —

(1) A citizens therapy advisory board consisting of the heads of the departments of psychology and psychiatry at Florida state university, university of Florida, and university of Miami, chairmen of the departments or such persons who may be designated from time to time by the said institutions, provided such designated persons shall be approved by the Florida psychological association and/or the Florida psychiatric association shall function as follows: The citizens therapy advisory board shall make recommendations to the board of commissioners of state institutions as to personnel and their compensation to staff the therapy and research team at the treatment center. It shall supervise and evaluate the research program and data and place educational material at the disposal of governmental departments, welfare agencies and such other individuals and organizations as they desire, for preventing the fashioning of psychiatrically deviated sex offenders. It shall recommend research and training course programs. It shall approve the design, furnishings and equipment of the Florida research and treatment center. It shall recommend psychiatric and psychological personnel to the board of commissioners of state institutions for the mental health staff board of review and it shall recommend personnel for special assignments on a temporary or permanent basis. It shall meet with the board of commissioners of state institutions and with the mental health staff board of review at least once annually.

(a) Each member of the citizens therapy advisory board and its secretary shall receive a reasonable daily fee for each meeting, which fee shall be fixed by the board of commissioners of state institutions, plus reasonable traveling expenses.

(b) From the recommendations of the citizens therapy advisory board the board of commissioners of state institutions shall forthwith employ a chief psychiatrist, chief clinical psychologist, chief psychiatric social worker and a secretary for the Florida research and treatment center, and shall appoint for a two year period, and thereafter every two years for a two year period, a psychiatrist and clinical psychologist and secretary to meet with the director of the division of mental health of the state board of health, as hereinafter provided for in this chapter, or a person designated by him, and the three shall comprise the mental health staff board of review. It shall also employ personnel for special assignments as recommended by the citizen therapy advisory board.

(c) Each member of the mental health staff board of review and its secretary shall receive a reasonable daily fee for each meeting, which fee shall be fixed by the board of commissioners of state institutions, plus reasonable traveling expenses.

(d) The director of the division of mental health of the state board of health, or the person designated by him, shall be the chairman of the mental health staff board of review. This board shall meet at least three times annually for considering the release or furlough or continuing treatment of persons receiving treatment at the Florida research and treatment center and for discussion of ways to improve the purpose of the law: namely, protection of society from physical harm, research into the causes of psychiatrical sex deviation, methods of preventing such deviation, methods for treating such deviation, methods for informing the community as to dealing with psychiatrical sexual deviation. Recommendations for such improvement shall be made to the board of commissioners of state institutions and to the citizens therapy advisory board from time to time.

(e) When considered desirable members of the Florida research and treatment center therapy team may meet with the mental health staff board of review and committed persons may be interviewed by them.

(f) When committed persons are interviewed by the mental health staff board of review, and in regard to security at the Florida research and treatment center the superintendent of the state prison shall be in charge of security. The superintendent of the state prison shall furnish subsistence, food, clothing and housekeeping personnel for the proper operation of the Florida research and treatment center.

(g) Personnel of the Florida research and treatment center therapy team and security personnel shall receive reasonable travel expenses when business of the Florida research and treatment center or carrying out the purpose of the chapter makes travel necessary.

(2) The committing court shall be notified by the superintendent of the state prison and the chief psychiatrist of the Florida research and treatment center of the receipt of the said person and copies of all records of said person committed. The clerk of the court that sentenced the person, the prosecuting attorney and all probation officers having information on such persons shall make such information available to the persons treating said committed persons. The committing court shall be notified by the superintendent or administrative head of the institution or hospital having custody of a person committed under this chapter of the receipt of the said person and copies of all records of said person.

History.—§10, ch. 26843, 1951; sub. §(2) am. §5, ch. 28158, 1953; §9, ch. 57-1990.

801.13 Review of records after commitment.—

(1) The mental health staff board of review shall cause to be brought before them within six months after commitment the complete record of a person committed under the provisions of this chapter for the purpose of considering and for ordering, the release, furlough or further treatment at the Florida research and treatment center of such person, subject to the provisions of this chapter. Thereafter at least once every two years such review shall be made. Upon recommendation of the psychiatrist treating said person or the superintendent of the state prison, said person's record shall be brought for review at any time earlier than the two year period. Prior to the consideration by the mental health staff board of review of a person's record, the Florida research and treatment center therapy team and also a psychiatrist and clinical psychologist other than the ones so treating said person shall make a complete examination and a complete report on said person giving diagnosis, prognosis, and recommendation as to further treatment and consideration of any other factors which would aid the mental health staff board of review in determining the disposition of said person's case. The superintendent of the state prison shall also make a complete report and recommendation concerning factors which would aid the mental health staff board of review in disposing of the said person's case.

(2) The release or furlough procedure provided for under the terms of this chapter shall follow in substance the terms of the procedure practiced by the state mental hospital and the tuberculosis hospital and shall provide for recommitment of persons when necessary for their own or society's protection, their taking outpatient treatment if required, provided no person shall be released or furloughed without the approval of the trial court. Reports from the released and furloughed persons and from sources who are treating outpatients, or caring for them, or from persons otherwise interested shall be sent at regular intervals to the Florida research and treatment center therapy team, the citizens therapy advisory board, the board of commissioners of state institutions, and the mental health staff board of review. The Florida research and treatment center shall have authority to order the proper authorities to recommit or otherwise detain a person not making a good sexual adjustment in the community and the report of such action shall be given to the mental health staff board of review. No person shall be discharged without the approval of the trial court. Any discharged person may be placed on probation at the court's discretion.

History.—§11, ch. 26843, 1951; am. §7, ch. 28158, 1953; §10, ch. 57-1990.

801.141 Sex offenses; publication of name under age sixteen prohibited.—No person shall print, publish, broadcast or televise, or cause to be printed, published, broadcast or televised, in any manner, the name or identity of any unmarried person under the age of sixteen who commits, or is the victim of or who is a witness to or concerning any sex offense. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor and punished according to law.

History.—Comp. §1, ch. 29931, 1955.

801.15 Sex offenses; trial person under age sixteen; courtroom cleared; exceptions.—In the trial of any case, civil or criminal, when any person under the age of sixteen is testifying concerning any sex offense, the court shall clear the courtroom of all persons except the parties to the cause and their relatives, attorneys, officers of the court, jurors, if any, newspaper reporters or broadcasters and court reporters, which shall constitute a public trial within the meaning of Sec. 11 of the declaration of rights of the constitution.

History.—Comp. §2, ch. 29931, 1955.

801.16 Florida research and treatment center; treatment of persons not committed under child molester act.—

(1) The superintendent of the state prison, the chief psychiatrist and the chief clinical psychologist of the Florida research and treatment center shall act as a board to recommend to the board of commissioners of state institutions such persons other than those committed under this chapter and who are confined at the state prison who would likely benefit in their efforts toward rehabilitation if they received treatment at the Florida research and treatment center. The board of commissioners of state institutions may, upon such recommendation, refer such persons to the Florida research and treatment center for such time as the chief psychiatrist and the chief clinical psychologist deem advisable.

(2) When the said Florida research and treatment center is fully operative in accordance with the purposes of the chapter all non-psychotic and non-mentally defective persons committed to the state hospital under the chapter shall be transferred to the Florida research and treatment center. Any psychotic or mentally defective person committed under the chapter to the said treatment center shall be transferred forthwith to the state hospital upon the request in writing of the chief psychiatrist and chief clinical psychologist of the Florida research and treatment center.

(3) Any person may voluntarily seek the aid of a state's attorney, county solicitor or circuit judge in full confidence of no exposure or publicity, knowing that he has committed or is likely to commit psychiatrically deviated sexual acts, and ask for commitment to the Florida research and treatment center. The court may at its discretion commit such person to the Florida research and treatment center. Such a commitment should not be of a criminal nature. The person so committed shall be subject to the rules of the treatment center while there. The said person shall agree to remain at the

said treatment center for at least one year unless the mental health staff board of review releases or furloughs him. After the said person has remained the agreed time he should be allowed to leave after thirty days notice of his intention to the mental health staff board of review. If the patient has made a confession while seeking commitment such confession should not be used to bring him to trial or convict him on a criminal charge. If, however, it can be proved that he sought commitment only to forestall indictment or criminal charges his commitment should be subject to the release, furlough, or continued treatment at the Florida research and treatment center as provided in §801.13.

History.—§11, ch. 57-1990.
cf.—§801.101 Examination of complaining witness upon request of defendant.

CHAPTER 805

KIDNAPING AND FALSE IMPRISONMENT

805.01 False imprisonment and kidnaping.—Whoever without lawful authority forcibly or secretly confines or imprisons another person within this state against his will, or confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this state against his will, or to cause him to be sent out of this state against his will; and whoever sells, or in any manner transfers, for any term, the service or labor of any other person who has been unlawfully seized, taken, inveigled or kidnaped from this state to any other state, place or county, shall be punished by imprisonment in the state prison not exceeding ten years.

History.—§43, sub-ch. 3, ch. 1637, 1868; RS 2399; GS 3225; RGS 5057; CGL 7159.

cf.—§932.14, Venue of prosecution for kidnaping.

805.02 Kidnaping for ransom.—Whoever, without lawful authority, forcibly or secretly confines, imprisons, inveigles or kidnaps any person, with intent to hold such person for a ransom to be paid for the release of such person, or any person who aids, abets or in any manner assists such person in the confining, imprisoning, inveigling or kidnaping of such person, shall be guilty of kidnaping a person and shall be punished by death, unless a majority of the jury shall recommend the defendant to the mercy of the court, in which event the punishment shall be by imprisonment for life in the state prison.

History.—§1, ch. 5907, 1909; RGS 5058; CGL 7160; §1, ch. 16063, 1933.

CHAPTER 806

ARSON

806.01 Arson, first degree. — Any person who willfully and maliciously sets fire to, burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, whether occupied, unoccupied, or vacant, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself or of another, shall be guilty of arson, in the first degree, and upon conviction thereof, be punished by imprisonment in the state prison for not more than twenty years.

History.—§1, ch. 15603, 1931; CGL 1936 Supp. 7208(8).
cf.—§811.03, Larceny in burning building.

806.02 Arson, second degree.—Any person who willfully and maliciously sets fire to, burns or causes to be burned, or who aids, counsels or procures the burning of any building or structure of whatsoever class or character, whether the property of himself or of another, not included or described in the preceding section, shall be guilty of arson in the second degree, and upon conviction thereof, be punished by imprisonment in the state prison for not more than ten years.

History.—§2, ch. 15603, 1931; CGL 1936 Supp. 7208(9).

806.03 Arson, third degree.—Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any personal property of another of whatsoever class or character of the value of twenty-five or more dollars, shall be guilty of arson in the third degree and upon conviction thereof, shall be punished by imprisonment in the state prison for not more than three years.

History.—§3, ch. 15603, 1931; CGL 1936 Supp. 7208(10).

806.04 Arson, fourth degree.—Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and upon conviction thereof shall, unless otherwise provided, be punished by imprisonment in the state prison for not more than two years or fined not to exceed one thousand dollars.

History.—§4, ch. 15603, 1931; CGL 1936 Supp. 7208(11).
cf.—§776.04, Attempts, generally.

806.05 Certain acts constituting attempts to burn.—Whoever places or distributes any inflammable, explosive or combustible material or substance, or any device, in any building or property with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or buring of same shall be guilty of an attempt to burn such building or property; and, upon conviction thereof shall be punished by imprisonment in the state prison for not more than ten years.

History.—§§1, 2, ch. 15620, 1931; CGL 1936 Supp. 7208(13).
cf.—§776.04, Attempts, generally.

806.06 Burning to defraud the insurer.—Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts so to do or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person against loss or damage by fire, shall be guilty of a felony and upon conviction thereof, be punished by imprisonment in the state prison for not more than five years.

History.—§1, ch. 15602, 1931; CGL 1936 Supp. 7208(12).
cf.—§1.01(3), "Person" defined.
§806.11, Burning insured building.

806.07 Burning other buildings in the nighttime.—Whoever willfully and maliciously burns in the nighttime a meeting-house, church, court house, town house, college, academy, jail or other building erected for public use, or a banking house, warehouse, manufactory or mill of another, or a barn, stable, shop or office within the curtilage of a dwelling house, or any other building by burning whereof any building mentioned in this section is burned in the nighttime, shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§2, sub-ch. 4, ch. 1637, 1868; RS 2427; GS 3274; RGS 5107; CGL 1936 Supp. 7208(2).
cf.—§235.08, Burning school property.

806.08 Burning crops and materials.—Whoever willfully and maliciously burns or otherwise destroys or injures a pile or parcel of wood, boards, timber or other lumber, or any fence, bars or gate, or a stack of grain, hay or other vegetable product, or any vegetable product severed from the soil and not stacked, or any standing trees, grain, grass or other standing product of the soil, or the soil itself, of another, shall be punished by imprisonment in the state prison not exceeding five years,

or in the county jail not exceeding twelve months, or by fine not exceeding five thousand dollars.

History.—§5, sub-ch. 4, ch. 1637, 1868; RS 2430; GS 3277; RGS 5110; CGL 1936 Supp. 7208(5).

806.09 Cutting bell-rope or destroying fire apparatus before burning.—Whoever, within twenty-four hours prior to the burning of a building or other property, willfully and maliciously cuts or removes any bell-rope in the vicinity of such building or property, or cuts, injuries or destroys any engine or hose or apparatus belonging to an engine in said vicinity, shall be deemed guilty of the burning, as accessory before the fact, and be punished by imprisonment in the state prison not exceeding ten years.

History.—§8, sub-ch. 4, ch. 1637, 1868; RS 2432; GS 3279; RGS 5112; CGL 7213.
cf.—§932.12, Jurisdiction and venue; accessory before the fact.
§910.04, Accessory in one county, offense committed in another.

806.10 Preventing or obstructing extinguishment of fire.—Whoever, during the burning of a building or other property, unlawfully and maliciously cuts or sunders any bell-rope in the vicinity of such building or other property, or otherwise prevents an alarm being given, or cuts, injures or destroys an engine or hose or other apparatus belonging to an engine in the vicinity, or otherwise willfully and maliciously prevents or obstructs the extinguishment of any fire, shall be deemed guilty of the burning, as accessory after the fact, and shall be punished by imprisonment in the state prison not exceeding seven years or in the county jail not exceeding twelve months, or by fine not exceeding one thousand dollars.

History.—§9, sub-ch. 4, ch. 1637, 1868; RS 2433; GS 3280; RGS 5113; CGL 7214.
cf.—§776.03, Accessory after fact.
§932.13, Jurisdiction and venue.
§811.03, Larceny in burning building.

806.11 Punishment for burning insured building.—Any person who shall willfully or wantonly set fire to or burn or attempt to burn any building or structure, or any personal property in which such person has an interest as mortgagee, insurer or otherwise, whether such person be the owner thereof or not, or any person, present or absent, who shall aid, assist, procure or coincide therein, and who shall thereafter make claim or demand for the insurance thereon, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the discretion of the court.

The provisions of this section shall in no way affect the law against arson.

History.—§1, ch. 6858, 1915; RGS 5114; CGL 1936 Supp. 7208(7).
cf.—§806.06, Burning to defraud insurer.

806.12 Limitation of prosecutions.—All offenses created by or prescribed in this chapter shall be prosecuted within five years after the same shall have been committed.

History.—§1, ch. 24299, 1947.

CHAPTER 810

BURGLARY

810.01 Burglary; breaking and entering dwelling house, etc.—Whoever breaks and enters a dwelling house, or any building or structure within the curtilage of a dwelling house though not forming a part thereof, with intent to commit a felony, or after having entered with such intent breaks such dwelling house or other building or structure aforesaid, if he be armed with a dangerous weapon, or have with him any nitro-glycerine, dynamite, gunpowder or other high explosive at the time of breaking and entering, or if he arm himself with a dangerous weapon, or take into his possession any such high explosive within such building, or if he make an assault upon any person lawfully therein, shall be punished by imprisonment in the state prison for life, or for such term of years as may be determined by the court.

If the offender be not armed, nor arm himself with a dangerous weapon as aforesaid, nor have with him nor take into his possession any high explosive as aforesaid, nor make an assault upon any person lawfully in said building, he shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§2434, RS 1892; §1, ch. 4405, 1895; §1, ch. 5411, 1905; GS 3281; RGS 5115; CGL 7216.

810.02 Breaking and entering other buildings, ship or vessel.—Whoever breaks and enters any other building or any ship or vessel with intent to commit a felony, or after having entered with such intent breaks such other building, ship or vessel, shall be punished by imprisonment in the state prison not exceeding fifteen years. If the offender breaks such building with the use of any high explosive mentioned in §810.01, or if he enters having with him, or having entered, take into his possession any such high explosive, he shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§2435, RS 1892; §2, ch. 4405, 1895; §2, ch. 5411, 1905; GS 3282; RGS 5116; CGL 7217.

810.03 Entering without breaking.—Whoever enters without breaking, any dwelling house, or any of the buildings or structures mentioned in §§810.01 and 810.02 or into any ship or vessel, with intent to commit a felony, shall be punished by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars. If the offender enter having with him, or having entered, take into his possession any high explosive mentioned in §810.01, he shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding two thousand dollars.

History.—§2436, RS 1892; §3, ch. 5411, 1905; GS 3283; sub §14, §10, ch. 7838, 1919; RGS 5117; CGL 7218.

810.04 Breaking and entering railroad car.—Whoever breaks and enters any railroad car with intent to commit a felony, or after having entered with such intent, breaks such railroad car, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars. If such offender breaks such railroad car with the use of any high explosive mentioned in §810.01, or if he entered having with him, or having entered, takes into his possession any such high explosive, he shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars.

History.—§1, ch. 3910, 1889; RS 2437; §3, ch. 4405, 1895; §4, ch. 5411, 1905; GS 3284; RGS 5118; CGL 7219.

810.05 Breaking and entering with intent to commit a misdemeanor.—Whoever breaks and enters or enters without breaking any dwelling or store house, or any building, ship, vessel, or railroad car with intent to commit a misdemeanor, shall be punished by imprisonment in the state prison or county jail not exceeding five years, or by fine not exceeding five hundred dollars.

History.—§4, ch. 4405, 1895; §1, ch. 5153, 1903; GS 3285; sub-§3, §10, ch. 7838, 1919; RGS 5119; CGL 7220.

810.051 Breaking and entering or entering without breaking vehicle. — Whoever breaks and enters any automobile, truck, trailer, semitrailer, or housecar with intent to commit any crime, and whoever enters without breaking any automobile, truck, trailer, semitrailer, or housecar with intent to injure the same or any property therein or to commit larceny, shall be guilty of a felony and shall be punished by a fine of not less than $25.00 nor more than $1,000.00, or imprisonment for not less than 30 days nor more than 1 year in the county jail, or for not more than 10 years in the state prison, or by both such fine and imprisonment.

History.—§1, ch. 22004, 1943; transferred from §860.12, 1955. Am. §1, ch. 57-262.

810.06 Possession of burglarious tools.—Whoever makes or mends, or begins to make or mend, or knowingly has in his possession any engine, machine, tool or implement adapted and designed for cutting through, forcing or breaking open any building, vault, safe or other depository, in order to steal therefrom money or other property, or to commit any oth-

er crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars.

History.—§30, sub-ch. 4, ch. 1637, 1868; RS 2439; GS 3286; RGS 5120; CGL 7221.

810.07 Prima facie evidence of intent.—In a trial on the charge of breaking and entering, or entering without breaking, a dwelling house with intent to commit a misdemeanor, or with intent to commit a felony, proof of the entering of such dwelling house in the nighttime stealthily, without consent of the owner or any occupant thereof, shall be prima facie evidence of entering with intent to commit a misdemeanor, in the absence of proof of intent to commit any specific crime.

History.—§5, ch. 4405, 1895; GS 3287; RGS 5121; CGL 7222.

CHAPTER 811

LARCENY; RECEIVING STOLEN GOODS; RELATED CRIMES

811.021 Larceny defined; penalties; sufficiency of indictment, information or warrant.—

(1) A person who, with intent to deprive or defraud the true owner of his property or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person:

(a) Takes from the possession of the true owner, or of any other person; or obtains from such person possession by color or aid of fraudulent or false representations or pretense, or of any false token or writing; or obtains the signature of any person to a written instrument, the false making whereof would be punishable as forgery; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, goods and chattels, thing in action, evidence of debt, contract, or property, or article of value of any kind; or

(b) Having in his possession, custody or control, as a broker, bailee, servant, attorney, agent, employee, clerk, trustee, or officer of any person, association, or corporation, member of co-partnership, pool or joint adventure, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any money, personal thing or action, goods and chattels, evidence of debt, contract, property, or article of value of any kind, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof; or

(c) While acting as executor, administrator, committee, guardian, receiver, collector or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, secretes, withholds or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, personal property, goods and chattels, thing in action, evidence of debt, contract, property or article of value of any kind, in his possession or custody by virtue of his office, employment or appointment; steals such property, and is guilty of larceny.

(2) If the property stolen is of the value of one hundred dollars or more, the offender shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the state penitentiary not exceeding 5 years, or in the county jail not exceeding 12 months, or by fine not exceeding $1,000.00.

(3) If the value of the property stolen as mentioned in the preceding section is less than $100.00 the offender shall be deemed guilty of petit larceny and upon conviction, shall be punished by imprisonment in the county jail not exceeding 6 months or by fine not exceeding $300.00.

(4) Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt or for conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color of aid of fraudulent or false representation or pretense, or of any false token or writing, to part with his property or the possession thereof, was illegal, immoral or unworthy.

(5) It shall be sufficient for any indictment, information or warrant returned, filed or issued under this section to charge generally that the defendant at the time and in the county specified, did steal the personal property, thing in action, evidence of debt or contract or article of value out of which the prosecution arose, describing the same in general terms and alleging generally the ownership and value thereof. This section shall not be construed as intending to interfere with the power of the court to require the state to furnish the defendant with a bill of particu-

lars in proper cases and on sufficient showing that cause exists for the same.

(6) Nothing in this section shall be construed as in any way altering, modifying or repealing the following statutes or any part thereof, §§706.19, 811.03, 811.04, 811.05, 811.07, 811.08, 811.11, 811.13, 811.14, 811.15, 811.19, 811.20, 811.21, 812.10, 812.12, 821.10, 821.22, 821.23.

History.—§§1-6, ch. 26912, 1951; (2) by §1, (3) by §2, ch. 57-344.

811.022 Shoplifting; exemption from false arrest.—

(1) A peace officer, or a merchant, or a merchant's employee who has probable cause for believing that goods held for sale by the merchant have been unlawfully taken by a person and that he can recover them by taking the person into custody, may, for the purpose of attempting to effect such recovery, take the person into custody and detain him in a reasonable manner for a reasonable length of time. Such taking into custody and detention by a peace officer, merchant, or merchant's employee shall not render such police officer, merchant, or merchant's employee criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(2) Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny in retail or wholesale establishments.

(3) A merchant or a merchant's employee who causes such arrest as provided for in subsection (1) hereof of a person for larceny of goods held for sale shall not be criminally or civilly liable for false arrest or false imprisonment where the merchant or merchant's employee has probable cause for believing that the person arrested committed larceny of goods held for sale.

History.—Comp. §§1-3, ch. 29668, 1955.

811.03 Larceny in burning building.—Whoever steals in a building that is on fire, or steals any property removed in consequence of an alarm caused by fire, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding five hundred dollars.

History.—§16, sub-ch. 4, ch. 1637, 1868; RS 2442; GS 3290; RGS 5124; CGL 7225.

811.04 Larceny of testamentary instrument.—Whoever steals, or for any fraudulent purpose destroys or conceals any will, codicil, or other testamentary instrument, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding two thousand dollars. No allegation of value or ownership need be made in an indictment under this section.

History.—§§19, 20, sub-ch. 4, ch. 1637, 1868; RS 2443; GS 3291; RGS 5125; CGL 7226.

cf.—§732.22, Production of wills.
Ch. 906, Indictment and information.

811.05 Stealing bank note paper.—Whoever commits the crime of larceny by stealing any printed piece of paper or blank, designed for issue by any person, incorporated bank or banking company in the United States, as a bank bill, certificate, or promissory note, or printed by means of an engraved plate, designed for printing such pieces of paper or blanks, with intent either to utter or pass the same, or to cause or allow the same to be uttered or passed as true, either with or without alteration, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars.

History.—§23, sub-ch. 4, ch. 1637, 1868; RS 2444; GS 3292; RGS 5126; CGL 7227.

cf.—§831.07, Forging bank bills or promissory notes.

811.06 Illegal retention of bank note paper.—Whoever, having been employed to print, or having assisted in printing any such printed piece of paper or blank, or having been intrusted with the care or custody thereof, retains the same in his possession without the knowledge and consent of the person for whom the same was printed, with the intent either to utter or to pass it, or to cause or allow it to be uttered or passed as true, either with or without alteration or addition, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars.

History.—§24, sub-ch. 4, ch. 1637, 1868; RS 2445; GS 3293; RGS 5127; CGL 7228.

cf.—§1.01, "Person" defined.
§812.01, Embezzlement.

811.07 Stealing logs or timber.—Whoever commits larceny by stealing any log or logs or timber, the property of another, of less than one hundred dollars in value, shall be punished by imprisonment in the state prison not exceeding two years, or by fine not exceeding five hundred dollars.

History.—§1, ch. 4175, 1893; GS 3295; RGS 5129; CGL 7230.

cf.—§821.10, Cutting and carrying away timber from lands of another.
§821.16, Boxing timber on land of another.
§821.22, Cutting timber from lands sold for taxes.
§821.23, Removing timber on land sold for taxes.

811.08 Carrying away planted oysters.—Whoever unlawfully, without permission of the owner, takes up and carries away by any means, or in any manner catches, interferes with or disturbs the oysters of another, lawfully planted upon the beds of the bayous, rivers, bays, sounds, or other waters within the jurisdiction of this state, shall be deemed guilty of larceny, grand or petit, as the case may be, and shall be punished accordingly.

History.—§3, ch. 3293, 1881; RS 2447; GS 3296; RGS 5130; CGL 7231.

811.09 Carrying away beasts or birds.—Whoever without the consent of the owner and with criminal intent takes any beast or bird ordinarily kept in a state of confinement, and not the subject of larceny at common law, shall be deemed guilty of petit larceny and shall be punished accordingly.

History.—§28, sub-ch. 4, ch. 1637, 1868; RS 2448; GS 3297; RGS 5131; CGL 7232.

811.10 Second conviction of larceny.—Whoever having been convicted either of the crime of larceny or of being accessory to the crime of larceny, afterwards commits the crime of larceny, or is accessory thereto before the fact, and is convicted thereof, and whoever is convicted at the same term of the court, either as a principal or accessory before the fact, of two distinct larcenies, shall be deemed a common and notorious thief, and shall be punished by imprisonment in the state prison not exceeding twenty years, or in the county jail not exceeding one year.

History.—§22, sub-ch. 4, ch. 1637, 1868; RS 2450; GS 3298; RGS 5132; CGL 7233.
cf.—§775.09, Second conviction of felony.
§775.10, Fourth conviction of felony.

811.11 Horse or cattle stealing.—Whoever commits larceny by stealing any horse, mule, mare, filly, colt, cow, bull, ox, steer, heifer or calf, the property of another, shall be punished by imprisonment in the state prison not less than two years nor more than five years.

History.—§1, ch. 4533, 1897; GS 3299; RGS 5133; CGL 7234.
cf.—§817.24, Altering or defacing brands.
§817.25, Fraudulently marking or branding.
§817.26, Fraudulently changing marks on animal.

811.12 Second conviction of horse or cattle stealing.—Whoever violates the provisions of §811.11 a second time, and is convicted of such second separate offense, either at the same term or a subsequent term of court, shall be punished by imprisonment in the state prison not less than five years nor more than twenty years.

History.—§2, ch. 4533, 1897; GS 3300; RGS 5134; CGL 7235.
cf.—§775.09, Second conviction of felony.
§775.10, Fourth conviction of felony.

811.13 Penalty for larceny of sheep and goats.—Whoever commits larceny by stealing any sheep or goat or lamb, the property of another, shall be punished by imprisonment in the state prison at hard labor not less than one year nor more than two years or by fine not exceeding one hundred dollars.

History.—§1, ch. 5136, 1903; GS 3301; RGS 5135; CGL 7236.
cf.—§775.06, Alternative punishment.

811.14 Larceny of hogs.—Whoever commits larceny by stealing any hog, the property of another, shall be punished by imprisonment in the state prison not less than two years nor more than five years.

History.—§1, ch. 4728, 1899; GS 3302; RGS 5136; CGL 7237; §1, ch. 17979, 1937.
cf.—§817.24, Altering or defacing brands.
§817.25, Fraudulently marking or branding.
§817.26, Fraudulently changing marks on animal.

811.15 Larceny of hogs; second offense.—Whoever violates the provisions of §811.14 a second time, and is convicted of such second separate offense, either at the same term or a subsequent term of court, shall be punished by imprisonment in the state prison not less than five years nor more than twenty years.

History.—§2, ch. 4728, 1899; GS 3303; RGS 5137; CGL 7238; §2, ch. 17979, 1937.
cf.—§775.09, Second conviction of felony.
§775.10, Fourth conviction of felony.

811.16 Buying, receiving, concealing stolen property.—Whoever buys, receives or aids in the concealment of stolen money, goods or property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars.

History.—§39, sub-ch. 4, ch. 1637, 1868; RS 2451; GS 3304; RGS 5138; CGL 7239.
cf.—§812.11, Buying, receiving, concealing embezzled property.
§906.19, Unnecessary to aver or prove that person who stole property has been convicted.

811.17 Receiving stolen goods; punishment when offender makes satisfaction.—Upon a first conviction under §811.16, and when the act of stealing the property is not by law a felony, if the party convicted of buying, receiving or aiding in the concealing of such stolen property, makes satisfaction to the party injured to the full value of the property stolen and not restored, he shall not be imprisoned in the state prison, but may be liable to such additional punishment as the court may direct.

History.—§40, sub-ch. 4, ch. 1637, 1868; RS 2452; GS 3305; RGS 5139; CGL 7240.
cf.—§775.07, Punishment for misdemeanors.

811.18 Receiving stolen goods; second and third convictions.—Whoever is convicted of buying, receiving or aiding in the concealment of stolen or embezzled property, knowing the same to have been stolen or embezzled, having been before convicted of the like offense, and whoever is convicted at the same term of the court of three or more distinct acts of buying, receiving or aiding in the concealment of money, goods or property stolen or embezzled as aforesaid, shall be deemed and adjudged to be a common receiver of stolen or embezzled goods, and shall be punished by imprisonment in the state prison not exceeding ten years.

History.—§43, sub-ch. 4, ch. 1637, 1868; RS 2453; GS 3306; RGS 5140; CGL 7241.
cf.—§775.09, Second conviction of felony.
§775.10, Fourth conviction of felony.

811.19 Larceny and injury to dogs.—Whoever steals any dog, the property of another, shall be deemed guilty of larceny and, upon conviction, shall be punished as for larceny. The act of having in one's possession and control the dog of another without the consent of the owner, shall be deemed to constitute prima facie evidence of a violation of this section.

Whoever maliciously injures, wounds or kills any dog, the property of another, shall be deemed guilty of a misdemeanor and, upon conviction, be fined not more than one hundred dollars or imprisoned not more than sixty days.

All dogs owned and domiciled within this state are declared to be domestic animals, and ownership of and property rights therein shall exist and be asserted and protected in the same manner and under the same conditions as ownership and property rights in other domestic animals.

History.—§1, ch. 4164, 1893; GS 3307; RGS 5141; §1, ch. 10108, 1925; CGL 7242; first para. a. by §1, ch. 61-306.
§828.07, Maliciously killing animal of another.
§828.09, Wantonly killing animal of another.
§828.12, Cruelty to animals.
§767.01, Damage by dogs.

811.20 Larceny of automobiles.—The larceny of any automobile, locomobile, motorcycle, or other like vehicle propelled by electricity, gasoline or kerosene in this state, shall be deemed a felony; and any person convicted thereof shall be punished by imprisonment in the state prison for a term not exceeding five years, or by fine not exceeding five thousand dollars.

History.—§1, ch. 7358, 1917; RGS 5142; CGL 7243.
cf.—§818.05, Sale of property held under contract or conditional sale.

811.201 Larceny; return of property to owner; procedure.—In every instance in which any money or motor vehicle shall have been taken from its rightful owner under circumstances constituting larceny of such money or motor vehicle and such money or motor vehicle is being held by state, county or municipal officials as evidence, the rightful owner of such money or motor vehicle may obtain the return and possession thereof in the following manner:

(1) The rightful owner shall file a petition in the court having criminal jurisdiction describing the money or motor vehicle, the time and manner in which the same was taken from the rightful owner, the value thereof if the same is money or motor vehicle, and that the petitioner is the true and lawful owner thereof. Such petition shall be under oath, sworn to by the petitioner or, if the petitioner is a corporation, by a duly authorized officer or agent thereof, or by such person other than the petitioner who shall have actual knowledge of the facts alleged in such petition.

(2) Notice of the filing of such petition and a copy thereof shall be served upon any person charged with the larceny of the money or motor vehicle involved in the same manner and for the same fee as the service of a summons.

(3) If no person has been charged by indictment or information with larceny of the money or motor vehicle involved, or if a person has been so charged and cannot be found within the jurisdiction of the court out of which capias has issued and that fact has been noted on the return of such capias, then the petitioner shall publish in a newspaper of general circulation within the county in which the alleged larceny occurred once a week for two consecutive weeks, two publications being sufficient, notice of the filing of such petition. Such notice shall describe the money or motor vehicle involved and the time and particular place of its taking.

(4) Copies of the mentioned petition shall be furnished the officer having custody of the money or motor vehicle involved and also the prosecuting officer of the court having criminal jurisdiction and such officers shall be notified of any hearings and proceedings had upon such petition.

(5) Within five days after receipt of service of the notice hereinabove provided or within ten days after the last publication of the mentioned notice, any person other than the petitioner claiming title or right of possession to the money or motor vehicle involved shall file his objections to the granting of such petition. Such objections shall be under oath of the person making them and shall set forth facts showing that the petitioner is not the rightful owner or not entitled to possession. If the person interposing objections to the petition desires that the question of ownership or right to possession be resolved by a jury, he shall make and file a demand for a jury trial at the time of filing his objections. If the objector fails to demand a jury trial at such time he shall be deemed to have waived such right.

(6) If objections are filed, as herein provided, the court having criminal jurisdiction may order the pleadings transferred to the court having civil jurisdiction of the cause where the same shall be adjudicated upon the pleadings, or he may defer hearing the matter until the criminal case has been adjudicated.

(7) If no objections are filed within the time herein provided, the court having criminal jurisdiction shall hear the matter and may, if satisfied that the petitioner is the rightful owner of the money or motor vehicle involved, order such money or motor vehicle returned to the petitioner. The court may, in its discretion, require the petitioner to post a bond in such amount as the court shall deem proper, conditioned that the petitioner will return the motor vehicle or the value of the money to the court within such time as shall be fixed by the court in the event it should be subsequently determined in judicial proceedings that the petitioner is not the rightful owner of such money or motor vehicle.

(8) When money or motor vehicle is returned to the rightful owner, as hereinabove provided, the court shall direct the clerk to make a detailed inventory description of such money or motor vehicle. The clerk in compliance with such direction shall make such inventory and description, including photographs of the motor vehicle involved where practicable and certify the same as being a true and correct inventory and description. The certified inventory and description shall then be filed by the clerk among the records of his office.

(9) In any trial involving the larceny of money or motor vehicle which has been returned to the rightful owner, as hereinabove provided, and it shall be necessary therein to adduce testimony concerning such money or motor vehicle, secondary evidence, including the certified inventory and description thereof shall be admissible in the same manner and to the same effect as would the admission of the said money or motor vehicle, had the same not been returned.

(10) The fact that any person charged with the larceny of money or motor vehicle has failed to object to the return of such money or motor vehicle to the alleged rightful owner

thereof, or the fact that such money or motor vehicle has been returned to the alleged rightful owner thereof under the provisions of this law, shall not be offered, received or considered as evidence either for or against the defendant in such criminal action.

History.—Comp. §§1, 2, ch. 29677, 1955.

811.21 Taking or using temporarily any vehicle or animal of another without authority.—Whoever willfully, mischievously and without right takes or uses any boat or vehicle, or takes, drives, rides or uses any horse, ass, mule, ox or any other draught animal, the property of another, without the consent of the owner or other person having the legal custody, care or control of the same, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars.

Nothing in this section shall be construed as to apply to any case where the taking of the property of another is with intent to steal the same, or when it is taken under a claim or right, or with the presumed consent of the owner or other person having the legal control, care or custody of the same.

History.—§44, sub-ch. 4, ch. 1637, 1868; RS 2499; GS 3381; RGS 5229; CGL 7348.

811.22 Penning and milking cattle without authority.—Whoever pens and milks any cattle, the property of another, without the consent of the owner or other person having the legal custody, care or control of the same, shall be punished by a fine not exceeding fifty dollars.

History.—§§1, 3, ch. 1669, 1868; RS 2500; GS 3382; RGS 5230; CGL 7349.

811.23 Driving cattle.—Whoever drives a distance of ten miles or further any cattle, the property of another, without the permission of the owner or agent, shall be punished by imprisonment in the state penitentiary not exceeding three years or by fine not exceeding fifteen hundred dollars.

History.—§1, ch. 4350, 1895; GS 3383; RGS 5231; CGL 7350.

811.24 Impounding hogs.—Any person who shall drive, carry or toll any cattle or any hog within the corporate limits of any town, village or hamlet belonging to persons who reside without said limits, with the intention of impounding them, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty dollars or imprisoned for not more than thirty days.

History.—§2, ch. 4190, 1893; §2, ch. 4349, 1895; GS 3387; RGS 5235; CGL 7354.

811.25 Driving cattle from range.—Whoever drives any cattle, the property of another, directly from their own range, or more than five miles from the house of the owner, without the permission of the owner, shall be punished by a fine not exceeding fifty dollars.

History.—§§2, 3, ch. 1669, 1868; RS 2504; GS 3388; RGS 5236; CGL 7355.

811.26 Maliciously driving or penning cattle.—Whoever, without the consent of the owner, shall interfere with cattle or other domestic animals on the ranges of the state, either for the purpose of annoying or injuring the owner or person in charge thereof, or to obtain some personal benefit for himself or for any person other than the owner thereof, by willfully or maliciously driving from one place to another or by penning such cattle or other domestic animals, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars.

History.—§1, ch. 3762, 1887; RS 2505; GS 3389; RGS 5237; CGL 7356.

cf.—§707.21, Refusing entrance to pasture to seek strayed domestic animals.

811.27 Larceny of citrus fruit or trees from groves.—

(1) Whoever commits larceny by stealing any grapefruit, oranges, tangerines or other citrus fruit, or any citrus fruit tree or budwood from any citrus fruit tree, or from any grove, orchard or farm, the property of another, shall be punished as follows:

(a) If the property stolen is of the value of fifty dollars or more, the offender shall be deemed guilty of grand larceny and be punished by imprisonment in the state penitentiary not exceeding five years or by a fine not exceeding $2,000.00 or by both fine and imprisonment in the discretion of the court.

(b) If the property stolen is of a value less than fifty dollars, the offender shall be deemed guilty of petit larceny and be punished by imprisonment in the county jail not exceeding twelve months, or by fine not exceeding $1,000.00, or by both fine and imprisonment in the discretion of the court.

(2) Nothing in this act shall be construed as repealing §811.10 or §822.23, but shall be cumulative to existing statutes.

History.—§§1, 2, ch. 61-308.

cf.—§822.23 Entering farm, etc., in nighttime to commit larceny offense; punishment.

811.28 Personal property; presumption.—It shall be prima facie evidence of larceny for any person who has obtained personal property, including but not limited to, any trailer, equipment or tool, under a contract of hire, to have obtained same by way of any material false statement or pretense or to fail to return such personal property to the owner or other lawful custodian thereof within ten days after demand has been made upon such person for the return of such personal property by the owner or lawful custodian thereof. This act shall not apply to motor vehicles.

History.—§1, ch. 63-166.

CHAPTER 812

EMBEZZLEMENT

812.01 Embezzlement by bailee, common carrier, etc.—If any factor, commission merchant, warehouse keeper, wharfinger, wagoner, stage driver or other common carrier on land or on water, or any other person with whom any property which may be the subject of larceny is entrusted or deposited by another, shall embezzle or fraudulently convert the same, or any part thereof, or the proceeds, or any part thereof, to his own use, or otherwise dispose of the same, or any part thereof, without the consent of the owner or bailor and to his injury, and without paying to him on demand the full value or market price thereof; or if, after a sale of any of the said property with the consent of the owner or bailor, such person shall fraudulently and without consent as aforesaid convert or embezzle the proceeds, or any part thereof, to his own use and fail or refuse to pay the same over to the owner or bailor on demand; and if any person borrows or hires property aforesaid and embezzles or fraudulently converts it or its proceeds, or any part thereof, to his own use, he shall be punished as if he had been convicted of larceny.

History.—§1, ch. 3462, 1883; RS 2454; GS 3308; RGS 5143; CGL 7244.

cf.—§811.021 Larceny defined.
§197.09, Embezzlement by tax collection agency.
§811.06, Illegal retention of bank note paper.
§906.20, Indictment or information in prosecution for embezzlement.
§906.21, Alleging ownership.

812.02 Secreting with intent to embezzle.—Whoever secretes with intent to embezzle or fraudulently conceals for his own use any property delivered to him which may be the subject of larceny, or any part thereof, shall be punished as if he had been convicted of larceny.

History.—§31, sub-ch. 14, ch. 1637, 1868; RS 2455; GS 3309; RGS 5144; CGL 7245.
cf.—§811.021 Larceny defined; penalties.

812.03 Fraudulent sale of personal property by lessee.—If the lessee of personal property sells or conveys it, or any part thereof, without the written consent of the owner or lessor, and without informing the person to whom it is sold or conveyed, that it is so leased, he shall be punished as if he had been convicted of larceny.

History.—§58, sub-ch. 14, ch. 1637, 1868; RS 2456; GS 3310; RGS 5145; CGL 7246.
cf.—§811.021 Larceny defined; penalties.
§818.05, Sale of property held under contract or conditional sale.

812.04 Embezzlement by officer, clerk, agent, servant or member of company or society.—If any officer, agent, clerk, servant or member of any incorporated company, or if any officer, clerk, servant, agent or member of any copartnership, society or voluntary association, or if any clerk, agent or servant of any person, embezzles or fraudulently disposes of, or converts to his own use, or takes or secretes with intent so to do, anything of value which has been entrusted to him, or has come into his possession, care, custody or control by reason of his office, employment or membership, he shall be punished as if he had been convicted of larceny.

History.—§34, sub-ch. 14, ch. 1637, 1868; RS 2457; §1, ch. 5160, 1903; GS 3311; RGS 5146; CGL 7247.
cf.—§811.021 Larceny defined; penalties.

812.05 Embezzlement by banker, broker, etc.—Any banker or broker who receives on deposit money belonging to another, or any person whose legitimate business requires him to receive the money or property of another, and who fraudulently uses, conceals or willfully withholds any of said money or property so as to prove a defaulter therein, shall be punished as if he had been convicted of larceny.

History.—§1, ch. 3279, 1881; RS 2458; GS 3312; RGS 5147; CGL 7248.
cf.—§811.021 Larceny defined; penalties.

812.06 Embezzlement or fraudulent secretion by bank officer, etc.—If any officer of an incorporated bank, or any person in the employment of such bank, fraudulently converts to his own use, or fraudulently takes and secretes with intent so to do, any bullion, money, note, bill or other security for money belonging to and in possession of such bank or belonging to any person and deposited therein, he shall, whether entrusted with the custody thereof or not, be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars.

History.—§35, sub-ch. 4, ch. 1637, 1868; RS 2459; GS 3313; RGS 5148; CGL 7249.

812.07 What shall be deemed such taking.—In prosecutions for offenses under §812.06 the fraudulent taking or receiving by any person of any bullion, money, note, bill or other security for money, belonging to such bank, by reason of an unlawful confederacy or agreement by him with an officer of said bank, or any person in the employment thereof, with

intent to defraud the same, shall be deemed to be a fraudulent taking by such officer or person in the employment of the bank, to his own use, within the meaning of §812.06, and it shall not be necessary on trial to identify the particular bullion, money, note, bill or security for money taken or received.

History.—§36, sub-ch. 4, ch. 1637, 1868; RS 2460; GS 3314; RGS 5149; CGL 7250.

812.08 Embezzlement of bank funds, etc.—Every president, cashier, director, teller, clerk or other officer or agent of any banking or trust company or corporation, doing a banking business in the state, who embezzles, abstracts, or willfully misapplies any of the moneys, funds or credits of any banking or trust company or corporation, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree; or who makes any false entry in any book, report or statement of any banking or trust company or corporation, with intent, in either case, to injure or defraud any such banking or trust company or corporation, body politic or corporate, or any individual person, or to deceive any officer of the banking or trust company or corporation, or any agent appointed to examine the affairs of the banking or trust company or corporation; and every person who with like intent aids or abets any officer, clerk or agent in any violation of this section, shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the state prison for not more than ten years.

History.—§34, ch. 3864, 1889; RS 2461; GS 3315; §1, ch. 6810, 1915; §1, ch. 15882, 1933; RGS 5150; CGL 7251.
cf.—§661.34, Embezzlement by conservator of bank or trust company.

812.09 Embezzlement of pledge by pledgee.—If a consignee or factor deposits or pledges any merchandise, bill of lading, certificate or order for the delivery of merchandise consigned or entrusted to him as security for money borrowed, or negotiable instrument received by him, and disposes of or applies the same to his own use in violation of good faith, and with intent to defraud the owner thereof; or with the like fraudulent intent applies or disposes of any money or negotiable instrument raised or acquired by the sale or other disposition of such merchandise, bill of lading, certificate or order, to his own use, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars.

History.—§60, sub-ch. 4, ch. 1637, 1868; RS 2462; GS 3316; RGS 5151; CGL 7252.

812.10 Embezzlement by state, county or municipal officers.—Any state, county or municipal officer who shall:

(1) Convert to his own use;

(2) Secrete with the intent to convert to his own use; or

(3) Withhold with the intent to convert to his own use,

(a) Any money, property or effects belonging to or in the possession of the state, county, city or town, whose duty requires him to receive said public money, property or effects; or

(b) Any money, property or effects of another, the duty of which office requires him to receive said money, property or effects, shall in every such act be deemed guilty of an embezzlement of the money, property or effects so converted, secreted or withheld, and shall be punished by imprisonment in the state prison not exceeding twenty years, and by a fine equal to the value of the money, property or effect so converted, secreted or withheld.

The failure, neglect, omission or refusal of any such officer to pay over or deliver to any official or person authorized or having the right by law to receive the same, for more than thirty days after the same has been collected or received by him, shall be prima facie evidence of the conversion to one's own use, or the secreting with intent to convert to one's own use, or the withholding with the intent to convert to one's own use the said money, property or effects.

This section shall apply to any deputy, clerk or employee in any state, county or municipal office, and to all school officers.

History.—§33, sub-ch. 4, ch. 1637, 1868; §1, ch. 3279, 1881; RS 2463; §1, ch. 4530, 1897; GS 3317; RGS 5152; CGL 7253; am. §7, ch. 22858, 1945.
cf.—§197.09, Embezzlement by tax collection agency.
§208.19, Failure of gasoline dealer to account for gasoline tax collected.
§661.34, Embezzlement by conservator of bank or trust company.
§212.15(1) Embezzlement of taxes.

812.11 Buying, receiving, concealing embezzled property.—Whoever buys, receives or aids in the concealment of embezzled property, knowing the same to have been embezzled, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars.

History.—§42, sub-ch. 4, ch. 1637, 1868; RS 2464; GS 3318; RGS 5153; CGL 7255.
cf.—§811.16, Buying, receiving, concealing stolen property.

812.12 Embezzlement by receiver of bank or trust company.—Any receiver of any bank, banker, banking firm, banking or trust company or corporation doing business in this state under the state laws, who embezzles, abstracts or willfully misapplies any of the moneys, funds or credits coming into his hands as such receiver, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for not more than ten years. The failure of any receiver to pay over promptly to the treasurer moneys coming into his hands shall be prima facie evidence of intent to embezzle.

History.—§5, ch. 6807, 1915; RGS 5154; CGL 7256.
cf.—§661.34, Embezzlement by conservator of bank or trust company.

CHAPTER 813
ROBBERY

813.011 Robbery defined; penalties.—Whoever, by force, violence or assault or putting in fear, feloniously robs, steals and takes away from the person or custody of another, money or other property which may be the subject of larceny, shall be punished by imprisonment in the state prison for life or for any lesser term of years, at the discretion of the court.

History.—§1, ch. 28217, 1953; §1, ch. 29930, 1955.

CHAPTER 817

FALSE PRETENSES, FRAUDS, AND OTHER CHEATS

817.02 Obtaining property by false personation.—Whoever falsely personates or represents another, and in such assumed character receives any property intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be punished as if he had been convicted of larceny.

History.—§49, sub-ch. 4, ch. 1637, 1868; RS 2466; GS 3321; RGS 5156; CGL 7259.
cf.—§906.18, Intent to defraud; how alleged.

817.03 Making false statement to obtain property or credit.—Any person who shall make or cause to be made any false statement, in writing, relating to his financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and shall by such false statement obtain credit, goods, money or other property, shall, upon conviction, be punished by imprisonment in the state penitentiary not exceeding one year, or by a fine not exceeding one thousand dollars.

History.—§1, ch. 5134, 1903; RS 3322; ch. 6869, 1915; RGS 5160; CGL 7263.
cf.—§775.06, Alternative punishment.
§509.151, Obtaining lodging with intent to defraud.

817.04 Making false statements; venue of prosecution.—Prosecutions under §817.03 may be begun in the county where the statement was written, or purports to have been written.

History.—§2, ch. 5134, 1903; GS 3323; RGS 5161; CGL 7264.
cf.—§910.03, Place of trial generally.

817.05 False statements to merchants as to financial condition.—Any merchant in the state, before extending credit to any person applying for the same, may require such applicant to furnish a statement in writing showing the property owned and the salary being earned by said applicant, and if said statement, or any part thereof, is false, provided the same be made willfully, and signed by applicant in presence of two witnesses, and any person obtains credit from any merchant by reason of the merchant relying on and being deceived by said false statement, or any part thereof, then said person so obtaining credit or goods shall be deemed guilty of obtaining money or goods under false pretenses and shall, upon conviction, be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding five hundred dollars.

History.—§1, ch. 19487, 1939; CGL 1940 Supp. 7264(1).
cf.—§775.06, Alternative punishment.

817.06 Misleading advertisements prohibited.—No person, persons, association, copartnership, or institution shall, with intent to offer or sell or in any wise dispose of merchandise, securities, certificates, diplomas, documents, or other credentials purporting to reflect proficiency in any trade, skill, profession, credits for academic achievement, service or anything offered by such person, persons, association, copartnership, corporation, or institution directly or indirectly, to the public, for sale or distribution or issuance, or with intent to increase the consumption or use thereof, or with intent to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, or ownership thereof, knowingly or intentionally make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding such certificate, diploma, document, credential, academic credits, merchandise, security, service or anything so offered to the public, which advertisement contains any assertion, representation or statement which is untrue, deceptive or misleading.

History.—§1, ch. 11827, 1927; CGL 7311; §1, ch. 57-410.
cf.—§1.01(3), "Person" defined.

817.07 Penalty for misleading advertisements.—Any person, persons, association, copartnership, corporation, or institution found guilty of a violation of §817.06 shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $200.00 or imprisonment not exceeding 90 days.

History.—§2, ch. 11827, 1927; CGL 7312; §2, ch. 57-410.
cf.—§775.06, Alternative punishment.

817.08 Receiving money or property upon false promises of services as seaman or sponge fisherman.—Whoever enters into a written agreement with any master or owner of a vessel to perform certain services upon said vessel as seaman or sponge fisherman for a contemplated voyage, and receives or accepts any money or goods, wares or merchandise, as advances or bounty for the performance of said services, and shall willfully and without just cause refuse to perform said services, or to go on said vessel at the time of the sailing of the same, shall be punished by a fine not to exceed five hundred dollars, or be imprisoned not to exceed twelve months.

History.—§1, ch. 5161, 1903; GS 3324; RGS 5162; CGL 7265.

817.11 Obtaining property by fraudulent promise to furnish inside information.—No person shall defraud or attempt to defraud any individual out of any thing of value, by assuming to have or be able to obtain any secret, advance or inside information regarding, any person, transaction, act or thing, whether such person, transaction, act or thing exists or not.

History.—§1, ch. 8466, 1921; CGL 7308.

817.12 Penalty for violation of §817.11.—Any person guilty of violating the provisions of §817.11 shall be deemed guilty of a felony and, upon conviction thereof, shall be fined not more than ten thousand dollars and imprisoned for not more than ten years in the state prison.

History.—§2, ch. 8466, 1921; CGL 7309.

817.13 Paraphernalia as evidence of violation of §817.11.—All paraphernalia of whatsoever kind in possession of any person and used in defrauding or attempting to defraud as specified in §817.11 shall be held and accepted by any court of competent jurisdiction in this state as prima facie evidence of guilt.

History.—§3, ch. 8466, 1921; CGL 7310.

817.14 Procuring assignments of products upon false representations.—Any person acting for himself or another, who shall procure any consignment of produce grown in this state, to himself or such other, for sale on commission or for other compensation by any knowingly false representation as to the prevailing market price at such time for such produce at the point to which it is consigned, or as to the price which such person for whom he is acting is at said time paying to other consignors for like produce at said place, or as to the condition of the market for such produce at such time and place, and any such person acting for another who shall procure any consignment for sale as aforesaid by false representation of authority to him by such other to make a guaranteed price to the consignor, shall be punished by fine not exceeding

five hundred dollars or by imprisonment not exceeding six months.

History.—§1, ch. 5141, 1903; GS 3325; RGS 5163; CGL 7266.

817.15 Making false entries, etc., on books of corporation.—Any officer, agent, clerk or servant of a corporation who makes a false entry in the books thereof, with intent to defraud, and any person whose duty it is to make in such books a record or entry of the transfer of stock, or of the issuing and cancelling of certificates thereof, or of the amount of stock issued by such corporation, who omits to make a true record or entry thereof, with intent to defraud, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding ten thousand dollars.

History.—§47, sub-ch. 4, ch. 1637, 1868; RS 2467; GS 3326; RGS 5164; CGL 7267.

cf.—§626.0630 Misrepresentations in application for insurance.
§626.0631 False claims; obtaining or retaining money dishonestly.

817.16 False reports, etc., by officers of banks, trust companies, etc., under supervision of comptroller with intent to defraud.—Any officer, director, agent or clerk of any bank, trust company, building and loan association, small loan licensee, credit union or other corporation under the supervision of the state comptroller, who willfully and knowingly subscribes or exhibits any false paper with intent to deceive any person authorized to examine as to the records of such bank, trust company, building and loan association, small loan licensee, credit union or other corporation under the supervision of the state comptroller, or willfully and knowingly subscribes to or makes any false reports to the state comptroller or causes to be published any false report, shall be guilty of a felony and shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year in the state prison.

History.—§1, ch. 15876, 1933; CGL 7315(1).

cf.—§775.06, Alternative punishment.
§526.01, Fraud and deception in sale, etc., of liquid fuels.
§381.411, Fraud in obtaining insulin.

817.17 Wrongful use of city's name.—No person or persons engaged in manufacturing in this state, shall cause to be printed, stamped, marked, engraved or branded, upon any of the articles manufactured by them, or on any of the boxes, packages or bands containing such manufactured articles, the name of any city in the state, other than that in which said articles are manufactured; provided, that nothing in this section shall prohibit any person from offering for sale any goods having marked thereon the name of any city in Florida other than that in which said goods were manufactured, if there be no manufactory of similar goods in the city the name of which is used.

History.—§1, ch. 4145, 1893; GS 3327; RGS 5167; CGL 7270.

817.18 Wrongful stamping, marking, etc.; penalty.—No person shall knowingly sell or offer for sale, within the state, any manufactured articles which shall have printed, stamped, marked, engraved or branded upon them, or upon the boxes, packages or bands containing said manufactured articles, the name of any city in the state, other than that in which such articles were manufactured; provided, that nothing in this section shall prohibit any person from offering for sale any goods, having marked thereon the name of any city in Florida, other than that in which said goods are manufactured, if there be no manufactory of similar goods in the city the name of which is used.

Any person violating the provisions of this or the preceding section shall be fined not exceeding five hundred dollars for each violation thereof.

History.—§2, ch. 4145, 1893; GS 3328; RGS 5168; CGL 7271.
cf.—§775.07, Imprisonment in default of payment of fine.

817.19 Fraudulent issue of certificate of stock of corporation.—Any officer, agent, clerk or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of stock of a corporation to any person not entitled thereto, or fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or any other person, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding ten thousand dollars.

History.—§46, sub-ch. 4, ch. 1637, 1868; RS 2468; GS 3329; RGS 5169; CGL 7272.
cf.—Ch. 608, Corporations.

817.20 Issuing stock or obligation of corporation beyond authorized amount.—Any officer, agent, clerk or servant of a corporation, or any other person, who issues, or signs with intent to issue, any certificate of stock in a corporation, or who issues, signs or indorses with intent to issue any bond, note, bill or other obligation or security in the name of such corporation, beyond the amount authorized by law, or limited by the legal votes of such corporation or its proper officers; or negotiates, transfers or disposes of such certificate, with intent to defraud, shall be punished by imprisonment in the state prison not exceeding ten years, or by a fine not exceeding ten thousand dollars.

History.—§45, sub-ch. 4, ch. 1637, 1868; RS 2469; GS 3330; RGS 5170; CGL 7273.

817.21 Books to be evidence in such cases.—On the trial of any person under §§817.19 and 817.20 the books of any corporation to which such person has access or the right of access shall be admissible in evidence.

History.—§48, sub-ch. 4, ch. 1637, 1868; RS 2470; GS 3331; RGS 5171; CGL 7274.

817.22 Making false invoice to defraud insurer.—If the owner of a ship or vessel or of property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of a ship or vessel, makes out or exhibits, or causes to be made out or exhibited, a false or fraudulent invoice, bill of lading, bill or parcels or

other false estimates of any goods or property laden or pretended to be laden, on board such ship or vessel, with intent to injure and defraud an insurer of such ship, vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding twelve months, or by fine not exceeding five thousand dollars.

History.—§72, sub-ch. 4, ch. 1637, 1868; RS 2471; GS 3332; RGS 5172; CGL 7275; am. §7, ch. 22858, 1945.
cf.—§822.14, Willfully destroying vessels.
§822.15, Equipping ship with intent to destroy it.

817.23 Making false affidavit to defraud insurer.—If a master, other officer, or mariner of a ship or vessel, makes or causes to be made, or swears to any false affidavit or protest, or if an owner or other person concerned in such ship or vessel or in the goods and property laden on board the same, procures any such false affidavits or protest to be made, or exhibits the same, with intent to injure, deceive or defraud an insurer of such ship or vessel, or of any goods or property laden on board the same, he shall be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding twelve months, or by fine not exceeding five thousand dollars.

History.—§73, sub-ch. 4, ch. 1637, 1868; RS 2472; GS 3333; RGS 5173; CGL 7276.
cf.—§626.0630, Misrepresentation in application for insurance.
§626.0631 False claims; obtaining or retaining money dishonestly.
§822.14, Willfully destroying vessels.
§822.15, Equipping ship with intent to destroy it.

817.24 Unlawful to add or alter or deface existing brand.—It is unlawful for any one to add to or alter or deface any existing brand on any animal not his own or without the consent of the owner, with a fraudulent intent to claim the same, any bar, letter, figure or character of any kind. Any violation of this section shall be punished by imprisonment in the state prison at hard labor, not more than five years or less than one year.

History.—§§1, 3, ch. 4734, 1899; GS 3334; RGS 5174; CGL 7277.
cf.—§811.11, Horse and cattle stealing.
§811.14, Larceny of hogs.
§534.01, Marks and brands of live stock.

817.25 Fraudulently marking or branding.—Whoever shall fraudulently mark or brand any unmarked or unbranded animal with the intent to claim the same or to prevent identification by the true owner or owners thereof, shall be punished as provided in §817.24.

History.—§4, ch. 4734, 1899; GS 3335; RGS 5175; CGL 7278.
cf.—§811.11, Horse and cattle stealing.
§811.14, Larceny of hogs.
§534.01, Marks and brands of live stock.

817.26 Fraudulently changing marks on animal.—If any person shall fraudulently alter or change the marks of any animal, not his own, with intent to claim the same or to prevent identification by the true owner thereof, the person so offending shall be punished by imprisonment in the state prison not exceeding five years.

History.—§1, ch. 5663, 1907; RGS 5176; CGL 7279.
cf.—§811.11, Horse and cattle stealing.
§811.14, Larceny of hogs.
§534.01, Marks and brands of live stock.

817.27 Cutting off ears or head of animal before same is dressed.—No person shall cut the ears or head off of any hogs, sheep, beef or other domestic animal until the same has been dressed. Any person violating the provisions of this section shall be punished by fine not exceeding one hundred dollars or imprisonment not exceeding sixty days.

History.—§§1, 2, ch. 5157, 1903; GS 3336; RGS 5177; CGL 7280.
cf.—§534.14, Inspection required before killing animals.

817.28 Fraudulent obtaining of property by gaming.—Whoever, by the game of three-card monte, so-called, or any other game, device, sleight of hand, pretensions to fortune telling, or other means whatever by the use of cards or other implement or implements, fraudulently obtains from another person property of any description, shall be punished as if he had been convicted of larceny.

History.—§53, sub-ch. 4, ch. 1637, 1868; RS 2473, GS 3343; RGS 5186; CGL 7289.

817.29 Cheating.—Whoever is convicted of any gross fraud or cheat at common law shall be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding four hundred dollars.

History.—§54, sub-ch. 4, ch. 1637, 1868; RS 2475; GS 3344; RGS 5187; CGL 7290.

817.30 Punishment for unlawful use of badge of certain orders and organizations.—Any person who willfully wears the badge or button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or of the Military Order of Foreign Wars of the United States, or of the Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of the Woodmen of the World, or of any society, order or organization of five years' standing in the state, or uses the same to obtain aid or assistance within this state, or willfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than six months.

History.—§1, ch. 6502, 1913; RGS 5197; CGL 7300.

817.31 Unlawful use of insignia of American Legion; penalty.—Any person who willfully wears the badge, button or other insignia of the American Legion shall be punished upon conviction therefor by a fine of not more than one hundred dollars or by imprisonment in the county jail for a period of not more than six months; provided, that the provisions of this section shall not apply to any member of the American Legion.

History.—§1, ch. 8464, 1921; CGL 7301.
cf.—§775.06, Alternative punishment.

817.311 Unlawful use of badges, etc.—
(1) From and after May 9, 1949, any person who shall wear or display a badge, button, insignia or other emblem, or shall use the name of or claim to be a member of any benevolent, fraternal, social, humane, or charitable organization, which organization is entitled to the exclusive use of such name and such badge, button, insignia or emblem either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, unless such person is entitled so to do under the laws, rules and regulations of such organization, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not to exceed one year.

(2) This section shall be cumulative to any and all laws now in force in the state.

History.—Comp. §1, ch. 25025, 1949.

817.32 Fraudulent operation of coin-operated devices.—Any person who shall operate or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated, any automatic vending machine, slot machine, coin-box telephone, or other receptacle designed to receive lawful coin of the United States in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick, or device whatsoever not lawfully authorized by the owner, lessee, or licensee of such machine, coin-box telephone or receptacle, or who shall take, obtain or receive from or in connection with any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States in connection with the sale, use, or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph, or other property, without depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin of the United States to the amount required therefor by the owner, lessee, or licensee of such machine, coin-box telephone or receptacle, shall be guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment not exceeding ninety days, or by a fine not exceeding one hundred dollars.

History.—§1, ch. 12267, 1927; CGL 7313.
cf.—§775.06, Alternative punishment.
§849.15, Possession of slot machines unlawful.

817.33 Manufacture, etc., of slugs to be used in coin-operated devices prohibited.—Any person who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the contents of any automatic vending machine, slot machine, coin-box telephone or other receptacle, depository, or contrivance designed to receive lawful coin of the United States in connection with the sale, use, or enjoyment of property or service, or who, knowing that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device or substance whatsoever intended or calculated to be placed or deposited in any such automatic vending machine, slot machine, coin-box telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment not exceeding ninety days, or by a fine not exceeding one hundred dollars.

History.—§2, ch. 12267, 1927; CGL 7314.
cf.—§775.06, Alternative punishment.

817.34 False entries and statements by investment companies offering stock or security for sale.—Any person who shall knowingly subscribe to or make or cause to be made, any false statements or false entry in any book of any investment company or exhibit any false paper with the intention of deceiving any person authorized to examine into the affairs of any investment company, or shall make, utter or publish any false statement of the financial condition of any investment company, or the stock, bonds or other securities by it offered for sale, shall be deemed guilty of a felony, and upon conviction thereof shall be fined not exceeding five thousand dollars or imprisoned in the state prison not exceeding five years.

History.—§9, ch. 6422, 1913; RGS 5748; CGL 7975.
cf.—§775.06, Alternative punishment.
§517.30, Violations of uniform sale of securities law.

817.35 Sale of cemetery lots, etc.; promises.—
(1) It shall be unlawful for any person, firm or corporation, to sell, offer for sale, or advertise for sale, cemetery lots or mausoleum space, upon the guarantee, promise, representation or inducement to the purchaser that the same may be sold or repurchased at a financial profit.

(2) Any violation of this section shall constitute a misdemeanor and any person, firm or corporation found guilty of such violation shall be fined not more than five hundred dollars or, if a person, imprisoned for not more than six months or by both such fine and imprisonment.

History.—§§1, 2, ch. 22080, 1943; am. §7(B), ch. 24337, 1947.

817.36 Resale of tickets of common carriers, places of amusement, etc.—
(1) Whoever shall offer for sale or sell any ticket good for passage or accommodations on any common carrier in this state, or good for admission to any sporting exhibition, athletic contest, theatre or any exhibition where an admission price is charged, and request or receive a price in excess of one dollar above the price charged therefor by the original seller of said ticket, shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars and not more than one thousand dollars, or imprisoned for not more than six months, or by both fine and imprisonment in the discretion of the court.

(2) The provisions of this law shall not apply to travel agencies that have an established place of business in this state, which place of

business is required to pay state, county and city occupational license taxes.

History.—§§1, 1a, ch. 22726, 1945.

817.37 Touting; defining; providing punishment; ejection from race tracks.—

(1) Any person who knowingly and designedly by false representation attempts to, or does persuade, procure or cause another person to wager on a horse in a race to be run in this state or elsewhere, and upon which money is wagered in this state, and who asks or demands compensation as a reward for information or purported information given in such case is a tout, and is guilty of touting.

(2) Any person who is a tout, or who attempts or conspires to commit touting, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. For a second like offense in this state, he shall be imprisoned.

(3) Any person who in the commission of touting falsely uses the name of any official of the Florida state racing commission, its inspectors or attaches, or of any official of any race track association, or the names of any owner, trainer, jockey or other person licensed by the Florida state racing commission, as the source of any information or purported information shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than five thousand dollars or by imprisonment in the state prison for a term of not less than one, nor more than five years, or by both such fine and imprisonment.

(4) Any person who has been convicted of touting by any court, and the record of whose conviction on such charge is on file in the office of the Florida state racing commission, any court of this state, or of the federal bureau of investigation, or any person who has been ejected from any race track of this or any other state for touting or practices inimical to the public interest shall be excluded from all race tracks in this state. Any such person who refuses to leave such track when ordered to do so by inspectors of the Florida state racing commission or by any peace officer, or by an accredited attache of a race track or association shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars.

History.—§§1, 2, 3, & 4, ch. 24344, 1947.
Sub. §(3) am, §10, ch. 26484, 1951.

817.38 Simulated process.—

(1) CIRCULATION PROHIBITED.—It shall be unlawful for any person, firm or corporation to send or deliver, or cause to be sent or delivered any letter, paper, document, notice of intent to bring suit, or other notice or demand, which simulates a summons, complaint, writ, or other court process, with intent to lead the recipient or sendee to believe the same to be genuine, for the purpose of obtaining any money or thing of value whatsoever. The sending of such simulating document shall be prima facie evidence of such intent, and it shall be no defense to show that the document bears any statement to the contrary, nor shall it be a defense to show that the money or thing of value sought to be obtained was to apply as payment on a valid obligation.

(2) EVIDENCE OF DELIVERY.—In prosecutions for violation of this section, the prosecution may show that the simulating document was deposited in the post office for mailing or was delivered to any person with intent to be forwarded, and such showing shall be sufficient proof of the sending or delivery.

(3) VENUE—Any person violating this section may be tried therefor in the county where such simulating document was so deposited, or the county where the same was received.

(4) EXCEPTION.—Nothing in this section shall be construed to prohibit the printing, publication or distribution of blank forms of genuine summons and other court process.

(5) PENALTIES.—Any person, firm or corporation violating this section shall be fined, for the first offense, not less than $10 nor more than $100, and for the second and subsequent offenses not less than $100 nor more than $500 or imprisoned not more than 6 months, or both.

History.—Comp. §§1-5, ch. 57-73.

817.39 Simulated forms of court or legal process; publication, sale or circulation unlawful; penalty.—

(1) Any person, firm or corporation who shall print for the purpose of sale or distribution, for use in the state or who shall circulate, publish or offer for sale any letter, paper, document, notice of intent to bring suit, or other notice or demand, which simulates a form of court or legal process, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $10.00 or more than $100.00 for the first offense, and not less than $100.00 or more than $500.00 for the second or any subsequent offense, or imprisoned not more than 6 months or both.

(2) It shall be no defense that the paper or other instrument referred to in subsection (1) shall declare that it is not a court or legal process.

(3) Nothing in this section shall prevent the printing, publication, sale or distribution of genuine legal forms for the use of attorneys, clerks of courts, or justices of the peace.

History.—§§1-3, ch. 57-265.

817.40 False, misleading and deceptive advertising and sales; definitions.—When construing this act, and each and every word, phrase or part thereof, where the context will permit:

(1) The word or term "wholesale" or "wholesale sale" shall extend to and include an "at cost sale," "below cost sale," and terms of similar purport, and embraces all sales purporting to be made at or below the seller's net delivered cost price, or below the average

wholesale cost of the items sold or to be sold, but which are in fact made for a price in excess of the average wholesale of like items.

(2) The word or term "retail" means the sale or offering for sale of individual items of merchandise to the ultimate consumer.

(3) The term or word "retailer" means one who acquires for the purpose of sale, keeps for sale, offers or exposes for sale, or sells individual units of merchandise to the ultimate consumer and not for resale.

(4) The term or word "merchandise" includes goods, wares and merchandise, as generally understood, and in addition thereto services and other things of value.

(5) The phrase "misleading advertising" includes any statements made, or disseminated, in oral, written or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services.

(6) The definitions contained in §1.01, in so far as the context of this act will permit, shall be applicable hereto.

History.—§1, ch. 59-301.

817.41 Misleading advertising prohibited.—(1) It shall be unlawful for any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisment. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

(2) It shall be unlawful for any person to advertise, in any way or by any medium whatsoever, any sale as a "wholesale sale," "below cost sale," or terms of similar purport, unless the goods, wares or merchandise offered for sale thereby are offered by the seller at or below his delivered net cost price, or below the average wholesale price of such goods, wares or merchandise. Such advertising of goods, wares or merchandise for sale shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

(3) Any retailer using the term or phrase "wholesale sale," "below cost sale," or terms of similar purport, in connection with the sale of goods, wares or merchandise at retail, shall, upon demand by a customer, forthwith make available, unless the same shall have theretofore been made available, to the better business bureau, the merchant's division of the chamber of commerce, or to the state attorney's office for inspection, invoices or shipping charges or true and correct copies thereof, of any goods, wares or merchandise so offered for sale, described or represented, indicating the delivery net cost to the seller of the particular goods, wares or merchandise sold or offered for sale, from which the seller's delivered net cost may be determined. The said retailer shall also and at the same time give all reasonable assistance in determining and ascertaining his net cost price of said goods, wares or merchandise. The said better business bureau, merchant's division of the chamber of commerce or state attorney, upon determining the said delivered net cost, shall forthwith issue a certificate evidencing such delivered net cost, as determined, and deliver the same to the retailer for delivery or exhibition to the customer. Unless such certificate shall show a delivered net cost equal to or in excess of the advertised price, the retailer shall be presumed to have violated this law.

(4) There shall be a rebuttable presumption that the person named in or obtaining the benefits of any misleading advertisement or any such sale is responsible for such misleading advertisement or unlawful sale.

History.—§2, ch. 59-301.

817.411 False information; advertising.—No person, firm or corporation shall knowingly publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement or statement containing any assertion, representation or statement that commodities, mortgages, promissory notes, securities or other things of value offered for sale are covered by insurance guaranties where such insurance is nonexistent or does not in fact insure against the risks covered.

History.—§1, ch. 61-110.

817.42 Advertising former or comparative prices.—No price shall be advertised as a former or comparative price of the thing advertised unless the alleged former price was the prevailing price for not less than thirty consecutive days within the four months next immediately preceding the date of the advertisement, or unless the date when the alleged former price did prevail is clearly and conspicuously stated in the advertisement, and on any price listing otherwise used, which must be available to customers and police officers.

History.—§3, ch. 59-301.

817.43 Exemption. — The provisions of §§817.40-817.42 shall not apply to any publisher of a newspaper, magazine or other publication, or the owner or operator of a radio or television station, or any other owner or operator of a media primarily devoted to advertising, who publishes, broadcasts or otherwise disseminates an advertisement in good faith without knowledge of its false, deceptive or misleading character.

History.—§4, ch. 59-301.

817.44 Intentional false advertising prohibited.—

(1) WHAT CONSTITUTES INTENTIONAL FALSE ADVERTISING.—It is unlawful to offer for sale or to issue invitations for offers for the sale of any property, real or personal, tangible or intangible, or any services, professional or otherwise, by placing or causing to be placed before the general public, by any means whatever, an advertisement describing such property or services as part of a plan or scheme with the intent not to sell such property or services so advertised, or with the intent not to sell such property or services at the price at which it was represented in the advertisement to be available for purchase by any member of the general public.

(2) PRESUMPTION OF VIOLATION.—The failure to sell any article or a class of articles advertised, or the refusal to sell at the price at which it was advertised to be available for purchase, shall create a rebuttable presumption of an intent to violate this section.

(3) EXEMPTION.—This section shall not apply to any publisher of a newspaper, magazine or other publication, or the owner or operator of a radio station, television station or other advertising media, who places before the public an advertisement in good faith without knowledge that the person so engaging or hiring such owner, operator or publisher has the intent not to sell the property or services so advertised or with the intent not to sell such property or services at the price at which it was represented in the advertisement to be available for purchase by any member of the general public.

History.—§5, ch. 59-301.

817.45 Penalty.—Any person convicted of violating any of the provisions of this act shall be punished by a fine not to exceed $500 or by imprisonment for a period not exceeding 60 days, or by both such fine and imprisonment.

History.—§6, ch. 59-301.

817.46 Violations may be enjoined.—In addition to the punishment provided in §817.45, the state attorney and his assistants of the various judicial circuits throughout the state are hereby vested with authority and power to invoke the jurisdiction of courts of equity within their respective judicial circuits to enjoin or obtain other equitable relief against persons violating the provisions of this law.

History.—§7, ch. 59-301.

817.47 Insurance advertising exempt. — Nothing in this act shall be deemed to apply to advertising in connection with sales of insurance which are regulated under the insurance laws of this state.

History.—§9, ch. 59-301.

817.481 Credit cards; obtaining goods by use of false, expired, etc.; penalty.—

(1) It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, counterfeit or expired credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

(2) It shall be unlawful for any person to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of the lawful price, charge or toll therefor.

(3) Any person who violates any provision of subsection (1) or (2) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50.00 nor more than $500.00 or imprisonment for not more than 1 year, or by both such fine and imprisonment.

History.—§§1-3, ch. 61-83.

817.49 False reports of commission of crimes; penalty.—Whoever willfully imparts, conveys or causes to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, in that no such crime had actually been committed, shall upon conviction thereof be guilty of a misdemeanor and fined not more than $500 or imprisoned not exceeding 6 months, or both.

History.—§1, ch. 59-294.

817.50 Fraudulently obtaining goods, services etc., from hospital.—

(1) Whoever shall, wilfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise or services from any hospital in this state shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $100.00 or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment.

(2) If any person shall give to any hospital in this state a false or fictitious name, a false or fictitious address, any other false or fictitious information required to be obtained by such hospital in compliance with §382.31, et seq., or shall assign to any hospital the proceeds of any insurance contract, then knowing that such contract is no longer in force or is invalid or is void for any reason, any such action shall be prima facie evidence of the intent of such person to defraud such hospital.

History.—§§1, 2, ch.61-154.
cf.—§382.31 Hospitals and almshouses required to keep records.

817.51 Obtaining groceries; intent to defraud.—Any person who shall obtain any items from retail grocery establishments with intent to defraud the owner or keeper thereof shall be guilty of a misdemeanor; and shall upon conviction be punished by imprisonment in the county jail not to exceed three months or by fine not exceeding $100.00; provided that the provisions of this section shall not apply where there has been an agreement for delay in payments.

History.—§1, ch. 61-206.

817.52 Obtaining vehicles with intent to defraud, failing to return hired vehicle, or tampering with mileage device of hired vehicle.—

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.—Whoever, with intent to defraud the owner or any person lawfully possessing any motor vehicle obtains the custody of such motor vehicle by trick, deceit, fraudulent or wilful false representation, shall be guilty of a felony and punished as hereinafter provided.

(2) HIRING WITH INTENT TO DEFRAUD.—Whoever, with intent to defraud the owner or any person lawfully possessing any motor vehicle, of the rental thereof, hires a vehicle from such owner, or such owner's agents, or any person in lawful possession thereof, such person shall, upon conviction, be deemed guilty of a misdemeanor. The absconding without paying or offering to pay such hire, shall be prima facie evidence of such fraudulent intent.

(3) FAILURE TO REDELIVER HIRED VEHICLE.—Whoever, after hiring a motor vehicle under an agreement to redeliver the same to the person letting such motor vehicle or his agent, at the termination of the period for which it was let, shall, without the consent of such person or persons and with intent to defraud, abandon, or willfully refuse or neglect to redeliver such vehicle as agreed shall, upon conviction, be guilty of a misdemeanor. The failure to return the motor vehicle within seventy-two hours of the time agreed shall be prima facie evidence of fraudulent intent.

(4) TAMPERING WITH MILEAGE DEVICE.—Whoever, after hiring a motor vehicle from any person or persons under an agreement to pay for the use of such motor vehicle a sum of money determinable either in whole or in part upon the distance such motor vehicle travels during the period for which hired, removes, attempts to remove, tampers with, or attempts to tamper with or otherwise interfere with any odometer or other mechanical device attached to said hired motor vehicle for the purpose of registering the distance such vehicle travels, with the intent to deceive the person or persons letting such vehicle or their lawful agent as to the actual distance traveled thereby, shall upon conviction be deemed guilty of a misdemeanor. Any person who shall knowingly aid, abet or assist another in violating the provisions of this subsection shall, upon conviction, be deemed guilty of a misdemeanor as a principal in the first degree. Any person violating this section may be informed against or indicted in the county where such odometer or such other mechanical device is removed, or attempted to be removed, or tampered with, or attempted to be tampered with, or in otherwise interfered with, or in the county where such persons knowingly aid, abet, or assist another in violating the provisions of this section, or in the county where any part of such motor vehicle upon which is attached such odometer, or such other mechanical device, is removed or attempted to be removed.

(5) Any person convicted of violation of any provision of subsection (1) shall be punished by imprisonment in the state prison for not more than 1 year or by fine not to exceed $1,000.00, or both.

(6) Any person convicted of violation of any provision of subsection (2), (3) or (4) shall be punished by imprisonment in the county jail for not more than 6 months or by fine not to exceed $500.00, or both.

History.—§1, ch. 63-177.

817.53 False charges for radio and television repairs and parts; penalty.—

(1) It is unlawful for a person to knowingly charge for any services which are not actually performed in repairing a radio or television set, or to knowingly charge for any parts which are not actually furnished, or to knowingly misinform a customer concerning what is wrong with his radio or television set, or to knowingly and fraudulently substitute parts when such substitution has no relation to the repairing or servicing of the radio or television set.

(2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided by law.

History.—§1, ch. 63-383.

817.54 Obtaining of mortgage, mortgage note, promissory note, etc., by false representation.—Any person who, with intent to defraud, obtains any mortgage, mortgage note, promissory note or other instrument evidencing a debt from any person or obtains the signature of any person to any mortgage, mortgage note, promissory note or other instrument evidencing a debt by color or aid of fraudulent or false representation or pretenses, or obtains the signature of any person to a mortgage, mortgage note, promissory note or other instrument evidencing a debt, the false making whereof would be punishable as forgery, shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the state prison not exceeding 5 years or by a fine not exceeding $10,000.00 or by both such fine and imprisonment.

History.—§1, ch. 63-142.

817.55 Tourist attraction advertisement; misleading use of the word "free."—

(1) It shall be unlawful for any person or persons, including corporations, operating a tourist attraction, event, show, or similar places of business for profit catering to the

public to use or advertise in connection therewith the words "free" or "free admission" or any similar words or words of similar or like import and meaning, in a false, misleading, deceptive, or fraudulent manner, calculated to cause or actually causing any member of the public to be misled, deceived or defrauded to his detriment.

(2) The state attorney, the county prosecuting attorney, the county solicitor or other prosecuting attorney of any county in which any violation of this act occurs, or the Florida development commission may enjoin the use of such word or words by temporary and permanent injunction by application to any court of competent jurisdiction.

(3) Violations of this act whether or not enjoined as provided herein, shall be punishable as a misdemeanor.

History.—§1, ch. 63-506.

CHAPTER 818

SALE OF MORTGAGED PERSONAL PROPERTY; SIMILAR OFFENSES

818.01 Disposing of personal property under lien, etc.—Whoever shall pledge, mortgage, sell, or otherwise dispose of any personal property to him belonging, or which shall be in his possession, and which shall be subject to any written lien, or which shall be subject to any statutory lien, whether written or not, or which shall be the subject of any written conditional sale contract under which the title is retained by the vendor, without the written consent of the person holding such lien, or retaining such title; and whoever shall remove or cause to be removed beyond the limits of the county where such lien was created or such conditional sale contract was entered into, any such property, without the consent aforesaid, or shall hide, conceal or transfer, such property with intent to defeat, hinder or delay the enforcement of such lien, or the recovery of such property by the vendor, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

It shall be prima facie evidence of concealing, selling, or disposing of such personal property whenever the person owning the property at the time the lien was created, or who bought the same under such retained title contract, fails or refuses to produce such property for inspection within the county where the lien was created, or the property delivered, upon demand of the person having such lien, or retaining such title, after the debt secured by such lien has become enforcible, or the vendee has substantially defaulted in the performance of such retained title contract.

History.—§1, ch. 4142, 1893; GS 3356; RGS 5202; §1, ch. 9288, 1923; CGL 7316.

cf.—§775.06, Alternative punishment.
§699.14, Disposing of live stock under lien.
§1.01(3), "Person" defined.
§85.20, Removing property subject to lien of hotel, etc.

818.02 Executing mortgage on personalty without notifying mortgagee of prior mortgages.—Whoever executes a second or subsequent mortgage of personal property and receives money or thing of value therein without first notifying the second or subsequent mortgagee of the existence of the prior mortgage or mortgages (whether the same be recorded or not), and of the amount of such prior indebtedness, shall be punished by a fine of not more than five hundred dollars or by imprisonment not exceeding six months.

History.—§1, ch. 5708, 1907; RGS 5203; CGL 7317.

cf.—§775.06, Alternative punishment.

818.03 Removing such property beyond the limits of county.—Whoever shall knowingly and without the written consent of the person having such a lien thereon, as mentioned in §818.01, buy, take, receive or remove or cause to be removed beyond the limits of the county, any personal property subject to such lien from the owner or any person in possession thereof, and whoever shall willfully conceal such property or obstruct, delay or hinder such lien holder in prosecuting his rights against any of such property, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

History.—§56, sub-ch. 4, ch. 1637, 1868; RS 2477; §2, ch. 4142, 1893; GS 3357; RGS 5204; CGL 7318.

818.04 Selling collateral security before debt due.—Whoever holding any collateral security deposited with him for the payment of a debt which may be due him sells, pledges, loans or in any way disposes of the same, as his own, before such debt becomes due and payable, and without the authority of the person depositing the same, shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding one year.

History.—§59, sub-ch. 4, ch. 1637, 1868; RS 2478; GS 3358; RGS 5205; CGL 7319.

818.05 Sale, etc., of property held under contract or conditional sale; penalty.—No person who is in possession of any personal property under and by virtue of any contract or conditional sale or otherwise where the title to said personal property does not vest in the possessor, shall sell, conceal or dispose of such personal property without first having the written consent of the person then having or retaining the bona fide title to such personal property so to sell, dispose of, or conceal the same.

Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§§1, 2, ch. 7860, 1919; CGL 7230, 7321.

cf.—§1.01(3), "Person" defined.
§775.06, Alternative punishment.
§812.03, Fraudulent sale of personal property by lessee.

CHAPTER 821

TRESPASS AND INJURY TO REALTY AND SIMILAR OFFENSES

821.01 Trespass after warning.—Whoever willfully enters into the enclosed land and premises of another, or into any private residence, house, building or labor camp of another, which is occupied by the owner or his employees, being forbidden so to enter, or not being previously forbidden, is warned to depart therefrom and refuses to do so, or having departed re-enters without the previous consent of the owner, or having departed remains about in the vicinity, using profane or indecent language, shall be punished by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars.

History.—§1, ch. 3139, 1879; RS 2514; GS 3403; RGS 5252; CGL 7371.
cf.—Ch. 822, Malicious injury to structures.
§177.13, Destruction of monuments, maps or plats.
Ch. 590, Forest protection.
Ch. 479, Outdoor advertisers.

821.02 Placing signs adjacent to highways; penalty.—All persons are prohibited from placing, posting or erecting signs upon land or upon trees upon land adjacent to or adjoining all public highways of the state, without the written consent of the owner of such land, or the written consent of the attorney or agent of such owner.

Every person convicted of a violation of this section shall be punished as for a misdemeanor.

History.—§§1, 2, ch. 13801, 1929; CGL 1936 Supp. 7433(1).
cf.—§775.07, Punishment for misdemeanors.

821.03 Entry on enclosure to hunt or fish.—Whoever willfully and with the view of trespassing enters any enclosure of another, where crops or fruit of any kind are cultivated, without permission of the occupant previously obtained, or, without such previous consent of the owner or occupant, enters upon the enclosed lands of another to hunt or fish, shall be punished by imprisonment not exceeding sixty days or by fine not exceeding fifty dollars.

Ten days' notice by poster to be posted at at least three different and conspicuous places around the enclosure, shall be given by parties wishing to avail themselves of the benefit of this section.

History.—§§1, 2, 3, ch. 3012, 1877; RS 2515; GS 3404; RGS 5253; CGL 7372.
cf.—§811.08, Carrying away planted oysters.

821.04 Trespass on enclosure.—No person in this state shall willfully, and with the view of trespassing, enter any enclosure of another or enter upon any tract of land bounded or entirely surrounded by sea, gulf, bay, river, or by creeks or lakes, without permission of

the owner or occupant, authorized to give such permission, being previously obtained, and every person so trespassing shall be imprisoned not to exceed ninety days or fined not exceeding fifty dollars.

History.—§1, ch. 4045, 1891; GS 3405; §1, ch. 5684, 1907; RGS 5259; CGL 7378.

821.041 Unauthorized entry on land; prima facie evidence of trespass.—

(1) The unauthorized entry by any person into or upon any legally enclosed and legally posted land shall be prima facie evidence of the intention of such person to commit an act of trespass and of intent to commit any other act pertaining to said land, the improvements thereto or growth thereon, committed while within said enclosure.

(2) The act of entry upon legally enclosed and legally posted land without permission of the owner of said land by any workman, servant, employee or agent while actually engaged in the performance of his work or his duties incident to such employment and while under the supervision, direction or through the procurement of any other person acting as supervisor, foreman, employer, principal, or in any other capacity, shall be prima facie evidence of the causing and of the procurement of such act by the supervisor, foreman, employer, principal or other person, and shall further be prima facie evidence of intent of such supervisor, foreman, employer, principal or other person, to cause or procure the commission of any other act pertaining to said land, the improvement thereto or the growth thereon, actually committed by such workman, servant, employee or agent, while the latter is on the said land.

(3) The act committed by any person or persons of taking, transporting, operating or driving, or the act of permitting or consenting to the taking or transporting of any machine, tool, motor vehicle or draft animal into or upon any legally enclosed and legally posted land without the permission of the owner of said land by any person who is not the owner of such machine, tool, vehicle or animal, but with the knowledge or consent of the owner of such machine, tool, vehicle or animal or the person then having the legal right to possession and use thereof, shall be prima facie evidence of the intent of such owner of such machine, tool, vehicle or animal, or of the person then entitled to the possession and use thereof, to cause or procure an act of trespass and any other illegal act pertaining to such land, the improvements thereto and the property and growth thereon, in the accomplishment of which act the said machine, tool, vehicle or animal is used.

(4) As used herein, the term "owner of said land" shall include the beneficial owner, lessee, occupant, or other person having any interest in said land under and by virtue of which that person is entitled to possession thereof, and shall also include the agents or authorized employees of such owner. However, this section shall not apply to any official or employee of the state or a county, municipality or other governmental agency now authorized by law to enter upon lands.

History.—Comp. §§1-4, ch. 25245, 1949.

821.05 Throwing down fences, etc.—Every person in this state who shall willfully lay or throw down the fence or bars or open a gate of another, or with evil intent, by any other means interfere with the fence of another person, thereby exposing crops or other property to waste, destruction or freedom, or shall enter upon the enclosed lands of another, or lands bounded or formed by a sea, gulf, bay, river, creek or lake, that are posted as provided in this chapter, without the consent of said owner or person occupying the same, authorized to give such permission to hunt or fish, shall be punished by a fine not to exceed fifty dollars, or imprisonment not to exceed three months.

History.—§2, ch. 4045, 1891; GS 3406; §2, ch. 5684, 1907; RGS 5260; CGL 7379.

821.06 Lands must be posted.—The provisions of §§821.04 and 821.05 shall not apply to lands which have not been posted in at least three conspicuous places around the enclosure, where it is enclosed by a fence, or lands which have not been posted in conspicuous places every eight hundred yards where the same is bounded or formed by a sea, gulf, bay, river, creeks or lakes, and when so posted as herein provided, such sea, gulf, bay, river, creeks or lakes shall be taken and considered as an enclosure. The parties posting the notices or those present at the time of posting such notices shall be competent to prove the posting. Such notices shall be kept in position where they can be seen.

History.—§3, ch. 4045, 1891; GS 3407; §3, ch. 5684, 1907; RGS 5261; CGL 7380.

821.07 Posting certain enclosed land not necessary.—It shall not be necessary to give notice by poster on any enclosed tract of land not exceeding two hundred acres on which there is a dwelling house, in order to obtain the benefits of the statutes of this state prohibiting trespass on enclosed lands.

History.—§1, ch. 5418, 1905; RGS 5262; CGL 7381.

821.071 Posted land; removing notices unlawful; penalty.—

(1) It is unlawful for any person to wilfully remove, destroy, mutilate or commit any act designed to remove, mutilate or reduce the legibility or effectiveness of any posted notice placed by the owner, tenant, lessee, or occupant of legally enclosed or legally posted land pursuant to any law of this state for the purpose of legally enclosing the same.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor.

History.—Comp. §§1, 2, ch. 25246, 1949.

821.08 Lands bounded by water need not be fenced.—For the purpose of §821.07 it shall be unnecessary to fence any boundary or part of a boundary of any such tract which shall be formed by sea, gulf, bay, river, creek or lake.

History.—§2, ch. 5418, 1905; RGS 5263; CGL 7382.

821.09 Breaking or injuring fences.—Whoever willfully and maliciously breaks down, mars, injures or cuts any fence, or any part thereof, belonging to or enclosing land not his own, or whoever causes to be broken down, marred, injured or cut any fence belonging to or enclosing land not his own, shall be punished by imprisonment in the penitentiary not exceeding ten years, or by fine not exceeding ten thousand dollars.

History.—§62, sub-ch. 4, ch. 1637, 1868; RS 2533; §1, ch. 5252, 1903; GS 3408; RGS 5264; CGL 7383.

821.10 Cutting and carrying away timber from lands of another; proviso.—Whoever shall enter upon, or cause to be entered upon, the land of another and sever, or cause to be severed, from said land any timber, tree or trees, standing or growing thereon, or any parcel or part of the realty, the property of another of the value of three dollars or more, and take and carry away, or cause to be taken or carried away, same or any part thereof, without the consent of the owner of said property, with the intent to convert same to his own use, shall be guilty of larceny and punished by imprisonment in the state prison not exceeding two years, or by fine not exceeding five hundred dollars.

Provided, that the provisions of this section shall not apply to the trimming or cutting of trees or timber by municipal or private public utilities or their employees, when such trimming or cutting is required for the establishment or maintenance of the service furnished by any such utility.

History.—§1, ch. 19287, 1939; CGL 1940 Supp. 7402(1).
cf.—§811.07, Stealing logs or timber.

821.11 Trespass on lands; severing and taking property from freehold.—Whoever willfully commits a trespass by cutting, scraping, injuring or destroying timber or wood standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land, or by digging or carrying away any stone, ore, gravel, clay, sand, turf or mould from such land, or by carrying away anything which is parcel of the realty, shall be punished as if he had stolen personal property of the same value.

History.—§2516, RS 1892; GS 3409; RGS 5265; CGL 7384.

821.12 Penalty for taking from farm or vineyard products, vegetables or flowers without consent of owner.—Whoever takes and carries away from any farm, garden, orchard, orange or lemon grove, or destroys any farm products, vegetables, fruits or flowers, corn or cotton from the stalk, or from any vineyard any grapes of any money value, without the consent of the owner or manager, shall be punished by imprisonment not exceeding three months, or by fine not exceeding fifty dollars.

History.—§2517, RS 1892; RS 2517; §1, ch. 4531, 1897; GS 3410; RGS 5266; CGL 7385.

821.121 Trespass; severing, taking or injuring grove or farm products; penalty.—

(1) Whoever severs or takes or carries away from any farm, garden, orchard, vineyard, orange, grapefruit, tangerine, lemon, lime or other citrus grove, or other improved land, or injures or destroys any farm products, vegetables, fruit, flowers, corn or cotton from the stalk, of any money value, without the consent of the owner or manager shall be punished by imprisonment not exceeding six months or by fine not exceeding $500 or by both such fine and imprisonment.

(2) Any person who may become an accessory, either before or after the fact, to such trespass or any prohibited act as set forth in subsection (1) of this section, and any person who shall knowingly receive any of the property so taken shall be punished as provided in said subsection.

(3) Nothing herein shall prevent prosecution under the larceny statutes of the state where the acts constitute larceny.

History.—Comp. §§1-3, ch. 29950, 1955.

821.13 Accessory to trespass on lands; receiver.—Any person may become an accessory to such trespass as set forth in §§821.11 and 821.12, before or after the fact, and such accessory and all persons who shall knowingly receive the property so taken shall be punished as provided in the said sections, respectively.

History.—§2518, RS 1892; GS 3411; RGS 5267; CGL 7386.
cf.—§932.12, Jurisdiction and venue; accessory before the fact.
§932.13, Accessory after the fact.
Ch. 776, Principals and accessories.

821.14 Trespass with intent to injure growing trees, etc.—Whoever willfully commits a trespass by entering upon the garden, orchard or other improved land of another without permission of the owner, with intent to cut, take, carry away, destroy or injure the trees, grains, grass, hay, fruit or vegetables there growing or being, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.

History.—§78, sub-ch. 4, ch. 1637, 1868; RS 2519; GS 3412; RGS 5268; CGL 7387.

821.15 Trespass by injuring fruit trees, etc.—Whoever willfully and maliciously, or wantonly and without cause, cuts down or destroys by girdling or by lopping, or otherwise injures any fruit or other tree, or any shrub, plant, vine or flower not his own, standing or growing for shade or ornament or other useful purpose, or maliciously and injuriously severs from the freehold of another any product thereof, or anything attached thereto, shall be punished by imprisonment not exceeding six months, or by fine not exceeding three hundred dollars.

History.—§76, sub-ch. 4, ch. 1637, 1868; RS 2520; GS 3413; RGS 5269; CGL 7388.

821.16 Boxing timber on land of another.—Whoever cuts, boxes, girdles, or causes or procures to be cut, boxed or girdled, any kind of timber standing, growing or being on the land of another, without the consent of the owner, or removes or causes or procures to be removed from any land of another, without

his consent, any timber or wood of any kind, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months.

History.—§1, ch. 5259, 1903; GS 3414; RGS 5270; CGL 7389.
cf.—§811.07, Stealing logs or timber.

821.17 Penalty for cutting tree across fence.—Whoever shall carelessly or maliciously cut or fell a tree onto or across the fence of any enclosed field, garden or grove, and does not at once remove the same and repair any damage that may be done to the fence, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding six months; and such person and his employer shall be liable and responsible for any and all damage to the crops or trees on the premises resulting from the breaking of the fence and the consequent depredation of stock.

History.—§2, ch. 4780, 1899; GS 3415; RGS 5271; CGL 7390.

821.18 Other trespasses.—Every trespass upon the property of another, committed with a malicious and mischievous intent, the punishment of which is not specially provided for, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.

History.—§2521, RS 1892; GS 3416; RGS 5272; CGL 7391.

821.19 Trespass upon state lands prohibited.—Trespass upon state lands is prohibited, and any person found guilty of such trespass shall be deemed guilty of, and punished as for, a misdemeanor; provided, this section shall not apply to any lands, title to which is now vested or which may hereafter vest in the state by reason of any tax sale certificate.

History.—§1, ch. 16185, 1933; CGL 1936 Supp. 7393(1).
cf.—§775.07, Punishment for a misdemeanor.
§822.03, Injuring state buildings.

821.20 Same; "trespass" and "state lands" defined.—The word "trespass" when used in §§821.19-821.21 shall be deemed to be used in its broadest and most liberal sense, and shall include the cultivation, living upon, or any other use of such lands, or the use or removal of anything growing thereon, or the use or removal of the soil of said land or anything except wild game in, on or under such soil, without written lease from the state.

The term "state lands" when used in §§821.19-821.21 shall include all state owned lands, lands vested in the state board of education and the trustees of the internal improvement trust fund.

History.—§2, ch. 16185, 1933; CGL 1936 Supp. 7393(2); §2, ch. 61-119.

821.21 Same; duties of sheriffs and prosecuting officers.—The sheriff and deputy sheriffs in each of the several counties of this state shall see that the state lands are not trespassed upon and shall arrest all persons found trespassing upon state lands and report the same to the proper prosecuting officer and to the governor of the state.

All prosecuting officers of the state or any county shall prosecute all offenders against the provisions of §§821.19-821.21.

History.—§3, ch. 16185, 1933; CGL 1936 Supp. 7393(3).

821.22 Cutting timber from lands sold for taxes.—If any person shall cut, or cause or procure to be cut, or aid, assist or be employed in cutting, any cedar, juniper, cypress, oak, pine, palmetto or other timber standing, growing or being on any lands that have been sold for taxes, before the lands are redeemed or a tax deed issued for the same; or if any person shall remove, or cause or procure to be removed, or aid or assist, or be employed in removing, from any of such lands any cedar, juniper, cypress, oak, pine, palmetto or other timber; or if any person shall cut or box, or cause or procure to be cut or boxed, or aid, assist or be employed in cutting or boxing any pine timber on said lands for the purpose of extracting and gathering the turpentine therefrom, or shall gather or remove, or cause to be gathered or removed, or aid, assist or be employed in gathering or removing, any turpentine extracted from the pine timber so cut or boxed; or if any person shall in any way, by cutting, felling, girdling or otherwise, destroy or injure any timber standing, growing or being upon said lands, he shall for every such offense be punished by a fine of not more than five hundred dollars; provided, however, this section shall not apply to the owner of said lands at the time the lands were sold for taxes.

History.—§1, ch. 4416, 1895; GS 3422; RGS 5278; CGL 7397.
cf.—§811.07, Stealing logs or timber.

821.221 Trespass and damage to timber and timber products.—Whoever wrongfully enters upon, or causes to be entered upon the land or lands of another and severs, cuts, chips, saws, chops, scrapes, turpentines, girdles, kills or otherwise damages or removes any timber, tree, or forest products, standing, lying or growing upon said land, without the consent of the legal owner, shall be liable to the owner in an action at law for damages in an amount equal to three times the sum which would compensate the owner for the actual damage suffered by the lawful owner.

Provided, however, that where the wrongful entry was involuntary, or the defendant in an action brought under this act had probable cause to believe that the entry upon such land was lawful, then the measure of damages shall be two times the sum which would compensate the owner for the actual damage suffered by the lawful owner. Provided, further, that the provisions of this section shall not apply to the trimming or cutting of trees or timber by municipal or private public utilities or their employees, when such trimming or cutting is required for the establishment or maintenance of the service furnished by any such utility.

History.—§1, ch. 61-355.

821.23 Removing, or working for turpentine, timber on land sold for taxes.—No person shall cut and remove or remove or cause or

procure to be cut and removed, or removed, or aid, assist or be employed in cutting and removing or removing, or in any manner working for turpentine purposes any timber on any land in this state when there shall be any unredeemed and outstanding tax sale certificates against such land, timber and turpentine privileges.

No person shall cut and remove, or remove or cause or procure to be cut and removed or removed, or aid, assist or be employed in cutting and removing or removing any timber from any lands in this state when there shall be any unredeemed or outstanding tax sale certificates against any such timber or timber privileges.

No person shall in any manner work for turpentine purposes or cause or procure to be worked for turpentine purposes or aid, assist or be employed in working for turpentine purposes any pine timber or any lands in this state when there shall be any unredeemed and outstanding tax sale certificates against such timber or turpentine privileges.

Provided, that this section shall not apply to the cutting of timber when the taxes on the timber shall have been paid or the turpentine privilege when the taxes on the turpentine privileges shall have been paid.

Any person violating any of the provisions of this section shall upon conviction therefor be punished by a fine of not more than one thousand dollars or be imprisoned not exceeding one year.

History.—§§1, 2, ch. 5683, 1907; RGS 5279; CGL 7398.
cf.—§775.06, Alternative punishment.
§811.07, Stealing logs or timber.

821.24 Punishment for use of timber or turpentine by owner after sale for nonpayment of taxes.—If, at any time after six months after the sale of the timber or turpentine rights for nonpayment of taxes due thereon, the former owner thereof, or his agents or servants, shall take or use any of such timber or turpentine, they shall each be guilty of a misdemeanor, and upon conviction shall pay a fine of not less than fifty dollars or be imprisoned not more than six months.

History.—§1, ch. 5725, 1907; RGS 5280; CGL 7399.

821.25 Injuring flowers, grounds, etc., of state institutions prohibited.—

(1) It is unlawful to injure, cut, interfere with, molest or disturb the forests, woodlands, ornamental plantings, orchards, groves, vegetable plantings, field crops, experimental plants, flowers, grounds, drives, roadways, and other property belonging to, leased by, operated by or under the control of the state road department, Florida state university, the agricultural and mechanical college for negroes, the Florida school for the deaf and blind, the university of Florida, the university of Florida agricultural experiment stations, field laboratories or biological stations, laboratories or the state plant board, or to steal, pilfer, pick, break or otherwise molest any natural or cultivated trees, shrubs, vines, fruits, flowers, vegetables, grasses, plants, or parts thereof belonging to, leased by, operated by or controlled by the state road department, Florida state university, the agricultural and mechanical university for negroes, the Florida school for the deaf and blind, the university of Florida, the university of Florida experiment stations, field laboratories or biological stations or laboratories or the state plant board; except when authorized by the officials of the state board of control or the state plant board, state road department or employees in charge of said property.

(2) Persons violating the provisions of this section, as amended shall be subject to the penalty provisions of §821.28.

History.—§1, ch. 10265, 1925; CGL 7429.
Am. §§1, 2, ch. 26903, 1951.
cf.—§822.03, Injuring state buildings.

821.26 Removing natural products from property of state institutions prohibited.—It is unlawful for any person to remove any soil, muck, clay, wood, minerals, timber or other natural products from any of the property belonging to the state board of control or the state plant board and controlled by, leased, held by or operated by the Florida state university, the agricultural and mechanical university for negroes, the Florida school for the deaf and blind, the university of Florida, the university of Florida agricultural experiment stations, field laboratories or biological stations or laboratories or the state plant board.

History.—§2, ch. 10265, 1925; CGL 7430.

821.27 Molesting game or fish on property of state institutions prohibited.—It is unlawful to kill, hunt, shoot at or wound any of the game, song birds or wild animals on property belonging to, leased by, operated by or controlled by the Florida state university, the agricultural and mechanical college for negroes, the Florida school for the deaf and blind, the university of Florida, the university of Florida agricultural experiment stations, field laboratories or biological stations or laboratories or the state plant board; or to use, hunt with, fire off or shoot any firearms, air rifles, slung shots or other weapons, whether deadly or not, commonly or ordinarily used for the destruction of wild life, or to trap or use nets on such property; or to fish, seine, use rod and reel or fish with hook and line or otherwise fish or disturb the fish or fish products or to shoot, hunt, or otherwise kill or to catch with net any fish or fish products out of waters on such property; provided, however, that the officers or members of the board of control or employees of the board of control, as state plant board of either of the above institutions, may hunt and fish and kill wild birds and animals to prevent their injury to crops or for experiments.

History.—§3, ch. 10265, 1925; CGL 7431.

821.28 Penalty for violation of §§821.25-821.27.—Any persons violating any of the provisions of §§821.25-821.27 shall be guilty of a

misdemeanor and upon conviction shall be punished as for the commission of a misdemeanor.

History.—§4, ch. 10265, 1925; CGL 7432.
cf.—§775.07, Punishment for misdemeanor.

821.29 Sheriff combining with trespassers on state lands.—Any sheriff, or his deputies, who shall combine with any person trespassing upon the state lands, or engaged in getting logs or other timber therefrom for sale, shall be punished by imprisonment in the state prison not exceeding three years, or by fine not exceeding one thousand dollars.

History.—§3, ch. 3020, 1877; RS 2523; GS 3418; RGS 5274; CGL 7393.
cf.—Ch. 839, Misconduct by auctioneers, public officers and employees.

821.30 Forcible entry.—Whoever forcibly enters into the possession of the lands and tenements of another, and does not, upon demand made by the party entitled to possession, vacate the same within four days after the demand, shall be punished by a fine not exceeding one thousand dollars.

History.—§23, ch. 1630, 1868; RS 2524; GS 3419; RGS 5275; CGL 7394.

821.31 Holding over by lessee whose lease has expired; penalty.—It is unlawful for any lessee whose lease has expired and no new lease thereon has been executed or agreed upon to hold possession of lands or houses after ten days' written notice to vacate from the owner of such property or his agent to such lessee.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or by imprisonment not exceeding three months.

History.—§1, ch. 3144, 1879; RS 2525; GS 3420; RGS 5276; CGL 7395; §§1, 2, ch. 16066, 1933; CGL 1936 Supp. 7395(1).
cf.—§775.06, Alternative punishment.

821.32 Trespasser may be arrested on Sunday without warrant.—Whoever is discovered in the act of willfully injuring any fruit or forest trees, or committing any kind of malicious mischief on Sunday, may be arrested by any sheriff, deputy sheriff, constable, watchman, police officer or other person, and lawfully detained by imprisonment in the jail or otherwise until a complaint can be made against him for the offense for which he was arrested, and he be taken upon a warrant issued upon such complaint, but such detention without warrant shall not continue more than twenty-four hours.

History.—§80, sub-ch. 4, ch. 1637, 1868; RS 2526; GS 3421; RGS 5277; CGL 7396.
cf.—§901.04, Arrest may be made on any day.
§901.15, When arrest by officer without warrant is lawful.
§901.23, Duty of officer after arrest without warrant.

821.33 Trespassing on property of waterworks.—Whoever, without the consent of any water company or municipal corporation owning waterworks doing business within the state, shall tap any pipe or main belonging to such waterworks company for the purpose of taking or using water of such company from such pipe or main, or for any other purpose; or whoever, without the consent of such waterworks company, shall take or use any water from such pipe or main, or from any hydrant used for the purpose of taking or drawing water from said pipe or main, shall be punished by a fine of not more than one hundred dollars, or by imprisonment not more than ninety days.

History.—§1, ch. 4424, 1895; GS 3423; RGS 5281; CGL 7400.
cf.—§822.19, Tampering with meters, etc., belonging to electric, gas, or water plants.

821.34 Trespass in counties where fences dispensed with.—Whenever fences or enclosures have been or shall hereafter be dispensed with in any county or part of a county in this state, by reason of any no-fence law, or law making it unlawful for live stock to run at large in such county or part of a county, the laws of this state applicable to offenses of trespass against realty or injury thereto, or to property thereon, or connected therewith, and in regard to hunting or fishing, or other kinds of trespass on lands, shall not become inoperative, but shall apply to such unenclosed or unfenced land with the same force and effect as if such enclosures or fences had not been so dispensed with. Notices required to be posted on lands shall be sufficient if the sign board shall have thereon in letters easily seen and read the word "Posted" in letters not less than two inches long and followed by the owner's name.

History.—§1, ch. 4410, 1895; GS 3424; §1, ch. 6485, 1913; RGS 5282; CGL 7401.

821.35 Turning in stock where parties farming under one fence.—When two or more persons are conducting and carrying on farming operations under one and the same fence enclosure, it shall be unlawful for any one or more of said farmers operating a farm within one fence enclosure to turn in any live stock, or permit or allow any of their own live stock to run upon any of said enclosed farming territory at any time between the first day of March and the first day of December of any year, without first having obtained the written consent of all the occupants of said territory actually conducting farms within said one fence enclosure; provided, that hogs shall be kept out from the first day of March to the first day of November. Any person convicted of violating this section shall be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding three months.

History.—§§1, 2, ch. 4369, 1895; §1, ch. 4599, 1897; GS 3425; RGS 5283; CGL 7402.

821.36 Dumping garbage, refuse, rubbish, etc.—

(1) It is unlawful for any person to dump, or cause to be dumped, or place, or cause to be placed, any garbage, refuse or rubbish of any kind whatsoever on or upon any public park, state designated highway, county road, city street or other public lands, or upon private property, without the prior consent of the owner thereof.

(2) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and punished by a fine of not more than $100.00, or by imprisonment in the county jail for not more than 3 months, or by both fine and imprisonment. Any person violating any of the provisions of this section, upon a second conviction, shall be fined up to $500.00 or imprisoned in the county jail for not more than 6 months or by both fine and imprisonment.

(3) The Florida highway patrol, county sheriffs, constables, city police officers, officers of Florida game and fresh water fish commission and any other law enforcement officer are charged with the responsibility of enforcement of this section.

History.—§§1, 2, ch. 21914, 1943; (1) §1, ch. 28168, 1953; §1, ch. 63-503.
cf.—§339.29 Dumping trash on highways; penalty.

821.37 Trespass on fruit groves; with deadly weapon.—

(1) No person in this state shall willfully and with the view of trespassing, enter within the boundaries of any citrus fruit or other fruit grove or orchard without permission of the owner or occupant authorized to give such permission having been obtained.

(2) No person in this state shall enter within the boundaries of any citrus fruit or other fruit grove or orchard while carrying a deadly weapon without permission of the owner or occupant authorized to give such permission, being previously obtained.

(3) The unauthorized entry of any person within the boundaries of any citrus fruit or other fruit grove or orchard shall be prima facie evidence of the intention of such person to commit an act of trespass and of intent to commit any other act pertaining to said land, the improvements thereto or growth thereon committed while within the boundaries of said grove or orchard.

(4) Any person violating any of the provisions of this act shall, upon conviction therefor, be punished by fine of not more than $1,000.00 or imprisonment in the county jail for not more than twelve months, or both, in the discretion of the court.

(5) This act shall not repeal §822.23.

History.—§§1-5, ch. 61-307.

CHAPTER 822

MALICIOUS INJURY TO BUILDINGS AND STRUCTURES

822.01 Maliciously injuring buildings, etc., by gunpowder.—Whoever willfully and maliciously, by the explosion of gunpowder or any other explosive substance, unlawfully destroys or injures any dwelling house, office, shop or other building, or any ship or vessel, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§63, sub-ch. 4, ch. 1637, 1868; RS 2528; GS 3427; RGS 5285; CGL 7405.

cf.—Ch. 821, Trespass and injury to realty.

822.02 Throwing explosive with intent to injure.—Whoever willfully and maliciously throws into, against or upon, or puts, places or explodes, or causes to be exploded in or upon or near any dwelling house, office, shop, building or vessel, any gunpowder or other explosive substance, or any bombshell, torpedo or other instrument filled or loaded with any explosive substance, with intent unlawfully to destroy or injure such dwelling house, office, shop, building or vessel, or any person or property therein, shall be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§64, sub-ch. 4, ch. 1637, 1868; RS 2529; GS 3428; RGS 5286; CGL 7406.

cf.—§790.16, Throwing bombs; discharging machine guns in public place.

822.03 Injuring public buildings or structures.—Whoever wantonly, willfully or maliciously shall mar, deface, injure or mutilate the capitol, or any other public state, county or municipal building or structure, or any church, synagogue, or any building used by a civic or charitable organization, or the contents or the walls thereof, or the fence, or the trees, or the grounds, or shall cause same to be done, shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding $500.00.

History.—§3, ch. 1822, 1870; RS 2530; GS 3429; RGS 5287; CGL 7407; §1, ch. 29910, 1955; §1, ch. 61-336.

cf.—§821.19, Trespass upon state lands.
§821.25, Injuring grounds, etc., of state institutions.

822.04 Injuring dwelling houses, school houses, churches, etc.—Whoever wantonly and maliciously, or wantonly and without cause, destroys, defaces, mars or injures any dwelling house or any school house, church or other building erected or used for the purpose of education or religious instruction or for the general diffusion of knowledge, or any of the outbuildings, fences, walls, or appurtenances of such school house, church or other building, or any furniture, apparatus or other property belonging to or connected with such school house, church or other building, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§62, sub-ch. 4, ch. 1637, 1868; RS 2531; GS 3430; RGS 5288; CGL 7408.

cf.—§235.09, Obscenity on school buildings.

822.05 Throwing noxious substances against buildings.—Whoever willfully and maliciously throws into, against or upon any dwelling house, office, shop or other building or vessel, or places therein or thereon any oil of vitriol, coal tar or other noxious or filthy substance, with intent unlawfully to injure, deface or defile such dwelling house, office, shop, building or vessel, or any property therein, shall be punished by imprisonment not exceeding six months, or by fine not exceeding three hundred dollars.

History.—§65, sub-ch. 4, ch. 1637, 1868; RS 2532; GS 3431; RGS 5289; CGL 7409.

822.06 Injuring mill-dams, etc.—Whoever willfully and maliciously breaks down, injures, removes or destroys any dam, reservoir, canal or trench, or any gate, flume, flash-boards or other appurtenances thereof, or any of the

wheels, mill gear or machinery of a water mill or cotton gin or press, or willfully or wantonly, without color of right, drains off the water contained in a mill pond, reservoir, canal or trench, or willfully and maliciously, without color of right, obstructs the water of a mill pond, reservoir, canal or trench from flowing out of the same, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding five hundred dollars.

History.—§67, sub-ch. 4, ch. 1637, 1868; RS 2534; GS 3432, RGS 5290; CGL 7410.
cf.—§298.66, Obstructing canals, etc., or destroying drainage works.

822.07 Injuring mill by erecting dam.—Whoever by erecting or maintaining a dam, either within or without the limits of this state, knowingly causes the water of a river or stream to be raised so as to flow upon or injure a mill lawfully existing in this state and belonging to any citizen or citizens thereof, without right as against the owner of such mill, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§66, sub-ch. 4, ch. 1637, 1868; RS 2535; GS 3433; RGS 5291; CGL 7411.

822.08 Injuring bridges.—Whoever willfully and maliciously breaks down, injures, removes or destroys any public or toll-bridge or any lock, culvert or embankment of a canal, or willfully and maliciously makes any aperture or breach in such embankment with intent to destroy or injure the same, shall be punished by imprisonment in the state prison not exceeding five years or by fine not exceeding five hundred dollars.

History.—§68, sub-ch. 4, ch. 1637, 1868; RS 2536; GS 3434; RGS 5292; CGL 7412.

822.09 Floating logs against bridges.—Any person who shall wantonly, willfully or negligently float or drive any logs or timber of any character down any creek or river against any public bridge crossing such creek or river to the injury of said bridge shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding thirty days.

History.—§1, ch. 4054, 1891; GS 3435; RGS 5296; CGL 7417.
cf.—§1.01(3), "Person" defined.

822.10 Injuring or tapping telegraph or telephone lines, etc.—Whoever, without the consent of the owner thereof, willfully destroys, damages, or in any way injures any telegraph, telephone, radio, television or television community antenna system poles, cables, wires, fixtures, antennas, amplifiers, or other apparatus, equipment, or appliances; or obstructs, impedes or impairs the service of any telegraph, telephone, radio, television or television community antenna system line or lines, or the transmission of messages thereover; or attaches any unauthorized device or equipment to any telegraph, telephone, radio, television or television community antenna system line, antenna, pole, cable, wire, fixture, amplifier, or other apparatus, instrument, equipment or appliance, or taps or connects, directly or indirectly, by wire or any other means whatsoever, to or with any telegraph or telephone line so as to hear, or be in position to hear, or to enable any other person to hear, or be in position to hear, for any use or purpose whatsoever, any message going over said line, or for the purpose of receiving, or enabling any other person to receive any unauthorized service over said line, or uses, or attempts to use, in any manner or for any purpose, or communicates in any way, any information so obtained; or aids, agrees with, employs, or conspires with, any person to do or cause to be done any of the acts hereinbefore mentioned, in cases where the property damage does not exceed two hundred dollars, shall be punished by fine not exceeding $500.00 or by imprisonment not exceeding one year in the county jail; provided that in cases where the property damage exceeds two hundred dollars or any person who, having been convicted of violating the provisions of this section, thereafter violates the provisions hereof, shall be punished, upon conviction, by imprisonment in the state prison for a period not exceeding fifteen years or by a fine not exceeding $5,000.00, or both.

History.—§2537, RS 1892; GS 3436; RGS 5297; CGL 7418; §1, ch. 17462, 1935; §1, ch. 59-258; §1, ch. 61-452.
cf.—§775.06, Alternative punishment.

822.11 Injuring boundary marks, guideposts, etc.—Whoever willfully and maliciously breaks down, injures, removes or destroys any monument erected for the purposes of designating the boundaries of a city or town, or of a tract or lot of land, or any tree marked for that purpose, or so breaks down, injures, removes or destroys any milestone, mileboard or guideboard erected upon a highway or other public way, turnpike or railroad, or willfully and maliciously defaces or alters the inscription on any such stone or board, or willfully and maliciously mars or defaces any building or signboard, or extinguishes any lamp, or breaks, destroys or removes any lamp or lamp post or railing or posts erected on any bridge, sidewalk, street, highway, court or passage, shall be punished by imprisonment not exceeding six months, or by fine not exceeding fifty dollars.

History.—§61, sub-ch. 4, ch. 1637, 1868; RS 2538; GS 3437; RGS 5298; CGL 7419.
cf.—§339.28, Injuring boundary marks, guideposts, etc.

822.12 Cutting section, township, range or corner trees.—It is unlawful for any person in this state to cut any section corner tree, any township corner tree or any range corner tree marked as such unless such tree stands in a clearing or field, or where the owner of the land wishes to place a building. Any person violating the provisions of this section shall be punished by imprisonment not less than ninety days or fine of not less than twenty-five dollars.

History.—§§1, 2, ch. 5232, 1903; GS 3438; RGS 5299; CGL 7420.

822.13 Laying out highway, etc., over graveyard.—Whoever lays out, opens or makes

a highway or townway, or constructs a railroad, turnpike or canal, or any other thing in the nature of a public easement over, through, in or upon any part of an enclosure, being the property of a city or town, religious society or of private proprietors, used or appropriated for the burial of the dead, unless authority for that purpose is specially granted by law, or unless the consent of such city, town, religious society or proprietors, respectively, is first obtained, shall be punished by imprisonment not exceeding one year, or by fine not exceeding two thousand dollars.

History.—§28, sub-ch. 8, ch. 1637, 1868; RS 2539; GS 3439; RGS 5300; CGL 7421.

cf.—Ch. 872, Offenses concerning dead bodies and graves.

822.14 **Willfully destroying vessels.**—Whoever willfully casts away, burns, sinks or otherwise destroys a ship or vessel with intent to injure and defraud any owner thereof, or the owner of any property laden on board the same, or an insurer of such ship, vessel or property, or of any part thereof, shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§70, sub-ch. 4, ch. 1637, 1868; RS 2540; GS 3440; RGS 5301; CGL 7422.

cf.—§817.22, Making false invoice to defraud insurer.
§817.23, False affidavit to defraud insurer.

822.15 **Equipping ship with intent to destroy it.**—Whoever lades, equips or fits out, or assists in lading, equipping and fitting out a ship or vessel with intent that the same shall be willfully cast away, burned, sunk or otherwise destroyed, to injure and defraud an owner or insurer of such ship or vessel, or of any property laden on board the same, shall be punished by imprisonment in the state prison not exceeding fifteen years, or by fine not exceeding five thousand dollars.

History.—§71, sub-ch. 4, ch. 1637, 1868; RS 2541; GS 3441; RGS 5302; CGL 7423.

cf.—§817.22, Making false invoice to defraud insurer.
§817.23, False affidavit to defraud insurer.

822.16 **Injuring and removing channel marks.**—Whoever maliciously and without authority cuts down, removes or destroys any beacon, or whoever willfully removes, runs down or destroys any buoy, stake or other mark, designating the channels of the navigable streams of waters of the state, and erected by lawful authority, shall be punished by imprisonment not exceeding six months, or by fine not exceeding six hundred dollars.

History.—§2542, RS 1892; GS 3442; RGS 5303; CGL 7424.

822.17 **Injuring or destroying private bridges.**—Any person who willfully or maliciously injures or destroys a bridge erected upon any land by the owner thereof shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding ninety days.

History.—§2, ch. 4943, 1901; GS 3443; RGS 5304; CGL 7425.

822.18 **Other malicious injury.**—Whoever willfully and maliciously destroys or injures the personal property of another, in any manner or by any means not particularly described in these statutes shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding one thousand dollars, but when the value of the property so destroyed or injured is not alleged to exceed the sum of fifteen dollars, the punishment shall be by imprisonment not exceeding thirty days, or by fine not exceeding fifteen dollars.

History.—§79, sub-ch. 4, ch. 1637, 1868; RS 2543; GS 3444; RGS 5305; CGL 7426.

822.19 **Injuring or tampering with meters, etc., belonging to electric, gas or water plants; punishment.**—It is unlawful to injure or knowingly to suffer to be injured any meter, wire, pipe or fittings connected with or belonging to an electric, gas or water plant owned or controlled by any person, firm or corporation, private or municipal, engaged in the business of furnishing electricity, gas or water to the users thereof; or to tamper or meddle with any meter or other appliance or any part of said plant in such manner as to cause loss or damage to the owner of such plant or the operator thereof; or to prevent any meter installed for registering electricity, gas or water from registering the quantity which otherwise would pass through the same; or to alter the index or break the seal of any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter; or fraudulently to use, waste or suffer the waste of electricity or gas or water passing through any such meter, wire, pipe or fitting, or other appliance or appurtenance connected with or belonging to any such plant, after such meter, wire, pipe, fitting, appliance or appurtenance has been tampered with, injured or altered. Any person violating this section, upon conviction, shall be punished by a fine not exceeding five hundred dollars or imprisoned for not more than one year.

History.—§1, ch. 5194, 1903; GS 3445; RGS 5306; CGL 7427; §1, ch. 17472, 1935; CGL 1936 Supp. 7428(1).

cf.—§775.06, Alternative punishment.
§821.33, Trespassing on property of waterworks.

822.20 **Prima facie evidence of violation of §822.19.**—The existence of any connection, wire, conductor, meter alteration, or any device whatsoever, which effects the diversion of electricity, gas or water without the same being measured or registered by or on a meter installed for that purpose by any person, firm or corporation, private or municipal, engaged in the business of furnishing electricity, gas or water to users thereof, or the use or waste of electricity, gas or water furnished by any such person, firm or corporation without its being measured or registered on a meter provided therefor by such person, firm or corporation, shall be prima facie evidence of intent to violate and of the violation of §822.19 by the person using or receiving the direct benefits from the use of electricity, gas or water passing through such connection, wire, conductor, device or altered meter, or being used without being measured or registered on a meter as aforesaid.

History.—§1, ch. 17472, 1935; CGL 1936 Supp. 7428(2).

822.21 **Making connection with wires or pipes connecting with gas or water plant; pun-**

ishment.—It is unlawful to make or cause to be made any connection with any wire, main service pipe or other pipes, appliance or appurtenance used for or in connection with an electric, gas or water plant owned or controlled by any person, firm or corporation, private or municipal, engaged in the business of furnishing electricity, gas or water to users thereof, in such manner as to cause to be supplied electricity, gas or water from such plant to any lamp, burner, orifice, faucet or other outlet whatsoever without such electricity, gas or water passing through a meter provided by the owner or operator of such plant and used for measuring and registering the quantity of electricity, gas or water passing through the same; or to make or cause to be made, without the consent of the owner or operator of any such plant, any connection with any such plant or any wire, main, pipe, service pipe, or other instrument or appliance connected with such plant in such manner as to take or use, without the consent of such owner or operator any electricity, gas or water. Any person violating this section, upon conviction, shall be punished by a fine not exceeding five hundred dollars or imprisoned for not more than one year.

History.—§2, ch. 5194, 1903; GS 3446; RGS 5307; CGL 7428; §2, ch. 17472, 1935; CGL 1936 Supp. 7428(2).

cf.—§775.06, Alternative punishment.
§821.33, Trespassing on property of waterworks.

822.22 **Prima facie evidence of violation of §822.21.**—The existence of any connection, wire, conductor, meter alteration, or any device whatsoever, which effects the diversion of electricity, gas or water without the same being measured or registered by or on a meter installed by any person, firm or corporation, private or municipal, engaged in the business of furnishing such electricity, gas or water to users thereof, or which effects the use of electricity, gas or water furnished by such person, firm or corporation without its being measured or registered on a meter provided therefor, by such person, firm or corporation, shall be prima facie evidence of intent to violate and of the violation of §822.21 by the person using or receiving the direct benefits from the use of electricity, gas or water passing through such connection, wire, conductor, device or altered meter, or being used without being measured or registered on a meter as aforesaid.

History.—§2, ch. 17472, 1935; CGL 1936 Supp. 7428(4).

822.23 **Entering farm, etc., in nighttime to commit offense; punishment.**—Whoever in the nighttime enters any farm, garden, orchard or fruit grove with intent to commit in such garden, farm, orchard or fruit grove any larceny or depredation or other offense, if he be armed with a dangerous weapon, or if he make an assault upon any person lawfully therein, shall be punished by imprisonment in the state prison for a period not exceeding ten years.

If the offender be not armed nor make an assault upon any person lawfully in said farm, garden, orchard or fruit grove, he shall be punished by imprisonment in the state prison for a period not exceeding two years.

History.—§1, ch. 14501, 1929; CGL 1936 Supp. 7433(2).

CHAPTER 823

NUISANCES; DOORS OF CERTAIN BUILDINGS

823.01 Indictment for nuisance; removal by justice of the peace.—All nuisances which tend to annoy the community or injure the health of the citizens in general, or to corrupt the public morals, shall be indictable and punishable by a fine not exceeding two hundred dollars, at the discretion of the court.

Any nuisance which tends to the immediate annoyance of the citizens in general, or is manifestly injurious to the public health and safety, or tends greatly to corrupt the manners and morals of the people, may be removed and suppressed by the order of the justice of the peace of the district, founded upon the verdict of twelve householders of the same, who shall be summoned, sworn and impaneled for that purpose, which order shall be directed to and executed by any sheriff or constable of the county; and an indictment or information shall lie for the same.

History.—§47, Feb. 10, 1832; RS 2704; GS 3680; RGS 5624; CGL 7817.

cf.—§64.11, Abatement of nuisances.
§533.06, Permitting escape of mine waste or debris.
Ch. 386, Nuisances injurious to health.
Ch. 906, Indictment and information.
Ch. 937, Proceedings in justice of the peace courts.

823.02 Building bonfires.—Whoever is concerned in causing or making a bonfire within ten rods of any house or building, shall be punished by fine not exceeding twenty dollars, or by imprisonment not exceeding one month.

History.—§12, sub-ch. 7, ch. 1637, 1868; RS 2705; GS 3681; RGS 5625; CGL 7818.

823.03 False alarms of fires. — Whoever without reasonable cause by outcry or the ringing of bells, or otherwise, makes or circulates, or causes to be made or circulated a false alarm of fire, shall be punished by fine not exceeding fifty dollars.

History.—§13, sub-ch. 7, ch. 1637, 1868; RS 2706; GS 3682; RGS 5626; CGL 7819.

823.04 Diseased animals. — It is unlawful for any person to bring into this state or to offer for sale therein any horses, mules, cattle, hogs or other domestic animals, knowing at the time of such introduction or offering for sale of any such animals that they are suffering from disease known as glanders, farcy, cholera, Texas fever or other virulent, contagious or infectious diseases; and any person convicted of such offense shall be punished by imprisonment for not more than four years in the state prison, or by fine of not more than one thousand dollars.

History.—§1, ch. 4351, 1895; GS 3692; RGS 5637; CGL 7830.

823.041 Disposal of bodies of dead animals; penalty.—

(1) Any owner, custodian, or person in charge of domestic animals, upon the death of such animals due to disease, shall dispose of the carcasses of such animals by burning or burying at least two feet below the surface of the ground; provided, however, nothing in this section shall prohibit the disposal of such animal carcasses to rendering companies licensed to do business in this state.

(2) It is unlawful to dispose of the carcass of any domestic animal by dumping such carcass on any public road or right of way, or in any place where such carcass can be devoured by beast or bird.

(3) Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine not to exceed $500.00 or by imprisonment not exceeding six months.

(4) For the purposes of this act the words domestic animal shall include any equine or bovine animal, goat, sheep, swine, dog, cat, poultry or other domesticated beast or bird.

History.—§§1-4, ch. 61-359.

823.05 Places declared a nuisance; may be abated and enjoined.—Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in §823.01, or shall be frequented by the class of persons mentioned in §856.02, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in §§64.11-64.15.

History.—§1, ch. 7367, 1917; RGS 5639; CGL 7832. Am. §24, ch. 57-1.

cf.—§386.01 et seq., Nuisances injurious to health.
§514.06, Public bath houses, bathing places, etc.
Ch. 796, Prostitution.

823.06 Doors of public buildings to open outward.—All buildings erected in this state for theatrical, operatic or other public entertainments of whatsoever kind shall be so constructed that the shutters to all entrances to

said building shall open outwardly and be so arranged as to readily allow any person inside said building to escape therefrom in case of fire or other accident. Any owner, manager, lessee, or other person having charge of any public building for the use expressed herein who fails to comply with the provisions of this section shall be punished by imprisonment not exceeding three years in the state prison.

History.—§§1, 3, ch. 4053, 1891; GS 3694; RGS 5640; CGL 7834.

823.07 Abandonment of certain iceboxes, refrigerators, etc., unlawful; intent of law.—

(1) The purpose of §§823.07-823.09 is to prevent the deaths due to suffocation of children locked in abandoned iceboxes, refrigerators, and other containers having airtight doors which, when closed, cannot be opened from the inside.

(2) It shall be unlawful for any person to allow any used icebox, container, or refrigerator with an interior storage area of more than one and one-half cubic feet of clear space, having airtight doors which, when closed, cannot be opened from the inside, to remain on his property or property under his control, or to discard or abandon same; provided that this shall not apply to an icebox, container, or refrigerator which is crated or is securely locked from the outside or from which the locking device or door or hinges has been removed, or which is in normal use in a home, rental unit, or place of business.

History.—Comp. §§1 and 2, ch. 29707, 1955.

823.08 Same; attractive nuisance to children.—Abandoned, unattended or discarded iceboxes, containers, or refrigerators having airtight doors which, when closed cannot be opened from the inside, are hereby declared to be an attractive nuisance to children, whether or not such children are trespassers, and a menace to their health and safety when accessible to them.

History.—Comp. §3, ch. 29707, 1955.

823.09 Penalty.—Any person, firm or corporation violating any of the provisions of this law shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding $100.00 or by imprisonment for not in excess of ten days. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

History.—Comp. §4, ch. 29707, 1955.

CHAPTER 828

CRUELTY TO CHILDREN AND ANIMALS

828.01 Duties of sheriff and constables, etc.—When a sheriff, constable, marshal, police officer or any agent of any duly incorporated society for the prevention of cruelty to children and animals has reason to believe that any person of lewd and lascivious practices or reputation within his jurisdiction has charge or custody of any child under the age of sixteen years, whether as parent, guardian or otherwise, he shall forthwith arrest such person and take him before a magistrate having jurisdiction of such case.

Upon the proper affidavit being filed, such magistrate shall hear the witnesses produced on oath, and if he find by the evidence that the person so in charge of such child is guilty of lewd and lascivious practices and reputation, or lives in a house where such practices are carried on, and is unfit to have custody of such child, he shall issue his warrant to the said officer, commanding him to take possession of such child, and put it into a suitable home with a private family, or in an orphan asylum or home, either in this state or out of it, under terms and conditions to be approved by the court, where such child will have proper moral and intellectual training.

Such child shall be kept in a home or asylum until he reaches the age of sixteen years, unless sooner adopted, or otherwise taken into the home of a private family of good character, who will bind themselves to properly clothe, provide for and educate such child.

History.—§3, ch. 4971, 1901; GS 3155; RGS 4981; CGL 7070.

828.02 Definition of "Animal."—In this chapter, and in every law of the state relating to or in any way affecting animals, the word "animal" shall be held to include every living dumb creature; the words "torture," "torment" and "cruelty" shall be held to include every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted or allowed to continue when there is reasonable remedy or relief; and the words "owner" and "person" shall be held to include corporations, and the knowledge and acts of agents and employees of corporations in regard to animals transported, owned, employed by or in the custody of a corporation, shall be held to be the knowledge and act of such corporation.

History.—§10, ch. 4971, 1901; GS 3156; RGS 4982; CGL 7071.

cf.—§1.01, General definitions.

828.03 Agents of societies, etc., may prosecute violators.—Any society or association for the prevention of cruelty to children or animals, organized under the laws of this state, may appoint agents for the purpose of prosecuting any person guilty of any act of cruelty to children or animals within this state, who may arrest without warrant any person found violating any of the provisions of this chapter, or any other law of the state for the purpose of protecting children and animals or preventing any act of cruelty thereto.

Upon making such arrest, such agent shall convey the person so arrested before some court or magistrate having jurisdiction of the offense, within the municipal corporation or county wherein the offense was committed, and there forthwith make complaint, on oath or affirmation, of the offense.

All appointments of such agents by such societies or corporations must have the approval of the mayor of the city in which the society or association exists, and if it exists or works outside of any city, the appointment must be approved by the county judge or the judge of the circuit court of the county, and

the mayor or judge shall keep a record of such appointment.

History.—§12, ch. 4971, 1901; GS 3158; RGS 4984; CGL 7073.

cf.—§901.15, When arrest without warrant is lawful.
§901.23, Duty of officer after arrest without warrant.

828.04 Torturing or unlawfully punishing children.—Whoever tortures, torments, cruelly or unlawfully punishes, or willfully, unlawfully or negligently deprives of necessary food, clothing or shelter any person under the age of sixteen years; and whoever torments, deprives of necessary sustenance or raiment, or unnecessarily or excessively chastises, or mutilates his child or ward, or whoever deprives such child or ward of necessary treatment and attention, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§1, ch. 4721, 1899; §1, ch. 4971, 1901; GS 3236, 3238; RGS 5069, 5071; §1, ch. 9331, 1923; CGL 7171, 7173.

cf.—§450.151, Hiring and employing children.

828.041 Abuse of children.—

(1) PURPOSE.—The purpose of this act is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. This is often manifest by the infliction, other than by accidental means, of physical injury requiring the attention of a physician. It is intended that the mandatory reporting of such cases by physicians and institutions to appropriate court authority will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever possible.

(2) REPORTS BY PHYSICIANS AND INSTITUTIONS.—Any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern and resident, having cause to believe that a child under the age of sixteen brought to him or coming before him for examination, care or treatment has had physical injury or injuries inflicted upon him, other than by accidental means, by a parent or caretaker, shall report or cause reports to be made to the appropriate juvenile judge in accordance with the provisions of this act; provided, when the attendance of a physician with respect to a child is pursuant to the performance of services as a member of the staff of a hospital or similar institution he shall notify the person in charge of the institution or his designated delegate who shall report or cause reports to be made in accordance with the provisions of this act.

(3) NATURE AND CONTENT OF REPORT.—Such reports shall be in writing and shall contain the names and addresses of the child and his parents or caretakers, if known, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the physician believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

(4) IMMUNITY FROM LIABILITY.—Anyone participating in the making of a report pursuant to this act or participating in a judicial proceeding resulting therefrom shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person acted in bad faith or with malicious purpose.

(5) EVIDENCE NOT PRIVILEGED.—The physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries or the cause thereof, in any judicial proceeding resulting from a report pursuant to this act.

(6) PENALTY.—Anyone knowingly and wilfully violating the provisions of this act shall be guilty of a misdemeanor.

History.—§§1-6, ch. 63-24.

828.05 Killing an animal when useless.—In case any horse, mule, ox, cow or other domestic animal shall be so injured or diseased as to be utterly useless, and of no value to the owner, and is in a suffering condition, and it shall appear by the certificate of a veterinary surgeon that such animal cannot be cured or rendered fit for service, the city or town marshal or chief of police shall, upon the application of the officers of any society for the prevention of cruelty to animals, cause such animal to be immediately killed.

History.—§2, ch. 4151, 1893; GS 3159; RGS 4985; CGL 7074.

828.06 Owner of insufficiently fenced premises, killing, etc., animals of another thereon.—Whoever, not having a sufficient fence or other enclosure to prevent the intrusion of animals upon his premises, shall, in attempting to expel therefrom any horse, cow, hog or other animal of another person found intruding thereon, kill, maim, wound or disfigure any such animal, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars.

History.—§1, ch. 1846, 1871; RS 2506; §1, ch. 5158, 1903; GS 3390; RGS 5239; CGL 7358.

828.07 Maliciously killing animal of another.—Whoever willfully and maliciously kills, maims or disfigures any horse, cattle or other beast of another person, or willfully and maliciously administers poison to any such beasts, or exposes any poisonous substance with intent that the same shall be taken and swallowed by them, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding one thousand dollars.

History.—§74, sub-ch. 4, ch. 1637, 1868; RS 2507; GS 3391; RGS 5240; CGL 7359.

cf.—§811.19, Larceny and injury to dogs.

828.08 Penalty for exposing poison.—Whoever leaves or deposits any poison or any substance containing poison, in any common street, alley, lane or thoroughfare of any kind, or in any yard or enclosure other than

the yard or enclosure occupied or owned by such person, shall be fined not more than fifty dollars or imprisoned not more than thirty days, and shall be liable for all damages sustained thereby.

History.—§8, ch. 4971, 1901; GS 3399; RGS 5248; CGL 7367.

828.09 Wantonly killing, etc., animals of another.—Whoever willfully or wantonly and without malice towards the owners kills, maims or disfigures any horse, cattle or other animals belonging to another person, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§1, ch. 3274, 1881; RS 2508; GS 3392; RGS 5241; CGL 7360.
cf.—§811.19, Larceny and injury to dogs.

828.10 Owner of sheep-killing dogs allowing them to run at large.—Any person who, owning or having in his possession and under his control any dog which said person knows to have injured or killed, or to be in the habit of injuring or killing sheep belonging to other persons, knowingly permits and allows such dog to run at large, shall be punished by fine not exceeding fifty dollars or imprisonment not exceeding thirty days.

History.—§1, ch. 5266, 1903; GS 3393; RGS 5242; CGL 7361.
cf.—§767.01, Liability of owner of dog for damage done to sheep or domestic animals.
§767.02, Sheep-killing dogs not to roam about.

828.11 Damage to stock by phosphate plants.—All persons owning, controlling or operating any phosphate mining plant, mill or manufactory, or mining or preparing phosphate or phosphatic rock, pebbles or earth, for market, shall securely and effectually enclose with a substantial fence all of the washings, debris, waste, clay, earth and deposits thrown out from or escaping from any such phosphate mine, mill or manufactory, where collected in quantities sufficient to bog up the stock named in this section, so that cattle, sheep, hogs, horses or other animals cannot have access thereto or become bogged therein, and shall so keep the same securely fenced and enclosed as long as such persons shall own, control or operate any such phosphate mining plant, mill or manufactory.

Thereafter the owner of the land upon which such phosphate mining plant, mill or manufactory has been located and operated, or the lands upon which such washings, debris, clay, waste, earth and deposits have been thrown, shall continue to keep the same securely fenced and enclosed until all danger to stock of all kinds shall have ceased.

Any person who shall fail, neglect or refuse to comply with the provisions of this section shall be guilty of a misdemeanor punishable by fine of not less than ten dollars, nor more than one hundred dollars, and shall be held liable civilly to the owner for full value of any cattle, horses, sheep, goats, swine or other livestock that may be lost, killed or injured in consequence of such non-compliance.

History.—§§1, 2, ch. 4755, 1899; GS 3394; §1, ch. 5664, 1907; RGS 5243; CGL 7362.
cf.—§1.01(3), "Person" defined.

828.12 Cruelty to animals.—Whoever unnecessarily overloads, overdrives, tortures, torments, deprives of necessary sustenance or shelter, or unnecessarily or cruelly beats, mutilates or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhuman manner, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars, unless otherwise provided.

History.—§4, ch. 4971, 1901; GS 3395; RGS 5244; CGL 7363.
cf.—§811.19, Larceny and injury to dogs.

828.13 Confinement of animals without sufficient food.—Whoever impounds or confines any animal in any place and fails to supply the same during such confinement with a sufficient quantity of good and wholesome food and water, or who keeps any animals in any enclosure without wholesome exercise and change of air, or who feeds cows on food that produces impure or unwholesome milk, or abandons to die any animal that is maimed, sick, infirm or diseased, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars, unless otherwise provided.

History.—§§2, 4, ch. 3921, 1889; RS 2510; GS 3396; RGS 5245; CGL 7364.

828.14 Water and food for stock on trains, vessels, etc.—No person or corporation, or agent of either, engaged in transporting livestock on railway trains or on steam or sailing vessels, or otherwise, shall detain such stock for a longer continuous period than twenty-eight hours after the same are so placed, without supplying the same with necessary food, water and attention, or shall permit them to be crowded so as to overlie, crush, wound or kill each other; and any person or agent as aforesaid violating the provisions of this section shall, unless otherwise provided, be punished by imprisonment not exceeding six months or by fine not exceeding one hundred dollars, and any corporation violating the provisions of this section shall be punished by fine not exceeding one thousand dollars.

Nothing in this section shall apply to owners, officers or crew of water crafts detained on the navigable waters of this state by storms and prevented by bad weather from reaching port.

History.—§6, ch. 4971, 1901; GS 3397; RGS 5246; CGL 7365.
cf.—§352.34, Care of livestock in transit.
§352.35, Violations of regulations as to transporting livestock.
§775.06, Alternative punishment.

828.15 §§828.12-828.14 not to apply to poultry shipped.—Nothing in §§828.12-828.14 shall be construed to apply to poultry shipped on steamboats or other crafts.

History.—§4, ch. 3921, 1889; RS 2512; GS 3398; RGS 5247; CGL 7366.
Held unconstitutional in Mikell v. Henderson 63 So. 2nd 508.

828.16 Contagious diseases. — Whoever, being the owner, or having the charge of any animal, knowing the same to have any contagious or infectious disease, or to have been recently exposed thereto, sells, barters or disposes of such animal without first disclosing to the person to whom the same is sold, bartered or disposed of, that such animal is so diseased, or has been exposed, as aforesaid, or knowingly permits such animal to run at large, or knowing such animal to be diseased as aforesaid, knowingly allows the same to come into contact with any such animal of another person without his knowledge or permission, shall be fined not more than five hundred dollars or imprisoned not more than sixty days.

History.—§9, ch. 4971, 1901; GS 3400; RGS 5249; CGL 7368.

828.17 Officer to arrest without warrant.— Any sheriff, constable or any other peace officer of the state, or any police officer of any city or town of the state, shall arrest without warrant any person found violating any of the provisions of § § 828.04, 828.08, 828.12-828.16, and the officer making the arrest shall hold the offender until a warrant can be procured, and he shall use proper diligence to procure such warrant.

History.—§15, ch. 4971, 1901; GS 3401; RGS 5250; CGL 7369; am. §1, ch. 28060, 1953.

cf.—§901.15, When arrest without warrant is lawful.
§901.23, Duty of officer after arrest without warrant.

828.18 Liable to owner for damages.—A person guilty of cruelty to an animal, the property of another, shall be liable to the owner thereof in damages, in addition to the penalties prescribed by law, and the conviction of an agent or employee shall not bar an action for cruelty to animals against an employer for allowing a state of facts to exist which will induce cruelty to animals on the part of such agent or employee.

History.—§11, ch. 4971, 1901; GS 3402; RGS 5251; CGL 7370.

cf.—§767.01, Owner responsible for damage by dogs.

828.19 Encouraging or contributing to delinquency of dependent or delinquent child.— In all cases where any child shall be a dependent or delinquent child, as defined under the laws of Florida, any person who shall by any act encourage, cause, or contribute to the dependency or delinquency of such child, and any parent or legal guardian of such child who shall by neglect of duty as such parent or legal guardian encourage, cause, or contribute to the dependency or delinquency of such child, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding $1,000.00 or imprisonment in the county jail not exceeding one year, or by both fine and imprisonment; provided the court may suspend sentence for a violation of the provisions of this section and impose conditions as to the conduct, in the premises, of any person so convicted, and make suspension to depend upon the fulfillment by the person of the conditions, and in case of the breach of any conditions, the court may impose sentence as though there had been no suspension. The court may as a condition of suspension, require a bond in such sum as the court may designate, to be approved by the judge requiring the same, to secure the performance by the person of the conditions placed by the court on the suspension; such bond shall by its terms be made payable to the state, and any moneys received for a breach of this or any other section of this chapter shall be paid into the county treasury to the credit of the fine and forfeiture fund or maintenance of children under chapter 39.

History.—§1, ch. 6906, 1915; RGS 5753; §1, ch. 11874, 1927; CGL 7981; transferred from §415.02 by §3, ch. 26880, 1951; am. §1, ch. 28235, 1953; §1, ch. 61-319.

cf.—§775.06, Alternative punishment.

828.20 Interfering with control of dependent and delinquent children; refusing to obey order of court; interfering with probation officer.—

(1) Any person who shall interfere with the custody or control of any child who shall have become the ward of any court under the provisions of this chapter, or who shall refuse to obey any order of any court made under the provisions hereof, or any person to whom the custody of a child is committed under the provisions hereof who shall refuse to produce such child to the court when ordered so to do, or any person who shall interfere with any probation officer in the discharge of his duties, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding five hundred dollars or imprisonment not exceeding six months.

(2) Any parent, guardian or other legal custodian of any child who is alleged to have committed an act of delinquency as defined under the laws of Florida, who allows or induces such child to leave the state in order to avoid judicial proceedings shall be guilty of encouraging or contributing to child delinquency and shall be punishable as provided in §828.19.

History.—§16, ch. 6216, 1911; RGS 5752; CGL 7980.
Transferred from §415.18 by §3, ch. 26880, 1951; (2)N. by §1, ch. 57-751.

cf.—§775.06, Alternative punishment.

828.201 Misuse of child support money.— Any person who wilfully misapplies funds paid by another or by any governmental agency for the purpose of support of a child shall, for the first offense, be guilty of a misdemeanor, and upon conviction thereof, be punished by fine not exceeding $200.00 or imprisonment not exceeding ninety days, and for a second or subsequent conviction under this section, be guilty of a felony and be punished by imprisonment in the state prison at hard labor, not exceeding two years, or by fine not to exceed $2,000.00, or by both fine and imprisonment. A person shall be deemed to have misapplied child support funds when such funds are spent for any purpose other than for necessary and proper home, food, clothing, and the necessities of life, which expenditure results in depriving the child of the above named neces-

sities. All public welfare agencies shall give notice of the provisions of this section at least once to each payee of any public grant made for the benefit of any child and shall report violations of this section to the proper prosecuting officer.

History.—§1, ch. 61-216.

828.21 Causing minor under eighteen to become a delinquent or dependent child.—

(1) Any person who shall commit any act which causes or tends to cause or encourage any person under the age of eighteen years to become a delinquent or dependent child, as defined under the laws of Florida, or which act contributes thereto, or any person who shall by act, or by threats, or commands, or persuasion, induce or endeavor to induce any such person, under the age of eighteen years, to do or to perform any act or to follow any course of conduct, or to so live as would cause or tend to cause any such person under the age of eighteen years to become or to remain a dependent or delinquent child, as defined under the laws of this state shall be guilty of a misdemeanor.

(2) Any person convicted of violating this act shall be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for a period of not more than one year, or by both fine and imprisonment, in the discretion of the court.

History.—§§1, 2, ch. 21978, 1943; §§1, 2, ch. 61-320. Transferred from §415.31 by §3, ch. 26880, 1951.

828.22 Humane slaughter requirement.— The legislature of this state finds that the use of humane methods in the slaughter of livestock prevents needless suffering, results in safer and better working conditions for persons engaged in the slaughtering industry, brings about improvement of products and economy in slaughtering operations, and produces other benefits for producers, processors and consumers which tend to expedite the orderly flow of livestock and their products.

It is therefore declared to be the policy of this state to require that the slaughter of all livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those employed in other states where humane slaughter is required by law and to those authorized by the federal humane slaughter act of 1958, and regulations thereunder.

Nothing in this act shall construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this act, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this act. For the purposes of this action the term ritual slaughter means slaughter in accordance with §828.23 (7) (b).

History.—§1, ch. 61-254.

828.23 Definitions.—As used in this act the following words shall have the meaning indicated:

(1) Commissioner means the commissioner of agriculture.

(2) Person means any individual, partnership, corporation, or association doing business in this state, in whole or in part.

(3) Slaughterer means any person regularly engaged in the commercial slaughtering of livestock.

(4) Livestock means cattle, calves, sheep, swine, horses, mules, goats and any other animal which can or may be used in and for the preparation of meat or meat products.

(5) Packer means any person engaged in the business of slaughtering, or of manufacturing or preparing meat or meat products for sale, either by such person or others; or of manufacturing or preparing livestock products for sale by such person or others.

(6) Stockyard means any place, establishment or facility commonly known as a stockyard, conducted or operated for compensation or profit as a public market, consisting of pens, or other enclosures, and their appurtenances, for the handling, keeping and holding of livestock for the purpose of sale or shipment.

(7) Humane method means either:

(a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical or other means that are rapid and effective, before being shackled, hoisted, thrown, cast or cut; or

(b) A method in accordance with ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

History.—§1, ch. 61-254.

828.24 Prohibited acts; exemption.—

(1) No slaughterer, packer or stockyard operator shall shackle, hoist, or otherwise bring livestock into position for slaughter, by any method which shall cause injury or pain.

(2) No slaughterer, packer or stockyard operator shall bleed or slaughter any livestock except by a humane method; provided, however, that the commissioner may, by administrative order, exempt from compliance with this act, for a period not to exceed one year after October 1, 1961, any slaughterer, packer or stockyard operator if he finds that an earlier compliance would cause such person an undue hardship.

(3) This act shall not apply to any person, firm or corporation slaughtering or processing for sale within the state not more than twenty head of cattle nor more than thirty-five head of hogs per week.

History.—§1, ch. 61-254.

828.25 Administration; rules and regulations; inspection; fees.—

(1) The commissioner shall administer the provisions of this act. He shall promulgate and may from time to time revise rules and regu-

lations which shall conform substantially to the rules and regulations promulgated by the secretary of agriculture of the United States pursuant to the federal humane slaughter act of 1958, public law 85-765, 72 Stat. 862 and any amendments thereto; provided, however, that the use of a manually operated hammer, sledge or poleax is declared to be an inhumane method of slaughter within the meaning of this act.

(2) The commissioner may appoint any member of his staff as an official inspector for the purposes of this act. Such inspector shall have the power to enter the premises of any slaughterer for the purposes of verifying compliance or noncompliance with the provisions of this act.

(3) As soon as practicable after October 1, 1961, an inspection shall be made of the premises of each slaughterer. Additional inspections shall be made not less frequently than quarterly. No fee shall be charged for such inspection.

History.—§1, ch. 61-254.

828.26 **Penalty.**—

(1) No slaughterer found by the commissioner in accordance with the above not to be in compliance with the provisions of this act shall sell any meat or meat products to any public agency in the state, or to any institution supported by state, county, or municipal funds. Failure to comply with this provision shall be a misdemeanor, the penalty for which shall be a fine of $500.00 for each violation of this provision.

(2) Upon failure to be in compliance with the provisions of this act after a period of one year from the date of the first inspection required under §828.25, the commissioner shall direct the slaughterer to cease slaughtering livestock. Failure to comply with this directive shall be a misdemeanor, the penalty for which shall be a fine of $100.00 for each day of continued slaughtering operations beyond the first week following mailing of such directive to the slaughterer by the commissioner.

History.—§1, ch. 61-254.

CHAPTER 831

FORGERY AND COUNTERFEITING

831.01 Forgery.—Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, justice of the peace, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding $5,000.00, or by both such fine and imprisonment.

History.—§1, sub-ch. 5, ch. 1637, 1868; RS 2479; §6, ch. 4702, 1899; GS 3359; RGS 5206; CGL 7324; §1, ch. 59-31; §1, ch. 61-98.

cf.—§703.17, Alteration of abstracts, etc., in clerk's office. §319.33, Alteration or forgery of certificate of title.

831.02 Uttering forged instruments.—Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in §831.01 knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding $5,000.00 or by both such fine and imprisonment.

History.—§2, sub-ch. 5, ch. 1637, 1868; RS 2480; GS 3360; RGS 5208; CGL 7326; §2, ch. 59-31; §2, ch. 61-98.

831.03 Forging or counterfeiting private labels. — Whoever, knowingly and willfully, forges or counterfeits, or causes or procures to be forged or counterfeited upon any goods, wares or merchandise, the private label, stamps or trade-mark of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding one hundred dollars.

History.—§1, ch. 3621, 1885; RS 2481; GS 3361; RGS 5209; CGL 7327.

cf.—Ch. 506, Stamped or marked boxes or bottles.

831.04 Penalty for changing or forging certain instruments of writing.—Any person making any erasure, alteration, interlineation or interpolation in any writing or instrument mentioned in §92.28, and made admissible in evidence, with the fraudulent intent to change the same in any substantial manner after the same has once been made, shall be guilty of the crime of forgery and shall be punished by imprisonment in the state prison not exceeding two years, or by fine not exceeding one thousand dollars.

Any person who may be in the business of making writings or written entries, maps or plats concerning or relating to lands or real estate, in any county in this state to which said sections apply, and of furnishing to persons applying therefor abstracts or copies of such writing or written entries, maps or plats as aforesaid, for a fee, reward or compensation therefor, and shall make the same with an alteration or interpolation in any matter of substance, with fraudulent intent to alter or change the same in any material manner or matter of substance, shall be guilty of the crime of forgery, and shall be punished by

imprisonment in the state prison not exceeding two years, or by fine not exceeding one thousand dollars.

History.—§6, ch. 4951, 1901; GS 3362; RGS 5210; CGL 7328.

831.05 Vending goods with counterfeit labels.—Whoever vends any goods, wares or merchandise having thereon a forged or counterfeit stamp, label or trade-mark of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall be punished by imprisonment not exceeding six months, or by fine not exceeding fifty dollars.

History.—§52, sub-ch. 4, ch. 1637, 1868; RS 2482; GS 3363; RGS 5211; CGL 7329.

831.06 Fictitious signature of officer of corporation.—If a fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to any instrument or writing purporting to be a note, draft or evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or ever have existed.

History.—§12, sub-ch. 5, ch. 1637, 1868; RS 2483; GS 3364; RGS 5212; CGL 7330.

831.07 Forging bank bills or promissory notes.—Whoever falsely makes, alters, forges or counterfeits a bank bill or promissory note payable to the bearer thereof, or to the order of any person, issued by an incorporated banking company established in this state, or within the United States, or any foreign province, state or government, with intent to injure any person, shall be punished by imprisonment in the state prison for life or for any term of years.

History.—§4, sub-ch. 5, ch. 1637, 1868; RS 2485; GS 3366; RGS 5214; CGL 7332.

cf.—§811.05, Stealing bank note paper.

831.08 Having forged notes, etc., in possession.—Whoever has in his possession ten or more similar false, altered, forged or counterfeit notes, bills of credit, bank bills or notes, such as are mentioned in any of the preceding sections of this chapter, payable to the bearer thereof or to the order of any person, knowing the same to be false, altered, forged or counterfeit, with intent to utter and pass the same as true, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison for life or for any term of years.

History.—§5, sub-ch. 5, ch. 1637, 1868; RS 2486; GS 3367; RGS 5215; CGL 7333.

831.09 Uttering forged bills.—Whoever utters or passes or tenders in payment as true, any such false, altered, forged or counterfeit note, or any bank bill or promissory note, payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding one thousand dollars.

History.—§6, sub-ch. 5, ch. 1637, 1868; RS 2487; GS 3368; RGS 5216; CGL 7334.

831.10 Second conviction of uttering forged bills.—Whoever, having been convicted of the offense mentioned in the preceding section, is again convicted of the like offense committed after the former conviction, and whoever is at the same term of the court convicted upon three distinct charges of such offense, shall be deemed a common utterer of counterfeit bills, and shall be punished by imprisonment in the state prison not exceeding ten years.

History.—§7, sub-ch. 5, ch. 1637, 1868; RS 2488; GS 3369; RGS 5217; CGL 7335.

cf.—§775.09, Second conviction of felony.

831.11 Bringing into the state forged bank bills.—Whoever brings into this state or has in his possession a false, forged or counterfeit bill or note in the similitude of the bills or notes payable to the bearer thereof or to the order of any person issued by or for any bank or banking company established in this state, or within the United States, or any foreign province, state or government, with intent to utter and pass the same or to render the same current as true, knowing the same to be false, forged or counterfeit, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding one thousand dollars.

History.—§8, sub-ch. 5, ch. 1637, 1868; RS 2489; GS 3370; RGS 5218; CGL 7336.

831.12 Fraudulently connecting parts of genuine instrument. — Whoever fraudulently connects together parts of several bank notes or other genuine instruments in such a manner as to produce one additional note or instrument, with intent to pass all of them as genuine, shall be deemed guilty of forgery in like manner as if each of them had been falsely made or forged.

History.—§19, sub-ch. 5, ch. 1637, 1868; RS 2490; GS 3371; RGS 5219; CGL 7337.

831.13 Having in possession uncurrent bills.—Whoever has in his possession at the same time five or more uncurrent bank bills or notes, knowing the same to be worthless, or has papers, not bank bills or notes but made in the similitude of bank bills or notes of any bank which has never existed, knowing the character of such papers, with intent to pass, utter or circulate the same, or to procure any other person to do so, for the purpose of injuring or defrauding, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding five hundred dollars.

History.—§22, sub-ch. 5, ch. 1637, 1868; RS 2491; GS 3372; RGS 5220; CGL 7338.

831.14 Uttering uncurrent bills.—Whoever utters, or passes or tenders in payment as

true, any such worthless and uncurrent bank bill or note, or any paper not a bank bill or note but made in the similitude of a bank bill or note, or any paper purporting to be the bill or note of any bank which has never existed, knowing the same to be worthless and uncurrent, as aforesaid, with intent to injure and defraud, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§23, sub-ch. 5, ch. 1637, 1868; RS 2492; GS 8373; RGS 5221; CGL 7339.

831.15 Counterfeiting coin; having ten or more such coins in possession with intent to utter.—Whoever counterfeits any gold, silver or any metallic money coin current by law or usage within this state, or has in his possession at the same time ten or more pieces of false money, or coin counterfeited in the similitude of any gold, silver or metallic coin; current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison for life, or for any term of years.

History.—§14, sub-ch. 5, ch. 1637, 1868; RS 2493; GS 8374; RGS 5222; CGL 7340.

831.16 Having less than ten counterfeit coins in possession, with intent to utter.—Whoever has in his possession any number of pieces less than ten of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, or who utters, passes or tenders in payment as true any such counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding twelve months, or by fine not exceeding one thousand dollars.

History.—§15, sub-ch. 5, ch. 1637, 1868; RS 2494; GS 8375; RGS 5223; CGL 7341.

831.17 Having less than ten counterfeit coins, etc.; second conviction.—Whoever having been convicted of either of the offenses mentioned in the preceding section, is again convicted of either of the same offenses, committed after the former conviction, and whoever is at the same term of the court convicted upon three distinct charges of said offenses, shall be deemed a common utterer of counterfeit coin and punished by imprisonment in the state prison not exceeding twenty years.

History.—§16, sub-ch. 5, ch. 1637, 1868; RS 2495; GS 8376; RGS 5224; CGL 7342.
cf.—§775.09, Second conviction of felony.

831.18 Making instruments for forging bills, etc.—Whoever engraves, makes or amends, or begins to engrave, make or amend, any plate, block, press, or other tool, instrument or implement, or makes or provides any paper or other material, adapted and designed for the making of a false and counterfeit note, certificate, or other bill of credit, purporting to be issued by lawful authority for a debt of this state, or a false or counterfeit note or bill, in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or in any foreign province, state or government; and whoever has in his possession any such plate or block engraved in any part, or any press or other tool, instrument or any paper or other material adapted and designed as aforesaid, with intent to issue the same, or to cause or permit the same to be used in forging or making any such false and counterfeit certificates, bills or notes, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars.

History.—§9, sub-ch. 5, ch. 1637, 1868; RS 2496; GS 8377; RGS 5225; CGL 7343.

831.19 Making or having instruments for counterfeiting coin.—Whoever casts, stamps, engraves, makes or amends, or knowingly has in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making counterfeit coin in the similitude of any gold, silver or metallic coin, current by law or usage in this state, with intent to use or employ the same, or to cause or to permit the same to be used or employed in coining and making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars.

History.—§17, sub-ch. 5, ch. 1637, 1868; RS 2497; GS 8378; RGS 5226; CGL 7344.

831.20 Counterfeit bills and counterfeiters' tools to be seized.—When false, forged or counterfeit bank bills or notes, or plates, dies or other tools, instruments or implements used by counterfeiters, designed for the forging or making of false or counterfeit notes, coin or bills, or worthless and uncurrent bank bills or notes described in this chapter shall come to the knowledge of any sheriff, constable, police officer or other officer of justice in this state, such officer shall immediately seize and take possession of and deliver the same into the custody of the court having jurisdiction of the offense of counterfeiting in the county, and the court shall, as soon as the ends of justice will permit, cause the same to be destroyed by an officer of the court who shall make return to the court of his doings in the premises.

History.—§25, sub-ch. 5, ch. 1637, 1868; RS 2498; GS 8379; RGS 5227; CGL 7345.

831.21 Forging or counterfeiting doctor's certificate of examination.—Whoever falsely makes, alters, forges or counterfeits any doctor's certificate or record of examination to an application for a policy of insurance, or knowing such doctor's certificate or record of examination to be falsely made, altered, forged or counterfeited, shall pass, utter or publish such certificate as true, with intent to injure or defraud any person, shall be deemed guilty of forgery, and upon conviction thereof shall

be punished by imprisonment in the state penitentiary not exceeding five years, or by fine not exceeding five hundred dollars.

History.—§1, ch. 4525, 1897; GS 3380; RGS 5228; CGL 7346.

cf.—§1.01(3), "Person" defined.

831.22 Damaging bank bills.—Whoever willfully and maliciously cuts, or in any manner damages and impairs the usefulness for circulation of any bank bill or note of any bank in this state, shall be punished by fine not exceeding ten thousand dollars for each offense, but the possession or uttering of a bill so damaged shall not be evidence against the party charged, unless connected with other circumstances tending to prove that the note or bill was damaged by him.

History.—§20, sub-ch. 5, ch. 1637, 1868; RS 2725; GS 3717; RGS 5700; CGL 7914.

831.23 Impeding circulation.—Whoever maliciously gathers up or retains or maliciously does any gathering up or retaining any bills or notes of any bank or banking company current by law or usage in this state for the purpose of endangering or impeding the circulation or business of such bank or banking company, or to compel it to do any act whatever out of its usual course of business, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars. In the prosecution of any such offense it will not be necessary to set out and describe each bill, but it shall be sufficient to aver and prove any amount of the bills of any bank which has been gathered up or retained.

History.—§21, sub-ch. 5, ch. 1637, 1868; RS 2726; GS 3718; RGS 5701; CGL 7915.

831.24 Issuing shop bills similar to bank notes.—Whoever engraves, prints, issues, utters or circulates a shop bill or advertisement in the similitude, form and appearance of a bank bill, on paper similar to paper used for bank bills, with vignettes, figures or decoration used on bank bills, or having the general appearance of a bank bill, shall be punished by imprisonment not exceeding ninety days, or by fine not exceeding fifty dollars.

History.—§24, sub-ch. 5, ch. 1637, 1868; RS 2727; GS 3719; RGS 5702; CGL 7916.

831.25 Bringing private bills similar to bank bills into the state.—Whoever brings into this state, with intent to pass the same therein, any bills or notes in the likeness of bank notes, which said bills or notes are or have been issued by private individuals or private unincorporated companies in any or either of the states in the United States, shall be punished by fine not exceeding fifty dollars.

History.—§1, Dec. 22, 1824; RS 2728; GS 3720; RGS 5703; CGL 7917.

831.26 Circulating any substitute for regular currency.—Whoever issues or circulates, or causes to be issued or circulated, or assists in issuing or circulating as a substitute in any respect for the currency recognized by law, any script, notes, bills, or any other written, engraved or lithographed paper payable in anything other than money, shall be punished by fine not exceeding two hundred dollars. This section shall not prohibit the giving or making and signing promissory notes.

History.—§1, ch. 3140 1879; RS 2729; GS 3721; RGS 5704; CGL 7918.

831.27 Issuing notes.—Whoever issues any note, bill, order or check, other than foreign bills of exchange and notes or bills of some bank or company incorporated by the laws of this state, or by the laws of the United States, or by the laws of either of the British provinces in North America, with intent that the same shall be circulated as currency, shall be punished by fine not exceeding fifty dollars for each offense.

History.—§18, sub-ch. 5, ch. 1637, 1868; RS 2730; GS 3722; RGS 5705; CGL 7919.

CHAPTER 832

ISSUING WORTHLESS CHECKS AND DRAFTS

832.04 Stopping payment; purchase of farm or grove products.—

(1) Whoever, with intent to defraud any producer of farm or grove products or product of such products or product shall, in person or by agent, make, draw, utter, deliver, or give to such producer any check, draft or written order for the payment of money upon any bank, person or corporation, and secure from such producer such products or product for or on account of such check, draft or written order, whether such products or product be valued at the amount of such check, draft or written order or at a greater or lesser value, and shall, pursuant to and in furtherance of such intent to defraud, stop payment on such check, draft or written order, shall be deemed to be guilty of a felony if the value of the products or product secured for or on account of such check, draft or written order be fifty dollars or more, and shall be punished by imprisonment in the state prison for not more than one year, or by fine not exceeding one thousand dollars; and if the value of the products or product secured for or on account of such check, draft or written order be less than fifty dollars, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than six months or by fine not exceeding five hundred dollars.

(2) In all prosecutions under this section, the introduction in evidence of any unpaid and dishonored check, draft or written order for the payment of money upon any bank, person or corporation, bearing the drawee's refusal to pay the same because of payment having been stopped, stamped or written thereon or attached thereto, shall be prima facie evidence of the making or uttering of said check, draft or written order, and of due presentation to the drawee for payment, and of the dishonor thereof, and that the same was properly dishonored because of payment thereof having been stopped by the maker or drawer. And, as against the maker or drawer thereof, the stopping of payment of any such check, draft or written order made, drawn, uttered, delivered, or given to a producer of farm or grove products or product in payment for any such products or product, the possession or control of which shall have been transferred upon faith of payment of such check, draft or written order, whether such products or product be valued at the amount of such check, draft or written order or at a greater or lesser amount, shall be prima facie evidence that such maker or drawer had the above mentioned intent to defraud such producer, if such maker or drawer, or his agent, shall have personally inspected such products or product at or before such transfer of possession or control.

(3) This section shall be taken to be cumulative and shall not be construed to repeal any other statute now in effect.

History.—Comp. §§1, 2, 4, ch. 26884, 1951.

832.05 Knowingly making, issuing, etc., worthless checks, drafts; obtaining property in return for worthless checks, etc.; penalty; duty of drawee; evidence.—

(1) PURPOSE.—The purpose of this section is to remedy the evil of giving checks, drafts, bills of exchange and other orders on a bank without first providing funds in or credit with the depository on which the same are made or drawn to pay and satisfy the same, which tends to create the circulation of worthless checks, drafts, bills of exchange and other orders on banks, bad banking, check kiting and a mischief to trade and commerce.

(2) WORTHLESS CHECKS; PENALTY.—

(a) It shall be unlawful for any person, firm or corporation to draw, make, utter, issue or deliver to another any check, draft, or other written order on any bank or depository for the payment of money or its equivalent, knowing at the time of the drawing, making, uttering, issuing or delivering such check or draft that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation; provided, that this section shall not apply to any check where the payee or holder knows or has been expressly notified prior to the drawing or uttering of same or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment as aforesaid, nor shall this section apply to any post dated check.

(b) Violation of the provisions of this subsection shall constitute a misdemeanor and shall be punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding $300.00, unless the check, draft or other written order drawn, made, uttered, issued or delivered be in the amount of fifty dollars, or its equivalent, or more and the payee or a subsequent holder thereof receives something of value therefor. In that event the violation shall constitute a felony and shall be punishable by imprisonment in the state penitentiary not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding $1000.00.

(3) OBTAINING PROPERTY IN RETURN FOR WORTHLESS CHECKS, ETC.; PENALTY.—

(a) It shall be unlawful for any person, firm or corporation to obtain any services, goods, wares or other things of value by means of a check, draft or other written order upon any bank, person, firm or corporation, knowing at the time of the making, drawing, uttering, issuing or delivering of said check or draft that the maker thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation, provided however that no crime may be charged in respect to the giving of any such check or draft or other written order where the payee knows or has been expressly notified or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment thereof.

(b) Violation of the provisions of this subsection shall, if the check, draft or other written order be for an amount less than fifty dollars or its equivalent, constitute a misdemeanor and shall be punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding $300.00. Violation of the provisons of this subsection shall, if the check, draft or other written order be in the amount of fifty dollars, or its equivalent, or more, constitute a felony and be punishable by imprisonment in the state penitentiary not exceeding five years, or in the county jail not exceeding twelve months, or by fine not exceeding $1,000.00.

(4) PAYMENT NO DEFENSE.—Payment of a dishonored check, draft, bill of exchange or other orders shall not constitute a defense or ground for dismissal of charges brought under this section.

(5) CREDIT DEFINED.—The word "credit" as used herein shall be construed to mean an arrangement or understanding with the drawee for the payment of such check, draft, or other written order.

(6) REASON FOR DISHONOR, DUTY OF DRAWEE.—It shall be the duty of the drawee of any check, draft, or other written order, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed, or stamped in plain language thereon or attached thereto, the reason for drawee's dishonor or refusal to pay same. In all prosecutions under this section, the introduction in evidence of any unpaid and dishonored check, draft or other written order, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or uttering of said check, draft, or other written order, and the due presentation to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped or attached by the drawee on such dishonored checks, draft, or other written orders; and, as against the maker or drawer thereof, the withdrawing from deposit with the drawee named in the check, draft or other written order, the funds on deposit with such drawee necessary to insure payment of said check, draft or other written order upon presentation within a reasonable time after negotiation; or the drawing, making, uttering or delivering of a check, draft or written order, payment of which is refused by the drawee, shall be prima facie evidence of knowledge of insufficient funds in or credit with such drawee; provided, however, if it is determined at the trial in a prosecution hereunder, that the payee of any such check, draft or written order at the time of accepting such check, draft or written order, had knowledge of or reason to believe that the drawer of such check, draft or other written order did not have sufficient funds on deposit in or credit with such drawee, then the payee instituting such criminal prosecution shall be assessed all costs of court incurred in connection with such prosecution.

(7) COSTS.—Where prosecutions are initiated under §832.05 before any committing magistrate, the party applying for the warrant shall be held liable for costs accruing in the event the case is dismissed for want of prosecution. No costs shall be charged to the county in such dismissed cases.

History.—§§1, 2, ch. 28096, 1953; §1, ch. 61-284; (7) n. by §1, ch. 61-185.
cf.—ch. 811, Larceny.

832.06 Prosecution for worthless checks given tax collector for licenses, etc., relative to motor vehicles and motorboats, etc.; refunds.—

(1) Whenever any person, firm or corporation violates the provisions of §832.05 by drawing, making, uttering, issuing or delivering to any county tax collector any check, draft or other written order on any bank or depository for the payment of money or its equivalent for any tag, title, lien, penalty, or fee relative to a boat, airplane or motor vehicle, the county tax collector, after the exercise of due diligence to locate the person, firm or corporation which drew, made, uttered, issued or delivered the check, draft or other written order for the payment of money, or to collect the same by the exercise of due diligence and prudence, shall swear out a warrant in the proper court against the person, firm or corporation for the issuance of the worthless check or draft. If payment of the dishonored check, draft, or other written order, together with court costs expended, is not received in full by the county tax collector within thirty days after service of the warrant or within thirty days after conviction, the county tax collector may make a written report to this effect to the state motor vehicle commissioner relative to airplanes and motor vehicles, to the state director of conservation relative to boats together with the amount remaining unpaid on the worthless check or draft and court costs expended and therein certify that the warrant has been issued and served but that payment in the amount remaining unpaid on the worthless check or draft and court costs expended have not been received by the county tax col-

lector, and the county tax collector may request that the sum of money certified by him be forthwith refunded by the state motor vehicle commissioner or the state director of conservation to the county tax collector and within thirty days after receipt of the request the state motor vehicle commissioner or the state director of conservation upon being satisfied as to the correctness of the certificate shall refund the sums of money so certified to the county tax collector. If any officer, of any court issuing the warrant, is unable to serve it within sixty days after the issuance and delivery of it to the officer for service, the officer shall make a written return to the county tax collector to this effect. Thereafter, the county tax collector may certify that the warrant has been issued and that service has not been had upon the defendant, and to further certify the amount of the worthless check or draft and the amount of court costs expended by the county tax collector, and the county tax collector may file the certificate in the office of the state motor vehicle commissioner relative to motor vehicles and airplanes, or in the office of the state director of conservation relative to boats together with a request that the sums of money so certified be forthwith refunded by the state motor vehicle commissioner or state director of conservation to the county tax collector and within thirty days after receipt of the request, the state motor vehicle commissioner or the state director of conservation upon being satisfied as to correctness of the certificate shall refund the sums of money so certified to the county tax collector.

(2) The provisions of this act shall be liberally construed in order to effectively carry out the purposes of this act in the interest of the public.

History.—§§1, 2, ch. 63-343.

CHAPTER 833

CONSPIRACY

833.01 Conspiracy.—If two or more persons shall agree, conspire, combine or confederate: (1) To commit any offense; (2) falsely or maliciously to indict another for any offense, or procure another to be charged or arrested for any offense; (3) falsely or maliciously to prove or maintain any suit; (4) to cheat and defraud any person of any money or property by means which are in themselves criminal; (5) to cheat and defraud any person of any money or property by any means which, if executed, would amount to a cheat or to obtaining property by false pretenses; (6) to commit any act injurious to the public health or public morals, or for the prevention or obstruction of justice; (7) to interfere with or prevent the holding or conducting of any election, or making returns thereof, or to prevent the due administration of the laws, they shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§23, sub-ch. 3, ch. 1637, 1868; RS 2593; GS 3514; RGS 5400; CGL 7541.

833.02 Wrongful combinations against workmen.—If two or more persons shall agree, conspire, combine or confederate together for the purpose of preventing any person from procuring work in any firm or corporation, or to cause the discharge of any person from work in such firm or corporation; or if any person shall verbally or by written or printed communication, threaten any injury to life, property or business of any person for the purpose of procuring the discharge of any workman in any firm or corporation, or to prevent any person from procuring work in such firm or corporation, such persons so combining shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding five hundred dollars each, or by imprisonment not exceeding one year.

History.—§1, ch. 4144, 1893; GS 3515; RGS 5401; CGL 7542.
cf.—§544, Combinations against Florida meats.

833.03 Conspiracy to commit capital offense.—If two or more persons shall agree, conspire, combine or confederate to commit any felony punishable by death or imprisonment for life, they shall be guilty of a felony and punishable by imprisonment in the state prison for not more than seven years.

History.—Comp. §1, ch. 57-383.

833.04 Conspiracy to commit other felony.—If two or more persons shall agree conspire, combine or confederate to commit any other felony they shall be guilty of a felony and punishable by imprisonment in the state prison for not more than one-fourth of the penalty or term which could have been imposed if the felony conspired to be committed had actually been committed, or by imprisonment in the state prison for one year, whichever may be the greater.

History.—Comp. §2, ch. 57-383.

833.05 Conspiracy to commit misdemeanor, etc.—If two or more persons shall agree, conspire, combine or confederate to: (1) Commit any misdemeanor; (2) falsely or maliciously indict another for any offense, or procure another to be charged or arrested for any offense; (3) falsely or maliciously prove or maintain any suit; (4) commit any act injurious to the public health or public morals, or for the prevention or obstruction of justice, they shall be guilty of a misdemeanor and punishable by imprisonment in the county jail for not more than one year, or by fine not exceeding five hundred dollars.

History.—Comp. §3, ch. 57-383.

CHAPTER 836

DEFAMATION; LIBEL; THREATENING LETTERS AND SIMILAR OFFENSES

836.01 Punishment for libel.—Any person convicted of the publication of a libel shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§15, sub-ch. 7, ch. 1637, 1868; RS 2418; GS 3256; RGS 5087; CGL 7189.
cf.—§770.01, Civil action for libel.
§906.15, Indictment or information for libel.

836.02 Must give name of the party written about.—No person shall print, write, publish, circulate or distribute within this state any newspaper, magazine, periodical, pamphlet or other publication of any character, either written or printed, wherein the alleged immoral acts of any person are stated or pretended to be stated, or wherein it is intimated that any person has been guilty of any immorality, unless such written or printed publication shall in such article publish in full the true name of the person intended to be charged with the commission of such acts of immorality.

Any person convicted of any violation of this section shall be punished by a fine not to exceed five hundred dollars, or by imprisonment not to exceed one year. Any person who shall aid in any way in the writing or printing of any literature in violation of this section shall be punished in the same manner as the principal might be punished upon conviction; provided, nothing in this section shall apply to mechanical employees in printing offices, or to newsboys.

History.—§§1, 2, 3, ch. 4733, 1899; GS 3257; RGS 5088; CGL 7190.
cf.—§1.01(3), "Person" defined.

836.03 Owner or editor of the paper also guilty.—Any owner, manager, publisher or editor of any newspaper or other publication who permits any anonymous communication or communications such as is signed otherwise than with the true name of the writer, and such name published therewith to appear in the columns of his publication in which said communication any person is attacked in his good name, or it is attempted to bring disgrace or ridicule upon any person, such owner, manager, publisher or editor shall be punished by a fine not to exceed five hundred dollars or imprisonment not to exceed one year.

History.—§4, ch. 4733, 1899; GS 3258; RGS 5089; CGL 7191.

836.04 Defamation.—Whoever speaks of and concerning any woman, married or unmarried, falsely and maliciously imputing to her a want of chastity, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§1, ch. 3460, 1883; RS 2419; GS 3260; RGS 5091; CGL 7193.

836.05 Threats; extortion.—Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his will, shall be punished by imprisonment in the state prison not exceeding 10 years.

History.—§42, sub-ch. 3, ch. 1637, 1868; RS 2420; GS 3261; RGS 5092; CGL 7194; §1, ch. 57-254.
cf.—§839.11, Extortion generally.

836.06 Punishment for making derogatory statements concerning banks and building and loan associations.—Any person who shall willfully and maliciously make, circulate or transmit to another or others any false statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any banking institution or building and loan association doing business in this state, or who shall counsel, aid procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding five hundred dollars, or by imprisonment for a term not exceeding one year.

History.—§1, ch. 6819, 1915; RGS 5093; §1, ch. 11866, 1927; CGL 7195, 7315.
cf.—§775.06, Alternative punishment.
§817.16, False reports by officers of banks, etc., with intent to defraud.

836.07 Notice condition precedent to prosecution for libel.—Before any criminal action is brought for publication, in a newspaper

periodical, of a libel, the prosecutor shall at least five days before instituting such action serve notice in writing on defendant, specifying the article and the statements therein which he alleges to be false and defamatory.

History.—§1, ch. 16070, 1933; CGL 1936 Supp. 7064(1).

cf.—Ch. 770, Regulating civil actions for libel.
§906.15, Indictment or information for libel.

836.08 Correction, apology, or retraction by newspaper.—If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, and if, in a criminal proceeding, a verdict of "guilty" is rendered on such a state of facts, the defendant shall be fined one dollar and the costs, and no more.

History.—§2, ch. 16070, 1933; CGL 1940 Supp. 7064(2).

836.09 Communicating libelous matter to newspapers; penalty.—If any person shall state, deliver, or transmit by any means whatever, to the manager, editor, publisher or reporter of any newspaper or periodical for publication therein any false and libelous statement concerning any person, then and there known by such person to be false or libelous, and thereby secure the publication of the same he shall be guilty of a misdemeanor.

History.—§1, ch. 5142, 1903; GS 3259; RGS 5090; CGL 7192; §3, ch. 16070, 1933; CGL 1936 Supp. 7064(3).

cf.—§1.01(3), "Person" defined.
§775.07, Punishment for misdemeanor.

836.10 Written threats to kill or do bodily injury; punishment.—If any person writes or composes and also sends or procures the sending of any letter or inscribed communication, so written or composed, whether such letter or communication be signed or anonymous, to any person, containing a threat to kill or to do bodily injury to the person to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent, the person so writing or composing and so sending or procuring the sending of such letter or communication, shall upon conviction be fined not more than two thousand dollars or be sentenced to the penitentiary for a period not exceeding ten years.

History.—§1, ch. 6503, 1913; RGS 5094; CGL 7196.

cf.—§775.06, Alternative punishment.

836.11 Publications which tend to expose persons to hatred, contempt or ridicule prohibited.—

(1) It shall be unlawful to print, publish, distribute or cause to be printed, published or distributed by any means, or in any manner whatsoever, any publication, handbill, dodger, circular, booklet, pamphlet, leaflet, card, sticker, periodical, literature, paper or other printed material which tends to expose any individual or any religious group to hatred, contempt, ridicule or obloquy unless the following is clearly printed or written thereon:

(a) The true name and post-office address of the person, firm, partnership, corporation or organization causing the same to be printed, published or distributed; and,

(b) If such name is that of a firm, corporation or organization, the name and post-office address of the individual acting in its behalf in causing such printing, publication or distribution.

(2) Any person, firm or corporation violating any of the sections of this statute shall upon conviction thereof be subjected to a fine not exceeding the sum of five hundred dollars, or imprisonment in the county penitentiary for a period not exceeding ninety days, or both such fine and imprisonment in the discretion of the court.

History.—§§1, 2, ch. 22744, 1945.

CHAPTER 837

PERJURY

837.01 Perjury otherwise than in judicial proceedings.—Whoever, being duly authorized or required by law to take oath or affirmation, not in a judicial proceeding, willfully swears or affirms falsely in regard to any material matter or thing, respecting which such oath or affirmation is authorized or required, shall be deemed guilty of perjury, and shall be imprisoned in the state prison not exceeding twenty years.

History.—§2, sub-ch. 6, ch. 1637, 1868; RS 2560; GS 3472; RGS 5341; CGL 7474.

cf.—§906.16, Indictment or information for perjury, etc.
Ch. 16864, Acts 1935, false swearing before civil service board in municipalities of 7,281-7,600 population.
§174.13, False swearing before civil service board in municipalities of not more than 125,000 population.
§11.05, By persons appearing before legislative committees.
§11.08, Before committees of legislature.
§101.60, By elector in identifying himself in counties where voting machines used.
§322.33, In connection with state public safety law.
§84.08, False statement by contractor to owner of property being improved.
§413.06, In securing blind-person benefits.
§476.23, In affidavits, etc., required by barber law.
§477.26, In affidavits, etc., required by beauty culture law.
§319.33, In connection with title certificate to motor vehicle.
§440.38, False testimony in proceedings before insurance commissioner.
§440.56, False testimony before industrial commission.

837.02 Perjury in judicial proceeding; punishment.—Whoever being lawfully required to depose the truth in any proceeding in a court of justice, commits perjury, shall be punished if the perjury is committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life or any term of years; and if committed in any other case, by imprisonment in the state prison not exceeding twenty years.

History.—§1, sub-ch. 6, ch. 1637, 1868; RS 2561; GS 3473; RGS 5343; CGL 7477.

837.03 Subornation of perjury.—Whoever is guilty of subornation of perjury, by procuring another person to commit perjury, shall be punished in the same manner as for perjury.

History.—§3, sub-ch. 6, ch. 1637, 1868; RS 2562; GS 3474; RGS 5344; CGL 7478.

837.04 Inciting to commit perjury.—Whoever endeavors to incite or procure any other person to commit perjury, though no perjury is committed, shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not exceeding one year.

History.—§4, sub-ch. 6, ch. 1637, 1868; RS 2563; GS 3475; RGS 5345; CGL 7479.

CHAPTER 838

BRIBERY

838.01 Bribery of executive, legislative or judicial officer.—Whoever corruptly gives, offers or promises to any executive, legislative or judicial officer, state, county, or municipal officer, official or employee of the same, after his election or appointment, either before or after he is qualified, or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be then pending, or which may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding three thousand dollars.

History.—§7, sub-ch. 6, ch. 1637, 1868; RS 2564; GS 3476; RGS 5346; §1, ch. 20922, 1941; CGL 7481.

838.011 **Bribery.**—Any person who shall corruptly give, offer or promise to any public officer, agent, servant or employee, after the election or appointment or employment of such public officer, agent, servant or employee and either before or after he shall have been qualified or shall take his seat, any commission, gift, gratuity, money, property or other valuable thing, or to do any act beneficial to such public officer, agent, servant or employee or another, with the intent or purpose to influence the act, vote, opinion, decision, judgment or behavior of such public officer, agent, servant or employee on any matter, question, cause or proceeding which may be pending or may by law be brought before him in his public capacity, or with the intent or purpose to influence any act or omission relating to any public duty of such public officer, agent, servant or employee, or with the intent or purpose to cause or induce such public officer, agent, servant or employee to use or exert or to procure the use or exertion of any influence upon or with any other public officer, agent, servant or employee in relation to any matter, question, cause or proceeding that may be pending or may by law be brought before such other public officer, agent, employee or servant, shall be guilty of the crime of bribery.

History.—Comp. §1, ch. 29722, 1955.

838.012 **Accepting bribe.**—Any public officer, agent, servant, or employee who, after his election, appointment or employment and either before or after he shall have been qualified or shall take his seat, corruptly requests, solicits or accepts for himself or another any commission, gift, gratuity, money, property or other valuable thing or a promise to pay or give any commission, gift, gratuity, money, property or other thing of value or to do any act beneficial to such public officer, agent, servant or employee or another, under an agreement or with an understanding between such public officer, agent, servant or employee and any other person to the effect that such commission, gift, gratuity, money, property, other thing of value or promise will influence the act, vote, opinion, decision, judgment or behavior of such public officer, agent, servant or employee on any matter, question, cause or proceeding which may be pending or may by law be brought before him in his public capacity or will influence his act or omission relating to any of his public duties or will cause or induce him to use or exert or procure the use or exertion of any influence upon or with any other public officer, agent, servant or employee in relation to any matter, question, cause or proceeding that may be pending or may by law be brought before such other public officer, agent, servant or employee, shall be guilty of the crime of accepting a bribe.

History.—Comp. §2, ch. 29722, 1955.

838.013 **Penalty.**—Any person who shall be convicted of the violation of any provision of §§838.011, 838.012 shall be punished by imprisonment in the state prison for not more than five years or in the county jail for not more than one year or by fine not exceeding $5,000.

History.—§3, ch. 29722, 1955; §24, ch. 57-1.

838.02 **Officer accepting bribe.**—Every officer, state, county or municipal, or any public appointee, or any deputy of any such officer or appointee, who corruptly accepts, requests or solicits a gift or gratuity, or a promise to make a gift, or do an act beneficial to such officer, public appointee or deputy, under an agreement or with an understanding that his vote, opinion or judgment shall be given in any particular manner or upon a particular aside of any question, cause or proceeding which is or may be by law brought before him, in his official capacity, or that in such capacity he shall make

any particular nomination or appointment, shall forfeit his office or appointment, be forever disqualified to hold any public office, trust or appointment under the constitution or laws of this state, and be punished by imprisonment in the state prison not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars.

History.—§8, sub-ch. 6, ch. 1637, 1868; RS 2565; GS 3477; RGS 5347; CGL 7482; am. §1, ch. 28052, 1953.

838.03 Bribery of court officers, jurors, etc.—Whoever corrupts, or attempts to corrupt, any master in chancery, auditor, juror, arbitrator, umpire or referee, by giving, offering or promising any gift or gratuity whatever, with intent to bias the opinion or influence the decision of such master in chancery, auditor, juror, arbitrator, umpire, or referee in relation to any cause or matter pending in court, or before an inquest, or for the decision of which such arbitrator, umpire or referee has been chosen or appointed, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§9, sub-ch. 6, ch. 1637, 1868; RS 2566; GS 3578; RGS 5348; CGL 7483.

838.04 Such officer accepting bribe.—If any person summoned as juror or chosen or appointed as an arbitrator, umpire or referee, or if any master in chancery or arbitrator corruptly takes anything to give his verdict, award or report, or corruptly receives any gift or gratuity whatever from a party to a suit, cause or proceeding, for the trial or decision of which such juror has been summoned, or for the hearing or determination of which such master in chancery, auditor, arbitrator, umpire or referee has been chosen or appointed, he shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§10, sub-ch. 6, ch. 1637, 1868; RS 2567; GS 3479; RGS 5349; CGL 7484.

838.05 Sheriffs, etc., accepting bribe.—If a sheriff, constable or other officer authorized to serve legal process, receives from a defendant or any other person, any money or other valuable thing, as a consideration, reward or inducement for omitting or delaying to arrest a defendant, or to carry him before a magistrate, or for delaying to take a person to prison, or for postponing the sale of property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by imprisonment not exceeding three months, or by fine not exceeding three hundred dollars.

History.—§11, sub-ch. 6, ch. 1637, 1868; RS 2568; GS 3480; RGS 5350; CGL 7485.

838.06 Unlawful for officers to accept unauthorized compensation for performance or nonperformance of duty.—It is unlawful for any public officer, agent, servant or employee to request, solicit, exact or accept any reward, compensation, or other remuneration, other than those provided by law, from any person whatsoever for the past, present or future performance, nonperformance or violation of any act, rule or regulation that may be or may have been incumbent upon such public officer, agent, servant or employee to administer, respect, perform, execute or have executed; provided that nothing herein shall be construed so as to preclude a sheriff, deputy sheriff, constable, deputy constable, city marshal or policeman from accepting rewards or remuneration for services performed in apprehending any criminal.

History.—§§1, 4, ch. 5416, 1905; RGS 5351; CGL 7486; §1, ch. 61-268.

838.07 Penalty for violation of §838.06.—Whoever violates the provisions of §838.06 shall be punished by imprisonment in the state prison not exceeding ten years or by fine not exceeding $1,000.00.

History.—§3, ch. 5416, 1905; RGS 5352; CGL 7487; §2, ch. 61-268.

cf.—§775.06, Alternative punishment.

838.071 Unlawful to offer to public officer reward or compensation not authorized by law.—It is unlawful for any person to pay, give, offer or promise to any public officer, agent, servant or employee any reward, compensation or other remuneration other than those provided by law, for the past, present or future performance, nonperformance or violation of any act, rule or regulation that may be or may have been incumbent upon such public officer, agent, servant or employee to administer, respect, perform, execute or have executed; provided that nothing herein shall be considered to preclude any person from paying, giving, offering or promising to any sheriff, deputy sheriff, constable, deputy constable, city marshal or policeman for services performed or to be performed in apprending any criminal. Whoever violates the provisions of this section shall be punished by imprisonment in the state prison not exceeding ten years or by fine not exceeding $1,000.00.

History.—§3, ch. 61-268.

838.08 Person giving reward not privileged from testifying.—No person shall be excused from attending and testifying, or producing any book, paper or other document, before any court upon any investigation, proceeding or trial for a violation of either §838.06 or §838.071, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

History.—§2, ch. 5416, 1905; RGS 5353; CGL 7488; §4, ch. 61-268.

838.09 Bribery of attache, or employee of the legislature.—Whoever corruptly gives, offers or promises to any employee or attache of

the legislature anything of value with intent to induce such employee or attache to exert his or her efforts or influence for the passage or defeat of any proposed law or resolution shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding three thousand dollars.

History.—§1, ch. 23956, 1947.

838.10 Bribery of candidate for elective public office.—Whoever corruptly gives, offers or promises to any candidate for any elective public office anything of value with intent to influence his act, vote, opinion, decision or judgment on any matter, question or proceeding which may by law come or be brought before him in his official capacity while serving in such elective public office shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding $3,000.00.

History.—§2, ch. 23956, 1947; §1, ch. 61-181.

838.12 Bribery in athletic contests.—

(1) Whoever gives, promises, offers or conspires to give, promise or offer, to anyone who participates or expects to participate in any professional or amateur game, contest, match, race or sport; or to any umpire, referee, judge or other official of such game, contest, match, race or sport; or to any owner, manager, coach or trainer of, or to any relative of, or to any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to influence him or them to lose or cause to be lost any game, contest, match, race or sport, or to limit his or their or any person's or any team's margin of victory in any game, contest, match, race, or sport, or to fix or throw any game, contest, match, race or sport, shall be sentenced to be imprisoned in the state prison not exceeding ten years or to pay a fine of not exceeding ten thousand dollars, or both.

(2) Any participant or prospective participant in any professional or amateur game, contest, match, race or sport; or any umpire, referee, judge or other official of such game, contest, match, race or sport; or any owner, manager, coach or trainer of, or any relative of, or any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid; who in any way solicits, receives or accepts, or agrees to receive or accept, or who conspires to receive or accept, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to lose or cause to be lost any game, contest, match, race or sport, or to limit his, their or any person's or any team's margin of victory in any game, contest, match, race or sport, or to fix or throw any game, contest, match, race or sport, shall be sentenced to be imprisoned in the state prison not exceeding ten years or to pay a fine of not exceeding ten thousand dollars, or both.

History.—Comp. § § 1, 2, ch. 23024, 1953.

CHAPTER 839

OFFENSES BY AUCTIONEERS, PUBLIC OFFICERS AND EMPLOYEES

839.01 False returns by auctioneer.—Any auctioneer who shall neglect to make the statement of sales required by law, or who shall knowingly make a false statement, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars, and upon conviction his commission shall be forfeited and void.

History.—§1, ch. 3847, 1889; RS 2550; GS 3459; RGS 5326; CGL 7459.
cf.—§128.08, Failure of county officers to swear to or file financial statements.
§193.73, Failure of tax assessor to perform duties.

839.02 Default by auctioneer or other receiver of public moneys.—If any auctioneer or other receiver of public moneys shall refuse or neglect to pay the moneys so received into the state treasury at the times and under the regulations prescribed by law, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars, when not otherwise expressly provided.

History.—§2551, RS 1892; GS 3460; RGS 5327; CGL 7460.
cf.—§116.02, Unlawful to pay commissions on funds collected but unremitted.
§167.49, Violation of law relating to unpaid municipal warrants.

839.021 Prohibited bidding by employees of auctioneers; penalty.—

(1) It shall be unlawful for any employee or agent of an auctioneer or any one interested directly or indirectly in the outcome of an auction to bid without notice to all bidders on any article offered for sale at any auction. No person without notice to all bidders on any article offered for sale at any auction shall act as a fictitious bidder or what is commonly known as a "capper," "booster," "by-bidder," or "shiller" and no person shall bid, offer to bid or pretend to buy any article sold or offered for sale at any auction by a prearranged agreement with any person interested in the sale directly or indirectly as seller; provided, however, that the provisions of this section shall not apply to auctions of livestock and agricultural products.

(2) Any person violating the provisions of this section shall upon conviction be guilty of a misdemeanor and upon second conviction the auctioneer's license shall be revoked.

History.—§§1, 2, ch. 59-219.

839.04 County officers not to speculate in county warrants or certificates.—Any county judge, clerk of the circuit court, sheriff, tax collector, tax assessor or their deputies, county commissioner, school commissioner, superintendent of public instruction, or any other county officer who buys up at a discount, or in any manner, directly or indirectly, speculates in jurors' or witnesses' certificates or in any warrants drawn upon the county treasurer for the payment of money out of any public fund of this state or of any county, shall be punished by imprisonment not exceeding six months, or by fine not more than one thousand dollars, and shall be removed from office.

History.—§§1, 2, ch. 3419, 1883; RS 2558; GS 3465; RGS 5334; CGL 7467.

839.05 Municipal officers not to speculate in municipal script.—Any mayor, marshal, treasurer, clerk, tax collector or other officer of any incorporated city or town, or any deputy of such officer, who buys up at a discount, or in any manner, directly or indirectly, speculates in any script or other evidence of indebtedness issued by the municipal corporation of which he is an officer, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one thousand dollars, and shall be removed from office.

History.—§§1, 2, ch. 3464, 1883; RS 2559; GS 3466; RGS 5335; CGL 7468.

839.06 Collectors not to deal in warrants, etc.; removal.—No tax collector of any county shall, either directly or indirectly, purchase or receive in exchange any comptroller's war-

rants, county orders, jurors' certificates or school district orders for a less amount than expressed on the face of such orders or demand, and any such person so offending shall, for each offense, be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of not less than one thousand dollars nor more than ten thousand dollars, and be removed from office.

History.—Ch. 4010, 1891; §40, ch. 4322, 1895; GS 3467; §39, ch. 5596, 1907; RGS 5336; CGL 7469.

839.07 Officers prohibited from bidding, etc., for public work.—It is unlawful for any commissioned or other officer of this state, or for any officer elected or otherwise of any county or incorporated town or city therein, to bid or enter into, or be in any way interested in, a contract for the working of any public road or street, the construction or building of any bridge, the erecting or building of any house, or for the performance of any other public work in which the said officer was a party to the letting, and any person upon conviction thereof shall be punished by fine not exceeding five hundred dollars or imprisonment not exceeding one year.

History.—§1, ch. 4020, 1891; GS 3468; RGS 5337; CGL 7470.

839.08 Public officer not to purchase supplies for public use from himself.—No state or county officer shall purchase supplies or materials for public use from himself or from any firm or corporation in which he is interested, nor in any manner share in the proceeds of such purchase. Any person violating this section shall upon conviction be punished by fine not exceeding five hundred dollars or imprisonment not exceeding one year.

History.—§1, ch. 5186, 1903; GS 3469; RGS 5338; CGL 7471.

839.09 Boards not to purchase supplies from members of boards.—No state or county board or municipal board or council shall purchase supplies, goods or materials for public use from any firm or corporation in which any member of such board is either directly or indirectly interested, nor shall any such board pay for such supplies, goods or materials so purchased. Any person violating the provisions of this section shall be punished, upon conviction, by fine not exceeding five hundred dollars or imprisonment not exceeding one year; provided, that no member of any board aforesaid who shall have recorded his vote against such illegal purchase, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section.

History.—§2, ch. 5186, 1903; GS 3470; §1, ch. 5692, 1907; RGS 5339; CGL 7472.

839.091 Purchasing supplies; exemption from penalties.—

(1) No person shall be subject to prosecution under §§839.08 and 839.09 when such purchases are:

(a) made from the lowest bidder under sealed bids, or

(b) where such purchases are made at current market prices under a rotation system by which purchases are rotated among the different suppliers; or

(c) where purchases are made at current market prices and are for an aggregate amount in any calendar year of not more than one thousand dollars.

(d) For utility services, newspaper advertising, telephone or telegraph service, insurance premiums or similar services.

(2) The provisions of this section shall not apply to counties of the state with population of more than one hundred thousand.

History.—Comp. §§1, 3, ch. 26934, 1951.

839.10 No officer or board to bid for public work.—No state or county officer nor member of any state or county board shall bid for, or enter into, or be in any manner interested in any contract for public work for which the said officer or state or county board is or may be a party to the letting. Any person violating the provisions of this section shall, upon conviction, be punished by fine not exceeding five hundred dollars, or imprisonment not exceeding one year; provided, that no member of any board aforesaid who shall have recorded his vote against the letting of such contract, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section.

History.—§3, ch. 5186, 1903; GS 3471; RGS 5340; CGL 7473.

839.11 Extortion and malpractice generally.—Any officer of this state who willfully charges, receives or collects any greater fees than he is entitled to charge, receive or collect by law, or who is guilty of any malpractice in office not otherwise especially provided for, shall be punished by imprisonment not exceeding one year or by fine not exceeding five hundred dollars.

History.—§2569; RS 1892; GS 3481; RGS 5354; CGL 7489.

cf.—§116.13, Superintendent of state asylums and presidents of educational institutions.
§117.08, Notary public acting after expiration of commission.
§119.02, Refusing to allow inspection of public records.
§165.22, Refusing public admission to municipal council meetings or to allow inspection of records.
§167.61, Municipal official refusing to submit records for examination.
§394.17, Violation of duty to inmates of insane asylum.
§741.05, Violation of law regulating issuance of marriage license.
§933.17, Exceeding authority in executing search warrant.

839.12 Officer failing to keep record of costs.—If any clerk of a court, sheriff, constable, county judge or justice of the peace neglects or refuses to keep a record book of the costs which he charges, he shall be punished by fine not exceeding five hundred dollars. Such record book shall be prima facie evidence in the courts of the amounts charged therein, in all cases in which any such officer is prosecuted for charging more costs than are allowed by law.

History.—§§3, 4, ch. 3252, 1881; RS 2570; GS 3482; RGS 5355; CGL 7490.

cf.—§116.04, Failure of officer to make sworn report of fees.

839.13 Falsifying records. — If any judge, justice, mayor, alderman, clerk, sheriff, coroner, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corruptly withdraw, falsify or avoid, any record, process, charter, gift, grant, conveyance, or contract, or any paper filed in any judicial proceeding in any court of this state, or shall knowingly and willfully take off, discharge or conceal any issue, forfeited recognizance, or other forfeiture, or other paper above mentioned, or shall forge, deface or falsify any document or instrument recorded, or filed in any court, or any registry, acknowledgment, or certificate, or shall fraudulently alter, deface or falsify any minutes, documents, books, or any proceedings whatever of or belonging to any public office within this state; or if any person shall cause or procure any of the offenses aforesaid to be committed, or be in anywise concerned therein, the person so offending shall be punished by being imprisoned not exceeding one year or by fine not exceeding one thousand dollars.

In any prosecution under this section, it shall not be necessary to prove the ownership or value of any paper or instrument involved.

History.—§19, Feb. 10, 1832; RS 2571; GS 3483; RGS 5357; CGL 7492.

cf.—§703.18, Refusing to make abstract.
§703.19, Filing untrue copies of abstracts.

839.14 Officer withholding records from successor.—If any officer, after the expiration of the time for which he may have been appointed or elected, or in case of his death, his executors and administrators, or the person in possession thereof, shall willfully and unlawfully withhold or detain from his successors the records, papers, documents or other writings appertaining and belonging to his office, or mutilate, destroy, take away, or otherwise prevent the complete possession by his successors of said records, documents, papers or other writings, he shall be punished by imprisonment not exceeding six months, or by a fine not exceeding five hundred dollars.

History.—§21, Feb. 10, 1832; RS 2572; GS 3485; RGS 5360; CGL 7495.

cf.—§81.31, Transfer of records to successor by justice of peace.
§298.65, Officers failing to produce records, etc., relating to drainage district for audit by state auditor.
§937.19, Final deposit of docket by justice of peace.

839.15 Judge withholding records. — Any judge or justice of the supreme or circuit courts who, upon resignation, or on being impeached, fails to file all papers and records in his possession belonging to his court with the proper clerk, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§3, ch. 3007, 1877; RS 2573; GS 3486; RGS 5361; CGL 7496.

839.16 Fraud of clerk in drawing jury.—If the clerk of any court shall be guilty of any fraud, either by practicing on a jury box previously to a draft, or in drawing a juror, or in returning into the box any juror which had been lawfully drawn out and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall be punished by a fine not exceeding five hundred dollars.

History.—§2575, RS 1892; GS 3491; RGS 5371; CGL 7505.

839.17 Misappropriation of moneys by commissioners to make sales.—Any commissioner or master in chancery, having received the purchase money or the securities resulting from any of the sales authorized by law, who shall fail to deliver such moneys and securities, or either of them, to the executor or administrator, or the person entitled to receive the same, upon the order of the court, unless he is rendered unable to do so by some cause not attributable to his own default or neglect, shall be fined in a sum equal to the amount received from the purchaser, and shall be imprisoned in the state prison not exceeding ten years.

History.—§30, ch. 1628, 1868; RS 2576; GS 3492; RGS 5372; CGL 7506.

839.18 Penalty for officer assuming to act before qualification.—Whoever being elected, or appointed, to any office assumes to perform any of the duties thereof before qualification, according to law, shall, unless otherwise provided, be punished by imprisonment not exceeding three months, or by fine not exceeding five hundred dollars.

History.—§2737, RS 1892; GS 3732; RGS 5757; CGL 7987.

839.19 Failure to execute process generally.—Any sheriff or other officer authorized to execute process, who willfully or corruptly refuses or neglects to execute and return, according to law, any process delivered to him, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§2577, RS 1892; GS 3497; RGS 5382; CGL 7421.
cf.—§30.15, Execution of process.

839.20 Refusal to execute criminal process.—If any officer authorized to serve process, willfully and corruptly refuses to execute any lawful process to him directed and requiring him to apprehend and confine any person convicted or charged with an offense, or willfully and corruptly omits or delays to execute such process, whereby such person escapes and goes at large, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§15, sub-ch. 6, ch. 1637, 1868; RS 2578; GS 3498; RGS 5383; CGL 7522.
cf.—§30.15, Execution of process.

839.21 Refusal to receive prisoner. — Any jailer or other officer, who willfully refuses to receive into the jail or into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§14, sub-ch. 6, ch. 1637, 1868; RS 2579; GS 3499; RGS 5384; CGL 7523.
cf.—§950.01, Jails and jailers.

839.221 Governmental officers and employees; prohibited participation in strikes or membership in organizations that assert right to strike against government employer.—

(1) No person shall accept or hold any office, commission or employment in the service of the state, of any county or of any municipality, who:

(a) Participates in any strike or asserts the right to strike against the state, county or any municipality; or

(b) Is a member of an organization of government employees that asserts the right to strike against the state, county or any municipality, knowing that such organization asserts such right.

(2) All employees who comply with the provisions of this section are assured the right and freedom of association, self-organization, and the right to join or to continue as members of any employee or labor organization which complies with this section, and shall have the right to present proposals relative to salaries and other conditions of employment through representatives of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a vocational or a labor organization.

(3) In the event that any public utility owned and operated by a private person, firm or corporation is taken over on or after May 1, 1959, by the state, a county or a municipality but in fact said person, firm or corporation maintains a substantial financial or operating control, said persons then employed or to be employed shall be excluded from the operation of this section.

(4) Upon the acquisition of any public utility system from a private person, firm or corporation by any state, county or municipal government, then and in that event the employees of such private person, firm or corporation other than executive or management staff, shall be eligible to be included in classified civil service and other benefit provisions and systems of that governmental unit.

History.—§§1-4, ch. 59-223.

CHAPTER 843

OBSTRUCTING JUSTICE

843.01 Resisting officer with violence to his person.—Whoever knowingly and wilfully resists, obstructs or opposes any sheriff, deputy sheriff, officer of the Florida highway patrol, constable, municipal police officer, beverage enforcement agent or other person legally authorized to execute process, in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, shall be punished by imprisonment in the state prison not exceeding 2 years, or by imprisonment in the county jail not exceeding 1 year, or by fine not exceeding $1,000.00.

History.—§1, ch. 3276, 1881; RS 2580; GS 3500; RGS 5385; CGL 7524; §1, ch. 28118, 1953; §1, ch. 61-66; §1, ch. 63-234; §1, ch. 63-433.

cf.—§933.15, Search warrant, obstructing service.

843.02 Resisting officer without violence to his person.—Whoever shall obstruct or oppose any such officer, beverage enforcement agent, or legally authorized person, in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be punished by imprisonment not exceeding 1 year, or by fine not exceeding $1,000.00.

History.—§2, ch. 3276, 1881; RS 2581; GS 3501; RGS 5386; CGL 7525; §1, ch. 63-433.

843.03 Obstruction by disguised person.—Whoever in any manner disguises himself with intent to obstruct the due execution of the law, or with the intent to intimidate, hinder or interrupt any officer, beverage enforcement agent, or other person in the legal performance of his duty or the exercise of his rights under the constitution or laws of this state, whether such intent is effected or not, shall be punished by imprisonment not exceeding 1 year, or by fine not exceeding $500.00 and may also be bound to good behavior for a term of 1 year after the expiration of such punishment.

History.—§19, sub-ch. 6, ch. 1637, 1868; RS 2582; GS 3502; RGS 5387; CGL 7526; §1, ch. 63-433.

cf.—§30.15, Refusal or neglect to aid sheriff.

843.04 Refusing to assist prison officers in arresting escaped convicts.—All prison officers and guards shall immediately arrest any convict, held under the provisions of law, who may have escaped. Any such officer or guard may call upon the sheriff or other officer of the state, or of any county or municipal corporation, or any citizen, to make search and arrest such convict.

Any officer or citizen refusing to assist shall be punished by imprisonment in the state prison not exceeding one year or by fine not exceeding one thousand dollars.

History.—§17, ch. 6530, 1917; RGS 5389; CGL 7528.

cf.—§901.18, Officer may summon assistance.

843.05 Resisting timber agent. — Whoever obstructs, resists or opposes a timber agent in the discharge of his duties, or attempts so to do, shall be punished by fine not exceeding fifty dollars for each offense.

History.—§5, ch. 3020, 1877; RS 2584; GS 3504; RGS 5390; CGL 7529.

843.06 Neglect or refusal to aid peace officers.—Whoever, being required in the name of the state by any constable, officer of the Florida highway patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case of the rescue or escape of a person arrested upon civil process, shall be punished by imprisonment not exceeding 1 month, or by fine not exceeding $50.00.

History.—§16, sub-ch. 6, ch. 1637, 1868; RS 2585; GS 3505; RGS 5391; CGL 7530; §2, ch. 28118, 1953; §1, ch. 63-433.

cf.—§901.18, Officer may summon assistance.

843.07 Refusal to obey justice of the peace.—Whoever, being required by a justice of the peace, upon view of a breach of the peace or any other offense proper for his cognizance, to apprehend and bring before him the offender, refuses or neglects to obey such justice, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

No person to whom such justice is known or declares himself to be a justice of the peace, shall plead any excuse on pretense of ignorance of his office.

History.—§17, sub-ch. 6, ch. 1637, 1868; RS 2586; GS 3506; RGS 5392; CGL 7531.

843.08 Falsely personating justice of peace, officer, etc.—Whoever falsely assumes or pretends to be a justice of the peace, sheriff, officer of the Florida highway patrol, deputy sheriff,

coroner, constable, police officer, beverage enforcement agent, or watchman, and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be punished by imprisonment not exceeding 1 year, or by fine not exceeding $400.00.

History.—§18, sub-ch. 6, ch. 1637, 1868; RS 2587; GS 3507; RGS 5395; CGL 7535; §3, ch. 28118, 1953; §1, ch. 63-433.

cf.—§933.15, Obstruction of service or execution of search warrant.
§951.19, Interference with county convicts.

843.09 Voluntary escape by officer.—If a jailer or other officer voluntarily suffers a prisoner in his custody, upon conviction of any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to or would be liable to suffer, upon conviction of the crime or offense wherewith he stood charged.

History.—§13, sub-ch. 6, ch. 1637, 1868; RS 2588; GS 3509; RGS 5395; CGL 7535.

843.10 Escape by negligence of officer.—If a jailer or other officer, through negligence, suffers a prisoner in his custody upon conviction of any criminal charge to escape, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§14, sub-ch. 6, ch. 1637, 1868; RS 2589; GS 3510; RGS 5396; CGL 7536.

843.11 Conveying tools into jail to aid escape; forcible rescue.—Whoever conveys into a jail or other like place of confinement, any disguise, instrument, tool, weapon or other thing adapted or useful to aid a prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or, by any means whatever, aids or assists such prisoner in his endeavors to escape therefrom, whether such escape is effected or attempted or not; and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of an offense, shall be punished by imprisonment in the state prison not exceeding ten years; or if the person whose escape or rescue was effected or intended, was charged with an offense not capital nor punishable by imprisonment in the state prison, then by imprisonment in the jail not exceeding one year, or by fine not exceeding $500.00; or if the prisoner while his escape or rescue is being effected or attempted commits any crime with the weapon, tool or instrument conveyed to him, the person conveying the weapon, tool or instrument to him shall be subject to whatever fine, imprisonment or other punishment the law imposes for the crime committed, as an accessory before the fact.

History.—§11, sub-ch. 6, ch. 1637, 1868; RS 2590; GS 3511; RGS 5397; CGL 7537; §1, ch. 29895, 1955.

843.12 Aiding escape.—Whoever knowingly aids or assists a person in escaping, or attempting to escape, from an officer or person who has or is entitled to the lawful custody of such person, shall be punished by imprisonment in the state prison not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§12, sub-ch. 6, ch. 1637, 1868; RS 2591; §1, ch. 5154, 1903; GS 3512; RGS 5398; CGL 7538.

843.13 Aiding escape of inmates of Florida schools for boys or girls.—Whoever in any manner knowingly aids or assists any inmate of any correctional institution for boys or girls in the state to escape therefrom, or who knowingly, or having good reason to believe that any person is an inmate of such schools and is escaping or attempting to escape therefrom, aids or assists such inmate to make his escape or to avoid detention or recapture, shall be guilty of a misdemeanor, and shall upon conviction be punished as by the statutes in such cases made and provided.

History.—§1, ch. 9138, 1923; CGL 7539; §1, ch. 63-128

cf.—§775.07, Punishment for misdemeanor.
§956.01, Florida school for girls.

843.14 Compounding felony.—Whoever, having knowledge of the commission of an offense punishable with death or by imprisonment in the state prison, takes money or a gratuity or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, shall when such offense of which he has knowledge is punishable with death or imprisonment in the state prison for life, be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year; and where the offense of which he so had knowledge was punishable in any other manner, he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§20, sub-ch. 8, 1637, 1868; RS 2592; GS 3513; RGS 5399; CGL 7540.

843.15 Unlawful to forfeit bail bond; penalty.—It is unlawful for any person, who is charged by affidavit, information or indictment with the commission of any criminal offense within the state, and who has entered into and executed any bail bond, conditioned upon his appearance before any court in this state, to forfeit such bail bond by not appearing in the court at the time and place designated in the said bail bond.

Any person, who shall violate this section shall, upon said bail bond being estreated by order of the court having jurisdiction over such bond, be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§§1, 2, ch. 8468, 1921; CGL 7545, 7546.

cf.—§775.06, Alternative punishment.
§903.26, Forfeiture of undertaking.

843.16 Unlawful to install radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.—

(1) No person, firm or corporation shall in-

stall in any motor vehicle or business establishment, except emergency vehicles as herein defined, or places established by municipal, county, state, or federal authority for governmental purposes, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the federal communications commission to police or law enforcement officers of any city or county of the state or to the state or any of its agencies. Provided, nothing herein shall be construed to affect any radio station licensed by the federal communications system.

(2) As used in this section the term "emergency vehicle" shall specifically mean:

(a) any motor vehicle used by any law enforcement officer or employee of any city, county, the state, federal bureau of investigation, or armed forces of the United States while on official business;

(b) any fire department vehicle of any city or county of the state, or any state fire department vehicle;

(c) any motor vehicle designated as an emergency vehicle by the director of the department of public safety, and approved by the executive board, department of public safety, when said vehicle is to be assigned the use of frequencies assigned to the state;

(d) any motor vehicle designated as an emergency vehicle by the sheriff of any county in Florida when said vehicle is to be assigned the use of frequencies assigned to the said county;

(e) any motor vehicle designated as an emergency vehicle by the chief of police of any city in the state when said vehicle is to be assigned the use of frequencies assigned to the said city.

(3) This section shall not apply to any holders of a valid amateur radio operator or station license issued by the federal communications commission.

(4) Any person, firm or corporation, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished according to law.

History.—Comp. §§1-4, ch. 26886, 1951.

CHAPTER 846

OPIUM DENS

846.01 "Opium den" defined.—Any building, structure or shelter where opium or any preparation in which opium is the principal medicinal agent, is sold for the purpose of being smoked on or about the premises where the same is sold, shall be considered an opium den.

History.—§1, ch. 5460, 1905; RGS 5426; CGL 7569.

846.02 Keeper of den; sale of opium.—Whoever, by himself, his servant, agent or employee, keeps or maintains an opium den, or whoever sells any opium or preparation in which opium is the principal medicinal agent, to be smoked on or about the premises where sold, shall be punished by imprisonment in the state prison not exceeding two years or by fine not exceeding two thousand dollars.

History.—§2, ch. 5460, 1905; RGS 5427; CGL 7570.

846.03 Servants, agents, etc., of keeper of opium den.—Whoever acts as servant, agent, or employee of any person in violation of §846.02 shall be punished in the manner and to the extent therein mentioned.

History.—§3, ch. 5460, 1905; RGS 5428; CGL 7571.

846.04 Renting building for opium den. — Whoever whether as owner or agent, knowingly rents to another a building, structure or shelter for the purpose of an opium den shall be punished by imprisonment in the state prison not exceeding two years or by fine not exceeding two thousand dollars.

History.—§4, ch. 5460, 1905; RGS 5429; CGL 7572.

846.05 Visiting opium dens for purpose of smoking opium.—Whoever visits any opium den for the purpose of purchasing or smoking opium or any preparation in which opium is the principal medicinal agent, shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding five hundred dollars.

History.—§5, ch. 5460, 1905; RGS 5430; CGL 7573.

846.06 Rule of evidence; proviso.—If any of the furniture, implements, drugs, preparations or materials commonly used in opium dens for the purpose of smoking opium, or other preparations in which opium is the principal medicinal agent, are found in any building, structure or shelter, it shall be prima facie evidence in prosecutions under this chapter that such building, structure or shelter is maintained as an opium den; provided, that this section shall not apply to the finding of opium or the other preparation aforesaid in regular drug stores.

History.—§6, ch. 5460, 1905; RGS 5431: CGL 7574.

846.07 General reputation of building received in evidence.—In any prosecution under this act general reputation shall be received in evidence to establish the character of any building, structure or shelter as an opium den.

History.—§7, ch. 5460, 1905; RGS 5432; CGL 7575.

CHAPTER 847

OBSCENE LITERATURE; PROFANITY

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(1) (a) A person who knowingly sells, lends, gives away, distributes, transmits, shows or transmutes, or offers to sell, lend, give away, distribute, transmit, show or transmute, or has in his possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene, lewd, lascivious, filthy, indecent, immoral, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person to do or assist in doing, either knowingly or innocently, any act or thing mentioned above, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding $1,000.00, or both. A person who, after having been convicted of a violation of this section, thereafter violates any of its provisions, is guilty of a felony and shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not exceeding one year or by fine not exceeding $10,000.00, or by both such fine and imprisonment.

(b) The knowing possession by any person of six or more identical or similar materials, matters, articles or things coming within the provisions of the foregoing paragraph (a) is presumptive evidence of the violation of said paragraph.

(2) A person who knowingly has in his possession, custody, or control any obscene, lewd, lascivious, filthy, indecent, immoral, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding $500.00, or both. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, lewd, lascivious, filthy, indecent, immoral, sadistic, or masochistic, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this section is guilty of a felony and shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not exceeding one year or by fine not exceeding $10,000.00, or by both such fine and imprisonment.

(4) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(5) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in he had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, or by showing facts and circumstances from which it may fairly be inferred that he had such knowledge, or by

showing that he had knowledge of such facts and circumstances as would put a man of ordinary intelligence and caution on inquiry as to such contents or character.

(6) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section, and upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer the same shall be delivered to and held by the clerk of the court having jurisdiction to try such violation. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if he shows that he is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(7) (a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney, county solicitor, or county prosecuting attorney in the name of the state upon the relation of such state attorney, county solicitor, or county prosecuting attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney, county solicitor or county prosecuting attorney shall request a judge of said court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within three days after the making of such request. No such order shall be made unless such judge shall be satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made, provided, however, that such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within two days of the conclusion of the trial.

(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of his compliance.

(e) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the state attorney or county solicitor or county prosecuting attorney before the issuance of a restraining order provided for by paragraph (b) of this subsection, and there shall be no liability on the part of the state or the state attorney or the county solicitor or the county prosecuting attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with any of the materials, matters, articles, or things described in this section, after the service upon him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

(8) The several sheriffs, constables, state attorneys, county solicitors, and county prosecuting attorneys shall vigorously enforce this section within their respective jurisdictions.

(9) This section shall not apply to the exhibition of motion picture films permitted by §521.02.

(10) For the purposes of this section, the test of whether or not material is obscene is: Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

(11) For the purposes of this section, the word person includes individuals, firms, associations, corporations, and all other groups and combinations.

History.—§§1-11, ch. 61-7.

cf.—§235.09, Obscenity on school buildings.
§933.02, Issuance of search warrant.

847.02 Confiscation of obscene books, etc.—Whenever any one is convicted under §847.011, the court in awarding sentence shall make an order confiscating said book, pamphlet, ballad, printed paper, picture, slide, film, or other thing and authorize the executive officer of the court to destroy the same.

History.—§2, ch. 7359, 1917; RGS 5439; CGL 7582.

847.03 Officer to seize books, etc.—Whenever any officer arrests any person charged with any offense under §847.011, he shall seize said book, pamphlet, ballad, printed paper, picture, slide, or film, or other thing, and take the same into his custody to await the sentence of the court upon the trial of the offender.

History.—§3, ch. 7359, 1917; RGS 5440; CGL 7583.

847.04 Open profanity.—Whoever, having arrived at the age of discretion, uses profane, vulgar and indecent language, in any public place; or upon the private premises of another, or so near thereto as to be heard by another, shall be punished by fine not exceeding twenty-five dollars, or by imprisonment not exceeding sixty days; but no prosecution for any such

offense shall be commenced after twenty days from the commission thereof.

History.—§18, sub-ch. 8, ch. 1637, 1868; RS 2622; GS 8542; §1, ch. 5921, 1909; RGS 5442; CGL 7585.

cf.—§231.07, Insulting school teachers.

847.05 Using indecent or obscene language.—Any person who shall publicly use or utter any indecent or obscene language shall be punished by imprisonment not exceeding thirty days, or by fine not exceeding twenty-five dollars.

History.—§1, ch. 3284, 1881; RS 2624; GS 3544; RGS 5444; CGL 7587.

cf.—§821.01, Trespasser, use of profanity.

847.06 Obscene matter; transportation into state prohibited; penalty.—Whoever knowingly transports into the state or within the state for the purpose of sale or distribution, any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than $500.00 or imprisoned not more than one year in the county jail, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

When any person is convicted of a violation of this section, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest.

History.—Comp. §1, ch. 29849, 1955.

CHAPTER 849

GAMBLING

849.01 Keeping gambling houses, etc.—Whoever by himself, his servant, clerk or agent, or in any other manner has, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which he may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not, shall be punished by imprisonment in the state prison not exceeding three years, or by fine not exceeding five thousand dollars.

History.—§1, ch. 3764, 1887; RS 2644; GS 3572; RGS 5499; CGL 7657.

cf.—§823.05, Nuisance, gambling house as.
§901.19, Disposition of apparatus.
§933.02, Search warrants, implements and appliances.

849.02 Agents, servants, etc., of keeper of gambling house.—Whoever acts as servant, clerk, agent or employee of any person in the violation of §849.01 shall be punished in the manner and to the extent therein mentioned.

History.—§2, ch. 3764, 1887; RS 2645; GS 3573; RGS 5500; CGL 7658.

849.03 Renting house for gambling purposes.—Whoever, whether as owner or agent, knowingly rents to another a house, room, booth, tent, shelter or place for the purpose of gaming shall be punished in the manner and to the extent mentioned in §849.01.

History.—§3, ch. 3764, 1887; RS 2646; GS 3574; RGS 5501; CGL 7659.

849.04 Permitting minors and persons under guardianship to gamble.—Whoever being the proprietor, owner or keeper of any E. O., keno or pool table, or billiard table, wheel of for-

tune, or other game of chance, kept for the purpose of betting, willfully and knowingly allows any minor or person non compos mentis or under guardianship to play at such game or to bet on such game of chance or whoever aids or abets or otherwise encourages such playing or betting of any money or other valuable thing upon the result of such game of chance by any minor, person non compos mentis or under guardianship shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars.

History.—§1, ch. 3145, 1879; RS 2647; §9, ch. 4322, 1895; GS 3575; RGS 5502; CGL 7660.

849.05 Prima facie evidence.—If any of the implements, devices or apparatus commonly used in games of chance by in gamgling houses or by gamblers, are found in any house, room, booth, shelter or other place it shall be prima facie evidence that the said house, room, booth, shelter or other place where the same are found is kept for the purpose of gambling.

History.—§4, ch. 3764, 1887; RS 2648; GS 3576; RGS 5503; CGL 7661.

cf.—§901.19, Seizure of gambling instruments.

849.051 Prima facie evidence; possession of federal gambling stamp.—

(1) The holding, owning, having in possession of, or paying the tax for a wagering occupational tax stamp issued by the internal revenue authorities of the United States shall be held in all the courts of this state as prima facie evidence against the person holding such stamp in any prosecution of such person for violation of the gambling laws of this state.

(2) In cases where the proper prosecuting officers shall produce said stamp or certified copy, the grand jury may indict the holder of such stamp or the proper prosecuting officer may file information against the holder of such stamp without further proof, charging such holder with the violation of the Florida gambling laws.

(3) Upon the trial of such person, proof of the owning, holding or possession of such stamp may be made by two witnesses who have seen such stamp in the place of business of the holder or on his person, or by the production of the original stamp with proof by one or more witnesses that it is the property of the defendant, or by production by the state of a copy of such stamp certified by the director of the issuing federal internal revenue district as being a copy of the stamp originally issued to the defendant. Proof made as herein provided shall be sufficient evidence, without explanation, to convict of violation of the gambling laws.

History.—Comp. § § 1-3, ch. 28057, 1953.

Held unconstitutional in Jefferson v. Sweat 76 So. 2d 494.

849.06 Regulation of age of persons frequenting or visiting places where billiards are played.—

(1) It is unlawful for any person, his servant or employee to permit anyone under the age of twenty-one years to visit or frequent or play in any billiard parlor in the state; provided, however, this shall not apply to any person on active duty in the armed services of the United States, or who has a written permit or card signed and notarized by his parent or guardian and filed in the establishment to which the permit or card is given by the parent or guardian of the minor involved, or a married minor, or when accompanied by parent or guardian. The said permit card shall be valid only in the establishment to which it is issued, and such permit card may be revoked at any time by the parent or guardian, or by the operator of said billiard parlor by returning the card to the parent or guardian, or by any law enforcement officer upon conviction of the party or parties of a crime. No written permit shall be valid in any establishment which sells or permits consumption on its premises of intoxicating or alcoholic beverages.

(2) Violation of this law shall be a misdemeanor and punishable upon conviction by a fine not exceeding $1,000.00 or imprisonment not exceeding 12 months in the county jail.

History.—§1, ch. 6489, 1913; RGS 5504; CGL 7662; §§1, 2, ch. 63-303.

cf.—§1.01(3), "Person" defined.
§775.06, Alternative punishment.

849.07 Permitting gambling on billiard or pool table by holder of license.—If any holder of a license to operate a billiard or pool table shall permit any person to play billiards or pool or any other game for money, or any other thing of value, upon such tables, he shall be deemed guilty of a misdemeanor, and upon conviction, be punished by imprisonment not exceeding six months in the county jail, or by fine not exceeding one hundred dollars.

History.—§14, ch. 6421, 1913; RGS 5505; CGL 7663.

849.08 Gambling.—Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be punished by imprisonment not exceeding ninety days, or by fine not exceeding one hundred dollars.

History.—RS 2651; §1, ch. 4514, 1895; GS 3579; RGS 5508; CGL 7666.

cf.—§901.19, Seizure of gambling implements.

849.09 Lottery prohibited.—

(1) It shall be unlawful for any person in this state to:

(a) Set up, promote, or conduct any lottery for money or for anything of value; or

(b) Dispose of any money or other property of any kind whatsoever by means of any lottery; or

(c) Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise; or

(d) Aid or assist in the setting up, promoting or conducting of any lottery or lottery

drawing, whether by writing, printing or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing; or

(e) Attempt to operate, conduct or advertise any lottery scheme or device; or

(f) Have in his possession any lottery wheel, implement or device whatsoever for conducting any lottery or scheme for the disposal by lot or chance of anything of value; or

(g) Sell, offer for sale, or transmit, in person or by mail or in any other manner whatsoever, any lottery ticket, coupon, or share, or any share in or fractional part of any lottery ticket, coupon or share, whether such ticket, coupon or share represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played; or

(h) Have in his possession any lottery ticket, or any evidence of any share or right in any lottery ticket, or in any lottery scheme or device, whether such ticket or evidence of share or right represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played; or

(i) Aid or assist in the sale, disposal or procurement of any lottery ticket, coupon or share, or any right to any drawing in a lottery; or

(j) Have in his possession any lottery advertisement, circular, poster or pamphlet, or any list or schedule of any lottery prizes, gifts or drawings.

(2) Any person who is convicted of violating any of the provisions of paragraphs (a), (b), (c) or (d) of subsection (1) of this section shall be punished by imprisonment in the state prison for not less than one year nor more than five years.

(3) Any person who is convicted of violating any of the provisions of paragraphs (e), (f), (g) or (i) of subsection (1) of this section shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year; provided that any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof shall be punished, upon conviction, by imprisonment in the state prison for not less than one year nor more than five years.

(4) Any person who is convicted of violating any of the provisions of paragraphs (h) or (j) of subsection (1) of this section shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year or by fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment; provided, that any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof shall be punished, upon conviction, by imprisonment in the state prison for not less than one year nor more than five years, or by fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

History.—§1, ch. 4373, 1895; GS 3582; RGS 5509; CGL 7667; am. §1, ch. 26765, 1951.

cf.—§1.01(3), "Person" defined.
§23, Art. III Florida Constitution, lotteries prohibited.

849.091 Chain letters, pyramid clubs, etc., declared a lottery; prohibited; penalties.—The organization of any chain letter club, pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members, is hereby declared to be a lottery, and whoever shall participate in any such lottery by becoming a member of, or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five thousand dollars, or by imprisonment in the county jail for a period of not more than two years or in the state penitentiary not less than one year nor more than ten years.

History.—Comp. §1, ch. 25096, 1949.

849.092 Retail merchandising business; certain activities permitted.—The provisions of §849.09, shall not be construed to prohibit or prevent persons who are licensed to conduct business under chapter 204 or chapter 208, from giving away articles of merchandise to persons selected by lot, if such gifts are made upon the following conditions:

(1) That such gifts are conducted as advertising and promotional undertakings, in good faith, solely for the purpose of advertising the goods, wares, merchandising and business of such licensee; and

(2) That the principal business of such licensee is the business permitted to be licensed under §204.02 or under §208.01; and

(3) That no person to be eligible to receive such gift shall ever be required to:

(a) Pay any tangible consideration to such licensee in the form of money or other property or thing of value,

(b) Purchase any goods, wares, merchandise or anything of value from such licensee,

(c) Nor enter into or upon the business premises of the licensee at the time of any drawing or selection; and

(4) That the person selected to receive any such gift or prize offered by any such licensee in connection with any such advertising or promotion is notified of his selection and the gift or prize is delivered to him at his last known

address at no expense to such selected recipient.

Newspapers, magazines, television and radio stations may, without violating any law, publish and broadcast advertising matter describing such advertising and promotional undertakings of such licensees which may contain instructions pursuant to which persons desiring to become eligible for such gifts or prizes may make their name and address known to such licensee.

History.—§1, ch. 63-553.

849.10 Printing lottery tickets, etc., prohibited.—It is unlawful for any person, in any house, office, shop or building in this state to write, typewrite, print, or publish any lottery ticket or advertisement, circular, bill, poster, pamphlet, list or schedule, announcement or notice, of lottery prizes or drawings or any other matter or thing in any way connected with any lottery drawing, scheme or device, or to set up any type or plate for any such purpose, to be used or distributed in this state, or to be sent out of this state.

It is unlawful for the owner or lessee of any such house, shop or building knowingly to permit the printing, typewriting, writing or publishing therein of any lottery ticket or advertisement, cicular, bill, poster, pamphlet, list, schedule, announcement or notice of lottery prizes or drawings, or any other matter or thing in any way connected with any lottery drawing, scheme or device, or knowingly to permit therein the setting up of any type or plate for any such purpose to be used or distributed in this state, or to be sent out of the state.

Any violation of this section shall be a felony, and shall be punished by a fine of not less than one hundred dollars, nor more than three thousand dollars, or by imprisonment in the state penitentiary not less than one year nor more than five years.

History.—§2, ch. 4373, 1895; GS 3583; RGS 5510; CGL 7668.

849.11 Plays at games of chance by lot.—Whoever sets up, promotes or plays at any game of chance by lot or with dice, cards, numbers, hazards or any other gambling device whatever for, or for the disposal of money or other thing of value or under the pretext of a sale, gift or delivery thereof, or for any right, share or interest therein, shall be fined not exceeding one hundred dollars, or be imprisoned not exceeding three months.

History.—§3, ch. 4373, 1895; GS 3584; RGS 5511; CGL 7669.

849.12 Money and prizes to be forfeited.—All sums of money and every other valuable thing drawn and won as a prize, or as a share of a prize, or as a share, percentage or profit of the principal promoter or operator, in any lottery, and all money, currency or property of any kind to be disposed of, or offered to be disposed of, by chance or device in any scheme or under any pretext by any person, and all sums of money or other thing of value received by any person by reason of his being the owner or holder of any ticket or share of a ticket in a lottery, or pretended lottery, or of a share or right in any such schemes of chance or device and all sums of money and other thing of value used in the setting up, conducting or operation of a lottery, and all money or other thing of value at stake, or used or displayed in or in connection with any illegal gambling or any illegal gambling device contrary to the laws of this state, shall be forfeited, and may be recovered by civil proceedings, filed, or by action for money had and received, to be brought by the attorney general or any state attorney, or other prosecuting officer, in the circuit courts in the name and on behalf of the state; the same to be applied when collected as all other penal forfeitures are disposed of.

History.—§4, ch. 4373, 1895; GS 3585; RGS 5512; CGL 7670; am. §1, ch. 28088, 1953.

849.13 Punishment on second conviction.—Whoever, after being convicted of an offense forbidden by law in connection with lotteries, commits the like offense, shall, in addition to the fine before provided therefor, be punished by imprisonment not exceeding one year.

History.—§4, sub-ch. 10, ch. 1637, 1868; RS 2655; GS 3586; RGS 5513; CGL 7671.

cf.—§775.09, Second conviction of felony.

849.14 Unlawful to bet on result of trial or contest of skill, etc.—Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of man or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of gambling, and shall be punished by imprisonment not exceeding six months or by fine not exceeding five hundred dollars.

History.—§1, ch. 5959, 1909; §1, ch. 6188, 1911; RGS 5514; CGL 7672.

cf.—§550.16, Pari-mutuel pool authorized within enclosure of race track.
§551.09, Pari-mutuel pool permitted with enclosure of fronton.
§775.06, Alternative punishment.

849.15 Manufacture, sale, possession, etc., of coin-operated devices prohibited.—It is unlawful:

(1) To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by him or under his management or

control, any slot machine or device or any part thereof; or

(2) To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

History.—§1, ch. 18143, 1937; CGL 1940 Supp. 4151(405-a).

849.16 Machines or devices which come within provisions of law.—Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money or coin or other object such machine or device is caused to operate or may be operated, and by reason of any element of chance or of other outcome of such operation unpredictable by him, the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance or thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver or present some merchandise, indication of weight, entertainment or other thing of value.

History.—§2, ch. 18143, 1937; CGL 1940 Supp. 4151(405-b).

849.17 Confiscation of machines by arresting officer.—Upon the arrest of any person charged with the violation of any of the provisions of §§849.15-849.23 the arresting officer shall take into his custody any such machine, apparatus or device, and its contents, and the sheriff, at the place of seizure, shall make a complete and correct list and inventory of all such things so taken into his custody, and deliver to the person from whom such article or articles may have been seized, a true copy of the list of all such articles. Upon making such a seizure the sheriff shall, forthwith and without delay, deliver each and every item of the things taken into his custody to the clerk of the circuit court of the county in which such seizure is made, and upon delivery, deliver therewith to said clerk the original list and inventory so made by said sheriff at the time and place of such seizure; and upon such delivery the clerk shall verify said list and inventory and mark each item for identification and make a complete and correct list and inventory of the things delivered to him by the sheriff, in duplicate, duly certified by him officially, and deliver one copy thereof to the sheriff, and deposit one copy in proper safety files in his office. The clerk of the circuit court shall keep and preserve all things so delivered to him and have the same forthcoming at any investigation, prosecution or other proceedings, incident to charges of violation of any of the provisions of §§849.15-849.23.

History.—§4, ch. 18143, 1937; CGL 1940 Supp. 4151(405-c).

849.18 Disposition of machines upon conviction.—Upon conviction of the person arrested for the violation of any of the provisions of §§849.15-849.23, the judge of the court trying the case, after such notice to the person convicted, and any other person whom the judge may be of the opinion is entitled to such notice, and as the judge may deem reasonable, shall issue to the sheriff of the county a written order adjudging and declaring any such machine, apparatus or device forfeited, and directing such sheriff to destroy the same, with the exception of the money. The order of the court shall state the time and place and the manner in which such property shall be destroyed, and the sheriff shall destroy the same in the presence of the clerk of the circuit court of such county.

History.—§5, ch. 18143, 1937; CGL 1940 Supp. 4151(405-d).

849.19 Property rights in confiscated machine.—The right of property in and to any machine, apparatus or device as defined in §849.16 and to all money and other things of value therein, is declared not to exist in any person, and the same shall be forfeited and such money or other things of value shall be forfeited to the county in which the seizure was made and shall be delivered forthwith to the clerk of the circuit court and shall by him be placed in the fine and forfeiture fund of said county.

History.—§6, ch. 18143, 1937; CGL 1940 Supp. 4151(405-e).
cf.—§1.01(3), "Person" defined.

849.20 Machines and devices declared nuisance; place of operation subject to lien for fine.—Any room, house, building, boat, vehicle, structure or place wherein any machine or device, or any part thereof, the possession, operation or use of which is prohibited by §§849.15-849.23, shall be maintained or operated, and each of such machines or devices, is declared to be a common nuisance. If a person has knowledge, or reason to believe, that his room, house, building, boat, vehicle, structure or place is occupied or used in violation of the provisions of §§849.15-849.23 and by acquiescence or consent suffers the same to be used, such room, house, building, boat, vehicle, structure or place shall be subject to a lien for and may be sold to pay all fines or costs assessed against the person guilty of such nuisance, for such violation, and the several state attorneys shall enforce such lien in the courts of this state having jurisdiction.

History.—§7, ch. 18143, 1937; CGL 1940 Supp. 4151(405-f); am. §7, ch. 22858, 1945.

849.21 Injunction to restrain violation.—An action to enjoin any nuisance as herein defined may be brought by any person in the courts of equity in this state. If it is made

to appear by affidavit or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the action. Upon application of the complainant in such a proceeding, the court or judge may also enter an order restraining the defendant and all other persons from removing, or in any way interfering with the machines or devices or other things used in connection with the violation of §§849.15-849.23 constituting such a nuisance. No bond shall be required in instituting such proceedings.

History.—§8, ch. 18143, 1937; CGL 1940 Supp. 4151(405-g).

849.22 Fees of clerk of circuit court and sheriff.—The clerks of the courts and the sheriffs performing duties under the provisions of §§849.15-849.23 shall receive the same fees as prescribed by general law for the performance of similar duties, and such fees shall be paid out of the fine and forfeiture fund of the county as costs are paid upon conviction of an insolvent person.

History.—§9, ch. 18143, 1937; CGL 1940 Supp. 4151(405-h).

849.23 Penalty for violations of §§849.15-849.22.—Whoever shall violate any of the provisions of §§849.15-849.22 shall, upon conviction thereof, be deemed guilty of a misdemeanor, and punished by a fine of not less than $250, nor more than $500, or by imprisonment in the county jail for a period of not less than 3 months nor more than 6 months; provided, that any person convicted of violating any provision of §§849.15-849.22, a second time shall, upon conviction thereof, be deemed a second offender and guilty of a misdemeanor, and shall be punished by a fine of not less than $500, nor more than $750, or by imprisonment in the county jail for a period of not less than 6 months nor more than 8 months; provided, further, that any person violating any provision of §§849.15-849.22, after having been twice convicted already, shall, upon conviction thereof, be deemed a "common offender," and shall be deemed guilty of a felony, and punished by a fine of not less than $1000, nor more than $5000, or by imprisonment in the state prison for a period of not less than 1 year, nor more than 5 years.

History.—§3, ch. 18143, 1937; CGL 1940 Supp. 8135(21). cf.—§775.06, Alternative punishment.

849.231 Gambling devices; manufacture, sale, purchase or possession unlawful.—Except in instances where the following described implements or apparatus are being held by authorized persons for the purpose of destruction, as hereinafter provided, it shall be unlawful for any person to manufacture, sell, offer for sale, purchase, own or have in his possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings or any other device, implement, apparatus or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.

History.—Comp. §1, ch. 29665, 1955.

849.232 Property right in gambling devices; confiscation.—There shall be no right of property in any of the implements or devices enumerated or included in §849.231 and upon the seizure of any such implement, device, apparatus or paraphernalia by an authorized enforcement officer the same shall be delivered to and held by the clerk of the court having jurisdiction of such offenses and shall not be released by such clerk until he shall be advised by the prosecuting officer of such court that the said implement is no longer required as evidence and thereupon the said clerk shall deliver the said implement to the sheriff of the county who shall immediately cause the destruction of such implement in the presence of the said clerk or his authorized deputy.

History.—Comp. §2, ch. 29665, 1955.

849.233 Penalty for violation of §849.231.—Any person, including any enforcement officer, clerk or prosecuting official who shall violate the provisions of §849.231 shall, upon conviction, be sentenced to a term of imprisonment not exceeding one year or by a fine not exceeding $1,000.00 or by both such fine and imprisonment.

History.—Comp. §3, ch. 29665, 1955.

849.24 Bookmaking on the grounds of a permit holder; penalty for violation; ejection.—

(1) Any betting on the grounds of a permit holder of a horse or dog track or jai alai fronton license other than through the legalized parimutuel pools is declared to be illegal.

(2) Any person who shall engage in bookmaking or who shall solicit for, or bet with a bookmaker on the grounds of a permit holder shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment not exceeding six months or by a fine not exceeding five hundred dollars, or both such fine and imprisonment. For a second like offense in this state, he shall be imprisoned.

(3) Any person who has been convicted of bookmaking, and the record of whose conviction on such charge is on file in the office of the Florida state racing commission, any court of this state, or of the federal bureau of investigation, or any person who has been ejected from any race track of this or any other state for bookmaking shall be excluded from all race tracks in this state.

(4) If the activities of an individual indicate that this law is being violated it shall be the duty of every officer, director, official and employee of the permit holder to investigate the actions of the person, or persons, believed to be violating this law. If after an investigation it shall be apparent to the investigating official that this law has been violated, then such person or persons shall be ejected from the premises of the permit holder and an ejection slip

filed with the Florida state racing commission.

(5) Any such person who refuses to leave such track when ordered to do so by any proper authority or any person who has been ejected from a race track or jai alai fronton and an ejection slip filed with the Florida state racing commission who thereafter returns to a race track or jai alai fronton without having been reinstated by the commission is guilty of a misdemeanor and upon conviction shall be punished as for a misdemeanor.

(6) It shall be the duty of each and every officer, director, official and employee of said permit holder to observe and enforce this section.

History.—§§1-6, ch. 24345, 1947; (5) by §1, ch. 57-179.

849.25 **Bookmaking defined; penalties.**—

(1) As used in this section, the term bookmaking shall be deemed to be the taking or receiving of any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of man, beast, fowl or motor vehicle.

(2) Whoever engages in bookmaking shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year; provided that any person who, having been convicted of violating this act, thereafter violates this act, shall be punished, upon conviction, by imprisonment in the state prison for not less than one year nor more than five years.

(3) This section shall not apply to parimutuel wagering in Florida as authorized by the laws of the state; provided further, however, this section shall not apply to any prosecutions filed and pending at the time of the passage hereof, but all such cases shall be disposed of under existing law at the time of the institution of such prosecutions.

History.—Comp. §§1-3, ch. 26847, 1951.

849.26 **Gambling contracts declared void; exception.**—All promises, agreements, notes, bills, bonds or other contracts, mortgages or other securities, when the whole or part of the consideration if for money or other valuable thing won or lost, laid, staked, betted or wagered in any gambling transaction whatsoever, regardless of its name or nature, whether heretofore prohibited or not, or for the repayment of money lent or advanced at the time of a gambling transaction for the purpose of being laid, betted, staked or wagered, are void and of no effect; provided, that this act shall not apply to wagering on parimutuels or any gambling transaction expressly authorized by law.

History.—Comp. §1, ch. 26543, 1951.

849.27 **Suits to recover payment on gambling contracts for loser's benefit; state's share.**—Whoever in person or by agent loses to another money or thing of value in any gambling transaction whatsoever, regardless of its name or nature, whether heretofore prohibited or not, and pays or delivers it or a part of it to the winner thereof or upon the winner's order, may, within ninety days after such loss and payment or delivery, sue for and recover (a) for his, the loser's own use and benefit, the money so lost and paid, and the thing of value so lost and delivered or its value, at his option, together with a reasonable attorney's fee, and (b) for the use and benefit of the state, an amount equal to the amount of money so lost and paid and an amount equal to the value of the thing of value so lost and delivered; provided, that this chapter shall not apply to wagering on pari-mutuels or any gambling transaction expressly authorized by law. If such loser has a legal guardian or curator, such guardian or curator may bring such suit within such ninety day period, and may exercise the option given the loser by clause (a) of this section to recover the property itself or the value thereof.

History.—Comp. §2, ch. 26543, 1951.

849.28 **Loser's failure to institute recovery suit; institution by wife, child, parent, etc.**—

(1) If the loser or his legal guardian or curator does not institute such suit within the ninety day period prescribed by §849.27 and effectively prosecute the same, without collusion or deceit, then, within ninety days after the expiration of the ninety-day period prescribed by said §849.27, such suit for the recovery of said items may be brought by

(a) the wife or husband of the loser; or

(b) if the loser has a wife or husband and/or minor child, such suit may be brought by any relative of the loser or of the loser's wife or husband; or

(c) if the loser is an unmarried minor, such suit may be brought by his or her parents or either of them.

(2) If the suit is brought by any person mentioned in paragraphs (a) or (b) of subsection (1) of this section, it shall be brought for the recovery of the item specified in clause (a) of §849.27 for the use and benefit of the loser's wife or husband and minor children, or such of them as there may be, and for the recovery of the items specified in clause (b) of §849.27 for the use and benefit of the state.

(3) If the suit be brought by any person or persons mentioned in paragraph (c) of subsection (1) of this section, it shall be for the recovery of the items specified in clause (a) of §849.27 for the use and benefit of the loser's parents, and for the recovery of the items specified in clause (b) of §849.27 for the use and benefit of the state. If property shall have been lost and delivered, any plaintiff suing under authorization of this section shall have the option given the loser in clause (a) of §849.27 to recover the property itself or the value thereof.

History.—§3, ch. 26543, 1951; (1)(b), (c) by §24, ch. 57-1.

849.29 **Persons against whom suits may be brought to recover on gambling contracts.**—The following persons shall be jointly and sev-

erally liable for the items which are authorized by this act to be sued for and recovered, and any suit brought under the authorization of this act may be brought against all or any of such persons, to-wit: The winner of the money or property lost in the gambling transaction; every person who, having direct or indirect charge, control or management, either exclusively or with others, of the place where the gambling transaction occurs, procures, suffers or permits such place to be used for gambling purposes; whoever promotes, sets up or conducts the gambling transaction in which the loss occurs or has an interest in it as backer, vendor, owner or otherwise; and, as to anything of value other than money, the transferees and assignees, with notice, of the persons hereinabove specified in this section; and the personal representatives of the persons specified in this section.

History.—Comp. §4, ch. 26543, 1951.

849.30 **Plaintiff entitled to writs of attachment, garnishment and replevin.**—In any suit under §§849.26-849.34, the plaintiff shall be entitled to writs of attachment and garnishment for the sums of money, exclusive of attorney's fees, sued for the use and benefit of persons other than the state, in the same manner and to the same extent as in an action on contract; and, in any suit under this chapter for the recovery of a thing of value other than money, the plaintiff shall be entitled to a writ of replevin for the recovery of such thing of value, in the manner and to the extent provided by the replevin statutes of the state.

History.—§5, ch. 26543, 1951; §24, ch. 57-1.

849.31 **Loser's testimony not to be used against him.**—In the event that suit is brought under the authorization of §§849.26-849.34 by someone other than the loser of the money or thing of value involved in the suit, such loser shall not be excused from being required to attend and testify or produce any book, paper or other document or evidence in such suit, upon the ground or for the reason that the testimony or evidence required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but he shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so be required to testify or produce evidence, and no testimony so given or produced shall be received against him upon any criminal investigation or prosecution. If the loser of money or thing of value involved in a suit brought under authorization of §§849.26-849.34, whether by him or by someone else, voluntarily attends or produces evidence in such suit, he shall not be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, and no testimony so given or produced shall be received against him upon any criminal investigation or prosecution. Also, neither the fact of the bringing of suit under this act by a loser nor any statement or admission in his pleadings which is material and relevant to the subject matter of the suit shall be received against him upon any criminal investigation or proceeding.

History.—Comp. §6, ch. 26543, 1951.

849.32 **Notice to state attorney; prosecution of suit.**—The summons in any such suit, and copies of all pleadings and notices of all hearings in the suit, and notice of the trial and of application for the entry of final judgment, shall be served on the state attorney, whose duty it shall be to protect the interests of the state and, if the plaintiff fails to diligently prosecute the suit, to bring such failure to the attention of the court. If the plaintiff fails to effectively prosecute any such suit without collusion or deceit and without unnecessary delay, the court shall direct the state attorney to proceed with the action. No such suit shall be dismissed except upon a sworn statement filed by the plaintiff or the state attorney which satisfies the court that the suit should be dismissed.

History.—Comp. §7, ch. 26543, 1951.

849.33 **Judgment and collection of money; execution.**—Any judgment recovered in such a suit shall adjudge separately the amounts recovered for the use of the state, and the plaintiff shall not have execution therefor, and such amounts shall not be paid to the plaintiff, but shall be payable to the state attorney, who shall promptly transmit the sums collected by him to the state treasurer. The state attorney shall diligently seek the collection of such amounts and may cause a separate execution to issue for the collection thereof.

History.—Comp. §8, ch. 26543, 1951.

849.34 **Loser's judgment; recovery of property; writ of assistance.**—If the plaintiff in any such suit seek to recover property lost, and if he shall prevail as to any such property, he shall take judgment for the property itself and for the value thereof, the judgment as to such property to be satisfied by the recovery of the property or of the value thereof. The plaintiff may, at his option, sue out a separate writ of possession for the property and a separate execution for any other moneys and costs adjudged in his favor, or he may sue out an execution for the value of the property and any other moneys and costs adjudged in his favor. If he elect to sue out a writ of possession for the property, and if the officer shall return that he is unable to find the property, or any of it, the plaintiff may thereupon sue out execution for the value of the property not found. In any proceeding to ascertain the value of the property, the value of each article shall be found so that judgment for such value may be entered.

History.—Comp. §9, ch. 26543, 1951.

849.35 **Definitions.**—In construing §§849.36-849.46 and each and every word, phrase, or part

thereof, where the context permits:

(1) The singular includes the plural and vice versa.

(2) The masculine includes the feminine and neuter and vice versa.

(3) The term "vessel" includes every description of watercraft, vessel or contrivance used, or capable of being used, as a means of transportation in or on water, or in or on the water and in the air.

(4) The term "vehicle" includes every description of vehicle, carriage, animal or contrivance used, or capable of being used, as a means of transportation on land, in the air, or on land and in the air.

(5) The term "gambling paraphernalia" includes every description of apparatus, implement, machine, device or contrivance used in, or in connection with, any violation of the lottery, gaming and gambling statutes, and laws of this state, except facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utility while so furnished.

(6) The term "lottery ticket" shall include every ticket, token, emblem, card, paper or other evidence of a chance, interest, prize or share in, or in connection with any lottery, game of chance or hazard or other things in violation of the lottery and gambling statutes and laws of this state (including bolita, cuba, bond, New York bond, butter and eggs, night house and other like and similar operations, but not excluding others). The said term shall also include so-called run down sheets, tally sheets, and all other papers, records, instruments, and things designed for use, either directly or indirectly, in, or in connection with, the violation of the statutes and laws of this state prohibiting lotteries and gambling in this state.

History.—Comp. §1, ch. 29712, 1955.

849.36 Seizure and forfeiture of property used in the violation of lottery and gambling statutes.—

(1) Every vessel or vehicle used for, or in connection with, the removal, transportation, storage, deposit or concealment of any lottery tickets, or used in connection with any lottery or game in violation of the statutes and laws of this state, shall be subject to seizure and forfeiture, as hereinafter provided; provided that no vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as such carrier shall be forfeited under the provisions of §§849.36-849.46 unless it shall appear that (a) in the case of a railway car or engine, the owner, or (b) in the case of any other such vehicle, vessel or aircraft the owner or the master of such vessel or the owner or conductor, driver, pilot or other person in charge of such vehicle or aircraft was at the time of the alleged illegal act a consenting party or privity thereto; provided further that this subsection shall not apply to vessels or ships operating under a foreign registry, flying foreign flags, which vessels or ships are engaged in the transportation of passengers and/or freight for hire in a continuous voyage between ports in Florida and ports outside the continental limits of the United States, provided said equipment or paraphernalia referred to herein is sealed prior to entering the jurisdiction of the state and remains in such inoperative condition within the said jurisdiction.

(2) All gambling paraphernalia and lottery tickets as herein defined used in connection with a lottery, gambling, unlawful game of chance or hazard, in violation of the statutes and laws of this state, found by an officer in searching a vessel or vehicle used in the violation of the gambling laws shall be safely kept so long as it is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought or certified to any other court having jurisdiction, either state or federal.

(3) The presence of any lottery ticket in any vessel or vehicle owned or being operated by any person charged with a violation of the gambling laws of the state, shall be prima facie evidence that such vessel or vehicle was or is being used in connection with a violation of the lottery and gambling statutes and laws of this state and as a means of removing, transporting, depositing or concealing lottery tickets and shall be sufficient evidence for the seizure of such vessel or vehicle.

(4) The presence of lottery tickets in any room or place, including vessels and vehicles, shall be prima facie evidence that such room, place, vessel or vehicle, and all apparatus, implements, machines, contrivances or devices therein, (herein referred to as "gambling paraphernalia") capable of being used in connection with a violation of the lottery and gambling statutes and laws of this state and shall be sufficient evidence for the seizure of such gambling paraphernalia.

(5) It shall be the duty of every peace officer in this state finding any vessel, vehicle or paraphernalia being used in violation of the statutes and laws of this state as aforesaid to seize and take possession of such property for disposition as hereinafter provided. It shall also be the duty of every peace officer finding any such property being so used, in connection with any lawful search made by him, to seize and take possession of the same for disposition as hereinafter provided.

History.—§2, ch. 29712, 1955; (1) by §1, ch. 57-236.

849.37 Disposition and appraisal of property seized under this chapter.—

(1) Every peace officer, other than the sheriff, seizing property pursuant to the provisions of §§849.36-849.46 shall forthwith make return of the seizure thereof and deliver the said property to the sheriff of the county wherein the same was seized. The said return to the sheriff shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in

full the reason why the seizing officer knew, or was led to believe, that the said property was being used for or in connection with a violation of the statutes and laws of this state prohibiting lotteries and gambling in this state. The said return shall contain the names of all persons, firms and corporations known to the seizing officer to be interested in the seized property.

(2) When property is seized by the sheriff pursuant to this chapter, or when property seized by another is delivered to the sheriff as aforesaid, he shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3) The return of the sheriff aforesaid shall contain a schedule of the property seized describing the same in reasonable detail and give in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting lotteries or gambling in this state; and a statement of the names of all persons, firms and corporations known to the sheriff to be interested in the seized property; and in cases where the said property was seized by another the sheriff shall attach to his said return, as an exhibit thereto, the return of the seizing officer to him.

(4) The sheriff shall hold the said property seized pending its disposal by the court as hereinafter provided.

History.—Comp. §3, ch. 29712, 1955.

849.38 Proceedings for forfeiture; notice of seizure and order to show cause.—

(1) The return of the sheriff aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction without regard to value under and by virtue of that provision in §6, art. V, of the state constitution, under which the circuit courts may be given jurisdiction of "such other matters as the legislature may provide." The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms or corporations who may have filed a claim prior to such amendment.

(2) Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or a lien upon the seized property, giving notice of the seizure and directing that all persons, firms or corporations owning, having or claiming an interest therein or lien thereon, to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within twenty days from personal service of said citation, when personal service is had. Personal service shall be made on all parties, in Florida, having liens noted upon a certificate of title as shown by the records in the office of the motor vehicle commissioner.

(3) The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE_____ JUDICIAL CIRCUIT, IN AND FOR_____ _____COUNTY, FLORIDA.

IN RE FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY:

(Here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS OWNING, HAVING OR CLAIMING AN INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY.

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chaper_____, laws of Florida, Acts of 1955, and is now in the possession of the sheriff of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the Circuit Court of the_____ Judicial Circuit, in and for_____ County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before _____, 19____, if not personally served with process herein, and within twenty days from personal service if personally served with process herein, why the said property should not be forfeited pursuant to said chapter _____, laws of Florida, Acts of 1955. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court.

WITNESS my hand and the seal of the above mentioned court, at _____ Florida, this _____ 19____.

(COURT SEAL)

_____

Clerk of the above mentioned Court.

By_____

Deputy Clerk

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than twenty-one nor more than thirty days, from the posting or publication thereof, and as to personally served with process within twenty days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the value of the property seized is shown by the sheriff's return to have an appraised value of four hundred dollars or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than four hundred dollars, the citation shall be published once a week for three consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 49, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—Comp. §4, ch. 29712, 1955.

849.39 Delivery of property to claimant.—Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the sheriff and posting with him, to be approved by him, a surety bond, payable to the governor of the state in twice the amount of the value of the said property as fixed in the sheriff's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to the sheriff the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the sheriff and the release of the property to the applicant the cause shall proceed to final judgment in the same manner as it would have had no such bond been filed, except that any execution to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—Comp. §5, ch. 29712, 1955.

849.40 Proceeding when no claim filed.—When no claim is filed in the cause within the time required the clerk shall enter a default against all persons, firms and corporations owning, claiming or having an interest in and to the property seized and the cause may then proceed in the same manner as a common law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—Comp. §6, ch. 29712, 1955.

849.41 Proceeding when claim filed.—When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting lotteries and gambling and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner of the property has been convicted of a violation of the statutes and laws of this state prohibiting lotteries or gambling such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and it shall be incumbent upon such claimant to satisfy the court that he was without knowledge of such conviction. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

History.—Comp. §7, ch. 29712, 1955.

849.42 State attorney to represent state.—Upon the filing of the sheriff's return with the clerk of the circuit court the said clerk shall furnish the state attorney with a copy thereof and the said state attorney shall represent the state in the forfeiture proceedings. The attorney general shall represent the state in all appeals from judgments of forfeiture to the appropriate district court of appeal or direct to the supreme court when authorized by §4, Art. V of the state constitution. The state may appeal any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.—§8, ch. 29712, 1955; §34, ch. 63-559.

849.43 Judgment of forfeiture.—On final hearing the return of the sheriff to the clerk of the circuit court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting lotteries and gambling in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimants to show that the property was not so used or if so used that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be

used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after two weeks public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

History.—Comp. §9, ch. 29712, 1955.

849.44 Disposition of proceeds of forfeiture.—All sums received from a sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof; provided, however, that in instances where the seizure is by a municipal police officer within the limits of any municipality having an ordinance requiring such vehicles, vessels or conveyances to be forfeited, the city attorney shall act in behalf of the city in lieu of the state attorney and shall proceed to forfeit the property as herein provided, and all sums received therefrom shall go into the general operating fund of the city.

History.—Comp. §10, ch. 29712, 1955; §24, ch. 57-1.

849.45 Fees for services.—Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and similar services in other cases and matters.

History.—Comp. §11, ch. 29712, 1955.

849.46 Exercise of police power.—It is deemed by the legislature that this chapter is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting lotteries and gambling, and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety and morals of the people of the state. All the provisions of this chapter shall be liberally construed for the accomplishment of these purposes.

History.—Comp. §12, ch. 29712, 1955.

CHAPTER 851

BUCKET SHOPS

851.01 "Bucket shop" defined; purpose of chapter.—A bucket shop within the meaning of this chapter is defined to be an office, store, or other place wherein the proprietor or keeper thereof, or other person or agent in his behalf, or any agent or correspondent of any other person, within or without the state, conducts the business of making or offering to make contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any stocks, bonds, cotton, grain, provisions or other commodities or personal property wherein both parties thereto, or said proprietor or keeper contemplated or intended that the contracts, agreements, trades or transactions shall be or may be closed, adjusted, or settled according to or on the basis of the market quotations or prices made on any board of trade or exchange upon which the commodities or securities referred to in such contracts, agreements, trades or transactions are dealt in and without a bona fide transaction on such board of trade or exchange.

The maintenance of any such office, store or other place of business, and the making of such contracts or agreements are unlawful. The said offense shall be complete against any proprietor, person, agent or keeper thus offering to make any such contracts, trades or transactions, whether such offer is accepted or not.

It is the intention of this chapter to prevent, punish and prohibit within this state the business now engaged in and conducted in places commonly known and designated as "bucket shops," and also to include the practice now commonly known as "bucket shopping" by any person or agent who ostensibly carries on the business or occupation of commission merchant or broker in stocks, bonds, cotton, grain, provisions or other commodities, whatsoever.

Provided, however, that nothing herein shall be construed to forbid or to declare unlawful the business of receiving and executing orders to buy or sell for immediate or future delivery any of the property or commodities set out in this section, where the person receiving such order shall act solely and exclusively as an agent, broker, or commission merchant, for the person giving such order, and where the agent, broker or commission merchant receiving such order shall either in person or through another agent execute the same upon, and in accordance with the rules and regulations of any legitimate produce, stock or cotton exchange or board of trade, or other similar body, located either within or without this state where bona fide trading in those commodities or property is actually carried on, where the rules or regulations thereof forbid the practice or mode of trading hereinbefore declared to be unlawful, and where said rules or regulations require both the buyer to accept and the seller to make delivery upon all transactions entered into upon said exchange, or board of trade, and all such transactions are hereby declared to be lawful and enforceable; and

Provided, further, that no such contract for the purchase or sale as aforesaid, executed as aforesaid upon any legitimate exchange or board of trade, shall be deemed unlawful as lacking the essential elements of any actual delivery thereon for the reason that said contract has been subsequently offset or settled between the members of such exchange or board of trade with or through whom any such contract was made or executed, where the only effect of said offset or settlement has been to substitute other parties, either as buyers or sellers, for those with or through whom the transaction was originally made.

The plain intent of this section is, while declaring unlawful all the transactions conducted in and through a bucket shop as described and defined herein, to make lawful and enforceable and to withdraw from the provisions of the gaming and wagering statutes of this state, all transactions executed upon and in accordance with the rules of a legitimate produce, stock or cotton exchange or board of trade, and this chapter shall be liberally construed at all times so as to effectuate this object.

History.—§1, ch. 9334, 1923; CGL 7899.
cf.—§1.01(3), "Person" defined.

851.02 Penalty for maintaining bucket shop.—It is a misdemeanor for any person or agent to keep or cause to be kept within this state any bucket shop, and any person or agent, whether acting individually or as a member, officer, agent or employee of any corporation, association, or copartnership, who shall keep, maintain, or assist in the keeping or maintaining of any such bucket shop within this state, shall upon conviction thereof be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months.

History.—§2, ch. 9334, 1923; CGL 7900.
cf.—§775.06, Alternative punishment.

851.03 Displaying, etc., quotations of prices; penalty.—Any person or agent who shall communicate, receive, exhibit or display in any manner any statement of quotations of the prices of any property mentioned in §851.01, with a view to any transaction or transactions in this chapter prohibited, shall be deemed an accessory, and upon conviction thereof, shall be fined and punished the same as the principal, as provided in §851.02.

History.—§3, ch. 9334, 1923; CGL 7901.
cf.—Ch. 776, Principals and accessories.

851.04 Statement as to proposed purchase.—Every commission merchant, person, agent or broker in this state, engaged in the business of buying or selling or buying and selling stocks, bonds, cotton, grain, provisions, or other commodities, or personal property for any person, principal, customer, or purchaser, shall furnish to any customer or principal for whom such merchant, broker, person, or agent has executed any order for the actual purchase or sale of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing names of the parties from whom the property was bought or to whom it shall have been sold, as the case may be; the time when, the place where, and the price at which the same was either bought or sold; and in case such commission merchant, broker, person, or agent shall refuse promptly to furnish the statement upon reasonable demand, the fact of such refusal shall be prima facie evidence that such property was not sold or bought in a legitimate manner, but was sold or bought in violation thereof.

History.—§4, ch. 9334, 1923; CGL 7902.

CHAPTER 855

SUNDAY LAWS

855.01 Following trade, etc., on Sunday.—Whoever follows any pursuit, business or trade on Sunday, either by manual labor or with animal or mechanical power, unless the same be work of necessity, shall be punished by a fine not exceeding fifty dollars; provided, however, that nothing contained in the laws of Florida shall be so construed as to prohibit the preparation or printing between the hours of midnight Saturday and six in the morning, Sunday, of any newspaper intended to be circulated and sold on Sunday, or to prohibit the circulation and sale on Sunday of same, or to prohibit the circulation and sale on Sunday of any newspaper theretofore printed; provided nothing contained in this section shall apply to theaters in which moving pictures are shown.

History.—§§1, 3, ch. 3146, 1879; RS 2638; §1, ch. 5164, 1903; GS 3565; RGS 5491; CGL 7649; §1, ch. 20450, 1941.
Am. §1, ch. 26932, 1951; §30, ch. 29615, 1955.
Unconstitutional—Kelly v. Blackburn, 95 So. 2d 260

855.02 Selling goods on Sunday.—Whoever keeps open store or disposes of any wares, merchandise, goods or chattels on Sunday, or sells or barters the same, shall be punished by a fine not exceeding fifty dollars. In cases of emergency or necessity, however, merchants, shopkeepers and others may dispose of the comforts and necessaries of life to customers without keeping open doors.

History.—§§2, 3, ch. 3146, 1879; RS 2639; GS 3566; RGS 5492; CGL 7650; §2, ch. 26932, 1951; §31, ch. 29615, 1955.
Unconstitutional—Kelly v. Blackburn, 95 So. 2d 260

855.03 Employing servants.—Whoever employs his apprentice or servant in labor or other business on Sunday, unless it be in the ordinary household business of daily necessity, or other work of necessity or charity, shall be punished by a fine not exceeding ten dollars for every such offense.

History.—§69, Feb. 10, 1832; RS 2640; GS 3567; RGS 5493; CGL 7651.

855.04 Use of firearms on Sunday.—Whoever uses firearms by hunting game upon Sunday shall be punished by imprisonment not exceeding twenty days, or by fine not exceeding twenty-five dollars.

History.—§§1, 2, ch. 1007, 1859; RS 2641; GS 3568; RGS 5494; CGL 7652; am. §10, ch. 26484, 1951.

855.05 Penalty for engaging in game or sport on Sunday.—Whoever engages on Sunday in any game or sport, such as football or bowling, as played in bowling alleys, or horse racing, whether as player, manager, director or otherwise, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months.

History.—§1, ch. 5436, 1905; RGS 5495; CGL 7653.
Am. §10, ch. 26484, 1951.

cf.—§775.06, Alternative punishment.

855.06 Trap and skeet shooting on Sunday.—It shall be lawful to engage in the sport of trap, target and skeet shooting on Sunday.

History.—§1, ch. 20526, 1941.

855.07 Baseball on Sunday; industrial plants continuously operated. — It shall be lawful to engage in, operate, follow the business or trade of, and employ persons, including without limitation agents, servants and apprentices, in the playing of baseball between the hours of two o'clock P. M. and eleven o'clock P. M. on Sundays; and to operate on Sunday and employ persons in the operation of industrial plants designed and intended for continuous operation.

History.—§1, ch. 23861, 1947.
Am. §1, ch. 25415, 1949.

CHAPTER 856

DRUNKENNESS; VAGRANCY; DESERTION

856.01 Drunkenness prohibited; penalty.—Whoever shall be or become drunk from the voluntary use of intoxicating liquors or drugs shall be punished by a fine of not more than twenty-five dollars, or by imprisonment in the county jail for not more than three months; but no prosecution shall be instituted after six months after the commission of the offense.

History.—§8, ch. 7736, 1918; RGS 5472; §§1, 2, ch. 16978, 1935; CGL 7616.
cf.—§775.06, Alternative punishment.
§860.01, Driving automobile while intoxicated.
§322.05, Drivers' license.

856.02 Vagrants.—Rogues and vagabonds, idle or dissolute persons who go about begging, common gamblers, persons who use juggling, or unlawful games or plays, common pipers and fiddlers, common drunkards, common night walkers, thieves, pilferers, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons who neglect their calling or employment, or are without reasonably continuous employment or regular income and who have not sufficient property to sustain them, and misspend what they earn without providing for themselves or the support of their families, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, idle and disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or tippling shops, persons able to work but habitually living upon the earnings of their wives or minor children, and all able bodied male persons over the age of eighteen years who are without means of support and remain in idleness, shall be deemed vagrants, and upon conviction shall be subject to the penalty provided in §856.03.

History.—§24, sub-ch. 8, ch. 1637, 1868; RS 2642; §1, ch. 5419, 1905; GS 3570; §1, ch. 5720, 1907; RGS 5497; CGL 7655.
cf.—§64.11, Abatement of nuisances.
§823.05, Places frequented by vagrants declared nuisances.
§2, Art. XIII, Const. Home and workhouse for vagrants.

856.03 Arrest of vagrant without written warrant.—Upon proper information made upon oath before an officer authorized to act in such cases he shall issue his warrant for the arrest of any person therein named or described who is charged therein with being a vagrant under any of the provisions of §856.02, and such warrant shall be executed by any sheriff, constable, policeman, or by private person duly authorized thereto by the officer issuing such warrant.

Any sheriff, constable, policeman or other lawful officer may arrest any vagrant described in §856.02 without a warrant in case delay in procuring one would probably enable such alleged vagrant to escape arrest. Any person so arrested by virtue of a warrant or without a warrant shall be given a speedy trial, and upon conviction shall be fined not exceeding two hundred and fifty dollars, or by imprisonment not more than six months.

History.—§25, sub-ch. 8, ch. 1637, 1868; RS 2643; §2, ch. 5419, 1905; GS 3571; RGS 5498; CGL 7656.
cf.—§901.15, Arrest without warrant.

856.04 Desertion; withholding support; proviso.—Any man who shall in this state desert his wife and children, or either of them, or his wife where there are no children or child, or who shall wilfully withhold from them or either of them, the means of support, or any mother, who shall desert her child or children, or who shall wilfully withhold from them, the means of support, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison at hard labor, not exceeding two years, or by fine not to exceed $2,000.00, or by both such fine and imprisonment; provided, however, that no husband shall be prosecuted under this section for the desertion of his wife, or for withholding from his wife the means of supporting her where there is existing, at the time of such desertion, such cause or causes as are recognized as ground or grounds for divorce, by statute, in this state, if such person shall have provided for the support of his children, if there be any.

History.—§1, ch. 4553, 1897; GS 3569; §1, ch. 6483, 1913; RGS 5496; CGL 7654; §1, ch. 59-147; §1, ch. 61-335.
cf.—§775.06, Alternative punishment.
§§65.09, 65.10, Maintenance and support.

CHAPTER 859

POISONS; ADULTERATED DRUGS

859.01 Poisoning food or water.—Whoever mingles any poison with food, drink or medicine, with intent to kill or injure another person, or willfully poisons any spring, well or reservoir of water with such intent, shall be punished by imprisonment in the state prison for life, or for any term of years.

History.—§4, sub-ch. 3, ch. 1637, 1868; RS 2658; GS 3587; RGS 5515; CGL 7675.

cf.—§500.24, Violation of food, drug and cosmetic law.
§502.27, Violation of law regulating sale of milk and milk products.
§503.10, Manufacture and sale of ice cream and frozen desserts.
§569.10, Adulterating liquor.

859.02 Selling certain poisons by registered pharmacists and others.—Any violation of the law, relative to sale of poisons, not specially provided for, shall render the principal of the store wherein the same are sold liable to a fine not exceeding one hundred dollars.

History.—§8, ch. 3880, 1889; GS 1906, 3604; RGS 5526; CGL 7692.

859.03 Sale of morphine.—Any druggist or other dealer in drugs and medicines who shall sell or offer for sale any sulphate or other preparations of morphine, without wrapping the same in a scarlet wrapper and plainly labeling it, shall be punished by fine not exceeding fifty dollars for each offense; provided, this section shall not apply to regular practicing physicians putting up their own prescriptions in their ordinary practice of dispensing medicines.

History.—§2, ch. 1891, 1872; §§1, 2, ch. 3286, 1881; RS §§2667, 826; GS 3605; RGS 5527; CGL 7693.

859.04 Provisions concerning poisons.—It is unlawful for any person not a registered pharmacist to retail any poisons enumerated below: Arsenic and all its preparations, corrosive sublimate, white and red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, and all other poisonous vegetable alkaloids and their salts, and the essential oil of almonds, opium and its preparations of opium containing less than two grains to the ounce, aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, veratrum digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic and oxalic acids; and he shall label the box, vessel or paper in which said poison is contained with the name of the article, the word poison, and the name and place of business of the seller.

No person shall deliver or sell any poisons enumerated above unless upon due inquiry it be found that the purchaser is aware of its poisonous character and represents that it is to be used for a legitimate purpose. The provisions of this section shall not apply to the dispensing of poisons in not unusual quantities or doses upon the prescriptions of practitioners of medicine.

Any violation of this section shall make the principal of said store liable to a fine of not less than ten dollars or more than one hundred dollars; provided, however, that this section shall not apply to manufacturers making and selling at wholesale any of the above poisons; and provided, that each box, vessel or paper in which said poison is contained shall be labeled with the name of the article, the word poison, and the name and place of business of the seller.

History.—§8, ch. 3380, 1889; RS 822, GS 3606; RGS 5528; CGL 7694.

859.05 Narcotics not to be sold except on prescription.—No person shall sell, give away, or otherwise dispose of any opium, morphine, cocaine, or its salts, atropine, belladonna or conium, to any person, except upon the written prescription of a licensed practicing physician, which prescription shall not be filled but once; provided, however, that this section shall not apply to manufacturers making and selling at wholesale to druggists, or to sales thereof, for the use of dentists, physicians, hospitals or infirmaries. Any person who shall, for himself, or for any other person, violate any of the provisions of this section shall be deemed guilty of a felony and, upon conviction, shall be imprisoned not less than one year nor more than five years.

History.—§§1, 2, ch. 5957, 1909; RGS 5529; §§1, 2, ch. 10189, 1925; CGL 7695.

cf.—§1.01(3), "Person" defined.
§398.22, Violation of uniform narcotic drug law.

859.06 Sale of cigarettes and wrappers to minors.—No person shall sell, barter, furnish or give away, directly or indirectly, to any minor, any cigarette, cigarette wrapper or any substitute for either; or procure for, or pursuade, advise, counsel or compel any child under said age to smoke any cigarette. Any person violating the provisions of this section shall, for the first offense, upon a conviction thereof, be fined not more than fifty dollars, nor less than ten dollars; and for a second and any subsequent offense, upon conviction thereof, be fined not more than one hundred dollars nor less than ten dollars, and to which may be added imprisonment in the county jail for any period not exceeding sixty days.

History.—§§1, 2, ch. 5716, 1907; RGS 5530; CGL 7696.

859.07 Duty of officers to enforce §859.06.—Sheriffs, constables, their deputies or any police officer shall enforce the provisions of §859.06, and he may summon any minor who may have or have had in his possession any cigarettes or cigarette material, and compel him to testify before the county judge or any justice of the peace as to where and from whom he obtained such cigarettes or cigarette material.

History.—§3, ch. 5716, 1907; RGS 5531; CGL 7697.

859.08 Penalty for selling adulterated drugs.—Every registered pharmacist, and the owner or proprietor of any store dealing in drugs or medicines, shall be held responsible for the quality of all drugs, chemicals or medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturer and those known as proprietary; and any person who fraudulently adulterates, for the purpose of sale, any drug or medicine or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment not exceeding six months, or by fine not exceeding four hundred dollars, and such adulterated drugs and medicine shall be forfeited and destroyed under the direction of the court; and if the offender be a registered pharmacist his name shall be stricken from the register.

History.—§8, ch. 6890, 1915; RGS 5532; CGL 7698.
cf.—§500.30, Sale of lye regulated.

CHAPTER 860

OFFENSES CONCERNING AIRCRAFT, MOTOR VEHICLES AND RAILROADS

860.01 Driving automobile while intoxicated; punishment.—It is unlawful for any person, while in an intoxicated condition or under the influence of intoxicating liquor to such extent as to deprive him of full possession of his normal faculties, to drive or operate over the highways or streets or thoroughfares of Florida, any automobile, truck or vehicle or motorcycle or any other vehicle propelled by gasoline, gas, vapor, electricity, steam or other power. Any person convicted of a violation of this section shall be punished as provided by §317.20.

If, however, damage to property or person of another, other than damage resulting in death of any person, is done by said intoxicated person under the influence of intoxicating liquor to such extent as to deprive him of full possession of his normal faculties, by reason of the operation of any of said vehicles mentioned herein, he shall upon conviction be fined not more than five hundred dollars, and also be imprisoned not less than three months nor more than twelve months, and if the death of any human being be caused by the operation of a motor vehicle by any person while intoxicated, such person shall be deemed guilty of manslaughter, and on conviction be punished as provided by existing law relating to manslaughter.

Convictions under the provisions of this section shall not be a bar to any civil suit for damages against the person so convicted.

History.—§§1, 2, ch. 6882, 1915; RGS 5563; §1, ch. 9269, 1923; §1, ch. 11809, 1927; CGL 7749; am. §7, ch. 22000, 1943.
cf.—§782.07, Manslaughter.
§856.01, Drunkenness prohibited.

860.02 Carelessness of common carrier.—Whoever, having management or control of or over any railroad train, steamboat or other public conveyance used for the common carriage of passengers, is guilty of gross carelessness or neglect in or in relation to the conduct, management and control of such conveyance, shall be punished by fine not exceeding five thousand dollars.

History.—§48, sub-ch. 3, ch. 1637, 1868; RS 2692; GS 3637; RGS 5573; CGL 7759.
cf.—§350.67, Penalty for violating provisions of Florida public utilities commission.
Ch. 352, Duties of railroad to passengers and freight.

860.03 Intoxicated servant of common carrier.—If any person while in charge of a locomotive engine, or acting as the conductor or superintendent of a car or train, or on the car or train as a brakeman, or employed to attend the switches, draw-bridges or signal stations on any railway, or acting as captain or pilot on any steamboat shall be intoxicated, he shall be punished by imprisonment not exceeding three months, or by fine not exceeding five hundred dollars.

History.—§2693, RS 1892; GS 3638; RGS 5574; CGL 7760.
cf.—§352.37, Conductors, etc., violating regulations.

860.04 Persons beating their way on railroad trains.—Any person, who, without permission of those having authority, with the intention of being transported free, rides or attempts to ride on any railroad train in this state, shall on conviction be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months.

History.—§§1, 2, ch. 4703, 1899; GS 3643; RGS 5579; CGL 7765.

860.05 Unauthorized person interfering with railroad train, cars or engines.—Any person other than an employee of the railroad company acting within the line of his duty on such railroad, who shall detach or uncouple any train, or put on, apply, or tamper with any brake or brakes of any train, or wantonly pull the bell cord, or emergency valve of any train, or otherwise interfere with any train, engine, car or part thereof, while such train is standing at any depot, crossing or stop, or while such train is in motion, or who tampers with, or in any manner intereferes with any railroad track, switch or signal or any part of the appliance connected with any railroad track, road bed or rolling stock shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months.

History.—§§1, 2, ch. 4704, 1899; GS 3654; RGS 5591; CGL 7777.

860.06 Unauthorized persons boarding trains.—No person shall board or enter upon any railway train or locomotive while the same is in motion or cling to any bar, railing or other outside fixture of any train or locomotive while the same is in motion except such persons who have a right upon said train or

locomotive, either as a passenger or employee, and any person convicted of a violation of this section shall be punished by fine of not more than twenty-five dollars or imprisonment not more than thirty days. In case of death or injury nothing in this section shall be construed to alter, change or affect in any manner the right of a party injured while violating this section, or his administrator or representative to recover for such death or injury.

History.—§§1, 2, ch. 4709, 1899; GS 3655; RGS 5592; CGL 7778.

860.07 Unauthorized persons giving signals to railroad trains or engines.—Any person who wrongfully, recklessly or wantonly and without authority, signals any train or engine in this state with a red light, or with a red flag, or gives any signal calculated to affect the movement or operation of any train, engine or cars, on any railroad in this state, shall be guilty of a misdemeanor; provided, that this section shall not apply to any person giving signals to stop a train for the purpose of preventing an accident to such train, or at a regular station or flag station when the train is flagged for the purpose of taking passage on said train. Any person who violates the provisions of this section shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment not exceeding six months.

History.—§1, ch. 4708, 1899; GS 3656; RGS 5593; CGL 7779.

860.08 Unauthorized persons interfering with signals connected with railroads or trains.—Any person who wrongfully, or without authority and willfully, removes any lamp from any switch stand, or who removes the oil from any lamp on any switch stand, or who removes any lantern, light, lamp, torch, flag, fuse, torpedo or other signal from any train, engine, car, railroad track, platform, depot or right of way, or who turns out or extinguishes or otherwise tampers with any such lantern, light, lamp, torch, fuse or other signal used in connection with railroad business, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than twelve months.

History.—§§1, 2, ch. 4705, 1899; GS 3657; RGS 5594; CGL 7780.

860.09 Interfering with railroad track.—Whoever willfully moves or misplaces or in any manner interferes with any railway switch, or removes any rail from any railway track, or in any other manner injures any railway track, or shall place any obstruction thereon, shall be punished by imprisonment in the state prison not exceeding twenty years.

History.—§1, ch. 3755, 1887; RS 2698; GS 3660; RGS 5597; CGL 7783.

cf.—§782.06, Killing by obstructing railroad track.

860.10 Disposing of duplicate switch keys of railroad companies; penalty.—It is unlawful for any person to make, buy, sell or give away any duplicate key to any lock belonging to or in use by any railroad company in this state on its switches or switch tracks, except on the written order of the officer of said railroad company whose duty it is to distribute and issue switch lock keys to the employees of such railroad company.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor.

History.—§§1, 2, ch. 9307, 1923; CGL 7786.

cf.—§775.07, Punishment for misdemeanor.

860.11 Injuring railroad structures; driving cattle on tracks.—Whoever otherwise wantonly or maliciously injures any bridge, trestle, culvert, cattle guard or other superstructure of any railroad company, or salts the track of any railroad company, for the purpose of attracting cattle thereto, or who shall drive cattle thereon, shall be punished by imprisonment in the state prison not exceeding ten years.

History.—§3, ch. 3281, 1881; RS 2699; GS 3661; RGS 5598; CGL 7784.

860.13 Operation of aircraft while intoxicated or in careless or reckless manner; penalty.—

(1) It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless or reckless manner so as to endanger the life or property of another.

(2) In any prosecution charging careless or reckless operation of aircraft in violation of this section the court, in determining whether the operation was careless or reckless, shall consider the standards for safe operation of aircraft as prescribed by federal statutes or regulations governing aeronautics.

(3) Any persons violating the provisions of this section shall be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment at the discretion of the court.

(4) It shall be the duty of any court in which there is a conviction for violation of this statute to report such conviction to the civil aeronautics administration for its guidance and information with respect to the pilot's certificate.

History.—Comp. §§1-4, ch. 25259, 1949.

860.14 Motor vehicle parts and accessories; records of certain purchases.—Every person engaged in the business of buying and selling parts and accessories for motor vehicles who purchases such parts and accessories from any person other than manufacturers, distributors, wholesalers, retailers or other persons usually and regularly engaged in the business of selling such parts and accessories, shall keep a daily record of all such parts and accessories so purchased, which record shall show the date and time of each purchase of such parts and accessories, the name and address of each person from whom such parts and accessories were purchased, the number of the driver's license of such person or, if such person does not have a driver's license, adequate informa-

tion to properly identify such person, and a detailed description of the parts and accessories purchased from such person, which description shall include all serial and other identifying numbers, if any. Such records shall be retained for not less than one year and shall at all times be subject to the inspection of all police or peace officers. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding $500.00, or both, in the discretion of the court.

History.—§1, ch. 61-420.

860.15 Overcharging for repairs and parts; penalty.—

(1) It is unlawful for a person to knowingly charge for any services on motor vehicles which are not actually performed; or to knowingly and falsely charge for any parts and accessories for motor vehicles not actually furnished; or to knowingly and fraudulently substitute parts when such substitution has no relation to the repairing or servicing of the motor vehicle.

(2) Any person wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided by law.

History.—§1, ch. 63-203.

CHAPTER 861

OFFENSES CONCERNING PUBLIC ROADS AND NAVIGABLE WATERS

861.01 Obstructing highway.—Whoever obstructs any public road or established highway by fencing across or into the same, or by willfully causing any other obstruction in or to such road or highway, or any part thereof, shall be punished by fine not exceeding one hundred dollars, or by imprisonment for a term not exceeding sixty days, and the judgment of the court shall also be that the obstruction be removed.

History.—§68, Feb. 10, 1832; RS 2700; GS 3662; §1, ch. 6884, 1915; RGS 5604; CGL 7791.

cf.—§775.06, Alternative punishment.
§339.31 Obstructing highways.

861.02 Obstructing water course.—Whoever erects or fixes on any navigable water course any dam, bridge, hedge, seine, drag, or other obstruction, whereby the navigation of boats drawing three feet of water, or the passage of fish may be obstructed, shall be punished by fine not exceeding one hundred dollars.

History.—§72, Feb. 10, 1832; RS 2701; GS 3665; RGS 5608; CGL 7797.

cf.—§822.16, Channel marks, destruction.

861.03 Injuries to dams.—Whoever willfully, maliciously and unlawfully injures, removes or destroys any dam, lawfully placed in or on any stream in this state for the purpose of propelling any kind of machinery, or willfully and maliciously makes any aperture or breach in such dam with intent to destroy or injure the same, shall be punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding ten thousand dollars.

History.—§1, ch. 4752, 1899; GS 3666; RGS 5609; CGL 7798.

861.04 Placing water hyacinths in any of the streams or waters of the state.—Whoever willfully places or causes to be placed any water hyacinths in any of the territorial waters of the state whether navigable or non-navigable shall be punished by a fine of not more than two hundred dollars, or imprisonment not more than ninety days.

History.—§1, ch. 4752, 1899; §1, ch. 5196, 1903; GS 3667; RGS 5610; CGL 7799; am. §1, ch. 28046, 1953.

861.05 Obstruction to navigation by bridges.—Any railway company, other corporation, or person, which has heretofore constructed, and which shall hereafter construct, any bridge or other causeway across any of the navigable waters of the state, are required to build and maintain a suitable draw or other proper and necessary appliances, so as to be able to remove such obstruction, or to turn a sufficient section thereof as to allow boats or other watercraft to pass such bridge or other causeway, without delay or hindrance, and any such company, corporation, or person failing to comply with such requirements, shall be punished by a fine not exceeding five thousand dollars.

History.—§§1, 2, ch. 3931, 1889; RS 2702; GS 3668; RGS 5611; CGL 7800.

861.06 Obstructing harbors, etc.—The master, or other person in charge of any steamer, vessel, barge or lighter, or any other person who violates the provisions of law relative to the protection of harbors, shall be punished by imprisonment in the state prison not exceeding two years, or by fine not exceeding one thousand dollars.

History.—§4, ch. 3142, 1879; RS 2703; GS 3669; RGS 5612; CGL 7801.

861.07 Obstructing wagon roads. — Whenever any tie cutter or log cutter cutting ties for a railroad or logs for milling purposes, shall cut or fell any tree into or across any traveled road, whether it be a county road or a road regularly used by the public or a neighborhood road, and shall fail to remove the same within two hours thereafter so as to free the road from all obstruction therefrom, shall be punished by a fine of ten dollars, or by imprisonment for thirty days; and such person and his employer shall be liable or responsible for any and all damages resulting from so obstructing a traveled road.

History.—§1, ch. 4780, 1899; GS 3673; RGS 5616, CGL 7805.

861.08 Obstructing county and settlement roads.—Whoever shall fell, drag or by any means place a tree, or other obstruction, in or across any county settlement or neighborhood road regularly used, or whoever causes such obstruction to be placed therein, shall remove the same from such road within six hours thereafter.

Any person violating the provisions of this section shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding sixty days; provided, that this law shall not apply to pasture fences, gates, nor the improvement of private property.

History.—§§1, 2, ch. 5238, 1903; GS 3676; §1, ch. 6538, 1913; RGS 5619; CGL 7808.

861.09 Certain vehicles prohibited from using hard-surfaced roads.—It is unlawful for

any person to drive, propel, or operate, or to have driven, propelled or operated, over the hard-surfaced public roads or parts of roads of this state any vehicle or implement having wheels that will carry more than two hundred pounds per wheel for every vehicle having tires of one inch in width, or five hundred pounds per wheel for every vehicle having tires of two inches in width, or eight hundred pounds per wheel for every vehicle having tires of three inches in width, or twelve hundred pounds per wheel for every vehicle having tires of four inches in width, or fifteen hundred pounds per wheel for every vehicle having tires five inches in width, or that will carry any load greater than six thousand pounds without first providing one inch of tire width per wheel for each additional two thousand pounds, or fraction thereof, or to permit any vehicle or implement or any load or portion of load thereof to drag upon the surface of any hard-surfaced public road or parts of roads; provided, that nothing in this section shall be construed as prohibiting the use of roughened surfaces on rubber tires or on the wheels of farm implements weighing less than one thousand pounds.

Hard-surfaced public roads or parts of roads as used in this section shall be construed to be brick, concrete, asphaltic, sand-clay, sand or bituminous surfaced roads which are maintained by county or state funds.

Any person violating the provisions of this section shall, on conviction thereof, be punished by fine of not exceeding one hundred dollars or by imprisonment in the county jail for not more than six months.

History.—§§1-3, ch. 7329, 1917; §§1, 2, ch. 7898, 1919; RGS 5617, 5618; CGL 7806, 7807.
cf.—§1.01(3), "Person" defined.
§775.06, Alternative punishment.
§339.29 Dumping trash on public highways.

861.10 Dumping or permitting trash upon highways; penalty.—

(1) It is unlawful for any person to dump or cause to be dumped or place or cause to be placed any trash, garbage or refuse of any kind whatsoever along the right-of-way of any public highway, road or street of this state; or while operating a motor vehicle to permit trash, garbage or refuse of any kind whatsoever to fall upon or along the right-of-way of any public highway, road or street of this state.

(2) Any person found guilty of violating this section shall be fined not to exceed one hundred dollars or be imprisoned not more than thirty days.

History.—§§1, 2, ch. 12214, 1927; CGL 7816; §1, ch. 59-33.
cf.—§775.06, Alternative punishment.
§339.29, Dumping trash on highways; penalty.

861.11 Penalty for cutting or destroying shade trees along public roads.—The county commissioners of each county may prescribe that the public roads in their county shall not be less than thirty feet wide, and it shall be unlawful for any person to belt, cut or destroy any shade trees on any public road or right-of-way without authority from the superintendent of public roads, supervisor or overseer of the district in which said trees are situated.

Each supervisor or overseer of each district in such counties shall enforce the provisions of this section by reporting the offenders to the nearest justice of the peace and upon trial and conviction, each offender shall be fined not more than twenty-five dollars, or imprisoned not more than thirty days.

History.—§§1, 2, 3, ch. 5005, 1901; GS 3677; RGS 5620; CGL 7809.
cf.—§336.02 Width of county roads.
§336.04 Superintendent of county roads, etc.
§339.25 Trees and shrubbery; removal or damage; penalty.

861.12 Penalty for road official or overseer neglecting duty.—Any superintendent of public roads, supervisor or overseer who willfully neglects to perform the duties prescribed in §861.11 shall be deemed guilty of, and made a party to the offense and proceeded against as the original offender by any person.

History.—§4, ch. 5005, 1901; GS 3678; RGS 5621; CGL 7810
cf.—§336.04 Superintendent of county roads, etc.

CHAPTER 862

OFFENSES CONCERNING SEAMEN

862.01 Shippers of sailors and keepers of sailor boarding houses, boarding vessels without master's permission. — No one engaged in the business of shipping sailors, nor any keeper of any sailor boarding house, nor any one in the employ of the keeper of a sailor boarding house, or acting in any manner in behalf of the keeper of a sailor boarding house, shall go on board any vessel, in any port or harbor in this state, without first having obtained from the master of such vessel permission to go on board of his vessel.

If any one engaged in the business of shipping sailors, or the keeper of any sailor boarding house, or any one in the employ of or acting in behalf of the keeper of a sailor boarding house, shall go aboard any vessel outside the jurisdiction of this state, he shall not remain on board of such vessel after she has entered any port or harbor of this state without first having obtained the express consent of the master of such vessel. Whoever willfully violates the provisions of this section shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars.

History.—§§1, 2, ch. 3288, 1881; RS 2751; GS 3746; RGS 5771; CGL 8001.

cf.—Ch. 307, Stevedores.
Ch. 310, Pilot commissioners and pilots.
*313.06, Obstructing or resisting harbor masters.

862.02 Enticing seamen from their vessels. —It is unlawful for any person to entice any seaman or sailor from the vessel on which he is engaged, previous to the expiration of his term of service on said vessel. Any person so enticing said seamen or sailors shall be punished by a fine not exceeding fifty dollars, or be imprisoned not exceeding thirty days.

History.—§1, ch. 4372, 1895; GS 3747; RGS 5772; CGL 8002.

862.03 Landing sick seamen or paupers in the seaports of the state.—If any master or commander of any ship or vessel shall discharge or cause to be put ashore any sick or disabled sailor belonging to his ship or vessel, not entitled to his discharge, by the contract between them, or any servant, without taking due care of his maintenance and cure, or who shall land from any such ship or vessel any pauper or vagrant, without the means of procuring his maintenance for the space of one month in any port of the state, he shall be fined in a sum not more than one hundred dollars, or be imprisoned for a period of not more than sixty days.

History.—§1, ch. 4593, 1897; GS 3748; RGS 5773; CGL 8003.

CHAPTER 865

VIOLATIONS OF CERTAIN COMMERCIAL RESTRICTIONS

865.02 Falsely shipping oranges as Florida oranges.—Whoever ships foreign-grown fruit or oranges, representing by mark or otherwise that said fruit is the product of the state, shall be punished by imprisonment not exceeding thirty days or by fine not exceeding one hundred dollars for each offense.

History.—§2, ch. 3454, 1883; RS 2708; GS 3699; RGS 5647; CGL 7851.
cf.—§775.06, Alternative punishment.

865.03 Introducing cottony cushion scale.—Whoever receives or brings into this state or causes to be brought in from any state of the United States, or from any foreign country, any orange, lemon or other tree of the citrus variety, or any bud, graft or scion from any such trees, affected with an insect known as the white or cottony cushion scale, or whoever makes use of or inserts, or causes the use or insertion of any bud, graft or scion of such affected tree into any orange tree or into any kind of a tree of the citrus variety, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§§1, 2, ch. 3912, 1887; RS 2709; GS 3700; RGS 5662; CGL 7853.
cf.—§775.06, Alternative punishment.

865.04 False packing of provisions.—Whoever fraudulently puts into any barrel, bale of cotton, cask or other package of sugar, rice or pork, or any other article of provisions, any dirt, rubbish or other thing, shall be punished by fine not exceeding one thousand dollars.

History.—§54, Feb. 10, 1832; RS 2710; GS 3703; RGS 5655; CGL 7856.

865.05 Selling trees, plants or vines under false name.—All trees, plants, seeds and vines sold, offered for sale or exposed for sale in this state shall be properly named as to variety and kind, and any person knowingly selling, trading, exchanging or offering or exposing for sale any trees, seeds, plants or vines falsely named as to variety and kind, with the purpose to deceive or defraud the purchaser, shall be fined not more than two hundred and fifty dollars.

History.—§1, ch. 5233, 1903; GS 3704; RGS 5656; CGL 7857.

865.06 Preservation of wild trees, shrubs and plants; penalty.—Any person who shall, within the state, knowingly buy, sell, offer or expose for sale any of the following hollies, trees or plants:

Dahoon (Ilex cassine and Ilex Myrtifolia), yaupon or cassena (Ilex vomitoria) and American holly (Ilex opaca); dogwood (Cornus Florida and Cornus alternifolia); jasmine (Gelsemium sempervirens); and the sweet bay (Magnolia Augustifolia); redbud or Judas Tree (Cercis canadensis); mountain laurel (Kalmia latifolia); southern wild smilax, (of which there are six different species); the sixteen species of epiphyte bromeliads and the twenty species of epiphyte orchids; the royal palm (Oreodoxa regia); or any part thereof, dug, pulled up or gathered from any public or private land, unless in the case of the private land the owner or person lawfully occupying such land gives his consent in writing thereto, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars and costs.

All prosecutions under this section shall be commenced within six months from the time such offense was committed and not afterwards.

History.—§1, ch. 10127, 1925; §§1, 2, ch. 12453, 1927; §1, ch. 15061, 1931; CGL 7858, 7859.
cf.—§1.01(3), "Person" defined.

865.061 Additional trees, plants and shrubs; penalty.—Any person who shall, within the state knowingly buy, sell, offer or expose for sale, any of the following trees, shrubs, plants, or any portions thereof, to-wit:

(1) Bromelia (Bromel)—All epiphytic species (Native to the state),
Tillandsia — (except Spanish moss) (Native to the state),
Catopsis — Guzmania (Native to the state),
Orchids—both epiphytic and terrestrial species (Native to the state),

shall be deemed guilty of a misdemeanor and shall be punished as provided by law.

(2) Cornus — Florida (L.) Cornus alternifolia (L.) Dogwood;
Cercis Canadensis (L.) Red-bud or Judas tree;
Kalmia latifolia (L.) Mountain-laurel,
Epigaea repens—, Trailing arbutus;
Ilex Cassine (L.), Dahoon Holly;
Ilex Myrtifolia Walt.;
Ilex Vomitoria Ait. Yaupon;
Torreya Taxifolia (Arn);
Taxus Floridana;
Ilex Opaca Ait., American Holly;
Roystonea regia (H. B. K.) C. F. Cook, Royal Palm;
Gelsomium Sempervirens (L.) Ait. F., Yellow Jessamine;

Magnolia Virginiana (M. glauca), Sweet bay;

unless such person shall have in writing a statement showing that such trees, shrubs, or plants, or portions thereof, were raised or produced by a licensed nurseryman; or by the owner or lessee of land, who grows thereon such trees, shrubs, plants, or portions thereof, shall be deemed guilty of a misdemeanor and shall be punished as provided by law.

History.—§§1, 2, ch. 26882, 1951; sub.§(2) am. §1, ch. 28268, 1953.

865.062 Exemptions from §§865.06 and 865.061.—The Seminole Indians of Florida shall be exempt from the prohibitions and penalties of §§865.06 and 865.061.

History.—§1, ch. 61-531.

865.07 Adulterated syrup.—Any person, or agent thereof, who shall sell, offer for sale, or advertise for sale in this state any adulterated or mixed syrups whatever, except at the time of such sale or offer for sale the percentage of such adulteration or mixture, and the name and postoffice address of the manufacturer, is clearly stamped or labeled on the barrel, can, case, bottle or other receptacle containing such syrup or mixture, shall be punished by fine not exceeding five hundred dollars or imprisonment not exceeding six months.

The term adulterated "mixture" or "admixture," as used herein is understood to apply to all mixtures of two or more ingredients differing in their nature and quality, such as sugar cane syrup, sorghum syrup, maple syrup, molasses or glucose.

History.—§§1, 2, 3, ch. 5231, 1903; GS 3706; RGS 5657; CGL 7860.

cf.—Ch. 500, Foods, drugs and cosmetics.
§775.06, Alternative punishment.

865.08 Purchase of cotton or leaf tobacco.—Whoever trades, traffics for or buys, except from the producer or his authorized agent, any cotton or leaf tobacco, unless the same be baled or boxed in the usual manner, or unless upon some exhibition of evidence in writing that the producer has parted with his interest therein, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one thousand dollars.

History.—§11, ch. 1466, 1866; RS 2711; GS 3707; RGS 5658; CGL 7861.

cf.—§775.06, Alternative punishment.

865.09 Fictitious name statute.—

(1) This section shall be known as the "Fictitious Name Statute."

(2) Definitions: "Persons" shall include every individual, whether natural or artificial, firm or group or combination of individuals or partnerships, whether natural or representative, except corporations.

"Fictitious names" shall include any trade name, whether a single name or a group of names, other than the proper name or known called names of those persons engaged in such business or professions.

"Business" shall include all enterprises or adventures wherein persons either sell, buy, exchange, barter or deal, or any of these things, or represent the dealing in anything or article of value, or rendering services for compensation.

(3) It shall be unlawful for any person or persons, as defined herein, to engage in business as herein defined, under a fictitious name as herein defined, without and unless said fictitious name shall be registered with the clerk of the circuit court of the county where the principal place of business is, which registration shall consist of filing with the clerk aforesaid an affidavit signed by all interested persons, stating under oath the names of all those interested in the business enterprise, the extent of the interest of each, and the fictitious name under which said business is carried on. Said registration may not be made until the person or persons desiring to engage in business under a fictitious name shall have advertised his or their intention to register said fictitious name at least once a week for four consecutive weeks in some newspaper as defined by law in the county where said registration is to be made, and said registration shall not be accepted by the clerk of the circuit court except upon receiving proof of such publication.

(4) The clerk of the circuit court shall receive a fee of one dollar for receiving and filing said registration, to be paid by the person or persons engaged in doing business under a fictitious name, as herein defined.

(5) The penalty for failure to comply with this law shall be that neither the business nor the members nor those interested in doing such business may defend or maintain suit in any court of this state, either as plaintiff or defendant, until this law is complied with, and further that any person violating this law may have information filed against him by anyone aggrieved or believed to be aggrieved, before the proper court and charged with a misdemeanor, and upon conviction thereof be fined the sum of twenty-five dollars, or sentenced to jail for sixty days, or both, in the discretion of the judge of the court who is trying the said case.

History.—§§1-5, ch. 20953, 1941, sub. §(3) am. §1, ch. 26760, 1951.

CHAPTER 867

EXHIBITIONS OF DEFORMED PERSONS OR ANIMALS

867.01 Exhibition of deformed persons prohibited; penalty.—Whoever shall exhibit for pay or compensation any crippled or physically distorted, malformed or disfigured man, woman or child in any circus, show or similar place or in any other place to which an admission fee is charged, and whoever knowingly advertises or knowingly causes to be advertised any such exhibition, and whoever solicits or procures the attendance of others at any such exhibition with knowledge of the nature thereof, shall, upon conviction, be punished by imprisonment in the state prison for not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§1, ch. 8524, 1921; CGL 7673.

867.02 Exhibition of deformed animals prohibited; penalty.—Whoever shall exhibit for pay or compensation any crippled or physically distorted, malformed or disfigured beast, bird or animal in any circus, show or similar place, or any other place to which an admission fee is charged, and whoever knowingly advertises or knowingly causes to be advertised any such exhibition, and whoever solicits or procures the attendance of others at such exhibition with knowledge of the nature thereof, shall upon conviction be punished by imprisonment in the county jail for not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§2, ch. 8524, 1921; CGL 7674.

CHAPTER 870

AFFRAYS; RIOTS; ROUTS; UNLAWFUL ASSEMBLIES

870.01 Punishment of affray.—All persons guilty of an affray or riot shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars.

History.—§35, Feb. 10, 1832; RS 2406; GS 3239; RGS 5072; CGL 7174.

870.02 Unlawful assemblies.—If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§2407, RS 1892; GS 3240; RGS 5073; CGL 7175.

cf.—§§876.03, 876.04, Anarchy, communism, etc., unlawful assembly for purpose of.

870.03 Riots and routs.—If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them shall be punished by imprisonment in the state prison not exceeding five years.

History.—§7, sub-ch. 7, ch. 1637, 1868; RS 2408; GS 3241; RGS 5074; CGL 7176.

870.04 Magistrate to disperse riotous assembly.—If any number of persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in any county, city or municipality, the sheriff or his deputies, or any constable or justice of the peace of the county, or the mayor, or any commissioner, councilman, alderman or police officer of the said city or municipality, or any officer or member of the Florida highway patrol, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said officers shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, he shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

History.—§§1, 2, sub-ch. 7, ch. 1637, 1868; RS 2409; GS 3242; RGS 5075; CGL 7177; §§1, chs. 61-223 and 61-237.

870.05 When killing excused.—If, by reason of the efforts made by any of said officers or by their direction to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or other person present is killed or wounded, the said officers and all persons acting by their order or under their direction, shall be held guiltless and fully justified in law; and if any of said officers or any person acting under or by their direction is killed or wounded, all persons so assembled and all other persons present who when commanded refused to aid and assist said officer shall be held answerable therefor.

History.—§6, sub-ch. 7, ch. 1637, 1868; RS 2410; GS 3243; RGS 5076; CGL 7178.

870.06 Unauthorized military organizations.—No body of men, other than the regularly organized land and naval militia of this state, the troops of the United States, and the students of regularly chartered educational institutions where military science is a prescribed part of the course of instruction, shall associate themselves together as a military organization for drill or parade in public with firearms, in this state, without special license from the governor for each occasion, and application for such license must be approved by the mayor and aldermen of the cities and towns where such organizations may propose to parade. Each person unlawfully engaging in the formation of such military organization, or participating in such drill or parade, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five dollars and not more than twenty-five dollars, and imprisoned not exceeding thirty days.

History.—§15, ch. 1466, 1866; RS 2411; §10, ch. 5202, 1903; GS 3246; RGS 5077; CGL 7179.

cf.—§250.43, Uniform, etc., not to be worn by persons not in military service.

CHAPTER 871

DISTURBING RELIGIOUS AND OTHER ASSEMBLIES

871.01 Disturbing schools and religious and other assemblies. — Whoever willfully interrupts or disturbs any school, or any assembly of people, met for the worship of God, or for any lawful purpose, shall be punished by fine not exceeding fifty dollars, or imprisonment in the county jail not exceeding sixty days.

History.—§§19, 21, 22, sub-ch. 8, ch. 1637, 1868; RS 2627, 2629, 2630; GS 3547; §1, ch. 5719, 1907; RGS 5448; CGL 7591.

871.02 Indictments or informations for disturbing assembly.—The several grand juries of this state in their respective counties may return indictments, or the several state attorneys of this state in their respective circuits may file information against all persons violating §871.01, and such indictments or informations, when filed with the clerk of the circuit court in the county where such offense is alleged to have been committed, shall be forthwith certified by him to some court in the county having jurisdiction to try and determine such charge, and said court to which such indictment or information is certified shall proceed to try and determine such charge upon such indictment or information, the same as if affidavit had been made before such court charging the said offense.

History.—§§2, 3, ch. 5719, 1907; RGS 5449; CGL 7592.
cf.—§923.03, Form of indictment or information.
Ch. 906, Indictment and information.

871.03 Peddling at camp meeting.—Whoever during the time of holding any camp or field meeting for religious purposes, and within one mile of the place of holding such meeting, hawks or peddles goods, wares, merchandise, or without permission from the authorities having charge of such meeting, establishes any tent or booth for vending of provisions or refreshments, or practices or engages in gaming or horse racing, or exhibits, or offers to exhibit, shows or plays, shall be punished by fine not exceeding twenty dollars for each offense; but a person having his usual and regular place of business within such limits is not hereby required to suspend his business.

History.—§20, sub-ch. 8, ch. 1637, 1868; RS 2628; GS 3548; RGS 5450; CGL 7593.

871.04 Advertising; religious discrimination; public places.—

(1) Except where the context clearly requires a different meaning, the following terms shall have for the purposes of this section the meaning respectively ascribed to them:

(a) "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(b) "Establishment" means any building or part thereof, including without being limited to public inns, hotels, motels, apartment hotels, any structure, enclosure, tract of land, and all improvements, appurtenances, and additions, bodies of water whether natural or artificial, and any other place of whatsoever nature to which the general public is or will be admitted, allowed or invited on payment of a fee, free of charge or otherwise.

(2) No person, directly or indirectly, for himself or for another, shall publish, post, broadcast by any means, maintain, circularize, issue, display, transmit, or otherwise disseminate or place in any manner before the public with reference to an establishment any advertisement that the patronage of any person is not welcome, or is objectionable, or is not acceptable because of his religion. No person shall cause or solicit another person to violate this section.

(3) This section shall not apply to any establishment which is private or limited to membership only; to any camp administered by any religious organization, group or sect, admission to which is based on religious belief or affiliation; or to any gathering, meeting or assembly held under the auspices of any religious organization, group or sect.

(4) Any person or persons violating this section shall be guilty of a misdemeanor and shall be punished upon conviction thereof by a fine of not more than $500.00 or by imprisonment not exceeding ninety days, or by both such fine and imprisonment.

History.—Comp. §§1, 2, ch. 29845, 1955.

CHAPTER 872

OFFENSES CONCERNING DEAD BODIES AND GRAVES

872.01 Dealing in dead bodies.—Whoever buys, sells or has in his possession for the purpose of buying or selling or trafficking in the dead body of any human being shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars; provided, however, that nothing contained in this section shall be construed to prohibit the obtaining, dissecting, using and disposing of dead bodies for the purpose of teaching or other appropriate university research by any medical school, dental school, school of nursing or other university research or teaching unit which is a part of a regularly established or chartered institution of higher learning under the laws of the state.

History.—§26, sub-ch. 8, ch. 1637, 1868; RS 2625; GS 3545; RGS 5446; CGL 7589; am. §1, ch. 22057, 1943.
Am. §1, ch. 26724, 1951.
cf.—§822.13, Laying out highway, etc., over graveyard.

872.02 Disfiguring tomb. — Whoever willfully destroys, mutilates, defaces, injures or removes any tomb, monument, gravestone or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb or other thing intended for the protection or ornamentation of any tomb, monument, gravestone or other structure before mentioned, or for any enclosure for the burial of the dead, or willfully destroys, mutilates, removes, cuts, breaks or injures any tree, shrub or plant placed or being within any such enclosure, or wantonly and maliciously disturbs the contents of a tomb or grave, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars.

History.—§27, sub-ch. 8, ch. 1637, 1868; RS 2626; GS 3546; RGS 5447; CGL 7590.

872.03 Cremating human bodies; limitation.—

(1) It shall be unlawful for any person, firm or corporation to cremate any dead human body prior to the expiration of forty-eight hours after the death of such human body.

(2) Anyone convicted for the violation of this section shall be punished by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months.

History.—§§1, 2, ch. 21780, 1943.

CHAPTER 876

CRIMINAL ANARCHY, COMMUNISM, WEARING MASKS, HOODS, ETC.

876.01 Criminal anarchy, communism, etc., prohibited.—Criminal anarchy, criminal communism, criminal naziism, or criminal fascism are doctrines that existing form of constitutional government should be overthrown by force or violence or by any other unlawful means, or by assassination of officials of the government of the United States or of the several states. The advocacy of such doctrines either by word of mouth or writing or the promotion of such doctrines independently or in collaboration with or under the guidance of officials of a foreign state or an international revolutionary party or group is a felony.

History.—§1, ch. 20216, 1941.
cf.—§§870.02, 870.04, Unlawful assemblies generally.

876.02 Criminal anarchy, communism, etc., defined and made a felony; penalty.—Any person who—

(1) By word of mouth or writing advocates, advises, or teaches the duty, necessity or propriety of overthrowing or overturning existing forms of constitutional government by force or violence; of disobeying or sabotaging or hindering the carrying out of the laws, orders, or decrees of duly constituted civil, naval or military authorities; or by the assassination of officials of the government of the United States or of the state, or by any unlawful means or under the guidance of or in collaboration with officials, agents or representatives of a foreign state or an international revolutionary party or group; or

(2) Prints, publishes, edits, issues or knowingly circulates, sells, distributes, or publicly displays any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that constitutional government should be overthrown by force, violence, or any unlawful means; or

(3) Openly, willfully and deliberately urges, advocates, or justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any official of the government of the United States or of this state because of his official character, or any other crime, with intent to teach, spread, or advocate the propriety of the doctrines of criminal anarchy, criminal communism, criminal naziism or criminal fascism; or

(4) Organizes or helps to organize or becomes a member of any society, group or assembly of persons formed to teach or advocate such doctrines; or

(5) Becomes a member of, associated with or promotes the interest of any criminal anarchistic, communistic, nazi-istic or fascistic organization, or helps to organize or becomes a member of or affiliated with any subsidiary organization or associated group of persons who advocates, teaches, or advises the principles of criminal anarchy, criminal communism, criminal naziism or criminal fascism;

Shall be guilty of a felony and upon conviction thereof be subject to imprisonment for not more than ten years or a fine of not more than ten thousand dollars, or both.

History.—§2, ch. 20216, 1941.

876.03 Unlawful assembly for purposes of anarchy, communism, etc.—Whenever two or more persons assemble for the purpose of promoting, advocating or teaching the doctine of criminal anarchy, criminal communism, criminal naziism or criminal fascism, as defined in §876.01 of this law, such an assembly or organization is unlawful, and every person voluntarily participating therein by his presence, aid or instigation shall be guilty of a felony and upon conviction thereof shall be subject to imprisonment for not more than ten years or a fine of not more than ten thousand dollars, or both.

History.—§3, ch. 20216, 1941

876.04 Allowing unlawful assembly in building prohibited.—No owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, shall willfully and knowingly permit therein any assemblage of persons prohibited by §876.03, and if such person after notification that the premises are so used, permits such use to be continued, he shall be guilty of a misdemeanor and upon conviction thereof subject to imprisonment for not more than one year or fine of not more than one thousand dollars, or both.

History.—§4, ch. 20216, 1941.

876.05 State employees; oath.—All persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning and all candidates for public office, are hereby required to take an oath before any person duly authorized to take acknowledgments of instruments for public record in the state in the following form:

I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida; that I am not a member of the Communist Party; that I have not and will not lend my aid, support, advice, counsel or influence to the Communist Party; that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence; that I am not a member of any organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States or of Florida by force or violence.

And said oath shall be filed with the records of the governing official or employing governmental agency prior to the approval of any voucher for the payment of salary, expenses, or other compensation.

History.—Comp. §1, ch. 25046, 1949.
Note.—See 7 L.Ed. 2d 285 and 137 So. 2d 828 as to constitutionality of section.
cf.—§90.01, Oaths, requirements.

876.06 Discharged for refusal to execute.—If any person required by §§876.05-876.10 to take the oath herein provided for fails to execute the same, the governing authority under which such person is employed shall cause said person to be immediately discharged, and his name removed from the payroll, and such person shall not be permitted to receive any payment as an employee or as an officer where he or she was serving.

History.—Comp. §2, ch. 25046, 1949.

876.07 Persons giving aid, advice, etc., to communist party.—Any person having taken the oath provided for in §876.05 and who thereafter should become a member of the communist party or who lends aid, support, advice, counsel or influence to the communist party or who expresses any belief in or advocates the overthrow of the government of the United States or of the state by violence or force or thereafter becomes a member of an organization or party which believes in or teaches directly or indirectly the overthrow of the government of the United States or of the state by force or violence, shall immediately be discharged from his employment by the employing authority and his name shall be removed from the payroll, and thereafter such person shall not be permitted to receive any payment as an employee or an officer where he or she then was serving. Any person seeking to qualify for public office who fails or refuses to file the oath required by this act shall be held to have failed to qualify as a candidate for public office, and the name of such person shall not be printed on the ballot as a qualified candidate.

History.—Comp. §3, ch. 25046, 1949.

876.08 Penalty for not discharging.—Any governing authority or person, under whom any employee is serving or by whom employed who shall knowingly or carelessly permit any such employee to continue in employment after failing to comply with the provisions of §§876.05-876.10, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months or by both fine and imprisonment.

History.—Comp. §4, ch. 25046, 1949.

876.09 Scope of law.—

(1) The provisions of §§876.05-876.10 shall apply to all employees and elected officers of the state, including the Governor and constitutional officers and all employees and elected officers of all cities, towns, counties and political subdivisions, including the educational system.

(2) This act shall take precedence over all laws relating to merit, and of civil service law.

History.—Comp. §§5, 7, ch. 25046, 1949.

876.10 False oath; penalty.—If any person required by the provisions of §§876.05-876.10 to execute the oath herein required executes such oath, and it is subsequently proven that at the time of the execution of said oath said individual was guilty of making a false statement in said oath, he shall be guilty of perjury, and shall be prosecuted and punished for the crime of perjury in the event of conviction.

History.—Comp. §6, ch. 25046, 1949.

876.11 Public place defined.—For the purpose of §§876.11-876.21 the term "public place" includes all walks, alleys, streets, boulevards, avenues, lanes, roads, highways or other ways or thoroughfares dedicated to public use or owned or maintained by public authority; all grounds and buildings owned, leased by, operated or maintained by public authority.

History.—Comp. §1, ch. 26542, 1951.

876.12 Unlawful to wear hood, etc.; on street, etc.—No person or persons over sixteen years of age shall, while wearing any mask, hood or device whereby any portion of the face is so hidden, concealed or covered as to conceal the identity of the wearer, enter upon, or be or appear upon any lane, walk, alley, street, road, highway or other public way in this state.

History.—Comp. §2, ch. 26542, 1951.

876.13 Same; on public property.—No person or persons shall in this state, while wearing any mask, hood or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, enter upon, or be, or appear upon or within the public property of any municipality or county of the state.

History.—Comp. §3, ch. 26542, 1951.

876.14 Same; on property of another.—No person or persons over sixteen years of age shall, while wearing a mask, hood or device whereby any portion of the face is so hidden, concealed or covered as to conceal the identity of the wearer, demand entrance or admission or enter or come upon or into the premises, enclosure or house of any other person in any municipality or county of this state.

History.—Comp. §4, ch. 26542, 1951.

876.15 Same; demonstration or meeting.—No person or persons over sixteen years of age, shall, while wearing a mask, hood, or device whereby any portion of the face is so hidden, concealed or covered as to conceal the identity of the wearer, hold any manner of meeting, make any demonstration upon the private property of another unless such person or persons shall have first obtained from the owner or occupier of the property his or her written permission to so do.

History.—Comp. §5, ch. 26542, 1951.

876.16 Certain exemptions.—The following are exempted from the provisions of §§876.11-876.15:

(1) Any person or persons wearing traditional holiday costumes;

(2) Any person or persons engaged in trades and employment where a mask is worn for the purpose of ensuring the physical safety of the wearer, or because of the nature of the occupation, trade or profession;

(3) Any person or persons using masks in theatrical productions including use in Gasparilla celebrations and masquerade balls;

(4) Persons wearing gas masks prescribed in civil defense drills and exercises, or emergencies.

History.—Comp. §6, ch. 26542, 1951.

876.17 Burning or flaming cross; in public.—It shall be unlawful for any person or persons to place or cause to be placed in a public place in the state a burning or flaming cross or any manner of exhibit in which a burning or flaming cross, real or simulated, is a whole or a part.

History.—Comp. §7, ch. 26542, 1951.

876.18 Same; on property of another.—It shall be unlawful for any person or persons to place or cause to be placed on the property of another in the state a burning or flaming cross or any manner of exhibit in which a burning or flaming cross, real or simulated, is a whole or part without first obtaining written permission of the owner or occupier of the premises to so do.

History.—Comp. §8, ch. 26542, 1951.

876.19 Exhibits that intimidate. — It shall be unlawful for any person or persons to place or cause to be placed anywhere in the state, any exhibit of any kind whatsoever with the intention of intimidating any person or persons, to prevent them from doing any act which is lawful to cause them to do any act which is unlawful.

History.—Comp. §9, ch. 26542, 1951.

876.20 Wearing mask and placing exhibit to intimidate.—It shall be unlawful for any person or persons while wearing a mask or any device whereby the face is so covered as to conceal the identity of the wearer, to place or to cause to be placed at, on or in any place any exhibit of any kind whatsoever.

History.—Comp. §10, ch. 26542, 1951.

876.21 Penalty.—Any person or persons violating §§876.11-876.20 shall be guilty of a misdemeanor and shall be punished upon conviction thereof, by a fine of not more than five hundred dollars, or by imprisonment not exceeding ninety days, or by both such fine and imprisonment.

History.—Comp. §11, ch. 26542, 1951.

876.22 Definitions. — As used in §§876.23-876.31:

(1) "Organizations" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently, or temporarily associated together for joint action or advancement of views on any subject or subjects.

(2) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy, or to assist in the overthrow, destruction of, the constitutional form of the government of the United States, the constitution or government of the state, or of any political subdivision of either of them, by revolution, force, violence or other unlawful means.

(3) "Foreign subversive organization" means any organization, directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or to assist in the overthrow, destruction of the constitutional form of the government of the United States, or of this state, or of any

political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(4) "Foreign government" means the government of any country, nation or group of nations other than the government of the United States or of one of the states thereof.

(5) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or to assist in the overthrow, destruction of the constitutional form of the government of the United States, or of this state, or any political subdivision of either of them, by revolution, force, violence or other unlawful means; or who is a member of a subversive organization or a foreign subversive organization.

History.—Comp. §1, ch. 28221, 1953.

876.23 Subversive activities unlawful; penalty.—

(1) It shall be a felony for any person knowingly and willfully to:

(a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, to assist the overthrow, destruction of, the constitutional form of the government of the United States, or of the state, or any political subdivision of either of them, by revolution, force, violence, or other unlawful means; or

(b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of this state, or of any political subdivision of either of them; or

(c) Conspire with one or more persons to commit any such act; or

(d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) Destroy any books, records, or files, or secretes any funds in this State of a subversive organization or a foreign subversive organization, knowing said organization to be such.

(2) Any person who violates any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned in the penitentiary for not less than one year nor more than twenty years, or both.

History.—Comp. §2, ch. 28221, 1953.

876.24 Membership in subversive organization; penalty.—It shall be a felony for any person after the effective date of this law to become, or after July 1, 1953, to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person convicted of violating this section shall be fined not more than five thousand dollars, or imprisoned in the penitentiary for not less than one year nor more than five years, or both.

History.—Comp. §3, ch. 28221, 1953.

876.25 Persons convicted under §§876.23, 876.24 not to hold office or vote.—Any person convicted by a court of competent jurisdiction of violating any of the provisions of §§876.23, 876.24, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(1) Holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(2) Filing or offering for election to any public office in the state; or

(3) Voting in any election held in this state.

History.—Comp. §4, ch. 28221, 1953.

876.26 Unlawful for subversive organizations to exist or function.—It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved and if it be a corporation organized and existing under the laws of the state a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of Florida.

History.—Comp. §5, ch. 28221, 1953.

876.27 Enforcement of §§876.22-876.31. — The attorney general of the state, all prosecuting attorneys, the secretary of state, and all law enforcement officers of this state shall each be charged with the duty of enforcing the provisions of §§876.22-876.31.

History.—Comp. §6, ch. 28221, 1953.

876.28 Grand jury to investigate violations of §§876.22-876.31.—The judge of any court exercising general criminal jurisdiction when in his discretion it appears appropriate, or when informed by the attorney general that there is information or evidence of the character described in §876.27 to be considered by the grand

jury, shall charge the grand jury to inquire into violations of § § 876.22-876.31 for the purpose of proper action, and further to inquire generally into the purposes, processes and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons.

History.—Comp. §7, Ch. 28221, 1953.

876.29 Subversive person prohibited from holding office or employment.—No subversive person, as defined in §876.22, shall after conviction be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision of this state.

History.—Comp. §8, ch. 28221, 1953.

876.30 Subversive person not to be candidate for election.—No person shall become a candidate nor shall be certified by any political party as a candidate for election to any public office created by the constitution or laws of this state if he has ever been tried and convicted as a subversive person as defined in §876.22.

History.—Comp. §9, ch. 28221, 1953.

876.31 Short title; § § 876.22-876.30. — Sections 876.22-876.30 may be cited as the subversive activities law.

History.—Comp. §10, ch. 28221, 1953.

CHAPTER 877

MISCELLANEOUS CRIMES

877.01 Instigation of litigation; penalty.—(1) Whoever gives, promises, offers or conspires to give, promise or offer, to anyone any bribe, money, goods, presents, reward or any valuable thing whatsoever with the intent and purpose of stirring up strife and litigation; or with intent and purpose of assisting, seeking out, influencing, or advising the accused, sick, injured, uninformed, or others to bring suit or seek professional legal services or advice, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail not to exceed 6 months, or by both such fine and imprisonment.

(2) Whoever, in any way, solicits, receives or accepts or agrees to receive or accept, or who conspires to receive or accept, any bribe, money, goods, presents, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with the intent and purpose of stirring up strife and litigation; or with the intent or purpose of seeking out, influencing, assisting or advising the accused, sick, injured, uninformed or others to bring suit, or seek professional legal services, counsel or advice, shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail not exceeding 6 months or by fine not exceeding $500, or by both such fine and imprisonment.

(3) Any person violating the provisions of this section shall not be privileged from testifying, but if he does testify in response to a subpoena issued by the state attorney, prosecuting attorney, or court having jurisdiction of such offense, nothing said by him in his testimony shall be admissible in any civil or criminal action against him, nor shall he be subjected to any penalty or forfeiture for or on account of any such testimony or evidence so given or produced.

(4) Nothing herein shall apply to the division of legal fees by and between attorneys at law.

(5) This section shall be taken to be cumulative and shall not be construed to amend or repeal any other valid law, code, ordinance, rule, or penalty now in effect.

History.—§§1-5, ch. 59-381.

877.02 Solicitation of legal services or retainers therefor; penalty.—

(1) It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal service, or to make it a business to solicit or procure such business, retainers or agreements; provided, however, that nothing herein shall prohibit or be applicable to banks, trust companies, lawyer reference services, legal aid associations, lay collection agencies, railroad companies, insurance companies and agencies, and real estate companies and agencies, in the conduct of their lawful businesses, and in connection therewith and incidental thereto forwarding legal matters to attorneys at law when such forwarding is authorized by the customers or clients of said businesses and is done pursuant to the canons of legal ethics as pronounced by the supreme court of Florida.

(2) It shall be unlawful for any person in the employ of or in any capacity attached to any hospital, sanitarium, police department, wrecker service or garage, prison or court, or for a person authorized to furnish bail bonds, investigators, photographers, insurance or public adjusters, to communicate directly or indirectly with any attorney or person acting on said attorney's behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal business or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

(3) Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $500 or by imprisonment in the county jail not to exceed 6 months, or by both such fine and imprisonment.

(4) This section shall be taken to be cumulative and shall not be construed to amend or repeal any other valid law, code, ordinance, rule, or penalty now in effect.

History.—§§1-4, ch. 59-391.

877.03 Breach of the peace; disorderly conduct.—Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor, and subject to punishment as provided by law.

History.—§1, ch. 59-325.

877.04 Tattooing of minors less than eighteen unlawful; penalty.—

(1) It is unlawful for any person to tattoo the body of a human less than eighteen years of age.

(2) Any person who violates the provisions

of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than $500 or imprisonment not to exceed 6 months, or by both such fine and imprisonment.

History.—§§1, 2, ch. 59-439.

877.05 Killing young veal for sale; penalty; exception.—Whoever kills or causes to be killed for the purpose of sale, any calf less than four weeks old, and knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, shall be punished by fine of not exceeding $200; provided, this section shall not apply to calves slaughtered on the premises of meat packing or slaughtering establishments operating under state or federal meat inspection supervision.

History.—Sub. §9, §2, ch. 1637, 1868; RS 2661; GS 3590; RGS 5519; CGL 7684; §1, ch. 59-150; transferred from §585.42, 1959.

TITLE XLV

CRIMINAL PROCEDURE

CHAPTER 901

ARRESTS

901.01 Judicial officers to be committing magistrates.—All judicial officers of this state shall be conservators of the peace and committing magistrates, and may issue warrants against persons charged on oath with violating the criminal laws of the state, and may commit offenders to jail or recognize them to appear before the proper court at the next ensuing term thereof to answer the charge, or may discharge them from custody, according to the circumstances of the case and may require sureties of the peace when the same has been violated or threatened. When a complaint is made to a magistrate that an offense has been committed within his jurisdiction, he shall examine on oath the complainant and any witnesses he may produce.

History.—§1, ch. 19554, 1939; CGL 1940 Supp. 8663(1).
cf.—§932.38, Parent or guardian to be notified before trial of offense against minor.

901.02 When warrant of arrest to be issued.—A warrant may be issued, for the arrest of the person complained against if the magistrate, from the examination of the complainant and the other witnesses, if any, has reasonable ground to believe that any offense was committed within his jurisdiction and that the person against whom the complaint was made committed it; provided, however, that a warrant may be issued by said magistrate for the arrest of the person complained against, upon presentation to him of affidavits sworn to by the complaining witness or witnesses before the prosecuting attorney, provided such prosecuting attorney is authorized to administer oaths as a notary public or otherwise.

History.—§2, ch. 19554, 1939; CGL 1940 Supp. 8663(2).

901.03 Form and contents of warrant.—The warrant of arrest shall:

(1) Be in writing and in the name of the state;

(2) Set forth substantially the nature of the offense;

(3) Command that the person against whom the complaint was made be arrested and brought before the magistrate issuing the warrant or, if he be absent or unable to act, before the nearest or most accessible magistrate in the same county;

(4) Specify the name of the person to be arrested or, if his name is unknown to the magistrate, designate such person by any name or description by which he can be identified with reasonable certainty;

(5) State the date when issued and the county and justice district where issued;

(6) Be signed by the magistrate with the title of his office; and

(7) In all offenses bailable as of right be indorsed with the amount of bail and the return day on the back of the warrant.

History.—§3, ch. 19554, 1939; CGL 1940 Supp. 8663(3).

901.04 Direction and execution of warrant.—The warrant shall be directed to all and singular the sheriffs and constables of the

state. It shall be executed only by a sheriff or constable of the county in which the arrest is made, unless the arrest is made in hot pursuit, in which event it may be executed by any sheriff or constable who is advised of the existence of said warrant. An arrest may be made on any day and at any time of the day or night.

History.—§4, ch. 19554, 1939; CGL 1940 Supp. 8663(4).
cf.—§821.32, Trespasser may be arrested on Sunday without warrant.

901.05 Procedure when warrant defective.—(1) No warrant of arrest shall be quashed or abated nor shall any person in custody for an offense be discharged from custody because of any informality in the warrant, but the warrant may be amended, so as to remedy any informality.

(2) If during the preliminary examination of any person who has been arrested for the commission of an offense it appears to the magistrate conducting the examination that the warrant of arrest does not properly name or describe the person arrested or does not properly set forth the nature of the offense for which he was arrested or that although not guilty of the offense specified in the warrant he is guilty of some other offense, the magistrate shall not discharge such person, but shall forthwith issue a new warrant for his arrest upon proper affidavit being made.

History.—§5, ch. 19554, 1939; CGL 1940 Supp. 8663(5).

901.06 Duty of officer after arresting with warrant.—When the arrest by virtue of a warrant occurs in the county where the alleged offense was committed and where the warrant was issued, the officer making the arrest shall without unnecessary delay take the person arrested before the magistrate who issued the warrant or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county.

History.—§6, ch. 19554, 1939; CGL 1940 Supp. 8663(6).

901.07 Admission to bail when arrest occurs in another county.—(1) When the arrest by virtue of a warrant occurs in a county other than that in which the alleged offense was committed and the warrant issued, if the person arrested is bailable as of right in respect of the offense set forth in the warrant, the officer making the arrest shall, upon being so requested by the person arrested, take him before a magistrate or other official of such county having authority to admit to bail for such offense, who shall admit him to bail for his appearance before the magistrate who issued the warrant.

(2) If the person arrested is not bailable as of right in respect of the offense set forth in the warrant, or if, on the admission to bail of the person arrested, bail is not forthwith given, the officer who made the arrest or the officer having the warrant, shall take the person arrested before the magistrate who issued the warrant.

History.—§7, ch. 19554, 1939; CGL 1940 Supp. 8663(7).

901.08 Issue of warrant when offense triable in another county.—(1) When a complaint is made before a magistrate of the commission of an offense which is punishable by death or imprisonment for more than five years and is triable in another county of the state, but it appears that the person against whom the complaint is made is in the county where the complaint is made, the same proceedings for the issuing of a warrant shall be had as prescribed in this chapter, except that the warrant shall require the person, against whom the complaint is made, to be taken before a named or otherwise designated magistrate of the county in which the offense is triable.

(2) If the person arrested is bailable as of right in respect of the offense set forth in the warrant, the officer making the arrest, shall, upon being so requested by the person arrested, take him before a magistrate or other official, having authority to admit to bail for such offense, of the county in which the arrest is made, who shall admit him to bail for his appearance before the magistrate named or otherwise designated in the warrant.

(3) If the person arrested is not bailable as of right in respect of the offense set forth in the warrant, or if, on the admission to bail of the person arrested, bail is not given, the person arrested shall be taken before the magistrate named or otherwise designated in the warrant.

History.—§8, ch. 19554, 1939; CGL 1940 Supp. 8663(8).

901.09 When summons shall be issued.—(1) Where the complaint is for the commission of an offense which the magistrate is empowered to try summarily he shall issue a summons instead of a warrant of arrest, unless he has reasonable ground to believe that the person against whom the complaint was made will not appear upon a summons, in which case he shall issue a warrant of arrest.

(2) Where the complaint is for a misdemeanor, which the magistrate is not empowered to try summarily, he shall issue a summons instead of a warrant of arrest, if he has reasonable ground to believe that the person against whom the complaint was made will appear upon a summons.

(3) The summons shall set forth substantially the nature of the offense, and shall command the person against whom the complaint was made to appear before the magistrate issuing the summons at a time and place stated therein.

History.—§9, ch. 19554, 1939; CGL 1940 Supp. 8663(9).

901.10 How summons served.—The summons may be served in the same manner as the summons in a civil action.

History.—§10, ch. 19554, 1939; CGL 1940 Supp. 8663(10).
cf.—§47.13, Service of process in civil action.

901.11 Effect of not answering summons.—If the person fails, without good cause, to appear as commanded by the summons, he shall be considered in contempt of court, and may be punished by a fine of not more than twenty

dollars. Upon such failure to appear the magistrate shall issue a warrant of arrest. If after issuing a summons the magistrate becomes satisfied that the person summoned will not appear as commanded by the summons he may at once issue a warrant of arrest.

History.—§11, ch. 19554, 1939; CGL 1940 Supp. 8663(11).

901.12 Summons against corporation.—Upon complaint against a corporation for the commission of an offense, the magistrate before whom the complaint is made shall issue a summons, which shall recite substantially the nature of the offense and shall command the corporation to appear before him at a place stated therein.

History.—§12, ch. 19554, 1939; CGL 1940 Supp. 8663(12).

901.13 Service of summons upon corporation.—The summons for the appearance of a corporation may be served in the manner provided for service upon a corporation in a civil action.

History.—§13, ch. 19554, 1939; CGL 1940 Supp. 8663(13).

901.14 Effect of failure by corporation to answer summons.—If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered by the magistrate if he is empowered to try the offense for which the summons was issued, and he shall proceed to trial and judgment without further process. If the magistrate is not empowered to try the offense he shall proceed as though the corporation had appeared.

History.—§14, ch. 19554, 1939; CGL 1940 Supp. 8663(14).
cf.—§908.03, Failure of a corporation to appear.

901.15 When arrest by officer without warwant is lawful.—A peace officer may without warrant arrest a person:

(1) When the person to be arrested has committed a felony or misdemeanor or violation of a municipal ordinance in his presence. In the case of such arrest for a misdemeanor or violation of a municipal ordinance, the arrest shall be made immediately or on fresh pursuit.

(2) When a felony has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it.

(3) When he has reasonable ground to believe that a felony has been or is being committed and reasonable ground to believe that the person to be arrested has committed or is committing it.

(4) When a warrant has been issued charging any criminal offense and has been placed in the hands of any peace officer for execution.

History.—§15, ch. 19554, 1939; CGL 1940 Supp. 8663(15); am. §1, ch. 21782, 1943.
cf.—§828.03, Cruelty to children; arrest without warrant.
§828.17, Cruelty to animals; arrest without warrant.
§856.03, Arresting vagrant without warrant.
§821.32, Trespasser may be arrested without warrant.

901.16 Method of arrest by officer by virtue of warrant.—When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of arrest and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest, but after the arrest, if the person arrested so requests, the warrant shall be shown to him as soon as practicable.

History.—§16, ch. 19554, 1939; CGL 1940 Supp. 8663(16).

901.17 Method of arrest by officer without warrant.—When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of an offense, or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the officer has opportunity so to inform him, or unless the giving of such information will imperil the arrest.

History.—§17, ch. 19554, 1939; CGL 1940 Supp. 8663(17).

901.18 Officer may summon assistance.—Any officer making a lawful arrest may orally summon as many persons as he deems necessary to aid him in making the arrest. Every person when so requested by an officer shall aid him in making such arrest.

History.—§18, ch. 19554, 1939; CGL 1940 Supp. 8663(18).
cf.—§843.04, Refusing to assist prison officers in arresting escaped convicts.
§843.06, Neglect or refusal to aid peace officers.

901.19 Right of officer to break into building.—(1) An officer, in order to make an arrest either by virtue of a warrant, or when authorized to make such arrest for a felony without a warrant, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance after he has announced his authority and purpose.

(2) Whenever an officer has entered a building in accordance with the provisions herein, he may break open a door or window of the building, if detained therein, when necessary for the purpose of liberating himself.

(3) The sheriff, deputy sheriff, city marshal, constable, or police officer, when any of the implements, devices, or apparatus commonly used for gambling purposes are found in any house, room, booth or other place used for the purpose of gambling, shall seize the same and hold them subject to the discretion of the court, to be used as evidence and afterwards the same shall be publicly destroyed in the presence of witnesses under order of the court to that effect.

History.—§19, ch. 19554, 1939; CGL 1940 Supp. 8663(19).
cf.—§849.05, Finding of gambling implements prima facie evidence of gambling.

901.20 Right to break into building in order to effect release of person making arrest detained therein.—A peace officer or any deputized person, may break open a door or window of any building when necessary for the purpose of liberating a person who entered the building for the purpose of making an arrest.

History.—§20, ch. 19554, 1939; CGL 1940 Supp. 8663(20).

901.21 Search of person arrested; admission in evidence of property found.—(1) When any sheriff, deputy sheriff, or other police

officer in this state shall lawfully arrest any person, the officer making such arrest, or his assistant, may search the person so arrested, and if such search reveals the violation of any law, the officer shall hold such person upon a charge of violating the law, the violation of which has been so revealed, and anything found on such person or in his possession which tends to show the guilt of such person of the violation of law shall be admitted in evidence upon a trial in which such violation is charged, and such violation shall be deemed to be one committed in the presence of the officer.

(2) When any sheriff, deputy sheriff, or other police officer of this state, shall lawfully arrest any person for the violation of the road or speed laws, or for reckless driving, or driving while drunk or intoxicated, and shall find upon making such arrest that such person has unlawfully in his possession or control, concealed weapons, intoxicating liquors or stolen or embezzled property, contrary to law, it shall be deemed to be a violation of the law committed in the presence of the officer so making the arrest, and the officer shall immediately take such person before a magistrate, and upon affidavit, charge such person with the commission of the offense so committed in the presence of the officer, and such person shall thereafter be dealt with as for the commission of such offense. The officer making the arrest, and thereupon finding such person engaged in the violation of the law, may immediately seize all evidence of such violation and give to the person so arrested and so found violating the law of this state an itemized inventory and receipt for the articles seized to be used as evidence, and hold the same to be used at the trial of such person for the violation of the law. The articles so seized shall be deemed to have been seized from a person in the act of violating the law in the presence of the officer making the arrest, and shall be admitted in evidence; provided, the possession of such articles shows or tends to show the person arrested to be guilty of the violation of the law.

History.—§21, ch. 19554, 1939; CGL 1940 Supp. 8663(21).

901.22 Arrest after escape or rescue.—If a person lawfully arrested escapes or is rescued, the person from whose custody he escapes or was rescued or any other officer may immediately pursue and retake him without a warrant at any time and in any place within the state.

History.—§22, ch. 19554, 1939; CGL 1940 Supp. 8663(22).

901.23 Duty of officer after arrest without warrant.—An officer who has arrested a person without a warrant, shall without unnecessary delay take the person arrested before the nearest or most accessible magistrate in the county in which the arrest occurs, having jurisdiction, and shall make before the magistrate a complaint, which shall set forth the facts showing the offense for which the person was arrested; or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county.

History.—§23, ch. 19554, 1939; CGL 1940 Supp. 8663(23).

901.24 Right of attorney to visit person arrested.—Any attorney at law entitled to practice in the courts of this state shall, at the request of the person arrested or of some one acting in his behalf, be permitted, forthwith upon his request, to visit the person arrested and to interview him privately.

History.—§24, ch. 19554, 1939; CGL 1940 Supp. 8663(24).

901.25 Municipal officer, arrest outside corporate limits in fresh pursuit.—When a person violates a municipal ordinance or commits a misdemeanor within any municipality having a population of not less than twenty-five thousand according to the latest official decennial census, or when any police officer of any such municipality has reasonable grounds to believe that a person found within any such municipality has committed or is committing a felony, any such municipal police officer may in fresh and continuous pursuit, whenever necessary to effect the arrest of such person, pursue such person outside of any such municipality to any point within the county in which any such municipality is located, and there arrest him.

History.—§1, ch. 63-515.

CHAPTER 902

PRELIMINARY EXAMINATION

902.01 Duty of magistrate.—When the defendant is brought before the magistrate upon an arrest, either with or without a warrant, on a charge of having committed an offense which the magistrate is not empowered to try and determine, the magistrate shall immediately inform him:

(1) Of the charge against him.

(2) Of his right to the aid of counsel during the preliminary examination,

(3) Of his right to waive such examination, and

(4) Of his right to refuse to testify, and also caution him that in the event he does testify, anything which he says may be used against him in a subsequent proceeding.

History.—§25, ch. 19554, 1939; CGL 1940 Supp. 8663(25).
cf.—§909.04, Accused in custody under Capias.

902.02 Waiver of examination.—(1) The defendant may waive a preliminary examination. If he does waive preliminary examination, the magistrate shall hold him to answer and shall either admit him to bail or commit him to custody.

(2) Notwithstanding a waiver of examination by the defendant, the magistrate, on the demand of the prosecuting attorney, shall examine the witnesses for the state and have their testimony reduced to writing or taken in shorthand by a stenographer. After hearing the testimony, if it appears that there is not probable cause to believe the defendant guilty of any offense, the magistrate shall order that he be discharged.

History.—§26, ch. 19554, 1939; CGL 1940 Supp. 8663(26).

902.03 Sending for counsel.—The magistrate shall allow the defendant a reasonable time to send for counsel and shall, if necessary, postpone the examination for that purpose. He shall also, upon request of the defendant, require an officer to communicate a message to such counsel in the county as the defendant may name. The officer shall with diligence and without cost perform that duty.

History.—§27, ch. 19554, 1939; CGL 1940 Supp. 8663(27).

902.04 Magistrate to proceed with examination unless waived.—(1) If the defendant does not request the aid of counsel, the magistrate shall immediately proceed to examine the case unless the defendant waives examination.

(2) If the defendant requests the aid of counsel the magistrate shall, immediately after the appearance of counsel, or, after waiting a reasonable time therefor, if none appears, proceed to examine the case unless the defendant waives examination.

History.—§28, ch. 19554, 1939; CGL 1940 Supp. 8663(28).

902.05 Postponement of examination.—The magistrate may for good cause postpone the examination. If no postponement is had, the examination shall be completed at one session. No postponement shall be for more than two days, nor shall the postponements in all exceed six days, except for good cause.

History.—§29, ch. 19554, 1939; CGL 1940 Supp. 8663(29).

902.06 Bail after postponement.—Where a postponement is had, unless the defendant is already admitted to bail, the magistrate, if the defendant is bailable as of right and by him, shall admit him to bail for his appearance at the time to which the examination is postponed. If the defendant is not admitted to bail by the magistrate or if bail is not furnished, the magistrate shall commit him to custody for further examination of the case.

History.—§30, ch. 19554, 1939; CGL 1940 Supp. 8663(30).

902.07 Summoning of witnesses.—The magistrate shall issue such process as may be necessary to secure attendance of witnesses within the state, for the state or the defendant.

History.—§31, ch. 19554, 1939; CGL 1940 Supp. 8663(31).
cf.—§932.40, Witnesses, recognizance.
§11, Decl. of rights, const.

902.08 Presence of defendant and cross-examination of witnesses.—All witnesses shall be examined in the presence of the defendant and may be cross-examined.

History.—§32, ch. 19554, 1939; CGL 1940 Supp. 8663(32).

902.09 Examination of witnesses for defendant.—At the conclusion of the testimony for the prosecution the defendant shall, if he so elects, be sworn and testify in his own behalf, and shall in such cases be warned that anything he may say can be used against him at a subsequent trial, and be subject to examination as other witnesses, and whether he testifies or not any witness produced by him shall be sworn and examined.

History.—§33, ch. 19554, 1939; CGL 1940 Supp. 8663(33).

902.10 Exclusion and separation of witnesses.—Prior to the examination of any witness in the cause, the magistrate may and on request of the defendant shall exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

History.—§34, ch. 19554, 1939; CGL 1940 Supp. 8663(34).

902.11 Testimony of witnesses.—At the request of the prosecuting attorney the testimony of the witnesses and of the defendant, if he testifies, shall either be reduced to writing by the magistrate, or under his direction, or be taken in shorthand by a stenographer and transcribed. The magistrate shall give the defendant an opportunity to sign his deposition. If the testimony, or any part thereof, is reduced to writing at the request of the prosecuting attorney, a copy of such testimony, or of the part thereof which has been reduced to writing, shall be furnished free of cost to defendant or his counsel.

History.—§35, ch. 19554, 1939; CGL 1940 Supp. 8663(35).

902.12 When deposition admissible at trial.—In case the defendant testified, his deposition, if signed by him, shall be admissible in evidence against him at the trial without further authentication. Nothing herein contained shall prevent the state from giving evidence at the trial of any admission or confession or other statement by the defendant, made at any time, which by law is admissible as evidence against such person.

History.—§36, ch. 19554, 1939; CGL 1940 Supp. 8663 (36).

902.13 When defendant to be discharged.—After hearing the evidence, if it appears either that an offense has not been committed, or that, if committed, there is not probable cause to believe the defendant guilty thereof, the magistrate shall order that he be discharged.

History.—§37, ch. 19554, 1939; CGL 1940 Supp. 8663(37).

902.14 When defendant to be held to answer; when to be admitted to bail or committed.—If it appears that any offense has been committed and that there is probable cause to believe the defendant guilty thereof, the magistrate shall hold him to answer. If the defendant is bailable as of right by the magistrate, he shall be admitted to bail. If he is not admitted to bail or if sufficient bail is not furnished, the magistrate shall commit him to custody.

History.—§38, ch. 19554, 1939; CGL 1940 Supp. 8663(38).

902.15 Undertaking by witness.—If the defendant is held to answer on any charge of murder, rape, robbery, arson or kidnapping, the magistrate may require each material witness for the state and each material witness for the defendant, if so requested by him, to enter into a written recognizance to appear and testify at the trial of the cause or to forfeit such sum as the magistrate may fix.

History.—§39, ch. 19554, 1939; CGL 1940 Supp. 8663(39).

902.16 When further security may be required.—When the magistrate from the proceedings had before him or from testimony on oath has reasonable ground to believe that any witness who has entered into such recognizance will not appear and testify unless further security is required, he may order the witness to give further security for his appearance, by entering into a written undertaking with such sureties and in such sum as the magistrate may deem proper.

History.—§40, ch. 19554, 1939; CGL 1940 Supp. 8663(40).

902.17 Procedure when witness does not give security.—(1) If a witness required to enter into an undertaking or recognizance to appear to testify, either with or without security, refuses compliance with an order for that purpose, the magistrate shall commit him to custody until he complies or is legally discharged.

(2) If the magistrate requires the witness to give security for his appearance, and the witness is unable to give such security, he may move the court having ultimate jurisdiction to try the defendant, for a reduction of said security.

(3) When it satisfactorily appears by examination on oath of the witness, or any other person, that the witness is unable to give security, the magistrate in the first instance, and the trial court having jurisdiction in the second instance, shall make an order finding such fact, and the witness shall be detained pending application for his conditional examination. Within three days from the entry of the order last mentioned, the witness so detained shall be conditionally examined on behalf of the state or the defendant on application made for that purpose. Such examination shall be by question and answer in the presence of the other party and counsel, and shall be taken down by a court reporter or a stenographer selected by the parties, and reduced to writing. At the completion of the examination, the witness shall be discharged, and his deposition may be introduced in evidence by the defendant at the forthcoming trial, or if the prosecuting attorney and the defendant and his counsel agree, the deposition may be admitted in evidence at the trial, by stipulation. No such deposition shall be admitted on behalf of the state, unless the defendant consents thereto.

(4) If no conditional examination is had within the above mentioned period of three days, the witness so detained shall be forthwith discharged.

(5) A witness so committed shall be entitled to his fees as a witness for the period of his commitment.

History.—§41, ch. 19554, 1939; CGL 1940 Supp. 8663(41).
cf.—§916.05, Continuance on ground of absent witness.

902.18 Transmission of papers by magistrate.—(1) When the magistrate has discharged the defendant, or has held him to answer, he shall transmit without delay to

the clerk of the court having jurisdiction of the offense:

(a) The warrant;

(b) The depositions of the witnesses:

(c) The defendant's deposition, if he testified;

(d) The recognizance or undertaking for the appearance of witnesses;

(e) A copy of the order discharging or holding the defendant;

(f) Every article, writing, money, or other exhibit used in evidence; provided, however, that such articles, writings, moneys, or other exhibits so used in evidence before said magistrate may be returned to the owner thereof upon written order of the judge of the court having jurisdiction to try the defendant.

(2) Any magistrate who refuses or fails to transmit the papers so mentioned, may be ordered to do so by the court having jurisdiction, and in case he disobeys such orders may be held for contempt.

History.—§42, ch. 19554, 1939; CGL 1940 Supp. 8663(42).

902.19 When prosecutor liable for costs.—(1) If any person shall make complaint before a justice of the peace that a crime or misdemeanor has been committed, and if such person be recognized by the justice to appear at the next term of the proper court to give his evidence as to such crime or misdemeanor, on his failure to appear to give such evidence, he shall be liable to the justice for all the costs occasioned by his complaint, and the justice may obtain a judgment and execution for the same as in other cases.

(2) No person who voluntarily appears before any grand jury, or before any prosecuting attorney of any criminal court of record, or any justice of the peace, or any county judge, shall be paid a per diem or mileage as a witness unless the grand jury finds a true bill or the prosecuting attorney files an information, or the justice of the peace or county judge holds the party charged for trial in the case or cases about which said witness appeared to testify, or caused himself to be summoned to testify.

(3) No person who voluntarily appears or has himself summoned before a justice of the peace or county judge, upon the trial of any misdemeanor before such justice or county judge, shall be paid a per diem or mileage as a witness unless the trial results in a conviction of the defendant.

(4) No sheriff, deputy sheriff, constable, deputy constable, highway patrolman, or other person employed or paid by the state or any county thereof as a law enforcement officer, shall be entitled to witness fees or to mileage when summoned to testify in any court sitting in the county in which he holds office, is employed, or has his residence.

History.—§43, ch. 19554, 1939; CGL 1940 Supp. 8663(43).

cf.—§939.09, Sheriff not entitled to constructive mileage.

CHAPTER 903

BAIL, BONDS; BONDSMEN; RUNNERS

903.01 Offenses less than capital.—All persons in custody for the commission of an offense, not capital, shall before conviction be entitled as of right to be admitted to bail, and after conviction bail may be granted at the discretion of either the trial or appellate court.

History.—§44, ch. 19554, 1939; CGL 1940 Supp. 8663(44). Am. §1, ch. 29932, 1955.

cf.—§932.39, Provisions supplementary to this chapter.

903.02 Application for bail denied.—If application for bail is made to an authorized court and denied, no court of inferior jurisdiction shall admit applicant to bail, unless such court of inferior jurisdiction is the court having jurisdiction to try the defendant.

History.—§45, ch. 19554, 1939; CGL 1940 Supp. 8663(45).

903.03 Jurisdiction of trial court to admit to bail.—After a person is held to answer by a magistrate, the court having jurisdiction to try the defendant shall, before indictment or information is filed, have jurisdiction to hear and decide all preliminary motions as to bail and production or impounding of all articles, writings, moneys, or other exhibits expected to be used at the trial by either the state or the defendant.

History.—§46, ch. 19554, 1939; CGL 1940 Supp. 8663(46).

cf.—§925.04, Production and discovery of documents, etc., for inspection or copying.

903.04 Notice of application for admission to bail; subsequent application.—

(1) The court to whom an application for

admission to bail is made, shall in all cases require written notice thereof to be given to the prosecuting attorney of the court having jurisdiction of the offense at least one hour before the hearing, unless notice is waived in writing by such prosecuting attorney.

(2) When a committing magistrate, not possessing trial jurisdiction orders a defendant held to answer before a court having jurisdiction to try defendant, and bail has been denied, or is alleged to be excessive, application by motion may be made to the court having jurisdiction to try the defendant, or in the absence of the judge of said trial court, in counties having a criminal court of record, court of crimes, or both, or either, application may be made to the judge of the circuit court of the county where the crime was committed.

(3) In the event any trial court fixes bail, before trial, the defendant may institute habeas corpus proceedings seeking reduction of bail.

(4) If application is made to the supreme court notice shall be given to the attorney general.

History.—§47, ch. 19554, 1939; CGL 1940 Supp. 8663(47).

903.05 Qualification of sureties. — Each surety for the release of a person on bail, other than a surety company duly authorized by law to act as such surety, shall be a resident of or owner of real estate within the state.

History.—§48, ch. 19554, 1939; CGL 1940 Supp. 8663(48).

cf.—§903.25, Qualification of sureties after order of recommitment.

903.06 Validity of undertaking by minor or married woman.—Minors and married women shall be capable of binding themselves by an undertaking for the purpose of securing their release on bail in like manner and with like effect as persons sui juris.

History.—§49, ch. 19554, 1939; CGL 1940 Supp. 8663(49).

903.07 Persons prohibited from signing undertaking.—No attorney at law and no official authorized to admit to bail, nor any state, or county officer shall become surety on any undertaking.

History.—§50, ch. 19554, 1939; CGL 1940 Supp. 8663(50).

903.08 Sufficiency of sureties.—If there is only one surety he shall be worth the amount specified in the undertaking exclusive of the amount of any other undertaking on which he may be principal or surety, and exclusive of property exempt from execution and over and above all liabilities; if there are several sureties they shall in the aggregate be worth that amount exclusive of the amount of other undertakings, and of the exemptions and liabilities mentioned above.

History.—§51, ch. 19554, 1939; CGL 1940 Supp. 8663(51).

903.09 Justification of sureties.—

(1) Each surety shall justify by affidavit that he possesses the qualifications and sufficiency to become a surety, and in such affidavit shall describe his property, to which he proposes to justify as to his sufficiency, stating the encumbrances thereon, and the number and amount of undertakings, if any, in any court, entered into by him and remaining undischarged. The false making of any such affidavit shall be considered perjury.

(2) Each bondsman as defined in §903.37 (3) shall justify his suretyship by attaching a copy of the power of attorney issued by the company to each bond, or by attaching to the bond United States currency, United States postal money order or cashier's check in the amount of the bond; provided further that the United States currency, United States postal money order or cashier's check cannot be used to secure more than one bond.

History.—§52, ch. 19554, 1939; CGL 1940 Supp. 8663(52). Am. §1, ch. 57-63.

cf.—Ch. 837, Perjury.

903.101 Sureties; licensed persons; to have equal access.—Every surety who meets the requirements pursuant to §§903.05-903.09 and every person who holds a currently effective license issued to such person by the insurance commissioner and registered as required in §903.50 shall be entitled to equal access to the jails of this state for the purpose of making bond, subject to the provisions of this chapter and the rules and regulations adopted and promulgated by the insurance commissioner.

History.—§1, ch. 61-406.

903.12 Bail before conviction; condition of the undertaking.—(1) If a person is admitted to bail for his appearance for a preliminary examination, or on a charge that a magistrate is empowered to try, the condition of the undertaking shall be that he will appear for such examination, or to answer the charge, and will submit himself to the orders and process of the magistrate trying the same, and will not depart without leave.

(2) If he is admitted to bail after he has been held to answer by a magistrate, or after an indictment has been found or an information filed against him, the condition of the undertaking shall be that he will appear to answer the charge before the court in which he may be prosecuted and submit to the orders and process of the court, and will not depart without leave.

History.—§55, ch. 19554, 1939; CGL 1940 Supp. 8663(55).

903.13 Bail on appeal; condition of the undertaking.—If the defendant is admitted to bail, after conviction and upon appeal, the condition of the undertaking shall be:

(1) That he will duly prosecute his appeal;

(2) That he will surrender himself in execution of the judgment or sentence upon its being affirmed or modified, or upon the appeal being dismissed; or in case the judgment is reversed and the cause remanded for a new trial, that he will appear in the court to which said cause may be remanded and submit himself to the orders and process thereof, and will not depart without leave.

History.—§56, ch. 19554, 1939; CGL 1940 Supp. 8663(56).

903.14 Contracts to indemnify sureties.—Every surety for the release of any person on

bail, shall file with the undertaking an affidavit stating whether or not he or any one for his use has been promised or has received any security or consideration for his undertaking, and if so, the nature and amount thereof, and the name of the person by whom such promise was made or from whom such security or consideration was received. Any willful misstatement in such affidavit or any intentional omission to set forth in the affidavit all the security or consideration promised or given shall render the person making it subject to the same prosecution and penalty as one who commits perjury. An action to enforce any indemnity agreement shall not lie in favor of the surety against such indemnitor, except with respect to agreements set forth in such affidavit. In an action by the indemnitor against the surety to recover any collateral or security given by the indemnitor, such surety shall have the right to retain only such security or collateral as is mentioned in the affidavit required above.

History.—§57, ch. 19554, 1939; CGL 1940 Supp. 8663(57).
cf.—§837.01, Perjury.

903.16 Deposit of money or bonds as bail.—When the defendant has been admitted to bail he, or another in his behalf, may deposit with an official authorized to take bail, a sum of money, or nonregistered bonds of the United States, or of the state, or of any county, city or town within the state, equal in market value to the amount mentioned in the order admitting the defendant to bail, together with his personal undertaking, and an undertaking of such other person, if the money or bonds are deposited by another.

When bonds as herein provided are deposited as bail, the consent of the person depositing such bonds to the sale of the bonds deposited, by the clerk of the circuit court after forfeiture of the undertaking, shall be conclusively presumed.

Upon delivery to the official in whose custody the defendant is of a certificate of such deposit, he shall be discharged from custody in the cause.

History.—§59, ch. 19554, 1939; CGL 1940 Supp. 8663(59); §1, ch. 59-353.

903.17 Substitution of cash bail for other bail.—When bail other than a deposit of money or bonds has been given, the defendant or the surety may, at any time before a breach of the undertaking, deposit the sum mentioned in the undertaking, and upon such deposit being made, accompanied by a new undertaking, the original undertaking shall be canceled.

History.—§60, ch. 19554, 1939; CGL 1940 Supp. 8663(60).

903.18 Bail after deposit of money or bonds.—If money or bonds have been deposited, bail by sureties may be substituted therefor at any time before a breach of the undertaking, and the official taking the new bail shall make an order that the money or bonds be refunded to the person depositing the same and they shall be refunded accordingly, and the original undertakings shall be canceled.

History.—§61, ch. 19554, 1939; CGL 1940 Supp. 8663(61).

903.19 Increase or reduction of bail.—The court in which a prosecution is pending may for good cause, after notice, either increase or reduce the amount of bail or require new or additional bail.

History.—§62, ch. 19554, 1939; CGL 1940 Supp. 8663(62).

903.20 Surrender of defendant. — At any time before there has been a breach of the undertaking any surety may surrender the defendant, or the defendant may surrender himself, to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed.

History.—§63, ch. 19554, 1939; CGL 1940 Supp. 8663(63).

903.21 Method of surrender; exoneration of obligors.—(1) The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.

(2) Upon the presentation of a certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, indictment, information or appeal, as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings; and, if money or bonds have been deposited as bail, that such money or bonds be refunded. On filing the order and the papers used in the application all persons bound are thereby exonerated, and if money or bonds have been deposited as bail, such money or bonds shall be refunded.

History.—§64, ch. 19554, 1939; CGL 1940 Supp. 8663(64).

903.22 Arrest of principal by surety before forfeiture.—For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or, by written authority indorsed on a certified copy of the undertaking, may empower any peace officer to make arrest, first paying the lawful fees therefor.

History.—§65, ch. 19554, 1939; CGL 1940 Supp. 8663(65).

903.23 Arrest and commitment by court.—The court in which the cause is pending, or a judge thereof, may, by an order entered in the minutes of the court, direct the arrest of the defendant who is at large on bail, and his commitment, in the following cases:

(1) When there has been a breach of the undertaking;

(2) When it appears that his sureties or any of them are dead or cannot be found or are insufficient or have ceased to be residents of the state;

(3) When the court or judge is satisfied that the bail should be increased or new or additional security required;

(4) When an indictment has been found against the defendant for an offense in respect of which he is not bailable.

The order for the commitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any official authorized to make arrests, and that the defendant be committed to the official in whose custody he would be had he not given bail, to be detained by such official until legally discharged.

The defendant shall be arrested pursuant to such order upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest.

If the order provided for is made because of the failure of the defendant to appear for judgment or because an indictment has been found against him for an offense in respect of which he is not bailable, the defendant shall be committed.

If the order is made for any other cause and the defendant is bailable the court or judge may fix the amount of bail and direct in the order that the defendant be admitted to bail in the sum fixed, which sum shall be specified in the order.

History.—§66, ch. 19554, 1939; CGL 1940 Supp. 8663(66).

903.24 Bail after recommitment. — If the defendant applies to be admitted to bail after recommitment and he is bailable, he may be admitted to bail by the court which recommitted him.

History.—§67, ch. 19554, 1939; CGL 1940 Supp. 8663(67).

903.25 Qualifications of surety after order of recommitment.—If the defendant offers bail after recommitment, each surety shall possess the qualifications and sufficiency, and the bail shall be furnished in all respects in the manner prescribed for admission to bail before recommitment.

History.—§68, ch. 19554, 1939; CGL 1940 Supp. 8663(68).

903.26 Forfeiture of the undertaking; when and how directed; discharge; how and when made; effect of payment.—

(1) Before a bail undertaking is forfeited it shall be shown that (a) the information or indictment was filed within six months from the date of arrest, and (b) the bondsman or surety was given notice seventy-two hours or more before the time of required appearance of the defendant, unless the time of required appearance was within a period of seventy-two hours from the time of arrest or unless a specific time of appearance was stated on the face of the bond.

(2) If there is a breach of the undertaking, the state or municipal court before which the cause is pending shall make a record thereof, and shall declare the undertaking, and any money or bonds that have been deposited as bail forfeited. The forfeiture shall be paid within thirty days of the date of forfeiture, provided the forfeiture has not been previously discharged.

(3) Thirty days after the forfeiture;

(a) All state and county officials having in their custody moneys deposited as bail, which has been forfeited, shall turn such moneys over to the county to be deposited in the county fine and forfeiture fund, provided the forfeiture has not been previously discharged;

(b) All municipal officials having in their custody moneys deposited as bail, which has been forfeited, shall turn such moneys over to the municipality to be deposited in a designated municipal fund, provided the forfeiture has not been previously discharged.

(4) Thirty days after forfeiture, all officials having in their custody bonds as authorized by §903.16, shall turn such bonds over to the clerk of the circuit court who shall immediately sell such bonds at market value, and the proceeds of such sale shall be disbursed to the county or municipality for deposit as provided in subsection (3), provided the forfeiture has not been previously discharged. The fee of the clerk of the circuit court in connection with each such sale shall be $3.50.

(5) (a) Upon said undertaking being forfeited, the clerk of the trial court shall immediately transmit the undertaking and any affidavits to the clerk of the circuit court of the county in which said undertaking and affidavits are filed, who shall record the same in the deed book of said county. If said undertaking and affidavits describe real property in another county, the clerk of the trial court shall transmit said undertaking and affidavits to the clerk of the circuit court of such other county, who shall likewise record same, and return said undertakings and affidavits to said first mentioned clerk. The undertaking and affidavits shall be a lien on any real property described in the same, from the time of the recording thereof in the county in which the property is situated. Upon the filing of an order by the court having jurisdiction with the clerk of the circuit court of the county where the property is situated, canceling the undertaking, the lien shall be discharged.

(b) The undertaking and affidavits shall be a lien on any real property described in the same for a period of two years from the time of the recording thereof in the county in which the property is situated, and thereafter until the final determination of any action or suit brought thereon instituted within such two year period. If no action is instituted within two years from date of recording, the lien shall stand discharged. After the expiration of two years from the date on which the undertaking and affidavits were recorded the same shall not continue a lien even though an action or suit is instituted unless in connection with the institution

of such action or proceeding a lis pendens notice is filed and recorded.

(6) At any time within thirty days from the date of forfeiture, the court before which the cause is pending upon a proper showing:

(a) Of a satisfactory explanation of the breach of the undertaking; or

(b) That the defendant was at the time of required appearance adjudicated insane and confined and is still confined in an institution or hospital; or

(c) That the defendant has been surrendered to the official in whose custody he was at the time bail was taken or to the official into whose custody he would have been given had he been committed provided that the failure to sooner apprehend or return the defendant has not defeated the ends of justice or thwarted the successful prosecution of the defendant,

the court shall direct that the forfeiture of the undertaking be discharged, or if the forfeiture has been paid, shall direct that remission of the forfeiture be made to the surety; provided that the court may require, as a condition to discharge or remission, the payment of costs and expenses incurred.

(7) The payment by a bondsman or surety of a forfeiture under the provisions of this chapter shall have the same effect as to a contract of indemnity as the payment of a judgment.

History.—§69, ch. 19554, 1939; CGL 1940 Supp. 8663(69); (1) by §1, ch. 59-354; §2, ch. 61-406.

cf.—§932.45, Calling of sureties upon breach of undertaking.
§932.46, Certificate of judge setting forth breach of conditions, etc.
§843.15, Unlawful to forfeit bail bond; penalty.

903.27 Forfeiture to judgment.—If the forfeiture is not paid or discharged within thirty days from the date of forfeiture and the undertaking is one secured otherwise than by a deposit of money or bonds as authorized by §903.16, the prosecuting attorney of the court ordering the forfeiture or the state attorney on behalf of justice of peace courts or other courts not having a prosecuting attorney shall immediately file a certified copy of the order of the court ordering such forfeiture in the office of the clerk of the circuit court of the county wherein such order shall have been made, and thereupon said clerk shall enter a judgment against the person bound by the undertaking for the amount of the penalty of said undertaking and shall issue execution thereon. Upon the entry of such judgment, the clerk of the circuit court where such judgment is entered shall give notice to the surety company thereof within ten days by furnishing the surety company at its home office a certified copy of said judgment. If said judgment is not paid within sixty days the clerk of the circuit court where such judgment is entered shall give notice to the insurance commissioner by furnishing two certified copies of said judgment together with a certificate showing said judgment remains unsatisfied, whereupon the insurance commissioner shall proceed pursuant to §627.0126.

History.—§70, ch. 19554, 1939; CGL 1940 Supp. 8663(70). §3, ch. 61-406.

903.271 No remission of judgment.—Under this chapter no remission shall be made where a forfeiture has been reduced to judgment.

History.—§24, ch. 61-406.

903.28 Remission of forfeiture; conditions.—After the payment of the forfeiture the court before which the case is pending may, for reasonable cause shown, within six months of the date of forfeiture, direct a remission of forfeiture in whole or in part upon such terms as are just; and shall direct a remission of forfeiture if it shall appear there was no breach of the undertaking or the defendant was at the time of required appearance adjudicated insane and confined and is still confined in an institution or hospital; provided, however, if the bail bondsman or his surety company shall apprehend the defendant whose failure to appear or to fulfill his bond contract which resulted in the forfeiture of the undertaking and cause him to be returned to the custody of the official in whose custody he was at the time bail was taken or official into whose custody he would have been given had he been committed, within six months from the date of forfeiture, said forfeiture shall be refunded, except where the trial court shall find that the failure to sooner apprehend or return the defendant has defeated the ends of justice and thwarted the successful prosecution of the defendant.

History.—§71, ch. 19554, 1939; CGL 1940 Supp. 8663(71); §2, ch. 59-354; §4, ch. 61-406.

903.29 Arrest of principal by surety or bail bondsmen after forfeiture.—At any time within six months from the date of forfeiture of undertaking which has been paid, the bail bondsman or surety may arrest the principal for the purpose of surrendering him to the official in whose custody he was at the time bail was taken or the official into whose custody he would have been given had he been committed.

History.—§72, ch. 19554, 1939; CGL 1940 Supp. 8663(72); §1, ch. ch. 59-192; §5, ch. 61-406.

903.30 Application for remission of forfeitures; how made and on what terms granted.—Application under §903.28 shall be accompanied by affidavits setting forth the facts on which it is founded. The prosecuting attorney for the court ordering the forfeiture shall be furnished with a copy of the application, the accompanying affidavits, and any other paper upon which the application is founded, together with notice of hearing on said application at least five days prior to said hearing on the application. The application shall be granted only upon the payment of the costs and expenses incurred in the proceeding for the enforcement of the forfeiture, unless it is granted on the ground that there was no breach of the undertaking.

History.—§73, ch. 19554, 1939; CGL 1940 Supp. 8663(73) §6, ch. 61-406.

903.31 Canceling the undertaking. — When the condition of the undertaking is satisfied or the forfeiture of the undertaking has been discharged or remitted the court shall make an order canceling the undertaking. Conviction or acquittal of the defendant shall satisfy the terms of the undertaking written by any bail bondsman, except where the court shall in the judgment of conviction or acquittal otherwise provide.

History.—§74, ch. 19554, 1939; CGL 1940 Supp. 8663(74); §2, ch. 59-192.

903.32 Defects in undertaking. — (1) No undertaking shall be invalid, nor shall any person be discharged from his undertaking, nor a forfeiture thereof be stayed, nor shall judgment thereon be stayed, set aside or reversed, or the collection of any such judgment be barred or defeated by reason of any defect of form, omission of recital or of condition, failure to note or record the default of any principal or surety, or because of any other irregularity, or because the undertaking was entered into on Sunday or other holiday, if it appear from the tenor of the undertaking before what magistrate or at what court the principal was bound to appear, and that the official before whom it was entered into was legally authorized to take it and the amount of bail is stated.

(2) If no day is fixed for the appearance of the defendant, or an impossible day, or a day in vacation, the undertaking, if for his appearance before a magistrate for a hearing, shall bind the defendant to appear in ten days from the receipt of notice so to do by the defendant, his counsel, or any surety on the undertaking; and if for his appearance in a court for trial, shall bind the defendant so to appear on the first day of the next term of the court which shall commence more than three days after the giving of the undertaking.

History.—§75, ch. 19554, 1939; CGL 1940 Supp. 8663(75).

903.33 Bail not discharged for certain defects.—The liability of a person on an undertaking shall not be affected by reason of the lack of any qualifications, sufficiency or competency provided in the criminal procedure law, or by reason of any other agreement than that expressed in the undertaking, or because the defendant has not joined in the undertaking.

History.—§76, ch. 19554, 1939; CGL 1940 Supp. 8663(76).

903.34 Who may admit to bail.—(1) Except as otherwise provided in the criminal procedure law, admission to bail at any stage of the proceedings shall be made by the same official now authorized by law in this state to admit to bail at a similar stage.

(2) In all criminal cases instituted or pending in the courts of county judges or justices of the peace or other committing magistrates, all bonds given by defendants therein at any time before the trial, shall be approved by the sheriff, county judge, justice of the peace, or other judge trying the case, as the case may be; and all bonds given by defendant after preliminary hearing shall be approved by the sheriff, county judge, justice of the peace or other committing magistrates, except appeal bonds which in the county judge or justice of the peace court shall be approved by such county judge or justice of the peace; and in appeals from the circuit court, court of crimes, criminal courts of records, or other courts having a clerk, the bond may be approved by the judge or the clerk of the court.

History.—§77, ch. 19554, 1939; CGL 1940 Supp. 8663(77).
cf.—§903.03, Allowance of bail by trial court.

903.35 Officer taking insufficient bail.—Any official who takes bail, which he knows to be insufficient, or accepts a surety in an undertaking knowing such surety not to possess the qualifications or sufficiency required by law, or accepts as surety any professional bondsman who is not duly registered with the clerk of the circuit court, and qualified to act as surety, shall be guilty of a misdemeanor, and upon conviction, shall be imprisoned not exceeding thirty days or fined not exceeding one hundred dollars, and may be removed from office by the governor.

History.—§78, ch. 19554, 1939; CGL 1940 Supp. 8663(78).
cf.—§775.06, Alternative punishment.

903.36 Guaranteed arrest bond certificates as cash bail.—Any guaranteed arrest bond certificate with respect to which a surety company has become surety, as provided in §627.0907, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed two hundred dollars, as a bail bond, to guarantee the appearance of such person in any court, including municipal courts, in this state, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate; provided, that any such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as set forth in Chapter 903 as it now exists or may hereafter be amended, and that any such guaranteed arrest bond certificate posted as a bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the charter or ordinance of the particular municipality pertaining to bail bonds posted.

History.—Comp. §2, ch. 26897, 1951.

903.37 Definitions for §§903.38-903.58.—The following words when used in §§903.38-903.58 shall have the meanings respectively ascribed to them in this section:

(1) "Commissioner" shall mean the state treasurer as ex officio insurance commissioner.

(2) "Insurer" shall mean any domestic, for-

eign or alien surety company which has qualified to transact surety business in this state.

(3) "Bail bondsman" shall mean a limited surety agent or a professional bail bondsman as hereafter defined.

(4) "Limited surety agent" shall mean any individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and receives or is promised money or other things of value therefor.

(5) "Professional bondsman" shall mean any person who pledges United States currency, United States postal money orders, or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

(6) "Runner" shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or employed by the bail bondsman to assist in the apprehension and surrender of defendant to the court, or keeping the defendant under necessary surveillance. This does not affect the right of a bail bondsman to hire counsel, or to ask assistance of law enforcement officers.

History.—§1, ch. 29621, 1955; (5) by §2, ch. 57-63.

903.38 State treasurer designated insurance commissioner.—

(1) The commissioner shall have full power and authority to administer the provisions of §§903.37-903.58, which regulate bail bondsmen and runners, and to that end, to adopt and promulgate rules and regulations pursuant to §624.0107 of the insurance code, and enforce rules and regulations necessary and proper to effectuate and enforce the purposes and provisions of said sections. The commissioner may employ and discharge such employees, examiners, counsel, and such other assistants as shall be deemed necessary, and he shall prescribe their duties, and their compensation shall be the same as other state employees receive for similar services.

(2) The commissioner shall adopt a seal by which his proceedings are authenticated. Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the commissioner, or any record of the commissioner authenticated under the hand of the commissioner by the seal, shall be accepted by all the courts of this state as prima facie evidence of the contents thereof.

(3) The commissioner's papers, documents, reports or evidence shall not be subject to subpoena without his consent until after the same shall have been published at a hearing held under said sections, unless after notice to the commissioner and hearing, the court shall determine that the commissioner shall not be unnecessarily hindered or embarrassed.

History.—§2, ch 29621, 1955; (1) a. by §7, ch. 61-406.

903.39 Licenses; general.—

(1) No license shall be issued except in compliance with this chapter and none shall be issued except to an individual. A firm, partnership, association, or corporation, as such, shall not be licensed.

(2) For the protection of the people of this state, the commissioner shall not issue nor renew, nor permit to exist any license except in compliance with this chapter. The commissioner shall not issue nor renew, nor permit to exist a license for any individual found to be untrustworthy or incompetent, or who has not established to the satisfaction of the commissioner that he is qualified therefor in accordance with this chapter.

(3) The commissioner may propound any reasonable interrogatories to an applicant for a license under this chapter or on any renewal thereof, relating to his qualifications, residence, prospective place of business, and any other matters which, in the opinion of the commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The commissioner may also conduct any reasonable inquiry or investigation he sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

(4) If upon the basis of the completed application for a license and such further inquiry or investigation the commissioner deems the applicant to be unfit as to character and background or lacking in one or more of the required qualifications for the license, the commissioner shall disapprove the application and notify the applicant thereof, stating the grounds for disapproval.

(5) (a) The license of a limited surety agent and a professional bail bondsman shall continue in force, without further examination unless deemed necessary by the commissioner, until suspended, revoked or otherwise terminated but subject to annual continuation by the insurer or professional bondsman named therein on or before September 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in §903.41 and miscellaneous fees as prescribed in §624.0300 of the insurance code.

(b) The license of a bail bond runner shall continue in force until expired, suspended, revoked or otherwise terminated but subject to annual continuation by the appointing limited surety agent or professional bondsman named therein on or before September 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in §903.41 and miscellaneous fees as prescribed in §624.-0300 of the insurance code.

(6) Any such license as to which request for renewal or continuation is not received by the commissioner at his offices at Tallahassee as required by subsection (5) above, shall be deemed to have expired as at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the commissioner

after such September 1 but on or before the next following October 15 may be accepted and effectuated by the commissioner, in his discretion; and any such request and payment received by the commissioner after such October 15 and on or before the next following November 15, may be accepted and effectuated by the commissioner, in his discretion, only if accompanied by an additional license continuation fee in the amount of $5.00.

(7) The original license certificate issued to any such licensee shall remain outstanding and in effect for so long as the license represented thereby continues in force as hereinabove provided.

(8) Any person who represents a surety company and whose duties are restricted to bail bonds only but who comes under the definition of service representative as provided in §626.081 of the insurance code may be licensed as a bail bondsman provided such person meets the qualification requirements of this chapter. Provided further, such person must either be licensed as a bail bondsman or qualify as a service representative and shall engage in such activities as provided in §§626.081, 626.0117 and 626.0118.

History.—§3, ch. 29621, 1955; (6) by §1, ch. 59-326; (4)-(6) a., (7), (8) n. by §8, ch. 61-406.

903.40 License required.—No person shall act in the capacity of a professional bail bondsman, limited surety agent, or runner, or perform any of the functions, duties or powers prescribed for bail bondsmen or runners under the provisions of this chapter unless that person shall be qualified and licensed as provided in this chapter.

History.—Comp. §4, ch. 29621, 1955.

903.41 License tax and fee.—

(1) The commissioner shall collect in advance all license taxes and fees for the issuance of any license to a bail bondsman, limited surety agent, or runner, as follows:

(a) Original license:

Appointment fee	$1.00	
State license tax	$6.00	
County license tax	$3.00	
Total		$10.00

(b) Annual renewal or continuation of license:

Appointment fee	$1.00	
State license tax	$6.00	
County license tax	$3.00	
Total		$10.00

(2) The commissioner shall deposit all license taxes and fees in such funds and for such uses as is provided by laws applicable to like license taxes and like fees in the case of general lines agents.

History.—§5, ch. 29621, 1955; §2, ch. 59-326.

903.411 Effective date and initial period of license.—

(1) All licenses as to which all requisite applications, payment of fees and taxes, passing of examinations, and waiting periods have been completed and evidence thereof in the customary form received by the commissioner at his office in Tallahassee within one calendar month prior to the expiration of the applicable license year then current or within one calendar month after the commencement of the next following new license year, shall be dated and be effective as of the first day of such new license year and shall be as for the entire such license year (subject to suspension, revocation, renewal, continuation, or termination as otherwise provided for in this chapter); but such a license, if issued pursuant to qualification therefor during the last calendar month of the preceding license year as hereinabove provided, shall be deemed to relate back in effectiveness to the date within such calendar month on which the last of such qualifying requirements was received by the commissioner at his offices in Tallahassee.

(2) All other licenses shall be dated and become effective as of the date of issue.

History.—§3, ch. 59-326.

903.42 Bail bond rates.—Bail bond rates shall be subject to the provisions of part I of chapter 627 of the insurance code. It shall be unlawful for a bail bondsman to execute a bail bond without charging a premium therefor and the premium rate shall not exceed nor be less than the premium rate as filed with and approved by the commissioner.

History.—§6, ch. 29621, 1955; §4, ch. 59-326.

903.43 Bail bondsmen; qualifications.—

(1) Application for filing for examination for bail bondsmen shall be submitted on forms furnished by the commissioner.

(2) To qualify as a bail bondsman it must affirmatively appear:

(a) Applicant is a natural person who has reached the age of twenty-one years.

(b) Applicant is a citizen of the United States; has been a bona fide resident of the state for one year last past and will actually reside in this state at least six months out of each year.

(c) That the place of business of the applicant will be located in this state and that such applicant will be actively engaged in the bail bond business and maintain a place of business accessible to the public.

(d) No applicant for a license as a limited surety agent or professional bondsman shall be qualified therefor or be so licensed unless within the two years immediately preceding the date his application for license is filed with the commissioner, he has:

1. Successfully completed a correspondence course for bail bondsmen approved by the commissioner; or

2. He has been engaged as a licensed runner for a period of one year; or

3. He has held a valid general lines agent's license for one year; or

4. He has had at least one year with responsible duties as a substantial fulltime bona

fide employee of a licensed agent, professional bondsman or an insurer engaged in writing bail bonds in which field he has specialized.

(e) Applicant shall be vouched for and recommended upon sworn statements by at least three bail bondsmen licensed by the commissioner, or three other reputable citizens who are residents of the same counties in which applicant proposes to engage in the bail bond business.

(f) Applicant shall be a person of high character and approved integrity.

(3) A fee of ten dollars shall be submitted to the commissioner with each application which shall be credited in a continuing fund created in the state treasury designated "insurance commissioner's miscellaneous service trust fund." Such fee to defray the cost of conducting character investigations of applicants.

(4) Applicant shall furnish with his application, a complete set of his fingerprints and a recent credential-size full face photograph of himself. The applicant's fingerprints shall be certified by an authorized law enforcement officer.

History.—§7, ch. 29621, 1955; (2)(d), (3) by §5, ch. 59-326. (1), (2)(c), (d) a. by §9, ch. 61-406; (3) a. by §2, ch. 61-119.

903.44 Professional bondsmen; qualifications.—In addition to the qualifications prescribed in §903.43, to qualify as a professional bondsman an applicant shall:

(1) File with his application for filing for examination and with each application for renewal or continuation of his license a detailed financial statement under oath; and

(2) File with his application for filing for examination the rating plan he proposes to use in writing bail bonds; such rating plan must be approved prior to issuance of the license.

History.—§8, ch. 29621, 1955; §10, ch. 61-406.

903.441 Bail bondsman's records.—

(1) Every bail bondsman must maintain in his office such records of bail bonds executed or countersigned by him to enable the public to obtain all necessary information concerning such bail bonds for at least one year after the liability of the surety has been terminated.

(2) On or before August 15 of each year, a sworn statement on a form furnished by the insurance commissioner shall be filed with the commissioner by:

(a) Every bail bondsman listing his assets and liabilities, and

(b) Every bail bondsman or every firm or agency if the bail bondsman is employed by, associated with or is a member of such firm or agency, listing every outstanding or unpaid forfeiture, estreature and judgment, together with the name of the court in which such forfeiture, estreature and judgment is recorded, and submitting all other pertinent information requested by the insurance commissioner.

History.—§11, ch. 61-406.

903.45 Runners; qualifications.—To qualify as a runner:

(1) It must affirmatively appear from the application:

(a) That the applicant is a natural person who has reached the age of twenty-one years.

(b) That the applicant is a citizen of the United States; has been a bona fide resident of this state for more than six months last past.

(c) That the applicant will be employed by only one bail bondsman, who will supervise the work of the applicant, and be responsible for the runner's conduct in the bail bond business.

(d) The application must be endorsed by the appointing bail bondsman, who shall obligate himself to supervise the runner's activities in his behalf.

(2) A fee of ten dollars shall be submitted to the commissioner with each application which shall be credited in a continuing fund created in the state treasury designated "insurance commissioner's miscellaneous service trust fund." Such fee to defray the costs of conducting character investigations of applicants.

(3) Applicant shall furnish with his application, a complete set of his fingerprints and a recent credential-size full face photograph of himself. The applicant's fingerprints shall be certified by an authorized law enforcement officer.

History.—§9, ch. 29621, 1955; (2) by §6, ch. 59-326; (2) a. by §2, ch. 61-119; (3) n. by §12, ch. 61-406.

903.46 Examination; time; place; fee; scope.—

(1) (a) If upon the basis of the completed application for examination and such further inquiry or investigation as the commissioner may make concerning the fitness and qualifications of the applicant, the commissioner is satisfied that, subject to any examination required to be taken and passed by the applicant for a license, the applicant is qualified to take the examination applied for and that all pertinent taxes and fees have been paid, he shall approve the application.

(b) If upon the basis of the completed application for examination and such further inquiry or investigation as to the fitness and qualifications of the applicant, the commissioner deems the applicant to be unfit or lacking in any one or more of the required qualifications as specified in §903.43 as to limited surety agent, and §§903.43 and 903.44 as to professional bondsmen, the commissioner shall disapprove the application and notify the applicant thereof, stating the grounds for disapproval.

(2) Upon approval by the commissioner the applicant shall be required to appear in person at a place hereinafter designated to take a written examination prepared by the commissioner, testing his ability and qualifications to be a bail bondsman.

(3) Each applicant shall become eligible for examination sixty days after the date the application is received by the insurance department in Tallahassee provided the commissioner is satisfied as to the applicant's fitness to take the examination. Examinations shall be held in the commissioner's offices where an adequate and designated examination room is

available. Each applicant shall be entitled to take the examination at such of the said offices which is located closest to his place of residence, and he shall be entitled to notice of the time and place not less than fifteen days prior to taking the examination.

(4) At the time of filing an application for examination a ten dollar fee shall be paid to the commissioner, which shall be credited in a continuing fund created in the state treasury designated "insurance commissioner's miscellaneous service trust fund" as provided in §624.0324 of the insurance code. The fee for filing application for examination shall not be subject to refund.

(5) The failure of the applicant to secure approval of the commissioner shall not preclude him from applying as many times as he desires, but no application will be considered by the commissioner within sixty days subsequent to the date upon which the commissioner denied the last application.

(6) The failure of an applicant to pass an examination, after having been approved by the commissioner to take the examination, shall not preclude him from taking subsequent examinations. A separate and additional application and fee for filing application for examination shall be filed with the commissioner for each subsequent examination; provided, however, that at least sixty days must intervene between examinations.

(7) The ten dollar fee for filing application for examination shall apply to each examination, but once an applicant has been approved by the commissioner he will not have to file another application as set forth in §§903.43 and 903.44 unless specifically so ordered by the commissioner. Any bail bondsman who successfully passes an examination must be licensed within twenty-four months from date of examination or be subject to another examination unless failure to be so licensed was due to military service, in which event the period within which another examination is not required may, in the commissioner's discretion, be extended to twelve months following the date of discharge from military service, if the military service does not exceed three years, but in no event to extend under this clause for a period of more than four years.

(8) The scope of the examination shall be as broad as the bail bond business.

History.—§10, ch. 29621, 1955; (1), (4), (6) and (7) by §7, ch. 59-326; (1) a. by §13, ch. 61-406; (4) a. by §2, ch. 61-119.

903.47 Notice of appointment of limited surety agents; termination.—

(1) The insurer shall annually prior to September 1 file with the commissioner an alphabetical list of all limited surety agents appointed, giving the type and class of license, names and addresses of each licensee whose appointment and license in this state is being renewed or is to be continued in effect, accompanied by payment of the applicable renewal or continuation fees and taxes. Every such insurer who shall, subsequent to the filing of this list expect to appoint a limited surety agent in this state, shall give notice thereof to the commissioner along with a written application for license for said agents. All such appointments shall be subject to the issuance of a license to such agents.

(2) The commissioner shall promptly notify any applicant who has passed the limited surety agent's examination. Upon receipt of application for license and proper taxes and fees, the commissioner shall issue a license in the name of the individual to the insurer.

(3) An insurer terminating the appointment of a limited surety agent shall, within thirty days after such termination, file written notice thereof with the commissioner, together with a statement that it has given or mailed notice to the limited surety agent. Such notice filed with the commissioner shall state the reasons, if any, for such termination. Information so furnished the commissioner shall be privileged and shall not be used as evidence in or basis for any action against the insurer or any of its representatives.

(4) Every insurer shall within five days after terminating appointment of any limited surety agent give written notice thereof to any clerk of the circuit court and sheriff with which the agent is registered.

History.—§11, ch. 29621, 1955; (1) by §8, ch. 59-326.

903.48 Notice of appointment of professional bondsmen; termination.—

(1) Any person applying to qualify as a professional bondsman shall at the time of filing his application for examination also file with the commissioner an application for license and upon the applicant's passing the examination for bail bondsmen the commissioner shall promptly issue proper license.

(2) Any professional bail bondsman who discontinues writing bail bonds during the period for which he is licensed shall notify the clerks of the circuit court and the sheriffs with whom he is registered and return his license to the commissioner for cancellation within thirty days from such discontinuance.

History.—§12, ch. 29621, 1955; (1) by §9, ch. 59-326.

903.49 Notice of appointment of runners; termination.—

(1) Every person duly licensed as a bail bondsman may appoint as runner any person who holds or has qualified for a runner's license. Each bail bondsman shall annually prior to September 1 file with the commissioner an alphabetical list of all runners appointed, giving the type and class of license, names and addresses of each licensee whose appointment and license in this state is being renewed or is to be continued in effect, accompanied by payment of the applicable renewal or continuation fees and taxes. Each such bail bondsman who shall, subsequent to the filing of this list, expect to appoint additional persons as runners shall file written notice with the commissioner and request a license for the said runner.

(2) A bail bondsman terminating the ap-

pointment of a runner shall within thirty days file written notice thereof with the commissioner, together with a statement that he has given or mailed notice to the runner. Such notice filed with the commissioner shall state the reasons, if any, for such termination. Information so furnished the commissioner shall be privileged and shall not be used as evidence in any action against the bail bondsman.

History.—§13, ch. 29621, 1955; (1) by §10, ch. 59-326.

903.50 Registration of bail bondsmen.—No bail bondsman shall become a surety on an undertaking unless he has registered in the office of the sheriff and with the clerk of the circuit court in the county in which the bondsman resides and he may register in a like manner in any other county and any limited surety agent shall file a certified copy of his appointment by power of attorney from each insurer which he represents as agent with each of said officers. Registration and filing of certified copy of renewed power of attorney shall be performed annually on October 1. The clerk of the circuit court and the sheriff shall not permit the registration of a bail bondsman unless such bondsman is currently licensed by the commissioner.

History.—Comp. §14, ch. 29621, 1955.

903.51 Power of attorney; to be approved by commissioner; filing of copies.—

(1) Every insurer engaged in the writing of bail bonds through limited surety agents in this state shall submit and have approved by the commissioner a sample power of attorney which will be the only form of power of attorney the insurer will issue to limited surety agents in Florida.

(2) Every professional bondsman who authorizes a licensed professional bondsman directly employed by him to sign his name to bonds must file copy of the power of attorney given to such licensed bondsman with the sheriff and the clerk of the circuit court in the county in which he resides and with the insurance commissioner. Such power of attorney to remain in full force and effect until written notice revoking the power of attorney has been received by the above named officials.

History.—§15, ch. 29621, 1955; §14, ch. 61-406.

903.52 Prohibitions.—

(1) No bail bondsman or runner shall:

(a) Suggest or advise the employment of or name for employment any particular attorney to represent his principal.

(b) Solicit business in or about any place where prisoners are confined or in or about any court.

(c) Pay a fee or rebate or give or promise anything of value to a jailer, policeman, peace officer, committing magistrate, or any other person who has power to arrest or to hold in custody; or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or estreatment thereof.

(d) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

(e) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.

(f) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety.

(g) Accept anything of value from a principal except the premium, provided that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

(2) When a bail bondsman accepts collateral he shall give a written receipt for same, and this receipt shall give in detail a full account of the collateral received.

(3) The following persons or classes shall not be bail bondsmen or runners and shall not directly or indirectly receive any benefits from the execution of any bail bond:

(a) Jailers
(b) Police officers
(c) Committing magistrates
(d) Justices of the peace
(e) Municipal or small claims court judges
(f) Sheriffs, deputy sheriffs and constables
(g) Any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners.

(4) A bail bondsman shall not sign nor countersign in blank any bond, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so authorized is a licensed bondsman directly employed by the bondsman giving such power of attorney.

(5) No bail bond agency shall advertise as or hold itself out to be a bail bond or surety company.

History.—Comp. §16, ch. 29621, 1955.

903.53 Denial, suspension, refusal to renew, or revocation of license.—

(1) The commissioner may deny, suspend, revoke or refuse to renew any license issued under this law for any of the following causes or for any violation of the laws of this state relating to bail:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) Violation of any law relating to the business of bail bond insurance in the course of dealings under the license issued him by the commissioner.

(c) Material mis-statement, misrepresentation or fraud in obtaining the license, or failure to pass any examination required under this chapter.

(d) Misappropriation, conversion or unlawful withholding of moneys belonging to in-

surers or others and received in the conduct of business under the license.

(e) Conviction of a felony.

(f) Fraudulent or dishonest practices in the conduct of business under the license.

(g) Willful failure to comply with, or willful violation of any proper order, rule or regulation of the commissioner.

(h) Failure or refusal, upon demand, to pay over to any insurer he represents or has represented, any money coming into his hands belonging to the insurer.

(i) Willful failure to return collateral security to the principal when the principal is entitled thereto.

(2) When, in the judgment of the commissioner, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering him unfit to carry on the bail bond business, or making his continuance in such business detrimental to the public interest, or that he is no longer in good faith carrying on the bail bond business, or that he is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide his commissions in the case of limited surety agents, or premiums in the case of professional bondsmen, and for such reasons is found by the commissioner to be a source of detriment, injury or loss to the public.

(3) In case of the suspension or revocation of license of any bail bondsman, the license of any or all other bail bondsmen who are members of the same agency, whether incorporated or unincorporated, any or all runners employed by such agency who knowingly were parties to the act which formed the ground for the suspension or revocation shall likewise be suspended or revoked for the same period as that of the offending bail bondsman, but this shall not prevent the licensing of any bail bondsman or runner except the one whose license was first suspended or revoked and those persons who knowingly were parties to the act, from being licensed as a member of, or bail bondsman or runner for some other agency.

(4) No license under this chapter shall be issued, renewed, or permitted to exist when the same is used directly or indirectly to circumvent any of the provisions of this law.

History.—§17, ch. 29621, 1955; (4) n. by §3, ch. 57-63; (1) (e) a. by §15, ch. 61-406.

903.54 Procedure for denial, revocation, suspension, or refusal to renew license. —

(1) If any bail bondsman or runner is convicted by a court of a violation of any of the provisions of this chapter, the license of such individual shall thereby be deemed to be immediately revoked, without any further procedure relative thereto by the commissioner.

(2) As to licenses denied by the commissioner upon application therefor, the applicant if aggrieved thereby shall have the right to a hearing thereon and may appeal to the court from any adverse decision of the commissioner relative thereto as provided in §903.55.

(3) As to licenses issued under this chapter and thereafter suspended or revoked, or renewal or continuation thereof refused by the commissioner except for failure of the licensee to pass any examination required under this chapter, the procedures hereinafter set forth in this section shall apply.

(4) If after an investigation or upon other evidence the commissioner has reason to believe that there may exist any one or more causes for suspension, revocation, or refusal to renew or continue the license of any bail bondsman or runner as such causes are specified in §903.53 or that a bail bondsman or runner has been guilty of violating any of the laws of this state relating to bail bonds, the commissioner shall mail written notice of his intention to suspend, revoke, or refuse to renew or continue the license, as the case may be, accompanied by a copy of the charges against the licensee to the licensee, and to the insurer represented by the licensee if a limited surety agent. Such notice and charges shall be mailed by registered mail, addressed to the licensee at his residence or principal business address last of record with the commissioner, and to the insurer, if a limited surety agent, at its address last of record with the commissioner. The notice shall be deemed given when so addressed and mailed postage prepaid at a United States post office or branch thereof.

(5) If within twenty days after the date of mailing the notice and charges as provided for in subsection (4), the licensee has not filed with the commissioner at his office in Tallahasee a written answer to such charges coupled with a written request for a hearing thereon, the commissioner may proceed to suspend, revoke or refuse to renew the license.

(6) If within such twenty days an answer and request for hearing is so filed with the commissioner, the commissioner shall hold a hearing with respect to the charges, the hearings to be held within sixty days of the date of the mailing of the notice and charges referred to in subsection (4), unless postponed by mutual consent of the parties. The commissioner shall give the licensee and each insurer that has filed with him the answer to the charges and request for hearing as provided in subsection (5), written notice of the hearing and of the matters to be considered thereat not less than ten days in advance of the hearing date.

(7) The commissioner's statement of charges, papers, documents, reports or evidence relative to the subject of a hearing under this section shall not be subject to subpoena without his consent until after the same shall have been published at the hearing, unless after notice to the commissioner and hearing the court determines that the commissioner would not be unnecessarily hindered or embarrassed by such subpoenas.

(8) Following the hearing the commissioner shall make his order thereon as required under §624.0126 (order on hearing) and mail a copy thereof by registered mail to the address last of record in his office of each party to the hearing. If by his findings made upon the hearing the commissioner finds that one or more of the causes therefor exist as specified in §903.53, his order shall incorporate the taking of action relative to suspension, revocation or refusal to renew or continue the license as authorized.

History.—§18, ch. 29621, 1955; §16, ch. 61-406.

903.541 Conduct of hearings.—

(1) The hearing may be held in the commissioner's office at Tallahassee or at such other place in this state deemed by the commissioner to be more convenient to parties and witnesses.

(2) The commissioner or an assistant, deputy or examiner designated by him shall preside at the hearing and shall sit in the capacity of a quasi-judicial officer.

(3) All hearings shall be public.

(4) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence and to examine and cross-examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf. Testimony may be taken orally or by deposition, and any party shall have such right of introducing evidence by deposition as he may obtain in the circuit courts of this state.

(5) Upon good cause shown the commissioner shall permit to become a party to the hearing by intervention, if timely, only such persons who were not original parties thereto and whose interests are to be directly and immediately affected by the commissioner's order made upon the hearing.

(6) Formal rules of pleading or of evidence need not be observed at the hearing, except that the right of any person to invoke such rules and the rule of exclusion of witnesses is preserved.

(7) Unless waived in writing by the other parties to the hearing, the commissioner shall cause a full stenographic record of the proceedings at the hearing to be made by a competent reporter and at the cost of the state. If transcribed, a copy of such stenographic record shall be made a part of the commissioner's record of the hearing. A transcription shall be made if requested by any party in order that such party may have a copy thereof. A copy of the transcribed stenographic record shall be furnished to any party to the hearing requesting the same, and at such reasonable charge therefor as the commissioner may fix. If no stenographic record is made or transcribed the commissioner shall prepare an adequate record of the evidence and of the proceedings. The state's portion of the cost of the stenographic record and transcription thereof shall be paid out of the enforcement trust fund provided for in §624.0321. Any sums received from parties for copies of the stenographic record shall be deposited by the commissioner into the state treasury to the credit of such enforcement trust fund.

History.—§17, ch. 61-406; (7) a. by §2, ch. 61-119.

903.542 Witnesses and evidence.—

(1) As to the subject of any examination, investigation or hearing being conducted by him the commissioner or any assistant, deputy or examiner appointed by him may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents or other evidence which he deems relevant to the inquiry.

(2) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the circuit court of Leon county or of the county wherein such examination, investigation or hearing is being conducted, or of the county wherein such person resides, on the commissioner's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(3) Subpoenas shall be served and proof of such service made in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

(4) Any person wilfully testifying falsely under oath as to any matter material to any such examination, investigation or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

(5) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing or investigation being conducted by the commissioner or his examiner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the commissioner and the attorney general, nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the

testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to this code.

(6) Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

(7) Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any person when subpoenaed and requested by the commissioner to so testify shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided under §903.58.

History.—§18, ch. 61-406.

903.543 Duration of suspension or revocation.—

(1) The commissioner shall, in his order suspending a license, specify the period during which the suspension is to be in effect, but such period shall not exceed one year. The license shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the commissioner, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license which has been suspended shall not be reinstated except upon request for such reinstatement, but the commissioner shall not grant such reinstatement if he finds that the circumstances for which the license was suspended still exist or are likely to recur.

(2) No individual licensed under any license which has been revoked by the commissioner, shall have the right to apply for another license under this chapter within two years from the effective date of such revocation, or, if judicial review of such revocation is sought, within two years from the date of final court order or decree affirming the revocation. The commissioner shall not, however, grant a new license to any individual if he finds that the circumstances for which the previous license was revoked still exist or are likely to recur.

(3) If licenses as bail bondsman or runner as to the same individual have been revoked at two separate times, the commissioner shall not thereafter grant or issue any license under this chapter as to such individual.

(4) During the period of suspension, or after revocation of the license, the former licensee shall not engage in or attempt to profess to engage in any transaction or business for which a license is required under this chapter.

History.—§19, ch. 61-406.

903.544 Effect of suspension, revocation upon associated licenses and licensees.—

(1) Upon suspension, revocation or refusal to renew or continue any license of a bail bondsman or runner the commissioner shall at the same time likewise suspend or revoke all other licenses held by the licensee under the Florida insurance code.

(2) In case of the suspension or revocation of license of any bail bondsman, the license of any and all bail bondsmen who are members of a bail bond agency, whether incorporated or unincorporated, and any and all runners employed by such bail bond agency, who knowingly are parties to the act which formed the ground for the suspension or revocation may likewise be suspended or revoked for the same period as that of the offending bail bondsman; but this shall not prevent any bail bondsman or runner, except the one whose license was first suspended or revoked, from being licensed as a member of or a runner for some other bail bond agency.

(3) The procedures provided for in §903.54 shall likewise apply as to suspension, revocation and refusals to renew or continue as referred to in subsection (2).

History.—§20, ch. 61-406.

903.545 Surrender of license or permit.—

(1) Though issued to a licensee all certificates of licenses issued under this chapter are at all times the property of the state, and upon notice of any suspension, revocation, refusal to renew, expiration or other termination of the license, the licensee or other person having either the original or copy of the license shall promptly deliver the certificate of license or copy thereof to the commissioner for cancellation.

(2) As to any certificate of license lost, stolen or destroyed while in the possession of any such licensee or person, the commissioner may accept in lieu of return of the certificate the affidavit of the licensee or other person responsible for or involved in the safekeeping of such certificate, concerning the facts of such loss, theft, or destruction. Wilful falsification of any such affidavit shall, upon conviction, be subject to punishment as for perjury.

(3) This section shall not be deemed to require the delivery to the commissioner of any certificate of license which, as shown by specific date of expiration on the face of the license, has already expired, unless such delivery has been requested by the commissioner.

History.—§21, ch. 61-406.

903.546 Administrative fine in lieu of suspension, revocation of license.—

(1) If, upon procedures provided for in §903.54, the commissioner finds that one or more causes exist for the suspension, revocation or refusal to renew or continue any license

issued under this chapter, the commissioner may, in his discretion, in lieu of such suspension, revocation or refusal, and except on a second offense, impose upon the licensee an administrative penalty in the amount of $100.00, or if the commissioner has found wilful misconduct or wilful violation on the part of the licensee, $500.00. The administrative penalty may, in the commissioner's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the licensee in connection with any transaction as to which the grounds for suspension, revocation or refusal related.

(2) The commissioner may allow the licensee a reasonable period, not to exceed thirty days, within which to pay to the commissioner the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the commissioner at his office at Tallahassee within the period so allowed, the licenses of the licensee shall stand suspended, revoked or renewal or continuation refused, as the case may be, upon expiration of such period and without any further proceedings.

(3) All such fines, monetary penalties, and costs received by the commissioner shall be deposited in the insurance commissioner's enforcement trust fund as provided in §624.0321.

History.—§22, ch. 61-406; (3) a. by §2, ch. 61-119.

903.547 Probation.—

(1) If, upon procedures provided for in §903.54, the commissioner finds that one or more causes exist for the suspension, revocation or refusal to renew or continue any license issued under this chapter the commissioner may, in his discretion, in lieu of such suspension, revocation or refusal, or in connection with any administrative monetary penalty imposed under §903.546, place the offending licensee on probation for a period, not to exceed two years, as specified by the commissioner in his order.

(2) As a condition to such probation or in connection therewith, the commissioner may specify in his order reasonable terms and conditions to be fulfilled by the probationer during the probation period. If during the probation period the commissioner has good cause to believe that the probationer has violated such terms and conditions or any of them, he shall forthwith suspend, revoke or refuse to renew or continue the license of the probationer, as upon the original causes referred to in subsection (1), by his order given to the licensee, without the necessity of further advance notice, hearing, or procedure.

History.—§23, ch. 61-406.

903.55 Review of denial, suspension, revocation or refusal to renew license.—Any applicant for license as bail bondsman or runner whose application has been denied or whose license shall have been so suspended or revoked, or renewal thereof denied, shall have the right of appeal from such final order of the commissioner by appeal to the district court of appeal, first district. Such an appeal shall be commenced within sixty days after the rendition of such order, and in compliance with the rules of procedure as prescribed by the supreme court of Florida for appeals.

History.—§19, ch. 29621, 1955; §11, ch. 59-326.

903.56 All bondsmen of same agency; licensed by same companies.—All bail bondsmen who are members of the same agency, partnership, corporation or association shall be licensed for the same companies. If any member of such agency, partnership, corporation or association is licensed as a professional bondsman, all members thereof shall be so licensed. It shall be the responsibility of each company to see that each agent in an agency is licensed to represent that particular company.

History.—§20, ch. 29621, 1955; §4, ch. 57-63.

903.57 Exemption. — Nothing in §§903.37-903.58 shall be construed as to prevent any duly licensed general lines agent as defined in §626.041 of the insurance code, from writing bail bonds for any company authorized to write fidelity and surety bonds which he represents as agent, provided such agent shall be subject to and governed by all laws, rules, and regulations relating to bail bondsmen when engaged in the activities thereof.

History.—§21, ch. 29621, 1955; §12, ch. 59-326.

903.58 Penalty.—Any person or corporation, who is found guilty of violating any of the provisions of this chapter shall, upon conviction, be fined not more than $500.00 for each offense, or imprisoned in the county jail for not more than six months, or both.

History.—Comp. §22, ch. 29621, 1955.

CHAPTER 904

METHODS OF PROSECUTIONS

904.01 Prosecution by information or indictment.—All capital offenses shall be tried on indictment by a grand jury, and all other cases may be tried either by indictment by grand jury or information filed by the prosecuting attorney under oath, except as is otherwise provided in the constitution of the state, and excepting cases of impeachment and in cases in the militia when in active service in time of war, or which the state with consent of congress may keep in time of peace.

History.—§79, ch. 19554, 1939; CGL 1940 Supp. 8663(79).

cf.—§10, Declaration of rights, Florida constitution.

904.02 Indictments triable in county judge's court.—Upon the finding of an indictment by a grand jury for an offense triable in the county judge's court, the clerk of the circuit court in which the indictment is returned shall certify such indictment and deliver it to the county judge, and the defendant may be tried in the county judge's court upon such indictment.

History.—Comp. §1, ch. 57-131.

CHAPTER 905
GRAND JURY

905.01 Number and procurement of grand jury.—

(1) Every grand jury shall consist of not less than fifteen, nor more than eighteen persons, the assent of at least twelve of whom shall be necessary to the finding of any indictment. All the provisions of law covering the qualifications, disqualifications, exemptions, drawing, summoning, supplying deficiencies, in whole or in part, and compensation and procurement of petit jurors, shall apply to grand jurors.

(2) The judge of any circuit court may dispense with the summoning, empaneling, and convening of the grand jury at any term of the court by making, entering and filing, either in vacation or term time, with the clerk of the court, a written order directing that no grand jury be summoned at such term of court.

History.—§80, ch. 19554, 1939; CGL 1940 Supp. 8663(80).
cf.—§932.15, Provisions supplemental to this chapter.
§40.01, Qualifications, exemptions, selection, etc., of petit jurors.
§10, Declaration of rights, Florida constitution, circuit court may dispense with summoning, etc.
§905.23, Number of grand jurors required to return indictment.

905.02 Who may challenge.—The state or a person who has been held to answer may challenge the panel or an individual grand juror.

History.—§81, ch. 19554, 1939; CGL 1940 Supp. 8663(81).

905.03 Ground for challenge to panel.—A challenge to the panel may be made only on the ground that the grand jurors were not selected or drawn according to law.

History.—§82, ch. 19554, 1939; CGL 1940 Supp. 8663(82).

905.04 Grounds for challenge to individual grand juror. — A challenge to an individual grand juror may be made:

(1) By either party for the reason:

(a) That the juror has not the qualifications required by law,

(b) That a state of mind exists on his part which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging,

(c) That the juror is related by blood or marriage within the third degree to the defendant or to the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted.

(2) By the state, because the juror is surety on the bail undertaking of any person whose case will come before the grand jury.

History.—§83, ch. 19554, 1939; CGL 1940 Supp. 8663(83).
cf.—§§40.02, 40.07, Qualifications of jurors.

905.05 When challenge or objection to be made.—After the grand jurors have been empaneled and sworn, no objection shall be raised by plea or otherwise, to the grand jury. The empaneling and swearing of the grand jury shall be conclusive evidence of its competency and qualifications, but the provisions of this section shall apply only to defendants who knew, or had reasonable ground to believe, that cases in which they were or might be involved would be investigated by the grand jury at the time it was empaneled and sworn.

History.—§84, ch. 19554, 1939; CGL 1940 Supp. 8663(84).

905.06 How challenge made and tried. — A challenge to the panel shall be in writing, but a challenge to an individual grand juror may be either oral or in writing. All challenges shall be tried by the court.

History.—§85, ch. 19554, 1939; CGL 1940 Supp. 8663(85).

905.07 Effect of sustaining challenge to panel.—If a challenge to the panel is sustained, the grand jury shall be discharged.

History.—§86, ch. 19554, 1939; CGL 1940 Supp. 8663(86).

905.08 Appointment of foreman.—When the grand jury is completed the court shall appoint one of the jurors to be foreman, and also another of the jurors to act as foreman in case of the absence of the foreman.

History.—§87, ch. 19554, 1939; CGL 1940 Supp. 8663(87).

905.09 Discharge and recall of grand jury. —When the grand jury attending any court shall have been dismissed before the court is adjourned without day, they may be sum-

moned to attend again in the same term at such time as the court shall direct, for the dispatch of any business that may come before them.

History.—§88, ch. 19554, 1939; CGL 1940 Supp. 8663(88).

905.10 Oath of grand jurors.—The clerk of the court shall prepare a list of the names of all the persons returned as grand jurors, and when the jury is empaneled, the following oath shall be administered to them:

"You, as grand jurors for the body of this county of _____ do solemnly swear (or affirm, as the case may be) that you will diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge; the counsel of the State of Florida, your fellows and your own, you shall keep secret, unless required to disclose the same by some competent court; you shall present no man for envy, hatred, or malice, neither shall you leave any man unpresented for love, fear, favor, affection, reward, or hope thereof, but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God."

History.—§89, ch. 19554, 1939; CGL 1940 Supp. 8663(89).

905.11 Charge of court.—After the grand jurors are sworn the court shall charge them concerning their duties.

History.—§90, ch. 19554, 1939; CGL 1940 Supp. 8663(90).

905.12 Retirement of grand jurors.—After the charge by the court, the members of the grand jury shall retire to a private room and perform their duties, as prescribed by law.

History.—§91, ch. 19554, 1939; CGL 1940 Supp. 8663(91).

905.13 Appointment of clerk.—The foreman shall appoint one of the grand jurors to be clerk, who shall keep minutes of the proceedings.

History.—§92, ch. 19554, 1939; CGL 1940 Supp. 8663(92).
cf.—§932.18, Delivering minutes to state attorney.

905.15 Appointment of interpreter. — The foreman or acting foreman, whenever necessary, shall appoint an interpreter, and shall swear him not to disclose any testimony or the name of any witnesses except when testifying in court.

History.—§94, ch. 19554, 1939; CGL 1940 Supp. 8663(94).

905.16 Duties of grand jurors.—The grand jurors shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed for such offense, and all other indictable offenses triable within the county which are presented to them by the prosecuting attorney or otherwise come to their knowledge.

History.—§95, ch. 19554, 1939; CGL 1940 Supp. 8663(95).

905.17 Who may be present during sessions of grand jury.—No person shall be present at the sessions of the grand jury except the witness under examination, the prosecuting attorney, the court reporter or stenographer, and the interpreter, if any. The stenographic records, notes or any transcript thereof made by the court reporter or stenographer shall be filed with the clerk of the court and kept by him in a sealed container not subject to inspection by the public. Such notes, records and transcriptions shall be opened and released by the clerk upon the request of any grand jury for the use of such grand jury and shall be opened and released by the clerk upon the order of the trial judge for use pursuant to the provisions of §905.27, but not otherwise. No person shall be present while the grand jurors are deliberating or voting. Any person violating either of the above prohibitions may be held in contempt of court.

History.—§96, ch. 19554, 1939; CGL 1940 Supp. 8663(96). Am. §1, ch. 26584, 1951.

905.18 Duty of court.—The court shall advise the grand jurors at all reasonable times regarding their legal duties, when requested by them. But the court shall not, in its original charge, or thereafter, restrict the grand jury in its investigation of any matter into which the grand jury is by law entitled to inquire.

History.—§97, ch. 19554, 1939; CGL 1940 Supp. 8663(97).

905.19 Duty of prosecuting attorney.—The prosecuting attorney or assistant prosecuting attorney shall attend the grand jurors for the purpose of examining witnesses in their presence, or of giving grand jurors legal advice regarding any matter cognizable by them. He shall also draft indictments.

History.—§98, ch. 19554, 1939; CGL 1940 Supp. 8663(98).

905.20 Duty of grand juror having knowledge of offense.—If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he shall declare such fact to his fellow jurors who shall investigate it. In such investigation the grand juror may be sworn as a witness.

History.—§99, ch. 19554, 1939; CGL 1940 Supp. 8663(99).

905.21 When grand jury of another county may indict in other cases.—Whenever the judge shall deem it impracticable or inexpedient to form a grand jury in any county for want of sufficient number of qualified jurors therein, or on account of any undue excitement or prejudice among the people, the grand jury of any county within the circuit, or in an adjoining circuit to which the cause may be sent by the judge of the circuit court in the county in which the crime was committed, may indict any person for crime committed in the county first mentioned. Upon the return of any such indictment, the same shall be certified and transferred to the county where the crime was committed and trial thereon shall be had in such county unless a motion for removal of cause should be made on behalf of the prosecution or the defense and such motion should be granted.

History.—§100, ch. 19554, 1939; CGL 1940 Supp. 8663(100).

905.22 Swearing of witnesses.—The foreman, acting foreman, state attorney, acting state attorney, or assistant state attorney commissioned by the governor, shall administer an oath or affirmation, in the manner pre-

scribed by law, to any witness who shall testify before the grand jury.

History.—§101, ch. 19554, 1939; CGL 1940 Supp. 8663(101).

905.23 Number of grand jurors required to return indictment.—An indictment shall not be found without the concurrence of twelve grand jurors. When so found, the same shall be signed by the state attorney, or acting state attorney, and the foreman or acting foreman shall indorse it "A true bill," sign it, and return it into court. When not so found, the foreman shall endorse the words "No true bill" on the file, sign same, and return it into open court.

History.—§102, ch. 19554, 1939; CGL 1940 Supp. 8663(102).

905.24 Proceedings of grand jury to be kept secret.—Every member of the grand jury shall keep secret whatever he or any other grand juror has said, and how he or any other grand juror has voted.

History.—§103, ch. 19554, 1939; CGL 1940 Supp. 8663(103).

905.25 What grand juror not permitted to state or testify.—No grand juror shall be permitted to state or testify in any court how he or any other grand juror voted on any question before them or what opinion was expressed by himself or any other grand juror regarding such question.

History.—§104, ch. 19554, 1939; CGL 1940 Supp. 8663(104).

905.26 Not to disclose finding of indictments.—No grand juror, reporter, interpreter, stenographer, or officer of the court, unless the court shall so order, shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested.

History.—§105, ch. 19554, 1939; CGL 1940 Supp. 8663(105).

905.27 Testimony not to be disclosed; exceptions.—No grand juror, prosecuting attorney, or special legal counsel, court reporter, interpreter, or any other person appearing before the grand jury, shall disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose the testimony given before the grand jury by any person upon a charge against such person for perjury in giving his testimony or upon trial therefor, or when permitted by the court in the furtherance of justice. Any person violating the provisions of this act shall be guilty of a criminal contempt of court, and punished accordingly.

History.—§106, ch. 19554, 1939; CGL 1940 Supp. 8663(106). Am. §1, ch. 26940, 1951.

CHAPTER 906

INDICTMENT AND INFORMATION

906.01 Definitions of terms used in chapter.—In this chapter:

(1) The words "person", "defendant" and similar words include, unless a contrary intention appears, a public or private corporation;

(2) The term "act" includes omission to act;

(3) The word "property" includes any matter or thing other than a person, upon or in respect to which any offense may be committed;

(4) The words "indictment" and "information", unless a contrary intention appears, include any count thereof;

(5) The words "writing" and "written" include words printed, painted, typed, engraved, lithographed, photographed or otherwise copied, traced or made visible to the eye;

(6) The term "the court", unless a contrary intention appears, means the court before which the trial is had;

(7) The term "prosecuting attorney" includes the prosecuting officer of any court in the state, his assistants, and attorneys appointed by the court to act in the place of the prosecuting attorney.

History.—§107, ch. 19554, 1939; CGL 1940 Supp. 8663(107).

cf.—§932.47, Provisions supplemental to this chapter.
§871.02, Indictment or information for disturbing assembly.
§1.01, General definitions.
§398.23, Uniform narcotic drug law.
§790.03, Carrying concealed weapons.
§823.01, Indictment or information for certain nuisances.

906.02 Caption; commencement; amendment.—(1) When an objection is made that an indictment or information does not contain a caption or commencement, a caption may be prefixed to, and a commencement may be inserted in, the indictment or information; and any defect, error, or omission in a caption or commencement may be amended as of course, at any stage of the proceedings, and after moving to quash or pleading to the merits.

(2) It is unnecessary to allege that the grand jurors were empaneled, sworn or charged, or that they present the indictment upon their oaths or affirmations.

History.—§108, ch. 19554, 1939; CGL 1940 Supp. 8663(108).

906.03 Conclusion.—The indictment or information need contain no formal conclusion.

History.—§109, ch. 19554, 1939; CGL 1940 Supp. 8663(109).

906.04 Subscription and verification of information.—(1) All informations shall be subscribed by the prosecuting attorney, and verified by the oath of the prosecuting attorney.

(2) No objection to any information on the ground that it was not subscribed or verified, as above provided, shall be made or entertained after moving to quash or pleading to the merits.

History.—§110, ch. 19554, 1939; CGL 1940 Supp. 8663(110).

906.05 Form of indictment.—The indictment may be in substantially the following form:

In the (state name of court) the _____day of _____ 19____.

The State of Florida versus A. B.

In the name and by the authority of the State of Florida;

The Grand Jurors of the County of _____ charge that A. B. (state offense).

History.—§111, ch. 19554, 1939; CGL 1940 Supp. 8663(111).

906.06 Form of informations.—The information may be in substantially the following form:

In the (state name of court) the _____ day of _____ 19____.

The State of Florida vs. A. B.

In the name and by the authority of the State of Florida:

X. Y. (title of prosecuting officer) for the County of _____ charges that A. B. (state offense).

History.—§112, ch. 19554, 1939; CGL 1940 Supp. 8663(112).

cf.—Ch. 832, Issuing worthless checks and drafts.
§932.49, Form of information of particular offenses.

906.07 Bill of particulars.—The court, on motion, may order the prosecuting attorney to furnish a bill of particulars, when the indictment or information fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense.

History.—§113, ch. 19554, 1939; CGL 1940 Supp. 8663(113).

906.08 Name of person other than defendant.—(1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying any person other than the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or if no better way of identifying such person is practicable, to state a fictitious name, or to state the name of an office or position held by him, or to describe him as "a certain person," or by words of similar import, or in any other manner. In stating the true name of such person or the name by which such person has been, or is known, it is sufficient to state a surname, or a surname and one or more given names, or surname and one or more abbreviations or initials of a given name or names.

(2) It is sufficient for the purpose of describing any group or association of persons not incorporated to state the proper name of such group or association, or to state any name or designation by which the group or association has been or is known or by which it may be identified, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others."

(3) It is sufficient for the purpose of describing a corporation to state the corporate name of such corporation, or any name or designation by which it has been or is known, or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

(4) In no case is it necessary to aver or prove that the true name of any person, group or association of persons or any corporation is unknown to the grand jury or prosecuting attorney.

(5) If in the course of the trial the true name of any person, group or association of persons, or corporation, described otherwise than by the true name, is disclosed by the evidence, the court shall cause the true name to be inserted in the indictment, information, bill of particulars and record wherever the name appears otherwise.

History.—§114, ch. 19554, 1939; CGL 1940 Supp. 8663(114).

906.09 Description of written instruments.—When it is necessary in an indictment or information to make an averment relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to describe such instrument by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy or facsimile of the whole or any part thereof. The description in a bill of particulars is sufficient if it sets forth the character and contents of the instrument with such particularity as to enable the defendant to prepare his defense.

History.—§115, ch. 19554, 1939; CGL 1940 Supp. 8663(115).

906.10 Description of written matter. — When in an indictment or information an averment relative to any spoken or written words or any picture is necessary, it is sufficient to set forth such spoken or written words by their general purport or to describe such picture generally, without setting forth a copy or facsimile of such written words or such picture. In a bill of particulars, the description is sufficient if the defendant is thereby sufficiently informed of the identity of the words or picture concerning which the averment is made so as to enable him to prepare his defense.

History.—§116, ch. 19554, 1939; CGL 1940 Supp. 8663(116).

906.11 Judgments.—In referring in an indictment or information to a judgment or determination of, or a proceeding before, any court or official, civil or military, it is unnecessary to allege the facts conferring jurisdiction on such court or official, but it is sufficient to allege generally that such judgment or determination was given or made or such proceedings had, in such manner as identifies the judgment, determination or proceeding.

History.—§117, ch. 19554, 1939; CGL 1940 Supp. 8663(117).

906.12 Exceptions. — No indictment or information for an offense created or defined by statute shall be invalid or insufficient merely for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense.

History.—§118, ch. 19554, 1939; CGL 1940 Supp. 8663(118).

cf.—§398.20, Negative exceptions unnecessary in prosecutions under uniform narcotic drug law.

906.13 Alternative or disjunctive allegations.—No indictment or information for an offense which may be committed by the doing of one or more of several acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, shall be invalid or insufficient for the reason that two or more of such acts, means, intents or results are charged in the disjunctive or alternative.

History.—§119, ch. 19554, 1939; CGL 1940 Supp. 8663(119).

906.14 Indirect allegations.—No indictment or information shall be invalid or insufficient for the reason that it alleges indirectly and by inference or by way of recital any matters, facts or circumstances connected with or constituting the offense; provided, however, that such indictment or information contains sufficient facts directly and clearly alleged and charged to constitute the offense being charged in such indictment or information.

History.—§120, ch. 19554, 1939; CGL 1940 Supp. 8663(120).

906.15 Libel. — No indictment or information for libel shall be invalid or insufficient for the reason that it does not set forth extrinsic facts for the purpose of showing the application to the party alleged to be libeled of the defamatory matter on which the indictment or information is founded.

History.—§121, ch. 19554, 1939; CGL 1940 Supp. 8663(121).

cf.—§836.01, Criimnal prosecution for libel.
§836.07, Notice condition precedent to prosecution for libel.

906.16 Perjury and kindred offenses.—No indictment or information for perjury, or for subornation of, solicitation of, conspiracy or attempt to commit perjury shall be invalid or insufficient for the reason that it does not set forth any part of the records or proceedings with which the oath was connected, or the commission or authority of the court or other official before whom the perjury was committed or was to have been committed, or the form of the oath or affirmation, or the manner of administering the same.

History.—§122a, ch. 19554, 1939; CGL 1940 Supp. 8663(122).
cf.—Ch. 837, Perjury.

906.17 Indictments in felonies.—It shall not be necessary to allege in an indictment that the offense charged is a felony, or felonious or done feloniously, nor shall any indictment or complaint be quashed or deemed invalid by reason of the omission of the words "felony," "felonious" or "feloniously."

History.—§122b, ch. 19554, 1939; CGL 1940 Supp. 8663(123).

906.18 Intent to defraud; how alleged.—When an intent to defraud is required to constitute any offense, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded, and on the trial it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States or any state, county, city, town or parish, or any body corporate, or any public officer in his official capacity, or any copartnership or members thereof, or any particular person.

History.—§122c, ch. 19554, 1939; CGL 1940 Supp. 8663(124).

906.19 Receiving stolen goods.—In prosecutions for the offense of buying, receiving, or aiding in the concealment of stolen property, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole the property has been convicted.

History.—§122d, ch. 19554, 1939; CGL 1940 Supp. 8663(125).

906.20 Embezzlement.—In prosecutions for the offense of embezzlement, fraudulently taking or secreting with intent to embezzle or convert the bullion, money, notes, bank notes, checks, drafts, bills of exchange, obligations, or other securities for money, of any person, bank, incorporated company or copartnership by a cashier or other officer, clerk, agent, or servant of such person, bank, incorporated company or copartnership, it shall be sufficient to allege generally in the indictment or information the embezzlement, fraudulent conversion, or taking with such intent, of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial, evidence may be given of such embezzlement, fraudulent conversion or taking with intent, committed within the statutory period of limitations. It shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance, if it be proved that any bullion, money, notes, check, draft, bill of exchange or other security for money, of such person, bank, incorporated company, or partnership of whatever amount was fraudulently embezzled, converted or taken with intent by such cashier or other officer, clerk, agent or servant, within the statutory period of limitations.

History.—§122e, ch. 19554, 1939; CGL 1940 Supp. 8663(126).
cf.—§811.04, Larceny of testamentary instrument; allegation of value of ownership.
Ch. 812, Embezzlement.

906.21 Embezzlement; alleging ownership.—If the property, or thing of value embezzled, belongs to several persons or members of a society or voluntary association, it shall be sufficient in the indictment or information to allege the ownership to be in any one or more of any such persons, owners or members, or in the society, association or partnership by its name.

History.—§122f, ch. 19554, 1939; CGL 1940 Supp. 8663(127).

906.22 Evidence in prosecution for forgery or counterfeiting.—In prosecutions for forging or counterfeiting notes or bills of banks, or for uttering, publishing, or tendering in payment as true, any forged or counterfeit bank bills, or notes, or for being possessed thereof with intent to utter and pass the same as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence is out of the state or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of such president or cashier, or who has knowledge of the difference in the appearance of the true and counterfeit bills or notes of such banks may be admitted to prove that such bills or notes are counterfeit.

History.—§122g, ch. 19554, 1939; CGL 1940 Supp. 8663(128).

906.23 Offenses divided into degrees.—In an indictment or information for an offense which is divided into degrees it is sufficient to charge that the defendant committed the offense without specifying the degree.

History.—§123, ch. 19554, 1939; CGL 1940 Supp. 8663(129).

906.24 Surplusage.—Any allegation unnecessary under existing law or under the provisions of this chapter may, if contained in an indictment, information or bill of particulars, be disregarded as surplusage.

History.—§124, ch. 19554, 1939; CGL 1940 Supp. 8663(130).

906.25 Defects and variances.—No indictment or information shall be quashed or judgment arrested or new trial be granted on account of any defect in the form of the indictment or information, or of misjoinder of offenses or for any cause whatsoever, unless the court shall be of the opinion that the indictment or information is so vague, indistinct and indefinite as to mislead the accused and embarrass him in the preparation of his defense or expose him after conviction or acquittal to

substantial danger of a new prosecution for the same offense.

History.—§125, ch. 19554, 1939; CGL 1940 Supp. 8663(131).

906.26 Interpretation of chapter.—Nothing contained in this chapter shall be so construed as to make invalid or insufficient any indictment or information which would have been valid and sufficient under the law existing prior to June 12, 1939.

History.—§126, ch. 19554, 1939; CGL 1940 Supp. 8663(132).

906.27 Inspection of indictment, information and record.—All indictments, informations and the records thereof shall be in the custody of the clerk of the court to which they are presented, and shall not be inspected by any person other than the judge, clerk, the attorney general and the prosecuting attorney until the defendant is in custody or has been admitted to bail, or until one year has elapsed between the return of an indictment, or the filing of an information, after which time the same shall be open for inspection by the public, unless otherwise ordered by the court having jurisdiction.

History.—§127, ch. 19554, 1939; CGL 1940 Supp. 8663(133). Am. §1, ch. 29719, 1955.

906.28 Copy of indictment or information to be furnished defendant.—Every person who has been indicted or informed against for an offense, shall, upon application to the clerk, be furnished with a copy of the indictment or information, together with the indorsements thereon, at least twenty-four hours before he is required to plead thereto, and he shall not be required to plead to such indictment or information if it has not been so furnished to him. A failure to furnish such copy shall not affect the validity of any subsequent proceeding against the defendant if he pleads to the indictment or information.

History.—§128, ch. 19554, 1939; CGL 1940 Supp. 8663(134).

906.29 Witnesses on indictment or information.—It shall not be necessary to indorse on any indictment or information the names of the witnesses on whose evidence the same is based, but upon motion of defendant, the court shall order the prosecuting attorney to furnish the names of such witnesses.

History.—§129, ch. 19554, 1939; CGL 1940 Supp. 8663(135).

CHAPTER 907

PROCESS UPON INDICTMENT AND INFORMATION

907.01 Capias and amount of bond.—Upon the filing of an indictment or information, if the person named therein is not in custody or at large on bail for the offense charged, the judge shall direct the clerk to issue immediately or when so directed by the prosecuting attorney, a capias for the arrest of such person. The judge upon the filing of the information or indictment, shall indicate the amount of bail, if the offense is bailable, in which case an indorsement shall be made on the capias and signed by the clerk, to the following effect: The defendant is to be admitted to bail in the sum of_____ dollars.

History.—§130, ch. 19554, 1939; CGL 1940 Supp. 8663(136).

cf.—903.01, Bail.

§932.48 Indictments and information, duties of clerk.

907.02 When summons may be issued for an individual.—When an indictment has been found or an information filed against a person charging a misdemeanor only, if he is not in custody or at large on bail for the offense charged, the court or a judge thereof shall direct the clerk to issue a summons instead of a warrant, if the court or judge has reasonable ground to believe that the person will appear in response to a summons.

History.—§131, ch. 19554, 1939; CGL 1940 Supp. 8663(137).

907.03 Summons to be issued when defendant is a corporation. — When an indictment has been found or an information filed against a corporation the court or a judge thereof shall direct the clerk to issue a summons to secure its appearance to answer the indictment or information.

History.—§132, ch. 19554, 1939; CGL 1940 Supp. 8663(138).

907.04 Disposition of defendant upon arrest.—If the defendant is not bailable in respect of the offense designated in the capias then upon being arrested he shall be immediately delivered into the custody of the sheriff of the county in which the indictment or information is filed. If the defendant is bailable, he shall be allowed his liberty upon giving bond in the amount designated on the capias.

History.—§133a, ch. 19554, 1939; CGL 1940 Supp. 8663(139).

907.05 Criminal cases in circuit court to be tried first.—All cases on the criminal docket at each term of the circuit court shall be tried first, if the same can be so tried without injury to the interests of the state or of the prisoner, and cases presented during the term by the grand jury may be tried, if proper, at any time during the same term.

History.—§133b, ch. 19554, 1939; CGL 1940 Supp. 8663(140).

CHAPTER 908

ARRAIGNMENT

908.01 Arraignment of defendant; how made.—When an indictment has been found or an information filed against a person he shall, before he is put on trial for the offense charged, be arraigned by having the charge stated to him by the prosecuting attorney in open court and by being called upon to plead thereto. If the defendant so demands before he pleads, the indictment or information shall be read to him by the prosecuting attorney. An entry of the arraignment shall be made of record.

History.—§134, ch. 19554, 1939; CGL 1940 Supp. 8663(141).

cf.—§932.38, Parent or guardian to be notified before trial of offense against minor.

908.02 Effect of failure to arraign or irregularity of arraignment.—Neither a failure to arraign nor an irregularity in the arraignment shall affect the validity of any proceeding in the cause if the defendant pleads to the indictment or information or proceeds to trial without objection to such failure or irregularity.

History.—§135, ch. 19554, 1939; CGL 1940 Supp. 8663(142).

908.03 Standing mute or pleading evasively; failure of a corporation to appear.—If the defendant is a corporation and fails to appear or if any defendant stands mute or pleads evasively a plea of not guilty shall be entered of record.

History.—§136, ch. 19554, 1939; CGL 1940 Supp. 8663(143).

cf.—§909.02, Certain pleas abolished; motion to quash substituted.

CHAPTER 909

MOTION TO QUASH AND PLEAS

909.01 Time to move to quash or plead.—Either prior to or upon being arraigned, the defendant shall, unless the court grants him further time, either move to quash the indictment or information or plead thereto, or do both. If he moves to quash, without also pleading, and the motion is withdrawn or overruled, he shall immediately plead.

History.—§137, ch. 19554, 1939; CGL 1940 Supp. 8663(144).

909.02 Certain pleas abolished; motion to quash substituted.—Pleas to an indictment or information, other than pleas of nolo contendere, guilty, or not guilty, are abolished.

All defenses heretofore available to a defendant by plea, other than pleas of nolo contendere and not guilty, shall be taken only by motion to quash the indictment or information, whether the same relate to matters of form or substance, former acquittal, former jeopardy, or any other defense which heretofore was raised by plea.

History.—§138, ch. 19554, 1939; CGL 1940 Supp. 8663(145).
cf.—§908.03, Standing mute or pleading evasively.

909.03 Motion to quash; form and contents.—(1) The motion to quash, if a court reporter is present, may be made orally, otherwise it shall be in writing and signed by defendant or his attorney. It shall specify distinctly the ground of objection relied on. If made orally, the court reporter shall transcribe the same, and file it with the clerk. When made in writing it shall be first filed with the clerk, before argument, and a copy served on the prosecuting attorney.

(2) The motion to quash may be filed at any time after information or indictment is filed, and with permission of the court, may, on notice to prosecuting attorney, be heard and disposed of either in term time or vacation. However, at such hearing the defendant must be present, if a felony is charged.

(3) The order on the motion to quash shall be filed in the cause and entered of record.

History.—§139, ch. 19554, 1939; CGL 1940 Supp. 8663(146).

909.04 Arrest on capias based on indictment or information; habeas corpus; motion to quash; preliminary hearing.—When an indictment or information is filed and a defendant is in custody under a capias he may apply for a writ of habeas corpus, attacking said indictment or information; or he may move to quash the indictment or information and bring it on to be heard before the trial court having jurisdiction. If a defendant so in custody upon a capias as aforesaid is confined in jail for thirty days after his arrest, without trial, he may apply to the trial court having jurisdiction for and be allowed a preliminary hearing.

History. §140, ch. 19554, 1939; CGL 1940 Supp. 8663(147).
Am. §1, ch. 26767, 1951.

909.05 Effect of sustaining the motion to quash.—If the motion to quash is sustained the court may order that another information be filed or that the matter be again submitted to a grand jury, or if the matter is such that an information might have been filed against the defendant if he had not been indicted, that an information be filed for the offense charged in the indictment. If one of the aforementioned orders is made, the defendant, if in custody, shall remain so unless he shall be admitted to bail. If such order is not made or if having been made, a new indictment is not found by the same or the next succeeding grand jury having authority to inquire into the offense, or another information not filed within a time to be specified in the order, or within such further time as the court may allow for good cause shown, the defendant, if in custody, shall be discharged therefrom, unless he is in custody on some other charge; if he has been released on bail he and his sureties are exonerated, and if money or bonds have been deposited as bail such money or bonds shall be refunded.

History.—§141, ch. 19554, 1939; CGL 1940 Supp. 8663(148).

909.06 Effect of failure to move to quash; exceptions.—If the defendant does not move to quash the indictment or information before or at the time he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash. If, however,

the defendant learns after he has pleaded or has moved to quash on some other ground that the offense with which he is now charged is an offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy or for which he has been granted immunity the court may in its discretion entertain at any time before verdict a motion to quash or motion for directed verdict on the ground of such pardon, conviction, acquittal, jeopardy or immunity.

History.—§142, ch. 19554, 1939; CGL 1940 Supp. 8663(149).
cf.—§932.29, Immunity from prosecution.

909.07 Form of plea; failure to enter of record.—Every plea shall be pleaded orally in open court and shall be immediately entered of record; but a failure so to enter it shall not affect the validity of any proceeding in the cause.

History.—§143, ch. 19554, 1939; CGL 1940 Supp. 8663(150).

909.08 Plea of guilty; presence of defendant.—Except where the defendant is a corporation, a plea of guilty to a charge of felony shall not be accepted unless the defendant is present.

History.—§144, ch. 19554, 1939; CGL 1940 Supp. 8663(151).

909.09 Plea of guilty of lesser offense or lesser degree.—The defendant, with the consent of the court and of the prosecuting attorney, may plead guilty of any lesser offense than that charged which is included in the offense charged in the indictment or information, or of any lesser degree of the offense charged.

History.—§145, ch. 19554, 1939; CGL 1940 Supp. 8663(152).

909.10 Effect of plea of guilty of an offense divided into degrees.—Where an indictment or information charges an offense which is divided into degrees, without specifying the degree, a plea of guilty which does not specify any degree is a plea of guilty of the highest degree of the offense charged.

History.—§146, ch. 19554, 1939; CGL 1940 Supp. 8663(153).

909.11 Plea of guilty of an offense divided into degrees; determination of the degree.—Where an indictment or information charges an offense which is divided into degrees without specifying the degree, if the defendant pleads guilty generally the court shall, before accepting the plea, examine witnesses to determine the degree of the offense of which the defendant is guilty.

History.—§147, ch. 19554, 1939; CGL 1940 Supp. 8663(154).

909.12 Plea of guilty; determination of punishment.—Where the defendant pleads guilty to an indictment or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.

History.—§148, ch. 19554, 1939; CGL 1940 Supp. 8663(155).

909.13 Withdrawal of plea of guilty.—The court may in its discretion at any time before sentence permit a plea of guilty to be withdrawn and, if judgment of conviction has been entered thereon, set aside such judgment, and allow a plea of not guilty, or, with the consent of the prosecuting attorney, allow a plea of guilty of a lesser included offense, or of a lesser degree of the offense charged, to be substituted for the plea of guilty.

History.—§149, ch. 19554, 1939; CGL 1940 Supp. 8663(156).

909.14 Plea of guilty before indictment or information filed.—If a person who has been held to answer for an offense desires to plead guilty thereto before he has been informed against he may so inform the court having jurisdiction of the offense, whereupon the court shall direct the prosecuting attorney to file an information charging the defendant with such offense, and, upon the filing of such information, and arraignment thereon, the defendant may plead guilty thereto.

History.—§150, ch. 19554, 1939; CGL 1940 Supp. 8663(157).

909.15 Plea of guilty after indictment or information filed.—If a person who has been indicted or informed against for an offense, but who has not been arraigned desires to plead guilty thereto, he may so inform the court having jurisdiction of the offense, and such court shall as soon as convenient, arraign the defendant and permit him to plead guilty to the indictment or information.

History.—§151, ch. 19554, 1939; CGL 1940 Supp. 8663(158).

909.16 Plea of not guilty; its operation in denial.—A plea of not guilty is a denial of every material allegation in the indictment or information.

History.—§152, ch. 19554, 1939; CGL 1940 Supp. 8663(159).

909.17 Defense of insanity; notice. — (1) When in any criminal case it shall be the intention of the defendant to rely upon the defense of insanity, no evidence offered by the defendant for the purpose of establishing such insanity shall be admitted in such case unless advance notice of such defense shall have been given by the defendant as hereinafter provided.

If the defendant upon arraignment, or prior thereto, notifies the court that he will rely upon insanity as one of his defenses, then the court will hear the parties and require the defendant to file, within such time as may be fixed by the court, a bill of particulars showing as nearly as he can the nature of insanity he expects to prove and the names of the witnesses by whom he expects to prove such insanity.

(2) Upon the filing of said bill of particulars by the defendant, upon motion of the prosecution, the court, after hearing, may cause the defendant to be examined in the presence of attorneys for the state and for the defendant, by one or more disinterested qualified experts, not exceeding three, appointed by the court, at such time and place as may be designated in the order of the court, as to the sanity, or insanity, of the defendant at the time of the commission of the alleged offense and subsequent thereto. The procedure shall follow that set forth in chapter 917.

(3) Upon good cause shown for the omission of the notices and procedure as to the defense of insanity, as here set forth, the court may in its discretion permit the introduction of evidence of such defense.

History.—§153, ch. 19554, 1939; CGL 1940 Supp. 8663(160).
cf.—§§917.01-917.03, Proceeding to determine mental condition of defendant.

909.19 Effect of failure to enter plea.—The fact that the defendant did not plead shall not affect the validity of any proceeding in the cause if the defendant proceeds to trial without a plea.

History.—§155, ch. 19554, 1939; CGL 1940 Supp. 8663(162).

909.20 Time to prepare for trial.—After a plea of not guilty the defendant is entitled to a reasonable time in which to prepare for trial.

History.—§156, ch. 19554, 1939; CGL 1940 Supp. 8663(163).

909.21 Appointment of counsel in capital cases.—In all capital cases where the defendant is insolvent, the judge shall appoint such counsel for the defendant as he shall deem necessary, and shall allow such compensation as he may deem reasonable, such sum to be paid by the county in which the crime was committed. Counsel, so appointed, may in the event of conviction and sentence of death, appeal the case to the supreme court, and prosecute said appeal to its final conclusion with diligence; and until the supreme court has disposed of the appeal, no compensation shall be allowed to such counsel. If counsel first appointed is unable for any reason to perfect and prosecute the appeal, the court may relieve him from such duty, but shall appoint other counsel for such purpose. When counsel so appointed by the court, in capital cases, completes the duties imposed by this section, such counsel shall file a written report as to the duties performed by him and apply for discharge by the court.

The compensation of counsel for the defendant, at the trial, shall not exceed five hundred dollars; and defendant's counsel's compensation on appeal, shall not exceed five hundred dollars additional.

History.—§157, ch. 19554, 1939; CGL 1940 Supp. 8663(164).
Am. §1, ch. 29656, 1955.

909.22 Trial pending writ of habeas corpus.—Whenever in any criminal prosecution, a writ of habeas corpus is applied for, by any person charged with any criminal offense, and the accused shall have been remanded to custody by the court to which such application is made, a supersedeas of such order made upon appeal being taken to the appellate court, shall not preclude the state from proceeding with the prosecution and trial of the accused pending the decision in such matter of habeas corpus by the appellate court, but in such cases the state may proceed with the prosecution and trial of the accused in the same manner as if an appeal had not been taken in the habeas corpus proceeding. Should the accused be convicted of the charge, then the court shall withhold imposition of sentence and final judgment until the appellate court shall have determined the issues presented in the matter of habeas corpus.

History.—§158, ch. 19554, 1939; CGL 1940 Supp. 8663(165).

909.23 Trial of persons in custody.—When an indictment has been returned or an information filed for a felony and the accused be in custody, the court shall cause him to be arraigned and tried at the same term, during which said indictment or information is filed, unless good cause be shown for a continuance.

History.—§159, ch. 19554, 1939; CGL 1940 Supp. 8663(166).

CHAPTER 910

JURISDICTION AND VENUE

910.01 Offense committed elsewhere but consummated here.—When the commission of an offense committed elsewhere is consummated within the boundaries of this state, the offender shall be liable to punishment here, though he was out of the state at the commission of the offense charged, if he consummated it in this state through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself. The jurisdiction in such case, unless otherwise provided by law, shall be in the county in which the offense was consummated.

History.—§160, ch. 19554, 1939; CGL 1940 Supp. 8663(167).
cf.—§932.07, Provisions supplemental to this chapter.

910.02 Offense in or against aircraft.—Any person who commits an offense in or against any aircraft while it is in flight over this state may be tried in this state. The trial in such case may be in any county over which the aircraft passed in the course of such flight.

History.—§161, ch. 19554, 1939; CGL 1940 Supp. 8663(168).
cf.—§11, Declaration of rights, Florida constitution. Accused has the right to be tried in the county where the crime was committed.

910.03 Place of trial generally.—In all criminal prosecutions the trial shall be in the county where the offense was committed unless otherwise provided by law.

History.—§162, ch. 19554, 1939; CGL 1940 Supp. 8663(169).
cf.—§817.04, Prosecution for making false statement to obtain goods on credit.

910.04 Where accessory in one county and offense committed in another.—Where a person in one county aids, abets or procures the commission of an offense in another county he may be tried for the offense in either county.

History.—§163, ch. 19554, 1939; CGL 1940 Supp. 8663(170).
cf.—§932.12, Jurisdiction and venue, accessory before the fact.
§932.13, Accessory after the fact.

910.05 Where offense committed partly in one and partly in another county.—Where several acts are requisite to the commission of an offense, the trial may be in any county in which any of such acts occurs.

History.—§164, ch. 19554, 1939; CGL 1940 Supp. 8663(171).

910.06 Where person in one county commits offense in another.—Where a person in one county commits an offense in another county the trial may be in either county.

History.—§165, ch. 19554, 1939; CGL 1940 Supp. 8663(172).

910.07 Where offense committed on railroad train or other vehicle.—Where an offense is committed on a railroad train or other public or private vehicle while in the course of its trip the trial may be in any county through which such train or other vehicle passed during such trip.

History.—§166, ch. 19554, 1939; CGL 1940 Supp. 8663(173).

910.08 Where offense committed on vessel.—Where an offense is committed on board a vessel in the course of its voyage, the trial may be in any county through which the vessel passed during such voyage.

History.—§167, ch. 19554, 1939; CGL 1940 Supp. 8663(174).
cf.—§11, Declaration of rights, Florida constitution.

910.09 Where injury inflicted in one county and death occurs in another.—Where a person inflicts an injury upon another person in one county from which the injured person dies in another county, the trial for the homicide may be in either county.

History.—§168, ch. 19554, 1939; CGL 1940 Supp. 8663(175).

910.10 Where stolen property brought into another county.—Where a person obtains property by larceny, robbery, false pretense or embezzlement in one county and brings the property so obtained into any other county or counties, he may be tried in the county in which he obtains the property or in any other county into which he brings it.

History.—§169, ch. 19554, 1939; CGL 1940 Supp. 8663(176).

910.11 Conviction or acquittal bar to prosecution.—

(1) No person shall be held to answer on a second indictment or information for a crime for which he has been acquitted, but such acquittal may be pleaded by motion in bar of any subsequent prosecution for the same crime, notwithstanding any defect in the form or circumstances of the indictment or information.

(2) Where a person may be tried for an offense in two or more counties, a conviction or acquittal of the offense in one county shall be a bar to a prosecution for the same offense in another county.

History.—§170, ch. 19554, 1939; CGL 1940 Supp. 8663(177).
cf.—§398.23, Former acquittal or conviction of violation of uniform narcotic drug law.

CHAPTER 911

CHANGE OF JUDGE AND REMOVAL OF CAUSE

911.01 Change of judge.—(1) On a prosecution by indictment or information, the prosecuting attorney or the defendant may apply for a change of judge by making and filing an affidavit that he fears a fair trial cannot be had in the court where the case is pending on account of the prejudice of the judge of said court against the applicant, or in favor of the adverse party, and thereupon, such judge shall proceed no further therein, but another judge shall be designated in a manner prescribed by the laws of Florida for the substitution of judges for the trial of causes where the presiding judge is disqualified.

(2) The presiding judge may examine the affidavits supporting the motion to disqualify him for prejudice, to determine their legal sufficiency, but shall not pass on the truth of the facts alleged, nor adjudicate the question of his disqualification.

(3) Every affidavit shall state the facts and the reasons for the belief that any bias or prejudice exists, and such affidavit shall be filed not less than ten days before the time the case is called for trial, or good cause shown for the failure to so file same within such time.

(4) Any affidavit so filed shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith, and the facts stated as a basis for making the affidavit shall be supported in substance by affidavit of at least two reputable citizens of the county, not of kin to the defendant or of counsel for the defendant; provided, that when the prosecuting attorney or defendant shall have suggested the disqualification of a trial judge and an order shall have been made admitting the disqualification of such judge, and another judge shall have been assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred shall not be disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge shall admit and hold that it is then a fact that he, the said judge, does not stand fair and impartial between the parties and if such judge shall hold, rule and adjudge that he does stand fair and impartial as between the parties and their respective interests, he shall cause such ruling to be entered on the minutes of the court, and shall proceed to preside as judge in the pending cause. The ruling of such judge may be reviewed by the appellate court, as are other rulings of the trial court.

History.—§171, ch. 19554, 1939; CGL 1940 Supp. 8663(178); am. §7, ch. 22858, 1945.

cf.—§38.09, Designation of judge to hear cause when order of disqualification entered.

911.02 Removal of cause.—(1) On a prosecution by indictment or information the state or the defendant may apply for removal of the cause on the ground that a fair and impartial trial can not be had for any reason other than the interest or prejudice of the trial judge.

(2) In all criminal cases pending in any of the criminal courts of record in any county in this state, changes of venue may be had and granted upon the same terms and for the same reasons and grounds and in the same manner as is now provided by law for changes of venue in causes pending in the circuit courts. When any change of venue is granted in any cause in any criminal court of record, the venue shall be changed to the criminal court of record, in some adjoining county if there be one, but if there shall be no criminal court of record in any adjoining county, the venue shall be changed to the circuit court of some adjoining county; provided, that the venue in cases of misdemeanor shall be changed to the county court of some adjoining county, if there be a county court therein. Upon such change the original papers in the cause, together with a certified copy of the order changing the venue, shall forthwith be forwarded by the clerk to the court to which such venue is changed, and he shall preserve in his office certified copies of all such original papers so transmitted.

History.—§172, ch. 19554, 1939; CGL 1940 Supp. 8663(179).

911.03 Application for removal of cause; how and when made.—The application for removal of the cause shall be in writing and shall be filed not less than ten days before the trial of said cause unless good cause be shown for the failure so to file same within such time. It shall state the grounds on which it is based and shall also state the facts constituting the grounds. When made by the state, it shall be verified by affidavit of the prosecuting attorney; when made by the defendant, it shall be verified by his affidavit and when the defendant is represented by counsel, the affidavit shall be accompanied by a certificate of counsel of record that said affidavit and application are made in good faith.

History.—§173, ch. 19554, 1939; CGL 1940 Supp. 8663(180).

911.04 Service of copy of application for removal of cause.—Upon the filing of an application for removal of the cause a copy thereof and a copy of any supporting affidavit shall be served upon the other party prior to the hearing of the application.

History.—§174, ch. 19554, 1939; CGL 1940 Supp. 8663(181).

911.05 Duty of judge upon application for removal of cause.—Where application is made for removal of the cause the court shall hear the application and shall either grant or refuse it after considering the facts set forth therein and the affidavit accompanying it and any other affidavits or counter affidavits that may be filed after hearing any witness produced by either side. If the court grants the application it shall make an order removing the cause to the proper court of some other convenient county where a fair and impartial trial can be had.

History.—§175, ch. 19554, 1939; CGL 1940 Supp. 8663(182).

911.06 Proceedings on removal, if defendant is in custody.—If the defendant is in custody, the order shall direct that he be forthwith delivered to the custody of the sheriff of the county to which the cause is removed.

History.—§176, ch. 19554, 1939; CGL 1940 Supp. 8663(183).

911.07 Order of removal; recording and transmission.—The clerk shall enter on the minutes the order of removal and shall transmit to the court to which the cause is removed a certified copy of the order of removal and of the record and proceedings and of the undertakings of the witnesses and the accused.

History.—§177, ch. 19554, 1939; CGL 1940 Supp. 8663(184).

911.08 Duty of witnesses.—Where the cause is removed to another court the witnesses who have entered into undertakings to appear at the trial shall, on notice of such removal, attend the court to which the cause is removed at the time specified in the order of removal. A failure so to attend shall work a forfeiture of the undertaking.

History.—§178, ch. 19554, 1939; CGL 1940 Supp. 8663(185).

911.09 Removal of cause where several defendants.—If there are several defendants and an order is made removing the cause on the application of one or more but not all of them, the other defendants shall be tried and all proceedings had against them in the county in which the cause is pending in all respects as if no order of removal had been made as to any defendant.

History.—§179, ch. 19554, 1939; CGL 1940 Supp. 8663(186).

911.10 Duty of prosecuting attorney, and court to which cause removed.—(1) The court to which the cause is removed shall proceed to trial and judgment therein as if the cause had originated in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the cause is removed shall at any time upon application of the prosecuting attorney or the defendant order such papers or pleadings to be transmitted by the clerk a certified copy thereof being retained.

(2) The prosecuting attorney of the court to which the cause is removed, may amend the information, or file a new information, and such new information shall be entitled in the county in which the trial is had, but the allegation as to the place of commission of the crime, shall cover the county in which the crime was actually committed.

History.—§180, ch. 19554, 1939; CGL 1940 Supp. 8663(187).

CHAPTER 912
WAIVER OF JURY TRIAL

912.01 When trial by jury may be waived. —In all cases except where a sentence of death may be imposed trial by jury may be waived by the defendant. Such waiver shall be made in open court and an indorsement thereof made on the indictment or information and signed by the defendant.

History.—§181, ch. 19554, 1939; CGL 1940 Supp. 8663(188).

CHAPTER 913

TRIAL JURY

913.01 Challenge to panel.—The state or the defendant may challenge the panel or an individual juror.

A challenge to the panel may be made only on the ground that the jurors were not selected or drawn according to law.

Challenges to the panel shall be made and decided before any individual juror is examined, unless ordered by the court.

A challenge to the panel shall be in writing and shall specify the facts constituting the ground of challenge.

Challenges to the panel shall be tried by the court.

Upon the trial of a challenge to the panel the witnesses shall be examined on oath by the court and may be so examined by either party with the permission of the court.

If the challenge to the panel is sustained, the court shall discharge the panel. If the challenge is not sustained, the individual jurors shall be called.

History.—§182, ch. 19554, 1939; CGL 1940 Supp. 8663(189).
cf.—§932.19, Provisions supplemental to this chapter.

913.02 Examination of jurors.—(1) The jurors shall be sworn, either individually or collectively, as the court may decide, to answer truthfully all questions put to them regarding their competence to serve as jurors. The court shall then examine each juror individually, except that, with the consent of both parties, it may examine the jurors collectively. Counsel for both state and defendant shall be permitted to propound pertinent questions to the juror after such examination by the court.

(2) If the court after the examination of any juror is of the opinion that he is incompetent the court shall excuse him from the trial of the cause. If, however, the court does not excuse the juror, either party may then challenge him, as hereafter provided.

History.—§183, ch. 19554, 1939; CGL 1940 Supp. 8663(190).

913.03 Grounds for challenge to individual jurors for cause.—A challenge for cause to an individual juror may be made only on the ground:

(1) That the juror has not the qualifications required by law;

(2) That the juror is of unsound mind or has such a defect in any organ of the body as renders him incapable of performing the duties of a juror;

(3) That the juror entertains such conscientious convictions as would preclude his finding the defendant guilty;

(4) That the juror served on the grand jury which found the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

(5) That the juror served on a jury formerly sworn to try the defendant on the same charge;

(6) That the juror served on a jury which has tried another person for the offense charged in the indictment or information;

(7) That the juror served as a juror in a civil action brought against the defendant for the act charged as an offense;

(8) That the juror is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution;

(9) That the juror is related by blood or marriage within the third degree to the defendant or the attorneys of either party or to the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(10) That the juror has a state of mind in reference to the cause or to the defendant or to the person alleged to have been injured by the offense charged, or to the person on whose complaint the prosecution was instituted, which will prevent him from acting with impartiality; but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror if he declares, and the court is satisfied, that he can render an impartial verdict according to the evidence;

(11) That the juror was a witness either for the state or the defendant on the preliminary examination or before the grand jury or is to be a witness for either party at the trial;

(12) That the juror is one of the sureties on defendant's bail bond in the cause.

History.—§184, ch. 19554, 1939; CGL 1940 Supp. 8663(191).
cf.—§40.01, §932.19, Qualification of jurors.
§54.12, Challenge in civil cases.

913.04 When challenge to individual juror to be made.—A challenge to an individual juror may be made only before the juror is sworn to try the cause; except that the court may for good cause permit it to be made after the

juror is sworn, but before any evidence is presented.

History.—§185, ch. 19554, 1939; CGL 1940 Supp. 8663(192).

913.05 How challenge to individual juror to be made.—A challenge to an individual juror may be oral. When a juror is challenged for cause the ground for challenge shall be stated.

History.—§186, ch. 19554, 1939; CGL 1940 Supp. 8663(193).

913.06 How challenge to individual juror to be tried.—Challenges to an individual juror shall be tried by the court.

History.—§187, ch. 19554, 1939; CGL 1940 Supp. 8663(194).

913.07 Examination of witness on trial of challenge to individual juror.—Upon the trial of a challenge to an individual juror for cause the juror challenged and any other material witnesses produced by the parties shall be examined on oath by the court and may be so examined by either party.

History.—§188, ch. 19554, 1939; CGL 1940 Supp. 8663(195).

913.08 Number of peremptory challenges.—The state and the defendant shall each be allowed the following number of peremptory challenges:

(1) Ten, if the offense charged is punishable by death or imprisonment for life;

(2) Six, if the offense charged is a felony not punishable by death or imprisonment for life;

(3) Three, if the offense charged is a misdemeanor.

(4) If two or more defendants are jointly tried each defendant shall be allowed the number of peremptory challenges specified above and in such case the state shall be allowed as many challenges as are allowed to all of the defendants.

History.—§189, ch. 19554, 1939; CGL 1940 Supp. 8663(196).

913.09 Effect of sustaining challenge to individual juror.—If a challenge to an individual juror is sustained he shall be discharged from the trial of the cause.

History.—§190, ch. 19554, 1939; CGL 1940 Supp. 8663(197).

913.10 Number of jurors and alternate jurors.—

(1) Twelve men shall constitute a jury to try all capital cases, and six men shall constitute a jury to try all other criminal cases.

(2) When in the opinion of the court a trial is likely to be a protracted one, the presiding judge of such court may direct that one or two jurors, in addition to the regular panel, be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination, shall take the same oath and shall have the same functions, powers, facilities and privileges as the principal jurors. An alternate juror, who does not replace a principal juror, shall be discharged at the time the jury retires to consider its verdict. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by law for each alternate juror so called. The additional peremptory challenge may be used only against the alternate juror and the other peremptory challenges allowed by law shall not be used against the alternate jurors.

History.—§191, ch. 19554, 1939; CGL 1940 Supp. 8663(198).

913.11 Oath of jurors.—The following oath shall be administered to the jurors: "Do you solemnly swear (or affirm) that you will well and truly try the issues between the State of Florida and the defendant whom you shall have in charge and a true verdict render according to the law and the evidence, so help you God."

If any juror affirms, the clause "So help you God" shall be omitted.

History.—§192, ch. 19554, 1939; CGL 1940 Supp. 8663(199).

CHAPTER 914

PRESENCE OF DEFENDANT

914.01 Presence of defendant when prosecution for felony.—In all prosecutions for a felony the defendant shall be present:

(1) At arraignment;

(2) When a plea is made;

(3) At the calling, examination, challenging, impaneling and swearing of the jury;

(4) At all proceedings before the court when the jury is present;

(5) When evidence is addressed to the court out of the presence of the jury for the purpose of laying the foundation for the introduction of evidence before the jury;

(6) At a view by the jury;

(7) At the rendition of the verdict;

(8) Persons prosecuted for misdemeanors may, at their own request, by leave of court, be tried in their absence from the court.

Provided, however, that upon the beginning of the trial of a defendant upon any charge contained in any indictment or information and the defendant being present thereat, if said defendant shall thereafter, during the progress of said trial, or before the verdict of the jury shall have been returned into court, voluntarily, without leave of court first had and obtained, absent himself from the presence of the court, the trial of said cause or the return of the verdict of the jury in said case shall not thereby be postponed or delayed, but said trial, the submission of said case to the jury for verdict, and the return of the verdict thereon shall proceed in all respects as though the defendant were present in court at all times.

History.—§193, ch. 19554, 1939; CGL 1940 Supp. 8663(200).

cf.—§918.05, View by jury.
§920.05, Grounds for new trial.

CHAPTER 915

DISMISSAL OF PROSECUTION

915.01 Speedy trial; reduction of bail; discharge of prisoner.—(1) When a person has been committed to custody to answer any criminal charge, and shall apply to the court on the first day of the term to which he has been committed, that he desires to be brought to his trial before the end of the term, and shall not be indicted or informed against at that term, unless it appear to the satisfaction of the court that the witnesses could not be procured, the court shall set him at liberty upon his giving bail in a reasonable penalty to appear at the next term. If the person in custody be not indicted or informed against in the second term, unless the attendance of witnesses is prevented by himself, he shall be discharged from imprisonment; and if he is not tried at or before the third term after the date he is first committed, he shall be forever discharged from the crime.

(2) When a person has been arrested and released on bond, and thereafter for three successive terms of court, files a written demand for trial (serving a copy on the prosecuting attorney) and he is not brought to trial at or before the third full term after the date he is first committed, he shall be forever discharged from the crime; provided, however, the attendance of the witnesses is not prevented by himself, and he has filed no pleading seeking a continuance.

History.—§194, ch. 19554, 1939; CGL 1940 Supp. 8663(201).

915.02 Speedy trial for persons serving terms of imprisonment.—Any person serving a sentence or sentences of imprisonment for crime in this state who has a charge of crime pending against him in this state and who, while imprisoned under such sentence or sentences, files in the court having jurisdiction to try said charge, on or within thirty days before the first day of each of three successive terms thereof, a written demand for trial, serving a copy upon the prosecuting attorney, and who is not brought to trial by the end of the third of such terms, shall be forever discharged from the said crime; provided that the attendance of the witnesses is not prevented by him; provided that any term of court during which a continuance has been granted for good cause shown to either the accused or the state shall not be counted in computing the three terms.

History.—§1, ch. 61-419.

CHAPTER 916

CONTINUANCE

916.01 Right to speedy trial.—In all criminal prosecutions the state and the defendant shall each have the right to a speedy trial.

History.—§195, ch. 19554, 1939; CGL 1940 Supp. 8663(202). cf.—§11, Decl. of rights, const.

916.02 Definition of continuance.—(1) A continuance within the meaning of this chapter is the postponement of a cause for any period of time.

(2) The court on the application of either party or on its own motion may in its discretion for good cause grant a continuance.

History.—§196, ch. 19554, 1939; CGL 1940 Supp. 8663(203).

916.03 When application for continuance to be made.—An application for continuance may be made only before or at the time the case is set for trial, unless good cause for failure so to apply is shown or unless the ground for application arose after the cause was set for trial.

History.—§197, ch. 19554, 1939; CGL 1940 Supp. 8663(204).

916.04 Form of application for continuance.—An application for continuance shall be in writing. The application shall specify the ground upon which it is based and shall be signed by the prosecuting attorney or by counsel for the defendant, as the case may be, and shall be accompanied by the certificate of the signer that it is made in good faith and shall be sworn to by the applicant.

History.—§198, ch. 19554, 1939; CGL 1940 Supp. 8663(205).

916.05 Application for continuance on ground of absent witness.—An application for continuance on the ground that a witness is absent shall state:

(1) The name and residence of the witness and that the witness is absent;

(2) The facts expected to be proved by the witness;

(3) That the testimony of the witness is material and not merely cumulative, and that the facts to be proven by the witness cannot be proven by any other available witnesses;

(4) Whether the witness is a legal resident of this state;

(5) Facts showing that due diligence has been used to obtain the witness, and that a service of a summons on the witness has been attempted, within a reasonable time before trial, but the witness could not be found;

(6) Facts showing that the applicant expects to be able to procure the attendance of the witness at a specified time;

(7) That the witness is not absent through the procurement, connivance, or consent, either directly or indirectly, of the applicant;

(8) That the applicant believes that the cause cannot be tried with justice to the party without the evidence of such witness;

(9) Facts showing when the witness left the jurisdiction of the court; whether his absence is temporary or permanent, and when he is expected to return;

(10) Facts showing when and how the applicant learned that the witness would testify as alleged in the motion;

(11) If the witness is not expected to return, then the filing of interrogatories to be propounded to such absent witness, and a request that a commission be issued to take the deposition of such witness, if the applicant is the defendant;

(12) That the witness will be present at a designated time, not later than the next term of court, or that his deposition will be obtained (if applicant is defendant).

History.—§199, ch. 19554, 1939; CGL 1940 Supp. 8663(206). cf.—§902.17, Refusal of witness to give security.

916.06 Depositions.—

(1) At any time after defendant is bound over for trial up to and including the day defendant is arraigned upon indictment or information, if he shall satisfy the court by his oath in writing, or by the affidavits of credible persons, that the testimony of absent persons is material and necessary to his defense, and that such witnesses reside beyond the jurisdiction of the court or are so sick and infirm that with diligence their attendance can not be procured at the same or the next succeeding regular or special term at which the case may be tried, the judge upon the proper application of the accused, or his attorney, and the filing of the interrogatories to be propounded to such absent witnesses, shall order that a commission be issued to take the deposition of such witnesses to be used in the trial.

(2) If a defendant desires to perpetuate the testimony of a witness living in or out of the state, whose testimony is material and necessary to his defense, the same proceedings shall be followed as set forth in subsection (1) hereof; with the exception, however, that the testimony of such witness be taken before an official court reporter, transcribed by him, and filed in the trial court.

(3) The order for issuing such commission may be made by the judge, either in term time or in vacation, and application to him for that purpose may be made in vacation as well as in term time, but in such case due notice of the application shall be given to the prosecuting attorney. The commission shall be issued at a time to be fixed by the judge.

(4) Except as otherwise provided, the rules governing the filing of interrogatories and cross-interrogatories, the objections thereto, the issuing, execution and return of the commission, and the opening of the depositions in civil cases shall be observed in criminal cases.

(5) No deposition shall be used or read in evidence when the attendance of the witnesses can be procured, and if it shall appear to the court that any person whose deposition has been taken, has absented himself by the procurement, inducement, or threats of the accused, or of any person on his behalf, such depositions shall not be read to the jury.

History.—§199a, ch. 19554, 1939; CGL 1940 Supp. 8663(207).

916.07 Hearing and action thereon.—The party applying for a continuance may file affidavits in support of his application, and the adverse party may, except as to the facts expected to be proved by the witness, thereupon file counter-affidavits. The court in its discretion may require additional affidavits or counter-affidavits and shall either grant or refuse the application after considering the allegations thereof and any affidavits or counter-affidavits that may be filed.

History.—§200, ch. 19554, 1939; CGL 1940 Supp. 8663(208).

916.08 Time for continuance.—No continuance shall be granted for a longer time than the ends of justice require.

History.—§201, ch. 19554, 1939; CGL 1940 Supp. 8663(209).

916.09 Continuance where several defendants.—Where there are several defendants and a continuance is granted on the application of one or more, but not all defendants, the trial of the other defendants shall proceed unless the court orders otherwise.

History.—§202, ch. 19554, 1939; CGL 1940 Supp. 8663(210).

CHAPTER 917

PROCEEDING TO DETERMINE MENTAL CONDITION OF DEFENDANT

917.01 Examination of defendant's mental condition to determine whether he shall be tried.—(1) If before or during trial the court, of its own motion, or upon motion of counsel for the defendant, has reasonable ground to believe that the defendant is insane, the court shall immediately fix a time for a hearing to determine the defendant's mental condition. The court may appoint two disinterested qualified experts to examine the defendant and to testify at the hearing as to his mental condition. Other evidence regarding the defendant's mental condition may be introduced at the hearing by either party.

(2) If the court, after the hearing, decides that the defendant is sane, it shall proceed with the trial. If, however, it decides that the defendant is insane, it shall take proper steps to have the defendant committed to the proper institution. If the defendant is declared insane during the trial, and afterwards released from the institution to which he has been committed, as sane, his former uncompleted trial shall not constitute former jeopardy. If, after a defendant has been committed to an institution as insane, the proper officer of such institution is of the opinion that the defendant is sane, he shall report this fact to the court which conducted the hearing. If the officer so reports, the court shall fix a time for a hearing to determine whether the defendant is sane. This hearing shall be conducted in all respects like the original hearing to determine the defendant's sanity. If found sane, the trial shall proceed; if found insane, he shall again be recommitted as hereinabove set forth. No defendant committed by a court to an institution, by reason of the examination referred to in this paragraph, shall be released therefrom, without the consent of the court committing him.

History.—§203, ch. 19554, 1939; CGL 1940 Supp. 8663(211).

917.02 Appointment of expert witnesses by court.—When on a prosecution by indictment or information the existence of insanity on the part of the defendant at the time of the alleged commission of the offense charged becomes an issue in the cause, the court may appoint one or more disinterested qualified experts, not exceeding three, to examine the defendant. If the court does so, the clerk shall notify the prosecuting attorney and counsel for the defendant of such appointment and shall give the names and addresses of the experts so appointed. If the defendant is at large on bail, the court in its discretion may commit him to custody pending the examination by such experts. The appointment of experts by the court shall not preclude the state or defendant from calling expert witnesses to testify at the trial and in case the defendant is committed to custody by the court they shall be permitted to have free access to the defendant for purposes of examination or observation. The experts appointed by the court shall be summoned to testify at the trial and shall be examined by the court and may be examined by counsel for the state and the defendant.

History.—§204, ch. 19554, 1939; CGL 1940 Supp. 8663(212).
cf.—§932.30, Expert witnesses in felony prosecutions.

917.03 Fees for expert witnesses.—When expert witnesses are appointed by the court they shall be allowed such fees as the court in its discretion deems reasonable, having regard to the services performed by the witnesses. The fees so allowed shall be paid by the county where the indictment was found or the information filed. Such fees shall be taxed as costs in the case.

History.—§205, ch. 19554, 1939; CGL 1940 Supp. 8663(213).

917.12 Criminal sexual psychopaths.—

(1) DEFINITION. — All persons suffering from a mental disorder and not insane or feeble-minded which mental disorder has existed for a period of not less than four months immediately prior to the appointment of the psychiatrists provided for in subsection (2)(c) coupled with criminal propensities to the commission of sex offenses and who may be considered dangerous to others are hereby declared to be criminal sexual psychopaths.

(2) PROCEEDING FOR DETERMINATION, COMMITMENT.—

(a) When a person has been charged by information with any crime or when a person has been convicted of any crime, in a court other than a circuit court, whether or not said crime constitutes a sex offense, the trial judge on his own motion or on motion of the prosecuting attorney of said court or on application by affidavit by or on behalf of the defendant, if, it appears to the satisfaction of the court that there is probable cause for believing such person is a sexual psychopath within the meaning of this act, may adjourn the proceeding or suspend the sentence, as the case may be, and may certify the person for hearing the examination by the circuit court of the circuit in which the trial court is situate to determine whether the person is a criminal sexual psychopath within the meaning of this act.

(b) When a person has been charged by indictment with any crime or when a person has been convicted of any crime in a circuit court, whether or not said crime constitutes a sex offense or not, the circuit court judge may on his

own motion or on motion of the prosecuting attorney of said court or on application by affidavit by or on behalf of the defendant, if it appears to the satisfaction of the court that there is probable cause for believing such person is a sexual psychopath within the meaning of this act, may adjourn the proceeding or suspend the sentence, as the case may be, and proceed to determine whether said person is a criminal sexual psychopath within the meaning of this act.

(c) The circuit court judge shall then appoint not less than two nor more than three qualified psychiatrists who are licensed physicians in the state and who have directed their professional practice primarily to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years, to make a personal examination of the alleged sexual psychopath, directed toward ascertaining whether the person is a criminal sexual psychopath. Each psychiatrist so appointed shall file with the court a separate written report of the result of his examination together with his conclusions. Said report shall not be competent evidence in any other proceeding against said person except the hearing to inquire into his alleged psychopathy. Said alleged psychopathic person shall be required to answer the questions propounded by such psychiatrists under penalty of contempt of court.

(d) The court shall cause a hearing to be held to ascertain whether or not such person is a criminal sexual psychopathic person. Upon such hearing it shall be competent to introduce evidence of the commission of said person of any number of crimes involving sexual motivation of which the accused heretofore has been convicted, together with the record of the punishment inflicted therefor. The accused psychopath shall have the right to have legal counsel present and assisting him at such hearing. The office of the state attorney shall be represented at such hearing on behalf of the state. The psychiatrists appointed by the court may be called by either party to the proceeding or by the court itself and when so called shall be subject to all legal objections as to competency and bias and as to qualification as an expert. When called by the court or by either party to the proceeding, the court may examine the psychiatrists as deemed necessary, but either party shall have the same right to object to questions asked by the court, and the evidence adduced, as though the psychiatrist were a witness for the adverse party. When a psychiatrist is called and examined by the court, the parties may cross-examine him in the order directed by the court. When called by either party to the proceeding, the adverse party may examine him the same as in the case of any other witness called by such party. The accused psychopath, the court, or the state may also call any other witnesses who are material to the issues of this hearing. If such person is determined to be a criminal sexual psychopathic person by the court, then the court shall order and commit such person to an appropriate institution under the jurisdiction of the board of commissioners of state institutions until there are reasonable grounds to believe that such person has recovered from such psychopathy to a degree that he will not be a menace to others.

(3) PERIODIC EXAMINATION; DISCHARGE PROCEEDINGS, ETC.; RECOMMENCEMENT OF PENDING PROCEEDINGS.—The superintendent of the institution wherein the person is committed by the circuit court judge shall cause to be made periodic examinations of such persons with the view of determining the progress of treatment and shall file a report in writing to the committing court not less than once each year. At any time after commitment an application in writing setting forth facts showing that such criminal sexual psychopath has improved to a degree that he will not be a menace to others may be filed with the committing court, whereupon the court shall issue an order returning the person to the jurisdiction of said court for a hearing. This hearing shall in all respects be like the original hearing to determine the mental condition of the person except that the court may or may not in its discretion further appoint psychiatrists for a new examination. In the event such person is found not to have so recovered from such psychopathy, then the circuit court shall order such person to be returned to the custody of said institution to be held under the previous commitment of such person. In the event the person is found to have recovered from such psychopathy to a degree that he will not be a menace to others, then the circuit court shall order such person discharged from the institution to which he was committed and further if criminal proceedings are still pending against such person then they shall recommence upon the order by the circuit court discharging the person from the institution.

(4) JURISDICTION CIRCUIT COURT.—The circuit court shall at all times retain jurisdiction of the psychopath from the commencement of these proceedings until final discharge and may order such further examinations and reports of and pertaining to said person as it may deem proper and all reports shall at all times be available to such committed person's attorney for use in petitions for discharge, and also as evidence at any hearings pertaining to discharge.

(5) INAPPLICABILITY IN CAPITAL CASES.—This act shall specifically not apply to those persons charged with a capital offense.

(6) CIVIL PROCEEDING.—This act is a civil proceeding and nothing contained herein shall alter in any respect the tests of mental capacity applied in criminal prosecutions under the laws of Florida.

(7) COSTS.—The state shall defray all cost and expense necessarily incurred by the state in the ascertainment of whether or not such person is a criminal sexual psychopathic per-

son, as well as that incident to his confinement and treatment in a state institution, and where possible, the state may recover the amount so paid from such person, upon a proceeding instituted for that purpose by the state attorney of the county where such person was charged with a criminal offense.

(8) WITNESSES, SUBPOENA, EXAMINATION.—At any hearing, held pursuant to this act, the judge shall also cause to be examined as a witness anyone whom he believes to have knowledge of the mental condition of the alleged sexual psychopath. The judge may, for any hearing, order the clerk of the court to issue subpoenas and compel the attendance of witnesses from any place within the boundaries of this state, but no person is obliged to attend as a witness in such hearing out of the county where he resides or is served unless the judge, upon affidavit to the effect that affiant believes that the evidence of the witness is material and his attendance at the hearing necessary, endorses on the subpoena an order for the attendance of the witness.

(9) FEES, WITNESSES, PSYCHIATRISTS.—All witnesses attending a hearing upon a subpoena issued under this act shall be entitled to the same fees and expenses as in criminal cases, to be paid upon the same conditions and in like manner. The psychiatrists appointed by the court shall be allowed such fees as in the discretion of the court seem just and reasonable, with regard to the services rendered by the psychiatrists.

History.—§§1-12, ch. 57-1989.

CHAPTER 918

CONDUCT OF TRIAL

918.01 Defendant at large on bail appearing for trial may be committed to custody.—The court in its discretion, any time after a defendant who is at large on bail appears for trial, may commit him to the custody of the proper official to abide the judgment, sentence and any further order of the court.

History.—§206, ch. 19554, 1939; CGL 1940 Supp. 8663(214).

918.02 Trial where joint defendants.—When two or more defendants are jointly charged with an offense, whether felony or misdemeanor, they shall be tried jointly, unless the court in its discretion on the motion of the prosecuting attorney or any defendant, orders separate trials. In ordering separate trials, the court may order that one or more defendants be each separately tried and the others jointly tried or may order that several defendants be jointly tried in one trial and the others jointly tried in another trial or trials, or may order that each defendant be separately tried.

History.—§207, ch. 19554, 1939; CGL 1940 Supp. 8663(215).

918.03 Procedure where offense committed outside state.—If the jury is discharged on the ground that the court is without jurisdiction because it appears that the offense charged was committed outside this state, the court may order the defendant to be discharged or may direct that a communication be sent by the clerk of the court to the chief executive officer of the state, territory or district where the offense was committed and may commit the defendant to custody or admit him to bail, for such time as it deems reasonable, to await a requisition for his extradition to such state, territory or district. If no requisition is made within the time set by the court the defendant shall be discharged, and if he has been admitted to bail, the court shall order that the surety or the defendant as the case may be, be exonerated from liability on his undertaking, or if money or bonds have been deposited as bail, that such money or bonds be returned.

History.—§208, ch. 19554, 1939; CGL 1940 Supp. 8663(216).
cf.—Ch. 941, Extradition.

918.04 Procedure where offense committed in another county.—If the jury is discharged on the ground that the court is without jurisdiction of the offense charged because it appears that it was committed in another county of this state and that the court is not empowered by the criminal procedure law to try such offense, the court shall commit the defendant to custody or admit him to bail, for such time as it deems reasonable, to await a warrant for his arrest from the proper county. The clerk of the court shall forthwith give notice to the prosecuting attorney of the proper county that the defendant has been so committed to custody or admitted to bail. If the defendant is not arrested on a warrant from the proper county within the time set by the court, he shall be discharged, and if he has been admitted to bail, the court shall order that the surety or the defendant, as the case may be, be exonerated from liability on his undertaking, or if money or bonds have been deposited as bail, that such money or bonds be returned.

History.—§209, ch. 19554, 1939; CGL 1940 Supp. 8663(217).

918.05 View by jury.—When, in the opinion of the court, it is proper that the jury should view the place where the offense appears to have been committed, or, where any other material fact appears to have occurred, it may order the jury, in the custody of the proper officer, to be conducted in a body to such place; and the officer shall be admonished to permit no person to speak to or otherwise communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into the courtroom without unnecessary delay, or at a specified time. The trial judge and defendant shall be present, unless defendant absents himself without permission of court, and the prosecuting attorney and counsel for the defendant may be present at the view by the jury.

History.—§210, ch. 19554, 1939; CGL 1940 Supp. 8663(218).
cf.—§914.01, Presence of defendant when prosecution for felony.

918.06 Separation and detention of jurors; admonition by court.—The court in its discretion may direct that the jurors, when they leave the jury box at any time before the cause is finally submitted to them, be permitted to separate or be kept together in charge of a proper officer. In either event the court shall admonish them that it is their duty not to converse among themselves, or with any one else, on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them. If the court permits the jurors to separate it shall also admonish the jurors not to view the place where the offense appears to have been committed.

History.—§211, ch. 19554, 1939; CGL 1940 Supp. 8663(219).

918.07 Admonition to officer in charge of

jurors.—If the jurors are committed to the charge of an officer he shall be admonished by the court to keep the jurors together in the place specified by the court and not to permit any person to speak to or otherwise communicate with them on any subject except with the permission of the court, given in open court, in the presence of the defendant or his counsel. Such officer shall not communicate with the jurors on any subject connected with the trial, and under the direction of the court, shall return the jurors to court when ordered so to do.

History.—§212, ch. 19554, 1939; CGL 1940 Supp. 8663(220).

918.08 Directing acquittal of defendant.—(1) If, at the close of the evidence for the state or at the close of all the evidence in the cause, the court is of the opinion that the evidence is insufficient to warrant a conviction, it may and, on the motion of the prosecuting attorney or the defendant, shall, direct the jury to acquit the defendant.

(2) A motion for directed verdict is not waived by subsequent introduction of evidence on behalf of defendant, but after introduction of evidence by defendant, the motion for directed verdict must be renewed at the close of all the evidence. Such motion must fully set forth the grounds upon which it is based.

History.—§213, ch. 19554, 1939; CGL 1940 Supp. 8663(221).

918.09 Accused may make himself a witness.—In all criminal prosecutions the accused may at his option be sworn as a witness in his own behalf, and shall in such case be subject to examination as other witnesses, but no accused person shall be compelled to give testimony against himself, nor shall any prosecuting attorney be permitted before the jury or court to comment on the failure of the accused to testify in his own behalf, and a defendant offering no testimony in his own behalf, except his own, shall be entitled to the concluding argument before the jury.

History.—§214, ch. 19554, 1939; CGL 1940 Supp. 8663(222).

918.10 Charge to jury; request for instructions.—

(1) The presiding judge shall charge the jury only upon the law of the case at the conclusion of argument of counsel, and must include in said charge the penalty fixed by law for the offense for which the accused is then on trial.

(2) Every charge to a jury shall be orally delivered, and charges in capital cases shall also be in writing. Charges in other than capital cases shall be taken by the court reporter, transcribed by him and filed in the cause.

(3) At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury.

(4) No party may assign as error or grounds of appeal the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects, and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(5) When an objection is made to the giving or failure to give an instruction, no exception need be made to the court's ruling thereon in order to have such ruling reviewed, and the grounds of objection and ruling thereon shall be taken by the court reporter, transcribed by him and filed in the cause.

History.—§215, ch. 19554, 1939; CGL 1940 Supp. 8663(223); am. §1, ch. 22775, 1945.

CHAPTER 919
CONDUCT OF JURY

919.01 Regulation of jury.—

(1) After the jury shall have been sworn they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public and in the presence of the accused; and after hearing such proofs and allegations the jury shall be kept together in some convenient place until they agree upon a verdict or are discharged by the court, and the sheriff or a bailiff shall be sworn to take charge of the jury.

(2) After the cause has been finally submitted the jurors shall retire to the place provided for them and consider their verdict. When the court directs a verdict of acquittal the jurors shall declare their verdict in open court by having one of their numbers sign, as foreman, a verdict prepared by the clerk of the court in accordance with the court's instruction.

(3) The sheriff when required by order of the court shall provide juries with meals and lodging, the expenses to be taxed against and paid by the state.

History.—§216, ch. 19554, 1939; CGL 1940 Supp. 8663(224).
cf.—§11, Declaration of rights, Florida constitution. Right of accused to public trial.
§40.01 et seq., Jurors and jury lists.
§912.01, Waiver of jury trial.
§913.01 et. seq., Challenges, etc.

919.02 Separation of jurors after submission of cause.—Unless the jurors have been kept together during the trial the court may, in its discretion, after the final submission of the cause, order that the jurors may separate for a definite time to be fixed by the court and then reconvene in the courtroom before retiring for consideration of their verdict.

History.—§217, ch. 19554, 1939; CGL 1940 Supp. 8663(225).

919.03 Selection of a foreman.—The court shall instruct the jurors to select one of their number foreman, or the court may appoint one of the jurors foreman, provided such appointment be made by the court before any testimony is taken in the cause.

History.—§218, ch. 19554, 1939; CGL 1940 Supp. 8663(226).

919.04 What jurors may have with them.—Upon retiring for deliberation the jurors may, if the court permits, take or later have sent to them:

(1) Forms of verdict approved by the court, after being first submitted to counsel.

(2) Any written instructions given; but if any such instruction is taken or sent all the instructions shall be taken or sent.

(3) All things received in evidence, other than depositions. If the thing received in evidence is a public record or a private document which in the opinion of the court, ought not to be taken from the person having it in custody, a copy shall be taken or sent instead of the original.

History.—§219, ch. 19554, 1939; CGL 1940 Supp. 8663(227).

919.05 Jurors may return into courtroom for instruction.—After the jurors have retired to consider their verdict if they desire additional instruction upon any point of law arising in the cause or to have any testimony, about which they are in doubt or disagreement, read to them, they shall, upon their request, be conducted into the courtroom by the officer who has them in charge and there the court shall give them such additional instruction or shall order such testimony read to them. Such instruction may be given and such testimony read only after notice to the prosecuting attorney and to counsel for the defendant.

History.—§220, ch. 19554, 1939; CGL 1940 Supp. 8663(228).

919.06 Court may recall jurors for supplemental instructions.—The court may recall the jurors after they have retired to consider their verdict to give them additional instructions or to correct any erroneous instruction it has given them. Such additional or corrective instructions may be given only after notice to the prosecuting attorney and to counsel for the defendant.

History.—§221, ch. 19554, 1939; CGL 1940 Supp. 8663(229).

919.07 Recalling jurors to hear additional evidence.—After the jurors have retired to consider their verdict the court shall not recall the jurors to hear additional evidence.

History.—§222, ch. 19554, 1939; CGL 1940 Supp. 8663(230).
cf.—§920.05, Grounds for new trial.

919.08 Court open during retirement of jurors.—After the jurors have retired to consider their verdict the court may adjourn from time to time as to other business, but shall be open for every purpose connected with the cause until the jurors are discharged from the cause.

History.—§223, ch. 19554, 1939; CGL 1940 Supp. 8663(231).

919.09 Return of jurors; manner of declaring the verdict; receiving and recording.—When the jurors have agreed upon a verdict they shall be conducted into the courtroom by the officer having them in charge. Their names shall be called by the clerk and when all jurors respond to their names the judge shall ask them if an agreement has been reached on a verdict. If the foreman answers in the affirmative, the judge shall call upon him to deliver the verdict in writing to the clerk. The court may then examine the verdict and correct it as to matters of form with the unanimous consent of the jurors. The clerk shall then read the verdict to the jurors and unless disagreement is expressed by one or more of them or the jury be polled, the verdict shall be entered of record, and the jurors discharged from the cause.

No verdict may be rendered in any criminal case unless all of the petit jurors concur in it.

History.—§224, ch. 19554, 1939; CGL 1940 Supp. 8663(232).

919.10 Polling the jury.—Upon the motion of either the state or the defendant or upon its own motion, the court shall cause the jurors to be asked severally if the verdict rendered is their verdict. If a juror dissents, the court must direct them sent back for further consideration; and if there be no dissent the verdict shall be entered of record and the jurors discharged. Provided, however, that no jury shall be polled after a verdict directed by the court and no motion to poll the jury shall be entertained after the jury is discharged or the verdict recorded.

History.—§225, ch. 19554, 1939; CGL 1940 Supp. 8663(233).

919.11 Acquittal for cause of insanity.—When a person tried for an offense shall be acquitted by the jury for the cause of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause, and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the people, the court shall order him to be committed to jail or otherwise to be cared for as an insane person, or may give him into the care of his friends, on their giving satisfactory security for the proper care and protection of such person; otherwise he shall be discharged.

History.—§226, ch. 19554, 1939; CGL 1940 Supp. 8663(234).

919.12 Proceedings on sealed verdict.—The court may, with the consent of the prosecuting attorney and the defendant, direct the jurors that if they should agree upon a verdict during a temporary adjournment of the court, the foreman and each juror shall sign the same, and such verdict shall be sealed in an envelope and delivered to the officer having charge of the jury, after which the jury may separate until the next convening of the court, at which time they shall reassemble in the jury box. The officer shall, at the earliest possible moment, deliver the sealed verdict to the clerk. When the jurors have reassembled in open court, the envelope shall be opened by the judge or clerk and the same proceedings shall be had as in the receiving of other verdicts, with the exception that the verdict having been signed by each juror there shall be no further necessity of polling the jury.

History.—§227, ch. 19554, 1939; CGL 1940 Supp. 8663(235).

919.13 Sealed verdict; admonition to jurors.—When the court authorizes the rendition of a sealed verdict it shall admonish the jurors not to make any disclosure concerning it nor to speak with other persons concerning the cause until their verdict shall have been rendered in open court.

History.—§228, ch. 19554, 1939; CGL 1940 Supp. 8663(236).

919.14 Determination of degree of offense.—If the indictment or information charges an offense which is divided into degrees, without specifying the degree, the jurors may find the defendant guilty of any degree of the offense charged; if the indictment or information charges a particular degree the jurors may find the defendant guilty of the degree charged or of any lesser degree. The court shall in all such cases charge the jury as to the degrees of the offense.

History.—§229, ch. 19554, 1939; CGL 1940 Supp. 8663(237).

919.15 Verdict of guilty where more than one count.—If different offenses are charged in the indictment or information the jurors shall, if they convict the defendant, make it appear by their verdict on which counts, if the indictment or information is divided into counts, or of which offenses they find him guilty.

History.—§230, ch. 19554, 1939; CGL 1940 Supp. 8663(238).

919.16 Conviction of attempt; conviction of included offense.—Upon an indictment or information for any offense the jurors may convict the defendant of an attempt to commit such offense, if such attempt is an offense, or convict him of any offense which is necessarily included in the offense charged. The court shall charge the jury in this regard.

History.—§231, ch. 19554, 1939; CGL 1940 Supp. 8663(239).

919.17 Verdict in the case of joint defendants.—On the trial of two or more defendants jointly the jurors may render a verdict as to such defendant in regard to whom the jurors agree.

History.—§232, ch. 19554, 1939; CGL 1940 Supp. 8663(240).

919.18 Reconsideration of ambiguous or defective verdict.—If a verdict is so defective that the court cannot determine from it whether the jurors intended to acquit the defend-

ant or to convict him of the offense for which judgment could be entered under the indictment or information, or cannot determine from it on what count or counts the jurors intended to acquit or convict the defendant, the court shall, with proper instructions, direct the jurors to reconsider the verdict, and the verdict shall not be received until it shall clearly appear therefrom whether the jurors intended to convict or acquit the defendant and on what count or counts they intended to acquit or convict him, unless they persist in rendering such defective verdict, in which case the verdict shall be received and entered of record as rendered.

History.—§233, ch. 19554, 1939; CGL 1940 Supp. 8663(241).

919.19 Verdict may be rendered and additional instructions given on any day.—A verdict may be rendered and additional or corrective instructions given on any day, including Sunday or any legal holiday.

History.—§234, ch. 19554, 1939; CGL 1940 Supp. 8663(242).

919.20 Disposition of defendant.—If a verdict of guilty is rendered the defendant shall, if in custody, be remanded; if he is at large on bail he may be taken into custody and committed to the proper official, or remain at liberty on the same or additional bail as the court may direct.

History.—§235, ch. 19554, 1939; CGL 1940 Supp. 8663(243).

919.21 Discharge of jurors. — After the jurors have retired to consider their verdict the court shall discharge them from the cause when:

(1) Their verdict has been recorded;

(2) A necessity exists for their discharge;

(3) Upon the expiration of such time as the court deems proper, there is no reasonable probability that the jurors can agree upon a verdict;

(4) At the final adjournment of the court.

The court may in any event discharge the jurors from the cause if the prosecuting attorney and the defendant consent to such discharge.

History.—§236, ch. 19554, 1939; CGL 1940 Supp. 8663(244).

919.22 Irregularity in rendition, reception and recording of verdict.—No irregularity in the rendition, reception or recording of a verdict shall affect its validity unless the defendant was in fact prejudiced by such irregularity.

History.—§237, ch. 19554, 1939; CGL 1940 Supp. 8663(245).

919.23 Recommendation to mercy.—(1) In all criminal trials, the jury, in addition to a verdict of guilty of any offense, may recommend the accused to the mercy of the court or to executive clemency, and such recommendation shall not qualify the verdict except in capital cases. In all cases the court shall award the sentence and shall fix the punishment or penalty prescribed by law.

(2) Whoever is convicted of a capital offense and recommended to the mercy of the court by a majority of the jury in their verdict, shall be sentenced to imprisonment for life; or if found by the judge of the court, where there is no jury, to be entitled to a recommendation to mercy, shall be sentenced to imprisonment for life, at the discretion of the court.

History.—§237a, ch. 19554, 1939; CGL 1940 Supp. 8663(246).

CHAPTER 920

MOTION FOR NEW TRIAL AND ARREST OF JUDGMENT

920.01 Granting new trial.—When a verdict has been rendered against the defendant or the defendant has been found guilty by the court, the court on motion of the defendant, or on its own motion, may grant a new trial.

History.—§238, ch. 19554, 1939; CGL 1940 Supp. 8663(247).

920.02 Time for making motion.—

(1) Every matter which heretofore could be set forth in a motion in arrest of judgment shall be included in the motion for a new trial and the filing of a motion in arrest of judgment is dispensed with.

(2) When the defendant has been found guilty by a jury or by the court a motion for new trial may be dictated into the record, if a court reporter is present, and argued and disposed of by the trial judge immediately after the return of the verdict, or after defendant has been found guilty by the court. The court may rule upon the same immediately and upon the denial of said motion the court shall immediately sentence the defendant and shall dictate to the court reporter such denial; the defendant may immediately thereafter file his notice of appeal, and upon filing notice of appeal the court shall fix the amount of the appeal bond if the defendant is entitled to bail, and upon the filing of the notice of appeal and the filing and approval of the supersedeas bond the defendant shall be released from custody. A certificate shall be prepared by the clerk setting forth the filing and approval of the bond and such certificate when presented to the officer having the defendant in custody shall be sufficient authority for the defendant's release.

(3) A motion for a new trial may be made within four days, or such further time as the court may allow, not to exceed fifteen days, after the rendition of the verdict or the finding of the court, but until said motion for new trial is heard and disposed of, the defendant shall remain in custody and not be allowed his liberty on bail; provided that the court may upon good cause being shown, if the offense for which the defendant is convicted is bailable, permit the defendant to be released upon bail until the motion for new trial is heard and disposed of.

(4) In no case, whether capital or not, shall an appeal be supersedeas to the execution of the judgment, sentence, or order complained of, except upon payment by the appellant of all costs which have accrued in the case up to that time, and upon his entering into bond with two or more sufficient sureties according to law, in a sum sufficient to secure the payment of such judgment, fine and future costs as may be adjudged and affirmed in the appellate court, and conditioned that the appellant shall be personally forthcoming to answer and abide the final order, sentence or judgment which may be passed in the premises by the appellate court, and in case the cause is remanded, that the appellant shall personally be and appear at the next term of the court in which the case was originally determined, thereafter to be held to answer in the premises and not to depart from the court without leave thereof. But in cases where capital punishment is by the sentence of the court ordered to be inflicted, the person of the defendant shall be the only security required for his forthcoming to answer as aforesaid.

History.—§239, ch. 19554, 1939; CGL 1940 Supp. 8663(248).

920.03 Form of motion; notice to prosecuting attorney.—The motion for new trial may be in writing, and when in writing shall be filed with the clerk; it shall state the grounds on which it is based. A copy of said motion, when in writing, shall be served on the prosecuting officer, and when the court has set a date for the hearing of the motion, the clerk shall notify counsel for the respective parties, or the attorney for the defendant may procure a date for hearing from the judge and shall serve notice of hearing on the prosecuting officer.

History.—§240, ch. 19554, 1939; CGL 1940 Supp. 8663(249).

920.04 Grounds for new trial.—The court shall grant a new trial if any of the following grounds are established:

(1) That the jurors decided the verdict by lot;

(2) That the verdict is contrary to law or the weight of the evidence;

(3) That new and material evidence, which if introduced at the trial would probably have changed the verdict or finding of the court, is discovered which the defendant could not with reasonable diligence have discovered and produced upon the trial.

History.—§241, ch. 19554, 1939; CGL 1940 Supp. 8663(250).

920.05 Grounds for new trial, if substantial rights of defendant have been prejudiced.—

(1) The court shall grant a new trial if any of the following grounds are established, provided the substantial rights of the defendant have been prejudiced:

(a) That the defendant was not present

at any proceeding where his presence is required under the criminal procedure law;

(b) That the jury has received any evidence out of court, other than that resulting from a view of the premises;

(c) That the jurors after retiring to deliberate upon the verdict have separated without leave of court;

(d) That any of the jurors has been guilty of misconduct;

(e) That the prosecuting attorney has been guilty of misconduct;

(f) That the court has erred in the decision of any matter of law arising during the course of the trial;

(g) That the court has misdirected the jury on a matter of law or has refused to give proper instruction requested by the defendant.

(2) Judgment shall be arrested only on one or more of the following grounds:

(a) That the indictment or information does not charge an offense;

(b) That the court is without jurisdiction of the cause;

(c) That the verdict is so uncertain that it does not appear therefrom that the jurors intended to convict the defendant of an offense of which he could be convicted under the indictment or information;

(d) That the defendant was convicted of an offense for which he could not be convicted under the indictment or information.

The court shall also grant a new trial when from any other cause not due to his own fault the defendant has not received a fair and impartial trial, or the sentence exceeds the penalty provided for by law.

History.—§242, ch. 19554, 1939; CGL 1940 Supp. 8663(251).

cf.—§914.01, Presence of defendant when prosecution for felony.
§919.07, Recalling jurors to hear additional evidence.

920.06 When evidence sustains only conviction of lesser offense.—In cases where the offense is divided into degrees or necessarily includes lesser offenses, and the judge, on a motion for a new trial, is of the opinion that the evidence does not sustain the verdict but does sustain a conviction in a lesser degree or for a lesser offense necessarily included in the indictment or information, the judge shall not grant a new trial but shall adjudge the defendant guilty of such lesser degree or offense necessarily included in the charge of which the defendant was convicted, unless such new trial should be granted by reason of some other prejudicial error in said cause.

History.—§243, ch. 19554, 1939; CGL 1940 Supp. 8663(252).

920.07 Hearing on motion.—

(1) The court in its discretion may sentence the defendant either before or after the filing of a motion for new trial.

(2) Where a motion for a new trial calls for the decision of any question of fact the court may hear evidence on such motion by affidavit or otherwise.

History.—§244, ch. 19554, 1939; CGL 1940 Supp. 8663(253).

920.08 Order of court.—The court may dictate to the court reporter his order granting or refusing the motion for new trial, in which event the court reporter shall deliver to the clerk of the court a transcript of the court's order, which shall be entered in the minutes of the court, but if the court makes an order in writing granting or refusing the motion for new trial, such order shall be entered in the minutes of the court.

History.—§245, ch. 19554, 1939; CGL 1940 Supp. 8663(254).

920.09 Effect of granting new trial.—When a new trial is granted such new trial shall proceed in all respects as if no former trial had been had, but where an offense is divided into degrees and the defendant has been convicted of a lesser degree, he cannot thereafter be prosecuted for a higher degree of the same offense.

All the testimony in such former trial must be produced anew, except of witnesses who are absent from the state or dead, in which event the evidence of such witnesses on former trial may be presented as the same was taken and transcribed by the court reporter. Before the introduction of the evidence of an absent witness, the party introducing same must show that due diligence of said witness at the trial, and that the witness is not absent by consent or connivance of the party moving to introduce the evidence of such witness on the former trial.

History.—§246, ch. 19554; 1939; CGL 1940 Supp. 8663(255).

CHAPTER 921

JUDGMENT AND SENTENCE

921.01 Judgment defined.—The term judgment as used in the criminal procedure law means the adjudication by the court that the defendant is guilty or not guilty.

History.—§247, ch. 19554, 1939; CGL 1940 Supp. 8663(256).

921.02 Rendition of judgment.—If the defendant has been convicted, a judgment of guilty, and if he has been acquitted, a judgment of not guilty, shall be rendered in open court and entered on the minutes of the court.

History.—§248, ch. 19554, 1939; CGL 1940 Supp. 8663(257).

921.03 Judgment on informal verdict.—If a verdict is rendered from which it can be clearly understood that it is the intention of the jurors to acquit the defendant, judgment of not guilty shall be rendered thereon even though the verdict is defective; but no judgment of guilty shall be rendered on a verdict unless the jurors clearly express in it a finding against the defendant upon the issue.

History.—§249, ch. 19554, 1939; CGL 1940 Supp. 8663(258).

921.04 Judgment of not guilty; defendant discharged and sureties exonerated.—If a judgment of not guilty is rendered the defendant, if in custody, shall be immediately discharged therefrom unless he is in custody on some other charge; if he is at large on bail his sureties are exonerated and if money or bonds have been deposited as bail such money or bonds shall be refunded.

History.—§250, ch. 19554, 1939; CGL 1940 Supp. 8663(259).

921.05 Sentence defined.—(1) The term sentence as used in the criminal procedure law means the pronouncement by the court of the penalty imposed on the defendant upon the acceptance of a plea of guilty or upon a verdict of guilty, or a finding of guilty by the court.

(2) When judgment of guilty has been rendered sentence shall be pronounced in open court.

History.—§251, ch. 19554, 1939; CGL 1940 Supp. 8663(260).

921.06 How defendant brought before the court when not in custody.—When the personal presence of the defendant is necessary for the pronouncement of sentence, and he does not appear and is not in custody, the court shall direct the clerk to issue either immediately or when so directed by the prosecuting attorney a warrant for his arrest. The warrant may be reissued from time to time by direction of the court or of the prosecuting attorney.

History.—§252, ch. 19554, 1939; CGL 1940 Supp. 8663(261).
cf.—§914.01, Presence of defendant when prosecution for felony.

921.07 Duty of court before pronouncing sentence.—When sentence is to be pronounced, the court shall inform the defendant of the accusation against him and of the judgment and shall ask him whether he has any cause to show why sentence should not be pronounced.

History.—§253, ch. 19554, 1939; CGL 1940 Supp. 8663(262).

921.08 What causes may be alleged for not pronouncing sentence.—The person before the court to be sentenced may allege and show for cause why sentence should not be pronounced, only:

(1) That he has become insane since the verdict was rendered;

(2) That he has been pardoned of the offense for which he is about to be sentenced;

(3) That he is not the person against whom the verdict or judgment was rendered;

(4) If the defendant is a woman, and the sentence of death is to be pronounced, that she is pregnant.

History.—§254, ch. 19554, 1939; CGL 1940 Supp. 8663(263).

921.09 Procedure when insanity is alleged as cause for not pronouncing sentence.—(1) When the cause alleged for not pronouncing sentence is insanity, if in the opinion of the court there is reasonable ground for believing the defendant to be insane, the court shall postpone the pronouncement of sentence and shall appoint two competent disinterested physicians to examine into the defendant's mental condition and to report thereon. The physicians so appointed shall be allowed such fees as the court deems reasonable, which fees shall be paid by the county in which the indictment was found or the information filed. If the court after hearing the report of the physicians decides that the defendant is insane it shall take steps to have the defendant committed to the proper institution. If later the defendant becomes sane the proper officer of such institution shall notify the court of that fact.

(2) If the court determines from such report that defendant is sane, sentence shall be immediately pronounced.

History.—§255, ch. 19554, 1939; CGL 1940 Supp. 8663(264).

921.10 Procedure when pardon is alleged as cause for not pronouncing sentence.—When the cause alleged for not pronouncing sentence is that the defendant has been pardoned for the offense for which he is about to be sentenced the court shall postpone the pronouncement of sentence, if necessary, for the purpose of hearing evidence of the pardon and on proof of such pardon shall not pronounce sentence, but shall discharge the defendant from custody, unless he is in custody on some other charge.

History.—§256, ch. 19554, 1939; CGL 1940 Supp. 8663(265).

921.11 Procedure when nonidentity is alleged as cause for not pronouncing sentence.—When the cause alleged for not pronouncing sentence is that the person brought before the court to be sentenced is not the person against whom the verdict or judgment was rendered the court shall postpone the pronouncement of sentence of necessity for the purpose of hearing evidence thereof, and on proof of non-identity shall discharge such person from custody, unless he is in custody on some other charge.

History.—§257, ch. 19554, 1939; CGL 1940 Supp. 8663(266).

921.12 Procedure when pregnancy is alleged as cause for not pronouncing sentence.—When the cause alleged for not pronouncing sentence is that the defendant is pregnant, the court shall postpone the pronouncement of sentence and shall appoint two competent disinterested physicians to examine the defendant as to her alleged pregnancy and to report thereon. The physicians so appointed shall be allowed such fees as the court deems reasonable, which fees shall be paid by the county in which the indictment was found or the information filed. If the court after hearing the report of the physicians decides that the defendant is pregnant he shall commit her to prison until she is delivered or until it appears that she is not pregnant.

History.—§258, ch. 19554, 1939; CGL 1940 Supp. 8663(267).

cf.—§922.08, Proceedings when person under death sentence appears to be pregnant.

921.13 Inquiry into mitigating or aggravating circumstances.—When the court has discretion as to the penalty to be inflicted on the defendant it shall, upon the suggestion of either party that there are circumstances which may properly be taken into consideration, hear evidence as to the same summarily in open court, either immediately or at a specified time and upon such notice to the adverse party as the court may direct; or the court may inquire into such circumstances of its own motion.

History.—§259, ch. 19554, 1939; CGL 1940 Supp. 8663(268).

921.14 Sentence of imprisonment for default of payment of fine or fine and costs.—Whenever a court shall sentence and adjudge a person to pay a fine or a fine and costs of prosecution such court shall also provide in such sentence a period of time for which such person shall be imprisoned in default of the payment of the same. Such term of imprisonment shall be served in the county jail if the offense for which sentence is imposed is a misdemeanor and in either the state prison or the county jail if the offense for which the sentence is imposed is a felony, and the sentence shall specify where such term is to be served.

History.—§260, ch. 19554, 1939; CGL 1940 Supp. 8663(269). §1, ch. 59-66.

cf.—§951.16 Prisoners to receive credit on fine based on imprisonment.

921.15 Stay of execution of sentence to fine; bond and proceedings.—

(1) Persons convicted of crimes, who shall have a pecuniary fine or sum of money assessed or adjudged against them as punishment therefor, shall have the right on being taken into custody by the proper officer of the court, or prior to such arrest, to give bail for the payment of such fine and the costs of prosecution. Such bail shall be by bond, conditioned for the payment of the fine and costs, executed by the defendant and one or more good and responsible persons to be approved by the court, if in session at the time; otherwise by the sheriff or the officer charged with the execution of the judgment.

(2) The bond shall be made payable in ninety days from the date thereof to the governor of this state and his successors in office, and if not paid at the expiration of the ninety days, the sheriff or other officer aforesaid shall indorse on the bond that default has been made in the payment, and having signed such indorsement, shall file the bond with the clerk of the court in which judgment was

rendered, and the clerk shall forthwith issue execution for the amount of the fine and costs against the security or bail, as if there had been judgment at law on such bond, and the same proceedings shall be had as in cases of other executions, and the person convicted shall be liable to be proceeded against, as if no such bond had been given, until the same has been fully paid and satisfied.

History.—§260a, ch. 19554, 1939; CGL 8426, 8427; CGL 1940 Supp. 8663-(270).

cf.—§951.15 Credit on fines and costs.
§951.16 Prisoners to receive credit on fine based on imprisonment.
§937.15 Persons convicted in justice of peace court.

921.16 When sentences to be concurrent and when consecutive.—When the defendant has been convicted of two or more offenses charged in the same indictment or information or in consolidated indictments or informations, the terms of imprisonment shall be served concurrently unless the court expressly directs that they or some of them be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment or information shall be served consecutively unless the court expressly directs that they or some of them be served concurrently.

History.—§261, ch. 19554, 1939; CGL 1940 Supp. 8663(271).

921.161 No authority to begin sentence to imprisonment before it is imposed; credit on state prison sentence for jail time after sentence and certificate of sheriff as to such time.—

(1) No court, officer, or agency shall have any authority to cause a sentence to imprisonment to begin running at any time prior to the date it is imposed. However, a judge imposing such a sentence may allow the defendant credit thereon for all or any part of the time spent by him in the county jail prior to sentence, provided that any such allowance must be for a specified length of time and it may be provided for in the sentence or by order thereafter made during the same term of court at which the sentence is imposed.

(2) In addition to the other credits to which he may become entitled, a person sentenced to imprisonment in the custody of the division of corrections shall receive credit on his sentence for all time spent by him in the county jail between the time he is sentenced and the time he is delivered into the custody of the division. For the purpose of furnishing information upon which the division may determine how much credit, if any, such a prisoner is entitled to receive under this subsection, the sheriff shall, upon delivering a prisoner to the custody of the division, certify in writing to the division:

(a) The date sentence was imposed and the date of delivery of the prisoner to the custody of the division.

(b) Whether or not the prisoner was released on bond after sentence and, if he was, the date or dates of release and the date or dates he was thereafter returned to the sheriff's custody.

(c) Whether or not the prisoner was out of the sheriff's custody at any time after sentence while not at liberty on bond, and, if he was, during what period or periods of time and for what reason or reasons.

Such certificate shall be prima facie evidence of the facts therein certified.

(3) Nothing in this section shall be deemed to repeal, amend, modify, or alter the application of §921.16 relating to when sentences shall be concurrent and when they shall be consecutive.

History.—§1, ch. 63-457.

921.17 Definitions, §§921.17-921.23; indeterminate sentence.—As used in §§921.17-921.23, the following terms shall have the meanings ascribed to them unless the context shall clearly indicate otherwise:

"Board"—The board of comissioners of state institutions as provided by law.

"Correctional system"—All prisons and other correctional institutions now existing or hereafter created under the jurisdiction of the department.

"Division"—The division of corrections.

"Reception and classification center"—A temporary custodial institution for offenders committed to the division for classification and assignment to an appropriate institution in the correctional system.

History.—§1, ch. 57-366; §18, ch. 61-530.

cf.—Ch. 945 creating division of corrections and establishing reception and classification center.
Ch. 947 parole commission.

921.18 Sentence for indeterminate period for noncapital felony.—Whenever any person is convicted of a noncapital felony and the court determines that the defendant should not be placed on probation and should not be fined as the sole punishment, but should be sentenced to a term of confinement, the court within its discretion, in imposing sentence, may sentence such person to the custody of the division for an indeterminate period of 6 months to a maximum period of imprisonment, which maximum sentence may be less than the maximum authorized by law for the felony of which such person was adjudged guilty but shall not be less than the minimum, if any, prescribed by law for such felony.

History.—§2, ch. 57-366; §1, ch. 59-109; §18, ch. 61-530; §1, ch. 63-306.

921.19 Commitment to and confinement by corrections division.—In every case where any person is convicted of a noncapital felony and is sentenced in accordance with the provisions of §§921.17-921.23, he shall be committed and conveyed in a manner provided by law to the custody of the division to a reception and classification center, and upon arrival it will be the duty of the classification board of the division to determine in which correctional institution the prisoner will be confined; this determination shall be made with the express purpose of placing every prisoner in a penal environment that is best suited to effect a rapid rehabilitation; and it shall be the duty of said classification board to consider the criminal, personal, social and environmental

background and such other aspects as found necessary in making this determination.

History.—§3, ch. 57-366; §18, ch. 61-530.

921.20 Classification summary; parole commission.—As soon as possible after the prisoner has been conveyed to the custody of the division it will be the duty of the classification board to prepare a classification summary as provided by §§921.17-921.23. This summary shall be furnished to the parole commission for its use as provided under §947.14.

History.—§4, ch. 57-366; §18, ch. 61-530.

921.21 Progress reports to parole commission.—The division shall from time to time submit to the parole commission a progress report on the persons sentenced under §§921.17-921.23, with such recommendations as the division feels necessary to advise the commission on the prisoner's rehabilitation progress. Such reports and other information available to the commission shall assist the commission in making its determinations as provided by law. When in the opinion of the classification committee, based on its findings, as provided by this law, the ends of justice, the interests of society, and public welfare shall best be served, and with due regard to the deterrent effect of the example to others who may be like offenders, the classification committee of the division shall recommend to the parole commission, and said commission shall have the power to either place the said prisoner on parole, as provided by law, or to finally discharge the prisoner from custody. If the prisoner is placed on parole, the period of parole shall be discretionary with the parole commission.

History.—§5, ch. 57-366; §18, ch. 61-530.

921.22 Determination of exact period of imprisonment by parole commission.—The parole commission upon the recommendation of the division shall have the authority to determine the exact period of imprisonment to be served by such defendants sentenced under the provision of §§921.17-921.22; provided, however, that the prisoner shall not be held in custody longer than the maximum sentence as provided by law.

History.—§6, ch. 57-366; §18, ch. 61-530.

921.23 Application and contruction of §§921.17-921.22.—

(1) Sections 921.17-921.22 shall not apply in any case where sentence is imposed under §775.09 and §775.10, or under any other statutes of this state providing for the punishment of habitual criminals.

(2) Nothing in §§921.17-921.22 shall be deemed to interfere with the right of any court to impose fine in lieu of a sentence, or with the right of any court to impose fine in addition to sentence under the provisions of §§921.17-921.22.

(3) Nothing in §§921.17-921.22 shall be deemed or held to restrict any of the powers of the parole commission or the division of corrections as now provided by law.

(4) Nothing in §§921.17-921.22 shall be construed as giving the parole commission or the division of corrections the power of authority to pardon any prisoner.

(5) Nothing in §§921.17-921.22 shall apply to any person sentenced for a conviction of a noncapital felony prior to October 1, 1957.

History.—§§7-11, ch. 57-366; (3), (4) a. by §18, ch. 61-530.

921.24 Illegal sentence, correction.—A court may at any time correct an illegal sentence imposed by it in a criminal case.

History.—§1, ch. 61-39.

921.25 Legal sentence, reduction.—A court may reduce a legal sentence imposed by it in a criminal case at the same term of court at which it has been imposed, or, if such term ends less than sixty days after the imposition of the sentence, then within sixty days after such imposition, or within sixty days after receipt by the court of a mandate issued by the appellate court upon affirmance of the judgment and/or sentence upon an original appeal, or within sixty days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence, or, if further appellate review is sought in a higher court or in successively higher courts, then within sixty days after the highest court to which a timely appeal has been taken under authority of law, or in which a petition for certiorari has been timely filed under authority of law, whether a state court or the United States supreme court, has entered an order of affirmance or an order dismissing appeal and/or denying certiorari.

History.—§2, ch. 61-39.

CHAPTER 922

EXECUTION

922.01 Commitment of defendant; duty of sheriff.—Upon pronouncement of a sentence imposing a penalty other than a fine only or death the court shall, unless the execution of the sentence is suspended or stayed, and, in such case, upon revocation of the suspension or termination of the stay, forthwith commit the defendant to the custody of the sheriff together with a certified copy of the sentence, and the sheriff shall thereupon, within a reasonable time, if he is not the proper official to execute the sentence, transfer the defendant, together with the copy of the sentence, to the custody of the official whose duty it is to execute the sentence, and shall take from such official a receipt for the defendant and make a return thereof to the court.

History.—§262, ch. 19554, 1939; CGL 1940 Supp. 8663(272).

922.02 Execution of sentence imposing fine.—If the sentence imposes a fine with or without imprisonment execution may be issued thereon as on a judgment in a civil action.

History.—§263, ch. 19554, 1939; CGL 1940 Supp. 8663(273); am. §7, ch. 22000, 1943.

922.03 Habeas corpus while serving sentence.—

(1) When a defendent has been sentenced, and is actually serving his sentence, and has not appealed from the judgment or sentence, but seeks his release from imprisonment by habeas corpus proceedings, and the writ has been refused, or the writ has been discharged after it has been issued, the custody of the prisoner shall not be disturbed, pending a review by the appellate court.

(2) Pending a review of a decision discharging a prisoner on habeas corpus, he shall be discharged upon bail, with sureties to be approved as other bail bonds are approved, for his appearance to answer and abide by the judgment of the appellate court

History.—§264, ch. 19554, 1939; CGL 1940 Supp. 8663(274).

922.04 Application for discharge.—When any person sentenced by any court of this state to pay a fine or fine and costs, the total of which does not exceed three hundred dollars, whether with or without imprisonment, has been confined in prison sixty days, solely for the nonpayment of such fine and costs, he may make application in writing to the judge of any circuit court or criminal court of record in the county where he is confined, setting forth his inability to pay such fine, or fine and costs, and the judge of such court shall proceed to hear and determine the matter, and if, upon examination, it shall appear to him that such person is totally unable to pay such fine or fine and costs, and that he has not any property, exceeding twenty dollars in value, the judge of such court shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit, so help me God." Thereupon such person shall be discharged from further custody, the judge giving the jailer or keeper of the jail a certificate setting forth the facts.

History.—§265, ch. 19554, 1939; CGL 1940 Supp. 8663(275). Am. §1, ch. 29661, 1955.

922.05 Forms of sentence to state prison and county jail.—

(1) When punishment of imprisonment in the state prison is awarded against any convict, the form of the sentence shall be that he be imprisoned by confinement at hard labor.

(2) When punishment of imprisonment in the county jail is awarded against any convict, the court may also sentence the prisoner to be employed at hard labor; and in such case, he may be employed at such manual labor as the county commissioners may direct.

History.—§266, ch. 19554, 1939; CGL 1940 Supp. 8663(276).

922.051 Imprisonment in county jail, term of five years or less.—Whenever punishment by imprisonment is prescribed, and said imprisonment is by statute expressly directed to be in a state prison, the court may, in its discretion in all cases where the sentence imposed is for a term of five years or less, direct that the imprisonment be in a county jail; provided that as of January 1, 1963, no such imprisonment in the county jail shall be directed for more than two years.

History.—§1, ch. 59-72; §1, ch. 61-168.

922.06 Stay of execution and sentence of death.—The execution of a sentence of death shall not be suspended or stayed, apart from the stay incident to an appeal, except by the governor.

History.—§267, ch. 19554, 1939; CGL 1940 Supp. 8663(277).

922.07 Proceedings when person under sentence of death appears to be insane.—(1) If there is reasonable ground to believe that a defendant under sentence of death has become insane since he was sentenced, the warden of the state penitentiary shall immediately notify the governor thereof who shall suspend execution of the sentence until he issues a warrant for its execution. On suspended sentence the governor shall appoint a commission consisting of two competent disinterested physicians to examine into the defendant's mental condition. The commission so appointed may call and examine witnesses and compel their attendance. The commission shall report its finding to the governor. The physicians constituting the commission shall be allowed such fees as the governor deems reasonable, which fees shall be paid by the state.

(2) If the governor after receiving the report of the commission decides that the defendant is sane, he shall issue a warrant to the warden directing him to execute the sentence at the time designated in said warrant.

(3) If the governor after receiving the report of the commission decides that the defendant is insane, he shall take steps to have the defendant committed to the state hospital for the insane. If thereafter the proper officer of such institution is of the opinion that the defendant is sane he shall report this fact to the governor, whereupon the governor shall appoint a commission consisting of two competent disinterested physicians to determine whether the defendant has been restored to sanity. The commission shall have the same powers and be allowed the same fees as are provided for in the criminal procedure law in insanity proceedings. If after the report of the commission, the governor decides that the defendant has been restored to sanity he shall cause the defendant to be returned to the custody of the warden of the state prison and shall issue a warrant to the warden directing him to execute the sentence at a time designated in said warrant.

History.—§268, ch. 19554, 1939; CGL 1940 Supp. 8663(278).
cf.—Ch. 917, Proceedings to determine mental condition of defendant.

922.08 Proceedings when person under sentence of death appears to be pregnant.—(1) If there is ground to believe that a defendant under sentence of death is pregnant the warden shall immediately notify the governor thereof who shall suspend execution of the sentence until he issues a warrant for the execution of the sentence. On suspending the sentence the governor shall appoint a commission consisting of two competent disinterested physicians to examine the defendant as to such pregnancy. The commission shall report its finding to the governor. The physicians constituting the commission shall be allowed such fees as the governor deems reasonable, which fees shall be paid by the state.

(2) If the governor after receiving the report of the commission decides that the defendant is not pregnant he shall issue a warrant to the warden directing him to execute the sentence at the time designated in said warrant.

(3) When the warden is satisfied that a defendant under sentence of death who has been found to be pregnant is no longer pregnant he shall so notify the governor, who, upon receiving the notice, shall issue to the warden a warrant directing him to execute the sentence at a time designated in said warrant.

History.—§269, ch. 19554, 1939; CGL 1940 Supp. 8663(279).

922.09 Capital cases.—When any person shall be convicted of any crime for which sentence of death shall be awarded against him, the clerk of the court as soon as may be shall make out and deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith remit the same to the governor, and the sentence of death shall not be executed upon such convict until a warrant shall be issued by the governor, under the seal of the state, with the copy of the record thereto annexed commanding the execution of the sentence of death to be done, and fixing therein some designated week, beginning with Monday, in which week such sentence shall be executed pursuant to such warrant and according to the manner and means hereinafter prescribed.

History.—§270, ch. 19554, 1939; CGL 1940 Supp. 8663(280).

922.10 How punishment of death inflicted.—On and after January 1, A. D. 1924, death by hanging as a means of punishment for crime in Florida is abolished and electrocution or death by electricity substituted therefor. Punishment of death shall in all cases be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause immediate death, and the application of such current must be continued until such convict is dead. The sentence of death shall, at the time directed by the warrant, be executed within the walls of the permanent death chamber, which the commissioners of state institutions shall provide at the state prison farm or such other place in the state as such commissioner of state institutions shall establish, and the superintendent of the state prison, or in the case of his death, disability or absence, a deputy, shall be executioner. The superintendent of the state prison shall cause to be provided in conformity with this section and approved by the governor and commissioners of state institutions the necessary electric chair or other appliances for the infliction of the punishment of death in accordance with the requirements of this section. Before every execution, the death warrant authorizing

the same shall be distinctly read in the presence of the condemned person to be executed, immediately prior to the infliction of death as heretofore provided.

History.—§271, ch. 19554, 1939; CGL 1940 Supp. 8663(281).

922.11 Regulation of execution.—The superintendent of the state prison or some authorized deputy by him to be designated shall be present at the execution, and for the purpose of executing sentences of death as provided by law, the first assistant engineer at the Florida state prison is hereby designated as the executioner, whose duty it shall be to execute and carry out the sentence of death by operating the switch or other mechanism necessary to send the electric current through the body of the condemned person. Not less than five days prior to the week of execution, the person sentenced to death shall be kept securely in or adjacent to the permanent death chamber, and the sentence of death shall be carried out on some week day of the week fixed by the governor as the week of execution, the time of carrying out such sentence to be decided by the superintendent of the state prison, or his deputy in his absence, death or disability.

All executions shall be carried out by the executioner, deputy executioner and such deputies, electricians and assistants as he may require to be present to assist, and shall be in the presence of a jury of twelve respectable citizens who shall be requested to be present and witness the same, and all other persons other than the jury, the counsel for the criminal, such ministers of the gospel as the criminal shall desire, officers of the prison, deputies and guards shall be excluded during the execution. The executioner or his deputy shall require the presence of at least one competent practicing physician, or the physician of the prison, who shall examine the convict during the execution and announce when death has been inflicted on such convict. Representatives of the press shall be permitted to be present at the execution under regulations to be approved by the board of state institutions.

Upon the completion of the infliction of death, the dead body of the convict shall be dressed for burial and delivered to the relatives of the deceased if they shall have requested that such be done, such delivery to be at the gates of the prison and if no other receptacle has been provided, shall be delivered in a plain coffin, the cost of which shall not exceed fifteen dollars. In the event the body shall not have been claimed by relatives on or before the day of execution, such body shall be delivered to such physicians as may request the same for dissection, or shall be buried or disposed of as convicts dying in the state prison are buried or disposed of. In all cases where sentence of death has been pronounced against any person to be executed by electrocution as provided, the convicted person shall be delivered by the sheriff of the county to the superintendent of the state prison to await the death warrant.

History.—§272, ch. 19554, 1939; CGL 1940 Supp. 8663(282); §1, ch. 20520, 1941; 3rd par. by §1, ch. 59-90.

922.111 Transfer to state prison for safekeeping before death warrant issued.—Whenever, prior to the issuance of a death warrant by the governor for the execution of a person sentenced to death, any circuit judge of the judicial circuit in which such sentence has been imposed shall be of the opinion that it is necessary to remove such person, for safekeeping, from the jail in which he is confined, such judge may, in his discretion, make an order directing that such person be confined in the state prison for safekeeping.

History.—§1, ch. 59-215.

922.12 Return of warrant.—After punishment of death has been inflicted upon any convict in obedience to the warrant of the governor, the officer in charge of such execution shall return the warrant as soon as may be with a statement under his hand of his doings therein, to the governor, and shall also file in the clerk's office where the conviction was had, an attested copy of the warrant and the statement aforesaid, and such shall be by the clerk recorded in the minutes of the court whose judgment was thus executed.

History.—§273, ch. 19554, 1939; CGL 1940 Supp. 8663(283).

922.13 Sentence of death unexecuted because of appeal; duty of court on affirming.—When a judgment or sentence of death has been affirmed on appeal, after the time appointed for the execution of the sentence, the appellate court shall fix a new time for the execution of the sentence, and if the governor fails or omits to issue his warrant carrying said sentence into execution, then the appellate court shall issue a warrant to the proper official, directing him to execute the sentence at a time designated in said warrant.

History.—§274, ch. 19554, 1939; CGL 1940 Supp. 8663(284).

922.14 Sentence of death unexecuted for reasons other than appeal.—If, for any reason, a sentence of death has not been executed, or, if the governor fails or omits to issue a death warrant as provided in the criminal procedure law, and there appears to be no legal ground why such sentence was not executed, the court which pronounced the sentence or any judge thereof or any court having appellate jurisdiction in capital cases, or any judge thereof, upon application by the attorney general or by the prosecuting attorney of the county in which the conviction was had shall, if the defendant is in custody, order the official in whose custody he is to bring him before the judge issuing the order, or, if the defendant is at large, shall issue a warrant for his arrest directing that he be brought before the judge issuing the warrant. Upon his appearance the judge shall inquire into the circumstances and if no legal ground is found why the sentence should not be executed, the judge shall issue a warrant

to the proper official directing him to execute the sentence at a time designated in said warrant.

History.—§275, ch. 19554, 1939; CGL 1940 Supp. 8663(285).

922.15 Return of warrant.—After punishment of death has been inflicted upon any convict in obedience to the warrant, the officer in charge of such execution shall return the warrant as soon as may be with a statement under his hand of his doing therein, to the court issuing the warrant, and if the warrant has been issued by the appellate court, the officer in charge of the execution shall also file in the clerk's office where the conviction was had, an attested copy of the warrant and the statement aforesaid, and such shall be by the clerk recorded in the minutes of the court, whose judgment was thus executed. There shall also be filed with the governor an attested copy of the warrant and the statement aforesaid.

History.—§276, ch. 19554, 1939; CGL 1940 Supp. 8663(286).

CHAPTER 923

FORM OF INDICTMENT AND OTHER FORMS

923.01 Criminal report. — Each committing magistrate at the time commitment papers are sent by him to the proper trial court, and the sheriff when an arrest is made, other than on a capias, shall transmit to the prosecuting attorney of the trial court having jurisdiction, a report in the following form:

CRIMINAL REPORT

Date: _____ Name and address of Defendant: _____
Age: _____. If under 21, give name and address of parent, next friend or guardian: _____
Name of offense, such as murder, assault, robbery, etc.: _____ Date and place where committed: _____
_____ Value of property stolen: _____
Kind of property stolen: _____
Kind of building robbed: _____
Name and address of owner of property stolen or building robbed: _____
Name and address of occupant of building robbed: _____
Name of party assaulted or murdered: _____
_____ Weapon used in assault or murder: _____ Exhibits taken at scene of crime or from Defendant: _____
_____ Name of custodian of such exhibits: _____
Location of building or place where offense committed: _____
Previous prison record of defendant: _____
_____ Has defendant been arrested: _____ Does defendant desire to plea guilty: _____ Names and addresses of state witnesses: _____
Name of defendant's lawyer: _____
If defendant is released on bond, names and addresses of sureties: _____
Brief statement of facts: _____
Name of committing magistrate: _____
If additional space required, use reverse side of this sheet.

_____
Signature of party making this report.

History.—§277, ch. 19554, 1939; CGL 1940 Supp. 8663(287).

923.02 Notice of setting case for trial.—The judge of any trial court may adopt as a rule of his court a rule requiring that at least four days before the sounding of the docket in criminal cases in any trial court, the clerk of said court shall send by United States mail, to the defendant, his sureties, and his attorney, if known, a notice in postcard form, reading as follows:

THE STATE OF FLORIDA
vs.
_____

NOTICE OF FILING INFORMATION

TO: _____

You are hereby notified that an information (indictment) charging you with the offense of _____ has been filed in the office of _____ in and for _____ County; and you are required to appear in the _____ court in and for _____ County at the Courthouse in _____ on _____ (date) for arraignment, plea and trial, or setting for trial in default of which your bond will be estreated, for failure to appear.

_____
Prosecuting Officer.

If such rule is adopted by any court and the rule is not complied with by the clerk the failure so to comply with the rule shall not constitute reversible error nor affect the obligations of the bond.

History.—§278, ch. 19554, 1939; CGL 1940 Supp. 8663(288).

923.03 Indictment and information.—(1) The following forms of indictment and information, in all cases to which they are applicable, shall be deemed sufficient, as a charge of the offense to which they relate as defined by the laws of this state, and analogous forms may be used in all other cases:

(a) As to first degree murder:

In the name and by the authority of the State of Florida: The Grand Jurors of the County of _____ charge that A. B. unlawfully and from a premeditated design to effect the death of _____ (or while robbing the house of _____ as the case may be) did murder _____ in said county, by shooting him with a gun or pistol (or by striking him with a club—or by giving him poison to drink—or by pushing him into the water whereby he was drowned)

(b) As to second degree murder:

Unlawfully by an act imminently dangerous to another, and evincing a depraved mind, re-

gardless of human life; that is to say, by firing his shotgun into the store of _____ (or by striking _____ with an adz, as the case may be) but without a premeditated design to effect the death of any particular person, did kill _____ in said county.

(c) As to third degree murder:

Unlawfully, and while feloniously stealing cattle (or timber, or while feloniously assaulting _____ as the case may be), but without any design to effect death, did kill _____ in said county, by sinking his boat (or by running over him with an automobile—or by shooting him with a gun or pistol, as the case may be).

(d) As to manslaughter:

Unlawfully and by culpable negligence, in driving an automobile (or firing a boiler—or by performing a surgical operation) or (in the heat of passion,—omitting in this latter case the allegation of culpable negligence), but without intent to murder, did kill _____ _____ in said county, by running over him with said automobile (or by causing said boiler to explode—or by infecting him with a deadly infection—or by striking him with a hammer).

(e) As to perjury:

In the hearing of a cause in the _____ court of _____ County, Florida, in which _____ and others were plantiffs and _____ _____ others were defendants, after being duly sworn to speak the truth, falsely swore, etc. (stating the substance of the false testimony) such matter being material in said cause, and the said _____ _____ then and there knowing that he swore falsely.

(2) An information shall be in the same form and signed by the prosecuting attorney who shall also append thereto the oath of the prosecuting attorney to the effect following:

Personally appeared before me _____ _____ (official title of prosecuting attorney) who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true and which, if true, would constitute the offense therein charged.

The affidavit shall be made by the prosecuting attorney before some person qualified to administer an oath.

History.—§279(1-2), ch. 19554, 1939; CGL 1940 Supp. 8663(289).

cf.—§932.49, Failure of motor vehicle operator to stop and assist person injured; form of information. §§906.05 906.06 Forms of indictment or information.

923.04 Petition for peace warrant.—

State of Florida,

_____ County,

_____ District.

Before the subscriber, a justice of the peace in and for said county, personally came _____ _____, who, being duly sworn, says that _____ did, on the _____ day of _____, A. D. 19_____, in the county and district aforesaid (here describe the cause of complaint), and this deponent says he has reason to fear, and does fear, that the said _____ will commit the offense so threatened, and he prays that the said _____ _____ may be required to find sureties to keep the peace; and this deponent further says that he does not require surety of the peace against said _____ _____ out of malice or for mere vexation, but for the cause aforesaid.

_____

Sworn to and subscribed before me this _____ day of _____ A. D. 19____.

_____ (SEAL)

Justice of the Peace

History.—§279(3), ch. 19554, 1939; CGL 1940 Supp. 8663(289).

923.05 Peace warrant.—

State of Florida,

_____ County,

_____ District.

In the name of the State of Florida—To the Sheriff or any Constable of said county:

Whereas, _____ has this day made oath before me that _____ _____ did, on the _____ day of _____ A. D. 19____, in the county and district aforesaid (here describe the cause of complaint), and that he has cause to fear, and does fear, that the said _____ _____ will commit the offense so threatened, and that he prays the said _____ _____ may be required to find sureties to keep the peace, and that he does not pray that the said _____ may be required to find sureties to keep the peace out of malice or for mere vexation, but for the cause aforesaid; these are, therefore, to command you forthwith to arrest him the said _____ and bring him before me to be dealt with according to law.

Given under my hand and seal this _____ day of _____ A. D., 19____.

_____ (SEAL)

Justice of the Peace.

History.—§279(4), ch. 19554, 1939; CGL 1940 Supp. 8663(289).

923.06 Bond to keep the peace.—

State of Florida,

_____ County,

_____ District.

Know all men by these presents, that we _____ are held and firmly bound unto the Governor of the State of Florida and his successors in office in the sum of _____ dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such, that if the said _____ shall keep the peace towards the people of the

State of Florida, and particularly towards _____, of said county, for the space of _____ months, then this obligation to be void; else to remain in full force and virtue.

_____(SEAL)
_____(SEAL)
_____(SEAL)

Taken before and approved by me,

_____,
Justice of the Peace.

History.—§279(5), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.07 Warrant to commit on failure to find sureties to keep the peace.—

State of Florida,
_____County,
_____District.

In the name of the State of Florida—To the Sheriff or any Constable of said County:

Whereas, _____ has made oath before me that _____ did, on the _____ day of _____ A. D. 19__, in the county and district aforesaid (here state the cause of complaint) and

Whereas, It appeared to me upon examination that there was just reason to fear the commission of said offense by the said _____ and the said _____ having been required to enter into a recognizance in the sum of _____ dollars, with sufficient surety to keep the peace towards the people of the State of Florida, and particularly towards the said _____ for the space of _____ months, and the said _____ having refused to find such surety;

These are, therefore, to command you forthwith to convey the said _____ to the common jail of said county, and to deliver him to the keeper thereof, who is hereby required to receive the said _____ into his custody in the said jail, and to keep him safely there until he shall find such security, or be thence discharged by due course of law.

Given under my hand and seal this _____ day of _____ A. D. 19__.

_____(SEAL)
Justice of the Peace.

History.—§279(6), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.08 Warrant of commitment on failure to give bond.—

State of Florida,
_____County,
_____District.

In the name of the State of Florida—To the Sheriff or any Constable of said County:

Whereas, _____ has this day made oath before me in writing that one _____, on the _____ day of _____ A. D., 19__, in the county and district aforesaid (describe the offense precisely as it is set forth in the affidavit and warrant) and whereas it appeared to me from an examination that there was just reason to believe that the said _____ was guilty of such offense, and the said _____ on being brought before me on a warrant was required to enter into a recognizance, with sufficient surety in the sum of _____ dollars, to appear at the next term of the court to be held in and for said county, and not to depart the same without leave; and the said _____ having refused to find such security:

You are, therefore, commanded forthwith to convey the said _____ to the common jail of the said county, and to deliver him to the keeper thereof, who is hereby required to receive the said _____ into his custody in the said jail, and to keep him safely there until he shall find such security, or be thence discharged by due course of law.

Given under my hand and seal this _____ day of _____ A. D., 19__.

_____(SEAL)
Justice of the Peace.

History.—§279(7), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.09 Recognizance of witnesses for the state.—

State of Florida,
_____County,
_____District.

Know all men by these presents, that I, _____, am held and firmly bound unto the Governor of Florida, in the sum of _____ dollars, for the payment whereof well and truly to be made I bind myself, my heirs, executors and administrators firmly by these presents.

Signed and sealed this _____ day of _____, A. D. 19__.

The condition of this obligation is such that if I personally appear before the court of said county, at its next term, to be holden in and for said county, then and there to give evidence in behalf of the State against _____ who is charged with (describe the offense), and not depart the same without leave, then this obligation to be void; else to remain in full force and virtue.

_____(SEAL)

Taken before and approved by me.

_____
Justice of the Peace.

History.—§279(8), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.10 Commitment of witnesses for not entering into recognizance.—

State of Florida,
_____County,
_____District.

In the name of the State of Florida—To the Sheriff or any Constable of said County:

Whereas, A. B. has this day been brought before me, a justice of the peace in and for said county, upon the charge of (here state the offense precisely as it is laid in the war-

rant), and I, having made examination in due form of law, did adjudge that said offense had been committed in said district, and that there was probable cause to believe the said A. B. guilty thereof; and whereas upon said adjudication I did order C. D. who then and there before me, a material witness in behalf of the State, to become recognized in the sum of _____ dollars for his appearance at the next term of the court to be holden in and for said county, and the said C. D. having failed to enter into such recognizance;

These are, therefore, to command you forthwith to take the said C. D. and convey him to the common jail of said county, the keeper whereof is hereby required to detain him in custody in said jail until he shall comply with said order or otherwise be discharged according to law.

Given under my hand and seal this _____ day of _____ A. D., 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(9), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.11 Affidavit for search warrant.—

State of Florida,

_____County,

_____District.

Before the subscriber, a justice of the peace in and for said county, personally came A. B., who being duly sworn, says that on the _____ day of _____ A. D. 19____, the following goods (here describe the goods particularly), were feloniously stolen, taken and carried away out of the house of the said A. B., in the county aforesaid, and that the said A. B. has probable cause to believe, and does believe, that the said goods, or part thereof, are concealed in the dwelling house of C. D., in said county and district.

Sworn to and subscribed before me this _____ day of _____ A. D. 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(10), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.12 Search warrant.—

State of Florida,

_____County,

_____District.

In the name of the State of Florida—To the Sheriff or any Constable of said County:

Whereas, A. B. has this day made oath before me that the following goods, to-wit: (Here describe the goods as in the affidavit) on the _____ day of _____ A. D. 19____, were feloniously stolen, taken and carried away out of the house of the said A. B., in the county aforesaid, and that he, the said A. B. has probable cause to suspect, and does suspect that the said goods, or part thereof, are concealed in the dwelling house of C. D. in the county and district aforesaid:

These are, therefore, to command you, with proper and necessary assistance, in the day time, in the dwelling house of the said C. D., in the county and district aforesaid, and there to diligently search for the said goods, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, to be disposed of and dealt with according to law.

Given under my hand and seal this _____ day of _____ A. D., 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(16), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.13 Affidavit of assault and battery.—

State of Florida,

_____County,

_____District.

Before the subscriber, a justice of the peace in and for said county, personally came _____, who, being duly sworn, says that one _____, on the _____ day of _____ A. D. 19____ in the county and district aforesaid, in and upon the said deponent an assault did make, and him the said deponent, then and there did beat, bruise, wound and ill-treat.

Sworn to and subscribed before me this _____ day of _____ A. D. 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(11), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.14 Warrant for assault and battery.—

State of Florida,

_____County,

_____District.

In the name of the State of Florida—To the Sheriff or any Constable of said County:

Whereas, _____ has this day made oath before me that one _____ on the _____ day of _____ A. D. 19____, in the county and district aforesaid, in and upon him the said deponent, an assault did make, and him the said deponent, then and there did beat, bruise, wound and ill-treat:

These are, therefore, to command you to forthwith arrest the said _____ and bring him before me to be dealt with according to law.

Given under my hand and seal this _____ day of _____ A. D., 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(12), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.15 Affidavit of larceny.—

State of Florida,

_____County,

_____District.

Before the subscriber, a justice of the peace in and for said county, personally came _____, who being duly sworn, says that one _____, on the _____ day of _____ A. D. 19____, in the county and district aforesaid (describe particularly the articles and the value of each), of the goods and chattels of one (set forth the owner), then and there be-

ing found, feloniously did steal, take and carry away.

Sworn to and subscribed before me this _____ day of _____ A. D. 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(13), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.16 Warrant for larceny.—

State of Florida,

_____County,

_____District.

In the name of the State of Florida—To the Sheriff or any Constable of said County:

Whereas, _____ has this day made oath before me that one _____ on the _____ day of _____A. D. 19____, in the county and district aforesaid (here describe the articles as in the affidavit), of the goods and chattels of one (here set forth the owner's name), then and there being found, feloniously did steal, take and carry away:

These are, therefore to command you forthwith to arrest the said _____ and bring him before me to be dealt with according to law.

Given under my hand and seal this _____ day of _____ A. D., 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(14), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.17 Recognizance for appearance at court.—

State of Florida,

_____County,

_____District.

Know all men by these presents, that we _____ and _____ are held and firmly bound unto the Governor of Florida, and his successors in office, the said (here insert the name of the principal), in the sum of _____ dollars, and the said _____ each in the sum of (here insert one-half the sum for which the principal is bound), for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Signed and sealed this _____ day of _____, A. D. 19____.

The condition of this obligation is such that if the said _____ shall appear at the next term of the court to be held in and for said county, to answer to a charge of (describe the offense), and shall not depart the same without leave, then this obligation to be void; else to remain in full force and virtue.

_____(SEAL)

_____(SEAL)

_____(SEAL)

Taken before and approved by me.

_____(SEAL)

Justice of the Peace.

History.—§279(15), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.18 Affidavit of murder.—

State of Florida,

_____County,

_____District.

Before the subscriber, a justice of the peace in and for said county, personally came A. B., who, being duly sworn, says that C. D., on the _____ day of _____, 19____ in the county of _____ and in district _____ and upon one E. F., in the peace of God then and there being, feloniously, willfully and of his malice aforethought, did make an assault, and that the said C. D. (with a certain knife which he then and there had held) in and upon the said E. F. a mortal wound did inflict, of which said mortal wound the said E. F. died, and that the said C. D. in manner aforesaid the said E. F. then and there did kill and murder; (or if the killing was a shooting, vary the form by adding after the word "assault" as follows: And that the said C. D. with a certain gun which he, the said C. D. then and there had held in and upon the said E. F. a mortal wound did inflict, of which mortal wound the said E. F. died, and that the said C. D. in manner aforesaid the said E. F. then and there did kill and murder).

Sworn to and subscribed before me this _____ day of _____ A. D. 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(17), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.19 Warrant for murder.—

State of Florida,

_____County,

_____District.

In the name of the State of Florida—To the Sheriff or any Constable of said County:

Whereas, A. B. has this day made oath before me (here recite the offense precisely as it is set forth in the affidavit):

These are, therefore, to command you forthwith to arrest the said C. D. and bring him before me to be dealt with according to law.

Given under my hand and seal this _____ day of _____ A. D., 19____.

_____(SEAL)

Justice of the Peace.

History.—§279(18), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

923.20 Commitment to jail of another county.—

State of Florida,

_____County,

_____District.

To the sheriff of said county:

Whereas, A. B. has this day made oath before me in writing that C. D., on the _____ day of _____ 19____ in the county of _____ and district

_____ (here describe the offense precisely as it is set forth in the affidavit); and

Whereas, it appeared to me from an examination that there was just reason to believe that the said C. D. was guilty of the said offense; and

Whereas, there is no jail or place of safekeeping in said county:

These are, therefore, to command you to deliver the said C. D. to the sheriff of _____ County, who is hereby required to receive the said C. D. into his custody, in the common jail of said county, there to be confined and dealt with according to law.

Given under my hand and seal this _____ day of _____ A. D., 19____.

_____ (SEAL)

Justice of the Peace.

History.—§279(19), ch. 19554, 1939; CGL 1940 Supp. 8663-(289).

CHAPTER 924

APPEALS*

924.01 Appeal only method of review.—The only method of reviewing the proceedings in a prosecution by indictment or information, shall be by appeal. Writs of error as methods of review in criminal causes and writs of scire facias ad audiendum errores are abolished.

History.—§280, ch. 19554, 1939; CGL 1940 Supp. 8663(290).
cf.—§59.01 et seq., Appellate proceedings at law.
§932.51, Provisions supplemental to this chapter.

924.02 Who may appeal.—An appeal may be taken by the defendant or by the state.

History.—§281, ch. 19554, 1939; CGL 1940 Supp. 8663(291).

924.03 Designation of parties.—The party appealing shall be known as the appellant and the adverse party as the appellee.

History.—§282, ch. 19554, 1939; CGL 1940 Supp. 8663(292).

924.04 Appeal by one of several defendants.—When several defendants are tried jointly, any one or more of them may take an appeal; but those who do not join in the appeal shall not be affected thereby unless the appellate court shall determine otherwise.

History.—§283, ch. 19554, 1939; CGL 1940 Supp. 8663(293).

924.05 Appeal as matter of right.—All appeals provided for in this chapter may be taken as a matter of right.

History.—§284, ch. 19554, 1939; CGL 1940 Supp. 8663(294).

924.06 Appeal by defendant. — An appeal may be taken by the defendant only from:

(1) A final judgment of conviction when probation has not been granted under chapter 948.

(2) An order granting probation under chapter 948, such appeal to be in the same manner and with the same scope and same effect as if judgment of conviction had been entered and appealed from.

(3) An order revoking probation under chapter 948; in case of such an appeal, only the proceedings after the order of probation may be considered or reviewed.

(4) A sentence, on the ground that it is excessive or illegal.

History.—§285, ch. 19554, 1939; CGL 1940 Supp. 8663(295); §22, ch. 20519, 1941; §3, ch. 59-130.

924.07 Appeal by state.—An appeal may be taken by the state from:

(1) An order quashing an indictment or information or any count thereof;

(2) An order granting a new trial;

(3) An order arresting judgment;

(4) A ruling on a question of law adverse to the state where the defendant was convicted and appeals from the judgment;

(5) The sentence, on the ground that it is illegal;

(6) Judgment discharging prisoner on habeas corpus.

History.—§286, ch. 19554, 1939; CGL 1940 Supp. 8663(296).

*Chs. 25 and 35, §§4 and 5, art. v., const. and new appellate rules.

924.08 Appeals in criminal cases.—From final judgments in criminal cases appeals shall lie:

(1) To the supreme court from judgments imposing the death penalty; from judgments or decrees passing upon the validity of a state or federal statute and from judgments construing a controlling provision of the state or federal constitution.

(2) To the appropriate district court of appeal from final judgments in all other criminal cases in which the circuit court has original jurisdiction, from criminal courts of record in cases of felonies and all criminal cases of which the Escambia court of record has jurisdiction.

(3) To the appropriate circuit court from misdemeanor cases tried by county courts, county judges courts, criminal courts of record, courts of crime, municipal courts and justice of the peace courts. The appeals provided in this section shall be in the manner and in the time provided by the Florida appellate rules.

History.—§287, ch. 19554, 1939; CGL 1940 Supp. 8663(297); §35, ch. 63-559.

cf.—§932.56, Trial de novo on appeal from justice of the peace court.

924.09 When appeal to be taken by defendant.—An appeal may be taken by the defendant only within ninety days after the judgment, sentence, or order appealed from is entered, except that an appeal by a person who has not been granted probation may be taken from both judgment and sentence within ninety days after the sentence is entered.

History.—§288, ch. 19554, 1939; CGL 1940 Supp. 8663(298). §4, ch. 59-130.

cf.—§932.53, Time for taking appeal from justice of the peace court where case tried de nova.

924.10 When appeal to be taken by state.—An appeal may be taken by the state only within thirty days after the order or sentence appealed from is entered.

History.—§289, ch. 19554, 1939; CGL 1940 Supp. 8663(299). Am. §1, ch. 29898, 1955.

924.11 How appeal taken.—(1) An appeal may be taken only by filing with the clerk of the trial court a notice in writing stating that the appellant appeals from a judgment, order, ruling or sentence, as the case may be, and by serving a copy of the notice of appeal. The notice of appeal, when taken by the state, shall be signed by the prosecuting attorney for the court from which the appeal is taken, or by the attorney general of the state. When the appeal is taken by the defendant the notice of appeal shall be signed by him or his counsel. Appellee may waive his right to notice that an appeal has been taken.

(2) The appellant shall file his directions to the clerk for making up the transcript of record on appeal within ten days after the filing of the notice of appeal. The appellant shall file his assignments of error within ten days after the transcript of the record on appeal has been lodged in the appellate court, provided, however, that the time for filing of either of said instruments may be extended by either the trial or the appellate court.

The parties by written stipulation filed with the clerk, may designate the parts of the records, proceedings and evidence to be included in the record on appeal and may agree upon a condensed statement in narrative form of all or part of the testimony and, if the same shall be thus done, they shall be in lieu of and shall take the place of the directions to the clerk for making up the transcript of record on appeal provided for hereinabove.

(3) Formal exceptions to rulings, orders or charges of the court are unnecessary; but for all purposes for which an exception has been necessary, it is sufficient that a party, at the time that the ruling, order, or charge of the court is made, or sought, makes known to the court the action which he desires the court to take, or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

History.—§290, ch. 19554, 1939; CGL 1940 Supp. 8663(300). Sub. §(2) am. §1, ch. 28022, 1953; sub. §(2) am. §1, ch. 29911, 1955.

924.12 Notice to prosecuting attorney when defendant appeals.—If the appeal is taken by the defendant, a copy of the notice of appeal shall be served on the prosecuting attorney of the court in which the judgment or sentence appealed from was rendered. and the clerk of the court shall immediately send a certified copy thereof to the supreme court, and to the attorney general, when the appeal is a felony case, and to the clerk of the circuit court and state attorney in misdemeanor cases appealed from criminal courts of record, court of crimes, and justice of peace courts, county judge's courts and county courts.

History.—§291, ch. 19554, 1939; CGL 1940 Supp. 8663(301).

924.13 Notice to defendant when state appeals.—If the appeal is taken by the state, a copy of notice of appeal shall be served on the defendant, if his place of residence is known or if he is imprisoned in the county: or, if not, on the counsel, if any, who appeared for him at the trial, if the counsel resides or practices his profession in the county. If such notice cannot be served, after due diligence, the trial court, upon proof thereof, may make an order for the publication of the notice in such newspaper and for such time as it deems proper. When the order for publication is complied with the appeal becomes perfected, and the clerk of the court shall immediately send a certified copy thereof to the supreme court and to the attorney general.

History.—§292, ch. 19544, 1939; CGL 1940 Supp. 8663(302).

924.14 Stay of execution when defendant appeals.—When the defendant appeals either from the judgment or the sentence, the execution of a sentence of death is stayed upon the taking of an appeal. The execution of a sentence other than death is stayed upon the

taking of the appeal and the defendant may be released on bail in an amount to be fixed by the court and approved as it shall direct.

History.—§293a, ch. 19554, 1939; CGL 1940 Supp. 8663(303).

cf.—§922.03, Stay of execution upon appeal from judgment refusing writ of habeas corpus.

924.15 How appeal bonds taken.—In every case the bonds prescribed by this chapter shall be entered before the clerk of the court in which the cause was originally determined, and shall be approved either by him or by the judge of said court, and in every case the persons offering themselves as sureties upon the said bond shall be required, before they are accepted as such, to present and file an affidavit that they are in the aggregate worth the amount of the penalty of the bond in real estate situate within the county and to set forth in such affidavit an accurate description of said property. The clerk or judge may, however, require further proof of the sufficiency of the sureties offered if he shall think proper.

History.—§293b, ch. 19554, 1939; CGL 1940 Supp. 8663(304).

924.16 Discharge pending appeal.—If the party applying for an appeal shall at the time be in custody under sentence of conviction, the allowance of an appeal and the obtaining of supersedeas shall not discharge him from custody except by order of the court below or of a judge of the appellate court, which order shall be made only in cases bailable according to the courts of the common law or by the statutes of the state.

History.—§293c, ch. 19554, 1939; CGL 1940 Supp. 8663(305).

924.17 Costs when appellant is insolvent.—In case the appellant shall be utterly unable to pay the costs of the cause, whether it be capital or not, either in whole or in part, and shall himself make oath before the court or the clerk thereof, and shall also by credible testimony establish satisfactorily to the court that he has no property or other means of payment either in his possession or under his control and has not divested himself of his property for the purpose of receiving benefit from this oath, and is also utterly unable to enter into the bond required to secure the payment of the judgment, fine and costs, the appeal shall be a supersedeas without such payment if the defendant remain in custody, or, in cases not capital, upon his entering into bond with two or more sufficient sureties, conditioned that he shall be personally forthcoming to answer and abide the final order, sentence, or judgment that may be passed in the premises by the appellate court, and also conditioned for his appearance before the court in which the cause was originally determined; provided, however, that if the appellant is in official custody in a state or federal prison or county or municipal jail or other penal institution or place of confinement, it shall not be necessary for him to make such oath before the court or to its clerk, and, in lieu thereof, he may present to the court his affidavit to the matters hereinabove required to be established, made before a notary public or other officer authorized to administer oaths, and, thereupon, the court shall either enter an order of insolvency or shall require further evidence in behalf of the appellant and/or the state and then grant or deny an order of insolvency according to whether he deems the insolvency of the appellant to be satisfactorily established or not.

History.—§293d, ch. 19554, 1939; CGL 1940 Supp. 8663(306); am. §1, ch. 28009, 1953.

cf.—§939.15, Costs paid by county in cases of insolvency.

924.18 Bail when state appeals.—Upon an appeal by the state after a conviction of the defendant, a judge of the trial court or a justice of the appellate court may in his discretion admit the defendant to bail as of right.

History.—§294, ch. 19554, 1939; CGL 1940 Supp. 8663(307).

924.19 When operation of order in favor of defendant not stayed.—An appeal by the state in no case stays the operation of an order in favor of the defendant except when the appeal is from an order granting a new trial.

History.—§295, ch. 19554, 1939; CGL 1940 Supp. 8663(308).

924.20 Duty of court upon breach of undertaking.—If a defendant who is at large on bail pending the appeal breaks the condition of the undertaking that he will duly prosecute his appeal, the appellate court, in addition to declaring the undertaking forfeited, may dismiss the appeal and may remand the cause to the trial court for such further proceedings as are proper.

History.—§296, ch. 19554, 1939; CGL 1940 Supp. 8663(309).

924.21 Detention of defendant in custody if bail not given.—If execution of the sentence is stayed, but the defendant is not at large on bail, the official in whose custody he is shall, upon receiving notice of the stay of execution, keep him in custody without executing the sentence, to abide the judgment on appeal.

History.—§297, ch. 19554, 1939; CGL 1940 Supp. 8663(310).

924.22 Stay when execution of sentence already commenced.—If execution of a sentence of imprisonment has commenced before a stay of execution is granted, the granting of such stay shall suspend the further execution of the sentence; provided, the defendant may at his option, if in custody, serve his sentence during the pendency of the appeal.

History.—§298, ch. 19554, 1939; CGL 1940 Supp. 8663(311).

924.23 Transcribing and filing notes of stenographic reporter upon appeal by defendant.—When notice of appeal is filed by the defendant the trial court shall direct the stenographic reporter to transcribe his notes of the proceedings. The reporter shall certify to the correctness of the notes and the transcript thereof, and shall file the notes and the transcript with the clerk. If the prose-

cuting attorney or counsel for the defendant questions the correctness of the notes or transcript the question shall be settled by the court. The defendant shall pay the costs of such stenographic report, unless he is insolvent, when the costs shall be paid by the county.

History.—§299, ch. 19554, 1939; CGL 1940 Supp. 8663(312).

924.24 Transcribing and filing notes of stenographic reporter upon appeal by state.—When notice of appeal is filed by the state the trial courts shall direct the stenographic reporter to transcribe such portion of his notes of the proceedings as the prosecuting attorney shall specify in writing. If counsel for the defendant is of the opinion that portions of the notes of the proceedings specified by the prosecuting attorney are not sufficient for a proper determination of the appeal the trial court at his request shall direct the reporter to transcribe such further portions of his notes of the proceedings as counsel for the defendant shall specify. The reporter shall certify to the correctness of the notes and the transcript thereof and shall file the notes and an original and three copies of the transcript, duly certified, with the clerk. If the prosecuting attorney or counsel for the defendant questions the correctness of the notes or transcript, the question shall be settled by the court. The costs of the stenographic report shall be paid by the county.

History.—§300, ch. 19554, 1939; CGL 1940 Supp. 8663(313).

924.25 Transmission of record to appellate court upon appeal by defendant.—

(1) The preparation of the record on appeal shall be commenced, and the said record shall be filed in the appellate court, within the times specified by supreme court rule twelve, or by such rule as may hereafter be adopted by the supreme court to govern such matters. An original and two copies of the appeal record shall be made up by the clerk of the trial court, who shall, within the time allowed for filing the appeal record, transmit the original record, duly certified, to the appellate court and deliver one copy to the attorney general if the appeal is to the supreme court or to the state attorney if the appeal is to the circuit court and the other copy to the appellant's attorney or to the appellant if he has no attorney. The time for filing the appeal record in the appellate court may be extended by the appellate court or the trial court, provided that no extension of more than ten days shall be granted without notice.

(2) It shall not be necessary for the record on appeal to be approved by the trial judge, but if any difference arises as to whether the record duly discloses what occurred, the difference shall be submitted to and settled by the court, and the record made to conform to the truth.

(3) If anything material to either party is omitted from the record on appeal by error or accident, or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, or the appellate court on a proper suggestion, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk.

(4) When the court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor, and for the safe keeping, transportation, and return thereof as it deems proper.

(5) The original appeal record shall be certified by the clerk of the trial court in the manner provided by supreme court rule twelve or by such rule as the supreme court may hereafter adopt to regulate such certification.

(6) The clerk's costs shall be paid by the defendant, or by the county in case the defendant is insolvent.

History.—§301, ch. 19554, 1939; CGL 1940 Supp. 8663(314). Am. §2, ch. 28022 1953.

924.26 Transmission of record to appellate court upon appeal by state.—

(1) When an appeal is taken by the state, the provisions of §924.25(1) shall be applicable, except that the clerk of the trial court shall deliver one copy of the appeal record to the attorney general if the appeal is to the supreme court or to the state attorney if the appeal is to the circuit court and the other copy to the appellee's attorney or to the appellee if he has no attorney. The provisions of §924.25(2)-(5) shall also apply when the appeal is taken by the state.

(2) The clerk's costs shall be paid by the county when an appeal is taken by the state.

History.—§302, ch. 19554, 1939; CGL 1940 Supp. 8663(315). Am. §3, ch. 28022, 1953.

924.27 Copy of appeal papers given upon request of either party.—The clerk of the trial court shall, within the time allowed for transmission of the appeal papers to the appellate court, deliver, upon payment of his fees, to the defendant or his attorney and to the prosecuting attorney, upon application therefor, a copy of the appeal papers.

History.—§303, ch. 19554, 1939; CGL 1940 Supp. 8663(316).

924.28 Failure of clerk to transmit appeal papers as required.—Failure of the clerk to transmit all the appeal papers within the time provided shall not prejudice the rights of the parties. If the clerk fails to transmit any of the papers the appellate court or the trial court may on its own motion, or shall on the motion of either party, direct the clerk to transmit such papers.

History.—§304, ch. 19554, 1939; CGL 1940 Supp. 8663(317).

924.29 Dismissal of appeal for failure to prosecute; certificate of dismissal.—The appellate court may dismiss the appeal if the appellant does not prosecute it as required by rules of court. When an appeal is dismissed, the clerk of the appellate court shall file with the clerk of the trial court a certificate stating that the appeal has been dismissed.

History.—§305, ch. 19554, 1939; CGL 1940 Supp. 8663(318).

924.30 Appeals in criminal causes to have precedence.—All appeals in criminal cases shall have precedence over other appeals and shall be placed first upon the calendar for hearing. Appeals in cases where a sentence of death has been imposed shall have precedence over all other appeals.

History.—§306, ch. 19554, 1939; CGL 1940 Supp. 8663(319).

924.31 When argument necessary. — Judgment may be affirmed without argument if the appellant fails to argue, but it may not be reversed without argument by the appellant, either oral or upon written brief.

History.—§307, ch. 19554, 1939; CGL 1940 Supp. 8663(320).

924.32 What appellate court to review.— (1) Upon an appeal by either the state or the defendant the appellate court shall review all rulings and orders appearing in the appeal papers in so far as it is necessary to do so in order to pass upon the grounds of appeal. The court shall also review all instructions to which an objection was made and which are alleged as a ground of appeal, and the sentence when there is an appeal therefrom. The court may also in its discretion, if it deems the interests of justice to require, review any other things said or done in the cause which appears in the appeal papers including instructions to the jury. The reception of evidence to which no objection was made shall not be construed to constitute a ruling by the court.

(2) Upon an appeal by the defendant from the judgment the appellate court shall review the evidence to determine if it is insufficient to support the judgment where this is a ground of appeal. Upon an appeal from the judgment by a defendant who has been sentenced to death the appellate court shall review the evidence to determine if the interests of justice require a new trial, whether the insufficiency of the evidence is a ground of appeal or not.

History.—§308, ch. 19554, 1939; CGL 1940 Supp. 8663(321).

924.33 When judgment not to be reversed or modified. — No judgment shall be reversed unless the appellate court after an examination of all the appeal papers is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. It shall not be presumed that error injuriously affected the substantial rights of the appellant.

History.—§309, ch. 19554, 1939; CGL 1940 Supp. 8663(322).
cf.—§54.23, Harmless error.

924.34 When evidence sustains only conviction of lower offense.—In a case where the offense is divided into degrees or necessarily includes lesser offenses, and the appellate court is of the opinion that the evidence does not prove the degree or offense of which the defendant is found guilty, but does establish his guilt of some lesser degree or offense necessarily included therein, then the appellate court shall reverse the judgment of the trial court with directions to the trial court to enter judgment for such lesser degree or offense necessarily included in the charge and pass sentence accordingly, unless some other matter or thing appearing in the record makes it advisable that a new trial be had.

History.—§310, ch. 19554, 1939, CGL 1940 Supp. 8663(323).

924.35 Enforcement of judgment on affirmance.—When the judgment against the defendant is affirmed, the judgment shall be enforced by the court from which the appeal was taken.

History.—§311, ch. 19554, 1939; CGL 1940 Supp. 8663(324).
cf.—§932.51, Execution on affirmation of judgment.

924.36 Order when judgment reversed.— When the judgment is reversed, the appellate court shall either order that the defendant be discharged from the cause, or, if it thinks proper, grant a new trial

History.—§312, ch. 19554, 1939; CGL 1940 Supp. 8663(325).

924.37 Order or decision when state appeals.—(1) When the state appeals from an order quashing an indictment or information or any count thereof, or from an order granting a new trial, and any such order is affirmed, the appellate court shall direct that the trial court proceed to carry such order into effect. If an order quashing an indictment or information or any count thereof is reversed, the appellate court shall direct that the defendant be tried on the indictment or information. If an order granting a new trial is reversed the appellate court shall direct that the judgment of conviction be entered against the defendant.

(2) When the state appeals from a ruling on a question of law adverse to the state the appellate court shall decide the question of law raised on such appeal.

History.—§313, ch. 19554, 1939; CGL 1940 Supp. 8663(326).

924.38 Whether removal of cause when new trial ordered.—When the appellate court orders a new trial, it shall direct that such trial be had in the court from which the appeal was taken, unless the defendant applied in such court for removal of the cause and the appellate court is of the opinion that the trial court should have granted such application in which case the appellate court shall direct in what court the new trial shall be had.

History.—§314, ch. 19554, 1939; CGL 1940 Supp. 8663(327).

924.39 Rehearing.—The appellate court may order the rehearing of an appeal.

History.—§315, ch. 19554, 1939; CGL 1940 Supp. 8663(328).

924.40 Appellate court rules.—(1) The appellate court may make rules, consistent with the provisions of this chapter, for regulating the practice and procedure on appeals.

(2) The appellate court shall prescribe a form of bond on appeal in criminal cases and habeas corpus cases and shall also prescribe the form of certificate to be used by a court reporter in certifying to the correctness of his transcribed notes, and a form for the clerk of the court in certifying the record on appeal.

History.—§316, ch. 19554, 1939; CGL 1940 Supp. 8663(329).

CHAPTER 925

CRIMINAL PROCEDURE GENERALLY

925.01 Penalty for failure to perform duty required of officer.—Except as otherwise provided herein, any sheriff, constable, justice of the peace, county judge, magistrate, prosecuting attorney, court reporter, stenographer or interpreter, or other officer required to perform any duty as provided in the criminal procedure law who willfully fails, refuses and omits to perform any duty herein required of such officer to be done and performed, or willfully violates any of the provisions hereof, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars nor more than one hundred dollars for each such offense, or be imprisoned in the county jail not exceeding ten days.

History.—§317, ch. 19554, 1939; CGL 1940 Supp. 8663(330).

cf.—§775.06, Alternative punishment.

925.02 Effective date.—The criminal procedure law shall become effective on 12:01 o'clock A. M., October 10th, 1939, and shall govern the procedure in all criminal cases commenced or instituted on and after said time.

History.—§321, ch. 19554, 1939; CGL 1940 Supp. 8663(334).

925.03 Short title and organization.—Chapters 901-925 comprise and may be cited as the "Criminal Procedure Law."

History.—§320, ch. 19554, 1939; CGL 1940 Supp. 8663(333).
am. §7, ch. 22858, 1945.

925.04 Discovery and production of documents and things for inspection, copying or photographing.—When a crime has been committed and the evidence of the state shall relate to ballistics, fingerprints, blood, semen, or other stains, or documents, papers, books, accounts, letters, photographs, objects, or other tangible things, upon motion showing good cause therefor, and upon notice to the prosecuting attorney, the court in which the action is pending, whether the committing magistrate's court or the court having jurisdiction to try the cause, may order the state to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated papers, books, accounts, letters, photographs, objects, or other tangible things. In examinations to be conducted by representatives of the state, as to ballistics, fingerprints, blood, semen, and other stains, the defendant, upon motion and notice, as aforesaid, shall be permitted under order of court, to be present, or have present, an expert of his own selection, during the course of such examination. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs, and may prescribe such terms and conditions as are just.

History.—§154, ch. 19554, 1939; CGL 1940 Supp. 8663(161).
Note.—Formerly §909.18.

cf.—§903.03, Justification of trial court to hear motion.

925.05 Statements or confessions; availability to defendant.—Where a person is charged with an offense, upon motion of such person, at any time after the filing of the indictment or information against him, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph written or recorded statements or confessions whether signed or unsigned by the defendant. The order shall specify the time, place and manner of making the inspection and of taking copies, or photographs, and may prescribe such terms and conditions as are just.

History.—§1, ch. 63-263.

925.06 Sale or destruction of unclaimed personal property in criminal proceedings.—

(1) Any personal property entered into evidence or otherwise coming into the custody of the court during the progress of any criminal case and not claimed by and returned to the owner or any person claiming an interest therein, shall, if of any appreciable value, be sold or offered for sale at public sales conducted by the sheriff of the appropriate county at such times as shall be ordered by the court. Notice, procedure and sheriff's fees shall be the same for such sales as provided by law for sales under execution. The proceeds of such sales, after deducting sheriff's fees and expenses, shall be paid over to any person entitled to and claiming the same. If no claim is made within sixty days after a sale, such proceeds shall be paid over by the sheriff into the county general fund. If the aforesaid property is of no appreciable value the court may order its destruction by the sheriff.

(2) Nothing herein shall be construed to repeal or supersede the provisions of §790.08 with respect to the disposition of weapons or arms as therein defined.

History.—§§1, 2, ch. 63-180.

CHAPTER 932

PROVISIONS SUPPLEMENTAL TO CRIMINAL PROCEDURE LAW

932.01 Courts in which criminal jurisdiction is vested.—Original jurisdiction in criminal cases is vested in the circuit courts, criminal courts of record, county courts, county judges' courts and courts of justices of the peace.

History.—§2792, RS 1892; GS 3842; RGS 5937; CGL 8203.

cf.—§26.53, Jurisdiction circuit courts, criminal cases.
§32.01, Criminal courts of record.
§34.01, County courts.
§36.01, County judge's courts.
§37.01, Justice of the peace courts.

932.02 Process.—Said courts may issue all writs and process necessary or proper to the exercise of the criminal jurisdiction, and such writs and process, except when otherwise provided by law, shall run and be of full force and effect throughout the state.

History.—§2793, RS 1892; GS 3843; RGS 5938; CGL 8204.

cf.—§932.25, Witnesses; subpoenas to run throughout state.

932.03 Contempts.—Said courts, in the exercise of their criminal jurisdiction may punish for contempts as in the exercise of their civil jurisdiction, and the criminal courts of record shall possess, in this respect, the same powers as the circuit courts.

History.—§2794, RS 1892; GS 3844; RGS 5939; CGL 8205.

932.04 Contempts before committing magistrate.—A committing magistrate, while holding any examination, shall have the same power to punish for contempts as he possesses while presiding at the trial of any criminal cause.

History.—§2795, RS 1892; GS 3845; RGS 5940; CGL 8206.

932.05 Limitation of prosecutions.— All offenses not punishable with death, save as hereinafter provided, shall be prosecuted within two years after the same shall have been committed. There shall be no limitation for offenses punishable with death. In all offenses not punishable with death where an indictment has been found or an information filed within two years after the commission of the offense and such indictment or information, because of any defect, omission or insufficiency in the contents or form thereof, is subsequently quashed or set aside after said two year period has elapsed, in that event further indictments may be found or informations filed for such offense within three months after the entry of the order of the court quashing or setting aside the indictment or information, and prosecution thereunder shall proceed as if the same were commenced within two years after the commission of the offense.

History.—§78, Feb. 10, 1832; RS 2357; GS 3181; RGS 5011; CGL 7113; §1, ch. 16962, 1935.
2nd paragraph repealed by §10, ch. 26484, 1951.

932.06 Same; state, county and municipal officials.—All offenses by state, county or municipal officials, committed during their term or terms of office, in any way whatsoever connected with the discharge of the duties of their different offices, shall be prosecuted within two years after the said officer shall retire from such office.

History.—§1, ch. 4915, 1901; GS 3182; RGS 5012; CGL 7114.

932.07 Jurisdiction and venue; offense commenced here but consummated elsewhere. — When the commission of an offense commenced here is consummated without the boundaries of this state, the offender shall be liable to punishment here therefor, and the jurisdiction in such case shall be in the county in which the offense was commenced.

History.—§2360, RS 1892; GS 3185; RGS 5015; CGL 7117.
cf.—§910.01, Jurisdiction and venue (criminal procedure law).

932.08 Same; dueling in another state.— Whoever being a resident or inhabitant of this state, by previous appointment or engagement made within the same, fights a duel without the jurisdiction of this state, and, in so doing, inflicts a mortal wound upon any person whereof he afterwards dies in this state, shall be deemed guilty of murder in the first degree in this state, and may be indicted, tried and convicted in the county wherein the death happens.

History.—§24, sub-ch. 3, ch. 1637, 1868; RS 2361; GS 3186; RGS 5016; CGL 7118.
cf.—Ch. 783, Dueling.

932.09 Same; seconds to such duel.—Whoever being an inhabitant or resident of this state, by previous appointment or engagement made within the same, becomes the second of either party in such duel, and is present as a second when such mortal wound is inflicted, whereof death ensues within this state, may be indicted, tried and convicted as an accessory before the fact in the county wherein the death happened.

History.—§25, sub-ch. 3, ch. 1637, 1868; RS 2362; GS 3187; RGS 5017; CGL 7119.
cf.—Ch. 776, Principals and accessories.

932.10 Same; acquittal or conviction in another state a bar here.—Any person indicted under §§932.08-932.09 may plead a former conviction or acquittal of the same offense in any other state or county, and such plea, if admitted and established, shall be a bar to all further or other proceedings against him for the same offense in this state.

History.—§26, sub-ch. 3, ch. 1637, 1868; RS 2363; GS 3188; RGS 5018; CGL 7120.

932.11 Same; navigable waters.—When the territorial jurisdiction of any court in any county shall extend to one bank of any navigable water such court shall have jurisdiction across such navigable water from shore to shore. If the territorial jurisdiction of different courts, whether of the same county or not, extends to the opposite banks of any navigable water, such courts shall have concurrent jurisdiction across said navigable water from shore to shore.

History.—§2365, RS 1892; GS 3190; RGS 5020; CGL 7122.

932.12 Same; accessory before the fact.—A person charged with counseling, hiring or otherwise procuring a felony to be committed, may be indicted, tried and convicted in the same court and county in which the principal felon might be indicted and tried, although the offense of counseling, hiring, or procuring the commission of such felony is committed on the high seas, or on land, either within or without the limits of this state.

History.—§5, sub-ch. 11, ch. 1637, 1868; RS 2366; GS 3191; RGS 5021; CGL 7123.
cf.—§910.04, Venue where accessory in one county and offense committed in another.

932.13 Same; accessory after the fact.— Whoever becomes an accessory to a felony after the fact, may be indicted, tried and convicted (whether the principal felon has or has not been convicted feloniously, or is or is not amenable to justice) by any court having jurisdiction to try the principal felon, and either in the county where such person became an accessory, or in the county where the principal felony was committed.

History.—§7, sub-ch. 11, ch. 1637, 1868; RS 2367; GS 3192; RGS 5022; CGL 7124.
cf.—§776.03, Accessory after the fact.
§806.10, Obstructing extinguishment of fire.

932.14 Same; kidnaping. — Every offense mentioned in §805.01 may be tried in the county in which it is committed, or in any county in or to which the person so seized, taken, inveigled, kidnaped or sold, or whose services are so sold or transferred, is taken, confined, held, carried or brought.

History.—§44, sub-ch. 3, ch. 1637, 1868; RS 2368; GS 3193; RGS 5023; CGL 7125.

932.15 Grand jury; to make presentments.—The grand jury may present every offense against the penal laws of this state, whether any specific punishment is pointed out or not, if punishment has not been inflicted.

History.—§16, Nov. 19, 1828; RS 2805; GS 3854; RGS 5949; CGL 8215.

cf.—§905.01, Grand jury (criminal procedure law).

932.16 Same; excusing grand juror related to person being investigated.—Any member of a grand jury may excuse himself or be excused by a majority vote of the other members of the grand jury, or by order of the judge of said court on his own motion or on motion of the state attorney, and relieved from the deliberations of the grand jury or voting on a true bill in any case being investigated by the grand jury, in which the party being investigated is related by blood or marriage to such grand juror. When so excused or relieved said member shall retire and be absent from the grand jury room throughout the investigation of and the voting on a true bill against such relative; provided, however, that the failure of any grand juror to excuse himself or be excused or relieved from participation in the investigation of or voting on a true bill against any person related to such grand juror by blood or marriage, shall not vitiate or in any respect invalidate any true bill or indictment found or returned against such relative.

History.—§1, ch. 17058, 1935; CGL 1936 Supp. 4452(1).

932.17 Same; state attorney to issue subpoena.—Whenever so required by the grand jury, the state attorney shall issue subpoenas and other process to secure witnesses.

History.—§20, ch. 1628, 1868; RS 2807; GS 3856; RGS 5951; CGL 8217.

cf.—§905.19, Duties of prosecuting attorney.

932.18 Same; list of witnesses; minutes.—The foreman of the grand jury shall return to the court a list under his hand of all witnesses who shall have been sworn before the grand jury during the term, and the same shall be filed of record by the clerk.

When the grand jury so directs, the minutes of its proceedings shall be delivered to the state attorney by its clerk.

History.—§§14, 15, ch. 1628, 1868; RS 2806, 2809; GS 3855, 3858; RGS 5950, 5953; CGL 8216, 8219.

cf.—§§905.08, 905.13, Foreman, Clerk.

932.19 Jurors; qualifications stated. — The qualifications of jurors in criminal cases shall be the same as their qualifications in civil cases.

History.—§2849, RS 1892; GS 3905; RGS 6003; CGL 8297.

cf.—§§40.01, 40.07-40.08, 40.12, Qualifications of jurors in civil cases.
§913.01, Trial jury (criminal procedure law).

932.20 Same; in capital cases.—No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be allowed to serve as a juror on the trial of any capital case.

History.—§12, ch. 1637, sub-ch. 13, 1868; RS 2850; GS 3906; RGS 6004; CGL 8298.

932.21 Same; procurement same as in civil cases.—In courts having civil and criminal jurisdiction the method of drawing, summoning and empaneling jurors in civil cases shall obtain also in criminal cases. In the criminal courts of record the law regulating the drawing, summoning and empaneling of jurors in the circuit court shall obtain, except that the jurors for the first week of the term of the criminal court of record shall be drawn not less than four days prior to the first day of the term, and shall be summoned not less than one day prior to the first day of the term.

History.—§2852, RS 1892; GS 3908; RGS 6006; CGL 8300.

cf.—§40.02, Procurement of jurors in civil cases.

932.22 Same; special jurors.—In all criminal cases the court, in its discretion, may order such number of jurors to be summoned, in addition to the regular panel, as it may deem proper.

History.—§2853, RS 1892; GS 3909; RGS 6007; CGL 8301.

932.23 Same; compensation.—In courts having both civil and criminal jurisdiction, except in courts of justices of the peace, the compensation of jurors in criminal cases shall be the same, and shall be made in the same manner, as in civil cases. In the criminal courts of record the compensation of jurors shall be the same, and shall be made in the same manner, as in the circuit court.

History.—§2864, RS 1892; §1, ch. 5110, 1903; GS 3913; RGS 6011; CGL 8305.

cf.—§40.24, Pay of jurors.

932.24 Same; compensation in justice of the peace courts.—In courts of justices of the peace the pay of jurors, when paid by the county, shall be for each day's attendance on the court, but when paid by the defendant, for each day's attendance on the case.

History.—§1, ch. 3702, 1887; RS 2858; GS 3914; RGS 6012; CGL 8306.

cf.—§40.24, Pay of jurors.

932.25 Witnesses; subpoenas to run throughout state.—All subpoenas for witnesses in criminal cases on behalf of the state and defendant shall run throughout the state, and shall be directed to all and singular the sheriffs of the state.

History.—§2, ch. 871, 1859; RS 2859; GS 3915; RGS 6013; CGL 8307.

cf.—§932.02, Process in general.

932.26 Same; all names to be included in one subpoena.—When possible, the names of all witnesses summoned for, or at the cost of, the state in a criminal case shall be included in one subpoena, and the prosecuting officer shall, when possible, include the names of all such witnesses in one praecipe for such subpoena.

History.—§§2, 4, 6, ch. 3702, 1887; RS 2860; GS 3916; RGS 6014; CGL 8308.

932.27 Same; number in justice of the peace courts.—In criminal cases in courts of justices of the peace no more than two witnesses shall be subpoenaed for the state to prove the same fact.

History.—§6, ch. 3702, 1887; RS 2861; GS 3917; RGS 6015; CGL 8309.

932.28 Same; attendance.—Witnesses summoned before a grand jury or in a criminal case pending in court, shall remain in attendance, and shall not depart therefrom unless they are discharged by order of the court, and if they depart without leave they shall be considered in contempt and liable to be attached for the same as in other cases of contempt. All witnesses subpoenaed once in a case shall attend at each succeeding term of court until the case is disposed of.

History.—§4, ch. 159, 1843; §2, ch. 2094, 1877; RS 2862; GS 3918; RGS 6016; CGL 8310.

cf.—§8, Decl. of rights, const. Unreasonable detention.

932.29 Same; person not excused from testifying in certain prosecutions on ground testimony might incriminate him; immunity from prosecution.—No person shall be excused from attending and testifying, or producing any book, paper or other document before any court upon any investigation, proceeding or trial, for a violation of any of the statutes of this state against bribery, burglary, larceny, gaming or gambling, or of any of the statutes against the illegal sale of spirituous, vinous or malt liquors, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

History.—§1, ch. 5400, 1905; §1, ch. 7850, 1919; RGS 6017; CGL 8311.

cf.—§838.08, Person giving unauthorized compensation to public officer, etc., not privileged from testifying.

932.291 Same; compelled testimony tending to incriminate witnesses; immunity.—

(1) Whenever any witness, after having claimed his privilege against self-incrimination to testify or produce evidence, is instructed by order of any court of the United States to testify or produce books, papers or other evidence before any federal grand jury or court of the United States government involving any interference with or endangering of, or plans or attempts to interfere with or endanger, the national security or defense of the United States by treason, sabotage, espionage, sedition, or seditious conspiracy, the testimony or production of evidence of said witness shall not be used as evidence in any subsequent criminal proceedings against him in any court of this state.

(2) No witness shall be exempt under the provision of this section from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this section.

History.—Comp. §1, ch. 29987, 1955.

932.30 Same; experts in felony prosecutions; compensation.—When it shall be made to appear in the trial of any person in this state for a felony, that it is necessary or expedient in the interest of justice to have the testimony of an expert as to his opinion concerning any matter or thing relevant or pertinent to the issues in said cause, the judge of such court where such felony is being, or is about to be tried, upon the motion of the state, or upon the motion of the defendant if he makes and files an affidavit that he is insolvent and unable to pay the costs of his defense or of procuring an expert witness and the court finds the same to be true, many enter an order requiring the attendance of an expert to appear and make examination of any person or exhibit offered or to be offered in evidence in the trial of said cause and to testify as to his opinions and findings thereon, and allow and fix the compensation to be paid such expert for his services in making such examination, and for his time in attendance upon the court to testify as to his findings and opinions, which said compensation so fixed by the court, shall be taxed as costs and paid in the same manner as other costs in said suit.

History.—§1, ch. 18412, 1937; CGL 1940 Supp. 8311(1). Am. §1, ch. 28202, 1953.

cf.—§917.01, Expert witnesses in proceedings to determine mental condition of defendant.

932.31 Same; competency as in civil cases.—The provisions of law relative to the competency of witnesses and evidence in civil cases shall obtain also in criminal cases, except in cases otherwise provided by law.

History.—§2863, RS 1892; GS 3919; RGS 6018; CGL 8312.

cf.—§90.04, Competency of witnesses in civil cases.

932.32 Same; approvers.—Approvers shall not be admitted in any case whatever.

History.—§17, Nov. 19, 1828; RS 2905; GS 3975; RGS 6076; CGL 8381.

932.33 Same; compensation.—In courts having civil and criminal jurisdiction, except courts of county judges and justices of the peace, the pay and mileage of witnesses in criminal cases shall be the same and shall be paid in the same manner as in civil cases in the same court. In the criminal courts of record their pay and mileage shall be the same and paid in the same manner as in the circuit courts.

History.—§2864, RS 1892; §1, ch. 5110, 1903; GS 3920; RGS 6019; CGL 8313.

cf.—§90.14, Compensation of witnesses in civil cases.

932.34 Same; compensation when summoned in two or more cases.—No witnesses subpoenaed in two or more cases pending at the same time, shall be paid more than one charge for per diem and mileage. When, however, the costs are thrown upon the defendant, the costs may be charged in full in each case.

History.—§4, ch. 159, 1848; RS 2865; §1, ch. 5133, 1903; GS 3921; RGS 6020; CGL 8314.

932.35 Same; compensation in courts of justices of the peace.—In criminal cases before justices of the peace, the pay of witnesses, when paid by the county, shall be for each day's actual attendance on the court, but in every case wherein the costs are collected from the

defendant, each witness shall be entitled to pay for each day's attendance in the case.

History.—§1, ch. 3702, 1887; RS 2866; GS 3922; RGS 6021; CGL 8315.

932.36 Same; for insolvent defendants in justices' courts and county judges' courts.—In case any person charged with any criminal offense is brought before a justice of the peace for examination or trial, and such person makes and files an affidavit that he is insolvent and unable to pay the costs of the defense or of procuring the attendance of his witnesses, and that certain witnesses, naming them and stating what he expects each to testify, are necessary to his defense, and that he cannot procure their attendance without subpoena, the justice shall, if satisfied of the good faith and truth of such affidavit, issue and cause to be served a subpoena for such witnesses, not to exceed two to prove any one fact. The costs in such case, when audited and approved according to law, shall be paid by the county. This section shall apply to the courts of the county judge.

History.—§2, ch. 3702, 1887; RS 2867; §1, ch. 5133, 1903; GS 3923; RGS 6022; CGL 8316.

cf.—§939.07, Pay of defendant's witnesses.

932.37 Same; for insolvent defendants in other courts.—In case any person is brought to trial in any court of criminal jurisdiction other than a court of a justice of the peace, or county judge, and such person makes and files an affidavit that he is insolvent and unable to pay the costs of his defense, or of procuring the attendance of his witnesses, and that certain witnesses, naming them and stating what he expects each to testify are necessary to his defense, and that he cannot procure their attendance without subpoena, the judge of such court shall, if satisfied of the good faith and truth of such affidavit, order that subpoena be issued and served to procure the attendance of such witnesses, not to exceed two to prove any one fact, and that the costs in such case, when audited and approved according to law, shall be paid by the county.

If any defendant shall desire more than three witnesses to be summoned at the expense of the county, he shall in addition to the affidavit before mentioned in this or in §932.36 be required to make affidavit that all witnesses desired by him in excess of three, are relevant witnesses, and that he cannot safely go to trial without them, and his attorney shall also certify that in his judgment such witnesses should be summoned in order to secure a fair trial of the defendant.

History.—§4, ch. 3702, 1887; §1, ch. 3719, 1887; RS 2868; GS 3924; RGS 6023; CGL 8317.

cf.—§939.07, Payment of costs when defendant insolvent or discharged.

932.38 Parent or guardian to be notified before trial of offense against minor; service of notice.—When any minor, not married, may be charged with any offense and brought before any of the courts, including municipal courts, of this state, due notice of such charge prior to the trial thereof shall be given to the parents or guardian of such minor, provided the name and address of such parent or guardian may be known to the court, or to the executive officers thereof. In the event that the name of such parent or guardian is not known or made known to the court or executive officer or cannot be reasonably ascertained by him, then such notice shall be given to any other relative or friend whom such minor may designate.

The service of notice required by this section to be given to the parent, or guardian or other person provided herein may be made as the service of summons ad respondendum is made; or in the event such parent, or guardian or other person provided herein may be beyond the jurisdiction of the court, then, and in that event, service may be made by registered mail, or by telegram, and return of such service shall be made by the executive officer of the court in the same manner as returns are made upon summons ad respondendum.

History.—§§1, 2, ch. 6221, 1911; RGS 6028; CGL 8322.

cf.—§47.13, Service of summons ad respondendum.
§1.01(13) defines registered mail to include certified mail with return receipt requested.

932.39 Commitment and bail; when commitment may be to jail of another county.—If the accused shall be committed by any justice of the peace in a county where there is no jail or place of safekeeping, the justice shall direct the sheriff of the county to deliver the accused to the sheriff of the next adjoining county where a jail or place of safekeeping may be, there to be confined and dealt with according to law. The sheriff may summon a guard for the purpose of conveying the accused to the adjoining county.

History.—§7, ch. 6213, 1911; RS 2879; GS 3938; RGS 6039; CGL 8340.

cf.—§923.20, Form of commitment to jail of another county.

932.40 Same; justices of the peace to give witnesses under recognizance memorandum showing date of meeting; form of memorandum; removal for violation.—Every justice of the peace or county judge, when sitting as a committing magistrate, in all cases where the defendant shall be held to await the action of the grand jury, shall give to each witness that he recognizes to appear before the said grand jury a memorandum in writing, stating the date when the next grand jury shall meet before whom the said witness is to appear.

The county commissioners in each county shall cause to be printed, slips glued together in pad form, for free distribution to the justices of the peace and the county judge in their respective counties, to be used for the purposes mentioned in this section. The slips shall be in the following or like form:

_____ (Date) _____

To _____

You are required to be and appear before the grand jury as a witness in the case of the State of Florida vs. _____

that meets at _____ on the _____ day of _____, 19____.

_____

An intentional or continued disregard by any

committing magistrate of the provisions of this section shall subject him to suspension from office by the governor, on the recommendation of the grand jury.

History.—§1, ch. 2096, 1877; RS 2880; §§1, 2, 3, ch. 5401, 1905; GS 3939; RGS 6041; CGL 8342.

932.41 Same; commitment for prejury in certain cases.—When it appears to a court of record that a witness or party, who has been legally sworn and examined, or has made an affidavit in any proceeding in a court of justice, has so testified as to induce a reasonable presumption that he is guilty of perjury therein, the court may immediately commit such witness or party by an order or process for that purpose, or may take a recognizance, with sureties, for his appearing to answer a charge of perjury. Thereupon the witnesses to establish such perjury may, if present, be bound over to the proper court, and notice of the proceedings shall forthwith be given to the prosecuting officer.

History.—§15, sub-ch. 6, ch. 1637, 1868; RS 2882; GS 3941; RGS 6043; CGL 8344.
cf.—Ch. 837, Perjury.

932.42 Prisoners awaiting trial may be worked on roads.—The county commissioners of any county where they may deem it beneficial to the prisoner concerned, and for the public welfare, may employ at labor upon the streets of incorporated cities or towns, or upon the roads, bridges and other public works in the county, any person in the county jail under charge of a misdemeanor upon which he may be confined for failure to give bail.

History.—§1, ch. 5260, 1903; GS 3945; RGS 6047; CGL 8348.

932.43 Written consent of prisoner required; credit for work.—No person shall be employed as mentioned in §932.42 without his written consent or against his will. No person shall work more than ten hours in each twenty-four, and in case such person so employed shall be acquitted of the offense upon which he is held for want of bail, or the case against him shall be nolle prosequied or dismissed, and he shall be discharged from further prosecution, then such person shall be paid by the county for his services at the rate of thirty cents per day for the time he may have been actually employed, and in case such person shall be convicted, then the time he may have been so employed shall be credited on any term of imprisonment to which he may be sentenced, and in case he shall be fined, then the value of such labor actually performed by him at the rate aforesaid shall be credited on his fine or the costs, or both fine and costs. No charge shall be made against the prisoner for feed or board during his confinement.

History.—§2, ch. 5260, 1903; GS 3946; RGS 6048; CGL 8349.

932.44 Record of conduct of prisoners.—The county commissioners shall cause to be kept by the road superintendent a record in which the conduct of persons employed as provided in §§932.42-932.43 shall be noted, and a transcript of such record shall be furnished to the court having jurisdiction in the premises.

History.—§3, ch. 5260, 1903; GS 3947; RGS 6049; CGL 8350.

932.45 Proceedings on estreat of bond; sureties to be called.—When any bond is taken for the appearance of any person charged with a criminal offense before any court in this state, and such person fails to attend said court as prescribed in the bond, the presiding judge of said court shall cause the sureties on the bond to be called upon to produce the body of the person for whose appearance they have given bond.

History.—§1, ch. 4403, 1895; GS 3949; RGS 6051; CGL 8352.
cf.—§903. 26, Directing forfeiture of undertaking.

932.46 Same; certificate of judge.—When the sureties have been called as required in this chapter, and have failed to produce the body of the person for whose appearance the bond has been given, the presiding judge of the court shall, during said term of court, or as soon thereafter as possible make and sign a certificate setting forth the facts of the giving of the bond, the breach of its conditions, and the failure of the sureties thereon to produce the body of the defendant, which certificate, under the hand of the justice or judge of said court, shall, in any court in this state, have all the force and validity of other record evidence, and shall be prima facie proof of all the facts set forth therein, and shall be substantially as follows:

In_____Court for
_____County (or District)
State of Florida
vs.
A_____B_____
(Affidavit) or
(Information) or
(Indictment) as the case may be.

This is to certify that the said A_____ B_____ together with C_____D_____, and E_____F_____, agreed to pay the State of Florida _____ dollars unless the said A_____B_____ should appear at this term of the _____ court, for _____ county, to answer the charge in this case; that the said A_____B_____ has failed to appear in this court to answer said charge, and that the sureties have been called upon and have failed to produce the body of said A _____ B_____ in this court, as their bond requires. In witness whereof, I have on this the _____ day of _____A. D. 19_____ made and signed this certificate.

(Signed) G_____H_____
(Justice) or Judge_____Court
For_____County.

The certificate, together with the bond shall be by the justice or judge of said court forthwith transmitted to the clerk of the circuit court of the county, where said bond is made payable, who shall give his receipt for the same.

History.—§2, ch. 4403, 1895; GS 3950; RGS 6052; CGL 8353.

932.47 Indictments and informations; informations filed by prosecuting attorney.—Infor-

mations may be filed by the prosecuting attorney of the circuit court with the clerk of the circuit court in vacation or in term without leave of the court first being obtained.

History.—§1, ch. 17172, 1935; CGL 1936 Supp. 8363(1).
cf.—§906.01, Indictments and informations (criminal procedure law).

932.48 Same; duties of clerks of courts.—Upon the filing of an information, the clerk of the circuit court shall docket the information and shall, without leave or order of the court first being had and obtained, issue a capias for the arrest of the person charged; and the clerk shall likewise issue any and all other necessary process incident to the information.

History.—§2, ch. 17172, 1935; CGL 1936 Supp. 8363(1).
cf.—Ch. 907, Process upon indictment and information.
§907.01 Capias and amount of bond.

932.49 Same; failure of motor vehicle operators to stop and assist persons injured; form of information.—Informations and indictments under §§317.09-317.10 shall be deemed sufficient if made in substantially the following form:

"That one A.B. while operating or being in charge of a motor vehicle then and there being driven along the _____ thoroughfare in _____ County, Florida, did strike and injure or put in jeopardy the person or property (as the case may be, giving details sufficient to identify the occurrence) of one _____ (or unknown as the case may be) and without stopping to render aid to the persons injured or put in jeopardy thereby and/or (without making known to the persons present his full, true and correct name and address as the case may be) did unlawfully depart from the scene of such accident contrary to the statute in such case made and provided."

History.—§3, ch. 13699, 1929; CGL 1936 Supp. 8374(1).
cf.—§906.05-906.06, Forms of indictment and information.
§923.03, Manslaughter.

932.50 Evidence necessary in treason.—No person shall be convicted of treason except by the testimony of two lawful witnesses to the same overt act of treason for which he is prosecuted, unless he confess the same in open court.

History.—§4, sub-ch. 2, ch. 1637, 1868; RS 2909; GS 3980; RGS 6082; CGL 8387.
cf.—Ch. 779, Treason and offenses against the government.
§23, Declaration of rights, Florida Constitution.

932.51 Execution on affirmance of judgment.—Upon the affirmance of a judgment, sentence or order, the appellate court shall order and direct the court in which the case was originally determined to carry into effect the original judgment, sentence or order, or the appellate court shall itself proceed to pass such judgment, sentence or order as to it shall seem proper.

History.—§5, ch. 138, 1848; RS 2978; GS 4051; RGS 6155; CGL 8469.
cf.—§924.35, Enforcement of judgment on affirmance.

932.52 Appeals from municipal courts.—(1) Any person convicted of any offense in any municipal court in this state may appeal from the judgment of such court to the circuit court of the county in which the conviction took place.

(2) Appeals under this section shall be taken and filed within thirty days from and after rendition of the judgment appealed from.

(3) Appeals under this section shall be perfected by the appellant's filing with the clerk of the municipal court, or with the judge of such court if there be no clerk, a simple notice of appeal which shall include or be accompanied by assignments of error in brief form.

(4) The form of said notice of appeal may be substantially the same as that provided by the supreme court for use in appeals to that court, with the addition of assignments of error in brief form.

(5) The filing of the notice of appeal with the clerk or judge shall give the circuit court jurisdiction of the subject matter and parties to the appeal.

(6) Rule days for appeals from municipal courts are abolished. The filing of the record in the circuit court shall fix the time from which the date for filing motion and other pleadings shall commence to run.

(7) Bills of exception and formal authentication thereof by the municipal court or judge are abolished. When any proceeding in the municipal court has been stenographically or otherwise reported, the court reporter, or other person reporting the same with the consent or approval of the court, shall, within fifteen days from the filing of the notice of appeal, or within such additional time as the municipal court or judge may allow, file his duly authenticated transcribed notes, or an authenticated copy thereof, with the clerk, or judge if there be no clerk, of the municipal court. When so filed the said transcribed notes, or copy thereof, shall become a part of the record in the cause. All documents, instruments and books used, or offered in evidence, when filed with the court shall become a part of the record in the cause to the extent used.

(8) Proceedings in pais, not stenographically or otherwise reported, may be authenticated by recital in the judgment appealed from, by a separate order, by certificate of the municipal judge, or by stipulation of the appellant and the city attorney, or other municipal officer having knowledge of the trial proceedings.

(9) The municipal court and the judge thereof shall, at all times, have full power and authority to correct the record in the cause and make it speak the truth, even when filed in the appellate court, and the like power may be exercised by the circuit court.

(10) It shall be the duty of the clerk, or the judge if there be no clerk, of the municipal court as soon as completed and ready for transmittal to forthwith transmit, under his hand, to the clerk of the circuit court, the entire original record, including the reporter's authenticated transcribed notes, or copy thereof, the notice of appeal and such other papers, books and plead-

ings as may have been filed in the cause. The record shall be accompanied by a certificate of such clerk or judge reciting that such record constitutes all the record and files in said cause.

(11) The said record on appeal shall be filed in the appellate court within twenty days from the filing of the notice of appeal, unless such time be extended by the municipal court, or circuit court, for good cause shown.

(12) When the record is filed in the circuit court, as aforesaid, the clerk or judge of the municipal court filing the same shall forthwith notify the appellant of such filing. Such notice may be given by mail or otherwise; however, it shall not be jurisdictional.

(13) The circuit court, on appeals under this section, shall examine the record and reverse or affirm the judgment appealed from, giving such judgment or order as the trial court should have given or otherwise as it may appear according to law. The circuit court shall have power to lower the sentence imposed by the municipal court if in his discretion the same should be lowered.

(14) The appeal may be heard by the circuit court either in term time or vacation. The circuit court shall set all appeals under this section for a speedy hearing and shall dispose of all such appeals as speedily as possible. The said circuit court shall sound the municipal appellate docket at least twice in each year and all undisposed of appeals shall have a speedy disposition.

(15) The Florida appellate rules shall govern in appeals brought under this section as to matters of practice and procedure.

(16) Appellant shall enter into a bond in double the amount of the fine and costs assessed or if the judgment be one of imprisonment for a term in the jail of said municipality, then the bond shall be in an amount sufficient to cover all costs taxed in the circuit court on appeal, plus not less than ten nor more than two hundred dollars additional in the discretion of the municipal judge, with one or more sufficient sureties to be approved by the clerk of the circuit court; conditioned to prosecute his appeal with dispatch and to abide the judgment of the court therein. When the bond is entered into and filed with the clerk of the circuit court, it shall operate as a supersedeas. The clerk of the circuit court shall receive a fee of one dollar for approving the appeal bond, payable when the bond is filed with him by the appellant.

(17) The costs shall be taxed by the circuit court upon the final decision of the appeal and shall be paid by the municipality if the decision on appeal is adverse to it.

History.—§1, ch. 4021, 1891; RS 4052; RGS 6156; CGL 8470. Am. §1, ch. 24068, 1947; §36, ch. 63-559.
Sub. §(16) am. §10, ch. 26484, 1951; (7), (14) by §24, ch. 57-1.
cf.—§924.01, Appeals from circuit court to supreme court.

932.521 Supersedeas bond in appeals from municipal to circuit court; enforcement and forfeiture.—

(1) Whenever any appeal is taken from any municipal court to the circuit court in accordance with §932.52, and a supersedeas bond is filed in the circuit court, the surety or sureties executing said supersedeas bond thereby submit themselves to the jurisdiction of the circuit court, and the circuit court shall retain jurisdiction of the cause as to the principal and surety or sureties on such supersedeas bond after the issuance of the mandate on such appeal for the purpose of entering such other and further orders as may be necessary and proper for the enforcement of the conditions of said bond.

(2) Whenever any appeal taken from any municipal court to the circuit court under the provisions of §932.52 has been dismissed, affirmed or modified, or in case the judgment has been reversed and the cause remanded for a new trial, and the appellant has not within five days after the issuance of the mandate complied with the judgment and sentence of the municipal court by payment of the fine, or surrender for service of the sentence, or surrender for a new trial in case a new trial has been ordered, the clerk or judge of the municipal court shall certify such fact to the circuit court. Upon such certificate being filed in the cause in the circuit court, the circuit court shall order the supersedeas bond filed in said cause forfeited, and unless within ten days after entry of such order of forfeiture the appellant, surety or sureties on such supersedeas bond shall satisfactorily explain the breach of the undertaking and secure a discharge of such forfeiture, the circuit court shall enter judgment against such appellant, surety or sureties on said supersedeas bond and execution shall issue thereon.

History.—Comp. §§1, 2, ch. 57-64.

932.53 Justice of the peace courts; time of taking appeal.—Appeals from a judgment or sentence of conviction in the court of a justice of the peace where a trial de novo is demanded shall be taken within thirty days from the date of the judgment or sentence.

History.—§1, ch. 3717, 1897; RS 2979; GS 4053; RGS 6157; CGL 8471; am. §1, ch. 24068, 1947.
cf.—§924.09, When appeal under criminal procedure law to be taken.

932.54 Appeals from justice of the peace courts; supersedeas.—The appeal shall operate as a supersedeas, if the appellant shall enter into a bond with one or more sufficient sureties, to be approved by the court entering the judgment or sentence of conviction, conditioned to appear before the circuit court of the county at its next ensuing term, and to abide its judgment therein.

History.—§1, ch. 3717, 1887; RS 2980; GS 4054; RGS 6158; CGL 8472.

932.55 Justice of the peace to make return of proceedings on appeal.—The judge of the court from which an appeal is taken shall make special return of the proceedings had before him, and shall cause it, with the bond aforesaid, and also the affidavit, warrant and return

and all other papers pertaining to the trial, to be filed in the circuit court on or before the first day of its next term, and the complainant and the witnesses may also be required by him to enter into bond to appear before the circuit court at the time aforesaid and to abide by its order therein.

History.—§2, ch. 3717, 1887; RS 2981; GS 4055; RGS 6159; CGL 8473.

cf.—§924.11, Method of appeal when trial de novo not requested.

932.56 Trial de novo in circuit court.—The circuit court, when so requested, shall proceed to try all criminal cases on appeal from justice of the peace courts de novo as though the proceedings had been originally begun in that court.

Such trial in the circuit court shall be had upon the affidavit or charge sent up from the inferior tribunal. Should the original affidavit or complaint on which the case was tried below be lost or be insufficient or defective in form or substance, the circuit judge shall order, at any stage of the proceedings, a new or amended affidavit or complaint to be filed, and the case shall proceed thereon the same in all respects as if the original had not been lost or been adjudged defective; provided, that the amended affidavit or complaint charge the same offense charged or attempted to be charged by the affidavit or complaint filed in the inferior tribunal.

History.—§2, ch. 3717, 1887; RS 2982; §1, ch. 5129, 1903; GS 4056; RGS 6160; CGL 8474.

cf.—§924.08, Appeals in criminal cases.

932.57 Authority of state attorney or county solicitor to order autopsies.—Either the state attorney or the county solicitor may, in his discretion, have autopsies performed upon dead bodies found within the county, either before interment or after interment, whenever in his opinion such autopsies are necessary in order to ascertain whether or not death was criminally caused. The reasonable charges of physicians performing autopsies at the direction of either of said prosecuting officers shall be paid from the county fine and forfeiture fund, upon the approval of their bills by the county commissioners and state attorney or county solicitor under whose direction such autopsies are performed.

History.—§1, ch. 28019, 1953; §1, ch. 57-311.

CHAPTER 933
SEARCH WARRANTS

933.01 Persons competent to issue search warrant.—A search warrant authorized by law may be issued by any judge, including the judge of any circuit court of this state or any court of record, or criminal court of record, or county judge, justice of the peace, or committing magistrate having jurisdiction within the district where the place, vehicle or thing to be searched may be.

History.—§3006, RS 1892; GS 4082; RGS 6186; §3, ch. 9321, 1923; CGL 8500, 8505.
cf.—§923.12, Form of search warrant.

933.02 Grounds for issuance of search warrant.—Upon proper affidavits being made a search warrant may be issued under the provisions of this chapter upon either of the following grounds:

(1) When the property shall have been stolen or embezzled in violation of law;

(2) When any property shall have been used:

(a) As a means to commit any misdemeanor or felony, or

(b) In connection with gambling, gambling implements and appliances, or

(c) In violation of §847.011 or other laws in reference to obscene prints and literature;

(3) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale and transportation of intoxicating liquors, or

(b) In violation of the fish and game laws, or

(c) In violation of the laws relative to food and drug;

(4) When the laws in relation to cruelty to animals have been or are violated in any particular building or place, but no search shall be made in such building or place after sunset, unless specially authorized by the officer issuing the warrant upon satisfactory cause shown; in which case such property may be taken on the warrant so issued from any house or place in which it is concealed, or from any vehicle, aircraft or watercraft in which it may be found, or from the possession of any person by whom it shall have been used in the commission of any offense or from any person in whose possession it may be.

The provisions of this section shall apply also to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

History.—§16, sub-ch. 8, ch. 1637, 1868; §6, ch. 3921, 1889; RS 3007, 3008; GS 4083, 4084; RGS 6187, 6188; §4, ch. 9321, 1923; CGL 8501, 8502, 8506.
cf.—§506.03, Issuance of search warrant to discover stamped or marked bottles and boxes.
§22, Declaration of rights, Florida constitution.

933.03 Destruction of obscene prints and literature.—All obscene prints and literature, or other things mentioned in §847.011 found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought.

History.—§16, sub-ch. 8, ch. 1637, 1868; RS 3007; GS 4083; RGS 6187; CGL 8501.

933.04 Affidavits.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

History.—§2, ch. 9321, 1923; CGL 8504.
cf.—§22, Declaration of rights, Florida constitution.

933.05 Issuance in blank prohibited.— A search warrant cannot be issued except upon probable cause supported by affidavit or affidavits, naming or describing the person, place or thing to be searched and particularly describing the property or thing to be seized; no search warrant shall be issued in blank and any such warrant shall be returned within ten days after issuance thereof.

History.—§5, ch. 9321, 1923; CGL 8507.

933.06 Sworn application required before issuance.—The judge or magistrate must, before issuing the warrant, have the application of some person for said warrant duly sworn to and subscribed, and may receive further testimony from witnesses or supporting affidavits, or depositions in writing, to support the application. The affidavit and further proof, if same be had or required, must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

History.—§6, ch. 9321, 1923; CGL 8508.

933.07 Issuance of search warrants. — The judge or magistrate, upon examination of the application and proofs submitted, if satisfied that probable cause exists for the issuing of the search warrant, shall thereupon issue a search warrant signed by him with his name of office, to any sheriff and his deputies or any constable, police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the same before the magistrate or some other court having jurisdiction of the offense.

History.—§7, ch. 9321, 1923; CGL 8509.

933.08 Search warrants to be served by officers mentioned therein.—The search warrant shall in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer requiring it, said officer being present and acting in its execution.

History.—§8, ch. 9321, 1923; CGL 8510.

933.09 Officer may break open door, etc., to execute warrant.—The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of his authority and purpose he is refused admittance to said house or access to anything therein.

History.—§9, ch. 9321, 1923; §1, ch. 10273, 1925; CGL 8511.
cf.—§901.19, Right of officer to break into building.

933.10 Execution of search warrant during day or night.—A search warrant issued under the provisions of this chapter may, if expressly authorized in such warrant by the judge or magistrate issuing the same, be executed by being served either in the daytime or in the nighttime, as the exigencies of the occasion may demand or require.

History.—§10, ch. 9321, 1923; CGL 8512.
cf.—§901.04, Execution of warrant of arrest.

933.101 Service on Sunday.—A search warrant may be executed by being served on Sunday, if expressly authorized in such warrant by the judge or magistrate issuing the same.

History.—Comp. §1, ch. 57-289.

933.11 Duplicate to be delivered when warrant served.—All search warrants shall be issued in duplicate. The duplicate shall be delivered to the officer with the original warrant, and when the officer serves the warrant, he shall deliver a copy to the person named in the warrant, or in his absence to some person in charge of, or living on the premises. When property is taken under the warrant the officer shall deliver to such person a written inventory of the property taken and receipt for the same, specifying the same in detail, and if no person is found in possession of the premises where such property is found, shall leave the said receipt on the premises.

History.—§11, ch. 9321, 1923; CGL 8513.
cf.—§901.21, Search of person arrested.

933.12 Return and inventory.—Upon the return of the warrant the officer shall attach thereto or thereon a true inventory of the property taken under the warrant, and at the foot of the inventory shall verify the same by affidavit taken before some officer authorized to administer oaths, or before the issuing officer, said verification to be to the following effect:

I, A. B., the officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

History.—§12, ch. 9321, 1923; CGL 8514.

933.13 Copy of inventory shall be delivered upon request.—The judge or magistrate to whom the warrant is returned, upon the request of any claimant or any person from whom said property is taken, or the officer who executed the search warrant, shall deliver to said applicant a true copy of the inventory of the property mentioned in the return on said warrant.

History.—§13, ch. 9321, 1923; CGL 8515.

933.14 Return of property taken under search warrant.—If it appears to the magistrate or judge before whom the warrant is returned that the property or papers taken are not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds upon which the warrant was issued, or if it appears to the magistrate before whom any property is returned that the property was secured by an "unreasonable" search, the judge or magistrate may order a return of the property taken; provided, however, that in no instance shall contraband such as slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets or other gambling devices, paraphernalia and equipment, or narcotic drugs, obscene prints and literature be returned to anyone claiming an interest therein, it being the specific intent of the legislature that no one has any property rights subject to be protected by any constitutional provision in such contraband; provided, further, that the claimant of said contraband may upon sworn petition and proof submitted by him in the circuit court of the county where seized, show that said contraband articles so seized were held, used or possessed in a lawful manner, for a lawful purpose, and in a lawful place, the burden of proof in all cases being upon

the claimant. The sworn affidavit or complaint upon which the search warrant was issued or the testimony of the officers showing probable cause to search without a warrant or incident to a legal arrest, and the finding of such slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets, scratch sheets, or other gambling devices, paraphernalia and equipment, including money used in gambling or in furtherance of gambling, or narcotic drugs, obscene prints and literature, or any of them, shall constitute prima facie evidence of the illegal possession of such contraband and the burden shall be upon the claimant for the return thereof, to show that such contraband was lawfully acquired, possessed, held and used.

No intoxicating liquor seized on any warrant from any place other than a private dwelling house shall be returned, but the same may be held for such other and further proceedings which may arise upon a trial of the cause, unless it shall appear by the sworn petition of the claimant and proof submitted by him that said liquors so seized were held, used or possessed in a lawful manner, and in a lawful place, or by a permit from the proper federal or state authority, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued and the finding of such intoxicating liquor shall constitute prima facie evidence of the illegal possession of such liquor, and the burden shall be upon the claimant for the return thereof, to show that such liquor was lawfully acquired, possessed, held and used.

No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a circuit judge or a judge of the court of record of Escambia county or criminal court of record.

If no cause is shown for the return of any property seized or taken under a search warrant, the judge or magistrate shall order that the same be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property, but perishable property held or possessed in violation of law may be sold where the same is not prohibited, as may be directed by the court, or returned to the person from whom taken. The judge or magistrate to whom said search warrant is returned shall file the same with the inventory and sworn return in the proper office, and if the original affidavit and proofs upon which the warrant was issued are in his possession, he shall apply to the officer having the same and the officer shall transmit and deliver all of the papers, proofs, and certificates to the proper office where the proceedings are lodged.

History.—§14, ch. 9321, 1923; CGL 8516; §1, ch. 29676, 1955.

933.15 Obstruction of service or execution of search warrant; penalty.—Whoever shall knowingly and willfully obstruct, resist or oppose any officer or person aiding such officer, in serving or attempting to serve or execute any search warrant, or shall assault, beat or wound any person or officer, or his deputies or assistants, knowing him to be such an officer or person so authorized, shall be fined not more than five hundred dollars, or imprisoned for not more than one year.

History.—§15, ch. 9321, 1923; CGL 7534.
cf.—§775.06, Alternative punishment.

933.16 Maliciously procuring search warrant to be issued; penalty.—Any person who maliciously and without probable cause procures a search warrant to be issued and executed shall be fined not more than five hundred dollars or imprisoned for not more than six months.

History.—§16, ch. 9321, 1923; CGL 7434.
cf.—§775.06, Alternative punishment.

933.17 Exceeding authority in executing search warrant; penalty.—Any officer who in executing a search warrant willfully exceeds his authority or exercises it with unnecessary severity, shall be fined not more than five hundred dollars or imprisoned for not more than six months and shall be liable to suspension and removal from office.

History.—§17, ch. 9321, 1923; CGL 7519.
cf.—§775.06, Alternative punishment.

933.18 When warrant may be issued for search of private dwelling.—No search warrant shall issue under this chapter or under any other law of this state to search any private dwelling occupied as such unless it is being used for the unlawful sale, possession or manufacture of intoxicating liquor, or stolen or embezzled property is contained therein, or it is being used to carry on gambling, or it is being used to perpetrate fraud and swindles, or the laws relating to narcotics are being violated therein, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel or boarding or lodging house. The term private dwelling shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boarding house or lodging house. No warrant shall be issued for the search of any private dwelling under any of the conditions hereinabove mentioned except on sworn proof by affidavit of some creditable witness that he has reason to believe that one of said conditions exists, which affidavit shall set forth the facts on which such reason or belief is based.

History.—§19, ch. 9321, 1923; §2, ch. 10273, 1925; CGL 8518; §1, ch. 57-418.

933.19 Searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise.—The provisions of the opinion rendered by the supreme court of the United States on March 2, 1925, in that certain cause wherein George Carroll and John Kiro were plaintiffs in error and the United States was defendant in error, reported in 267 United States Reports, beginning at page 132, relative to searches and seizures of vehicles

carrying contraband or illegal intoxicating liquors or merchandise, and construing the fourth amendment to the constitution of the United States, are adopted as the statute law of the state applicable to searches and seizures under §22 of the bill of rights of the constitution of the state, when searches and seizures shall be made by any duly authorized and constituted bonded officer of this state exercising police authority in the enforcement of any law of the state relative to the unlawful transportation or hauling of intoxicating liquors or other contraband or illegal drugs or merchandise prohibited or made unlawful or contraband by the laws of the state.

The same rules as to admissibility of evidence and liability of officers for illegal or unreasonable searches and seizures as were laid down in said case by the supreme court of the United States shall apply to and govern the rights, duties and liabilities of officers and citizens in the state under the like provisions of the Florida constitution relating to searches and seizures.

All points of law decided in the aforesaid case relating to the construction or interpretation of the provisions of the constitution of the United States relative to searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise shall be taken to be the law of the state enacted by the legislature to govern and control such subject.

History.—§1, ch. 12257, 1927; CGL 7644.

CHAPTER 936

INQUESTS OF THE DEAD

936.01 Justices of the peace to hold inquests. —Justices of the peace within their respective districts shall hold inquests of the dead when so directed as provided in §936.03, and to that extent shall be deemed coroners. In case the justice of the district in which the death occurs or the dead body is found shall for any reason be unable to hold an inquest, it shall be held by the county judge of the county in which the death occurs, or where the dead body is found, or by a justice of the peace of one of the adjoining districts of the county.

History.—§3009, RS 1892; §1, ch. 5125, 1903; GS 4085; RGS 6189; CGL 8519; am. §1, ch. 21965, 1943.

936.02 When inquests may be taken.—Inquests may be taken:

(1) Of all violent, sudden and casual deaths where there are no eyewitness or eyewitnesses to the killing or cause of death, and such deaths occur under circumstances indicating that death was caused by some criminal act or was the result of criminal negligence;

(2) Of all sudden deaths in prison or other state, county, municipal and such public institutions, without an attending physician;

(3) Of all dead bodies found within the county, whether of person known or unknown, when there are no known eyewitness or eyewitnesses and it is apparent, from the body or the surrounding circumstances, that death was caused by some criminal act or was the result of criminal negligence, or when the deceased died or disappeared under circumstances indicating foul play; and,

(4) When otherwise ordered by a court of record having jurisdiction of felonies, upon petition of the prosecuting attorney thereof.

History.—§1, ch. 3253, 1881; RS 3010; GS 4086; RGS 6190; CGL 8520; am. §2, ch. 21965, 1943.

936.021 Inquests, public.—All inquests held pursuant to chapter 936, except the deliberation of the jury, shall be open to the public.

History.—Comp. §1, ch. 57-105.

936.03 Preliminary inquiry and direction for inquest; proceedings, etc.—

(1) Every coroner, as soon as he knows or is informed that the dead body of any person, supposed to have come to his death under any of the circumstances mentioned in subsection (1), (2) or (3) of § 936.02 has been found within his district, shall forthwith make a preliminary investigation into the facts and circumstances surrounding the death and ascertain the names and addresses of all persons having knowledge thereof, and report the same to the judge, the prosecuting attorney or some assistant prosecuting attorney of any court having trial jurisdiction of felonies committed in the county where the dead body of such deceased person is found. If, upon consideration of such report and upon such further investigation of the facts and circumstances surrounding the death as such judge, prosecuting attorney or assistant prosecuting attorney may deem necessary, the said judge, prosecuting attorney or assistant prosecuting attorney finds that there is reasonable ground for believing that such death was caused by the criminal act or the criminal negligence of another, and further finds that an inquest is necessary, he shall direct that the coroner forthwith cause a coroner's jury to be summoned to be and appear before him, at a specified time and place, to inquire, after a view of the dead body, how and in what manner and by whom the deceased came to death. The coroner shall, forthwith upon being directed as aforesaid, or when directed pursuant to subsection (4) of §936.02 make out his warrant, which warrant shall state the grounds upon which it is believed that death was caused by the criminal act or criminal negligence of another and recite the order and direction for impaneling a jury and be directed to the constable of the district, if there be one, and if not, then to any constable of the county or to the sheriff, directing that he forthwith summons a coroner's jury to be and appear before the said coroner, at the time and place therein to be named, to inquire how and in what manner and by whom the deceased came to his death.

(2) The report of the preliminary inquiry, by the coroner to the judge, prosecuting attorney or assistant prosecuting attorney, may be made by mail, by telephone or by telegram confirmed by mail, and the direction for holding the inquest may likewise be given. A copy of the direction for holding the inquest shall be at-

tached to the coroner's cost bill and no cost bill shall be approved or paid unless and until a copy of such direction is attached as aforesaid.

History.—§6, ch. 52, 1845; §1, ch. 3116, 1879; RS 3011; §1, ch. 4543, 1897; GS 4087; RGS 6191; CGL 8521; am. §3, ch. 21965, 1943; sub. §(1) am. §10, ch. 26484, 1951.

936.04 Coroner's jury; number.—A coroner's jury shall consist of six good and lawful men of the justice's district wherein the dead body is found.

History.—§1, ch. 3116, 1879; RS 3012; GS 4088; RGS 6192; CGL 8522; am. §4, ch. 21965, 1943.

936.05 Return of warrant requiring sheriff to summon jurors.—Every officer to whom such warrant shall be delivered or directed shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with his proceedings thereon, to the coroner who granted the same.

History.—§7, ch. 52, 1845; RS 3013; GS 4089; RGS 6193; CGL 8523.

936.06 Penalty for failure of constable to execute warrant or juror to appear.—Every constable or other officer failing to execute such warrant, or to return the same as aforesaid, shall forfeit and pay the sum of five dollars, and every person summoned as a juror aforesaid who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding ten dollars, which fines shall be recovered by an action of debt in the name of the state before any justice of the peace in the proper district, and shall be applied to the use of the county school fund.

History.—§8, ch. 52, 1845; RS 3014; GS 4090; RGS 6194; CGL 8524.

936.07 Oath of jurors.—The coroner shall administer an oath to the six jurors; to the foreman first, in the following manner: "You do solemnly swear or affirm (as the case may be) that you will diligently inquire and true presentment make how and in what manner and by whom A. B. who here lies dead, came to his death, and you will deliver to me, a coroner of this county, a true inquest thereon, according to such evidence as shall be laid before you and according to the best of your knowledge; so help you God."

The other jurors shall swear in the following form: "Such oath as your foreman has now taken before you on his part you and each of you will keep and observe on your respective parts; so help you God."

History.—§§9, 10, ch. 52, 1845; §1, ch. 3116, 1879; RS 3015; GS 4091; RGS 6195; CGL 8525.

936.08 Charge to jury.—The jurors being sworn, the coroner shall give them a charge upon their oaths to declare of the death of the person: whether he died of felony, mischance, or accident; if of felony, who were the principals and who were the accessories, with what instrument he was struck or wounded, and so of all prevailing circumstances which may come by presumption; if by mischance or accident, whether by the act of man or whether by hurt, fall, stroke, drowning or otherwise; also to inquire of the persons who, if any, were present, and of the friends of the deceased, his relatives and neighbors, whether he was killed in the same place where the body was found; and if elsewhere, by whom the body was brought thence, and of all other circumstances relating to said death; and if he died of his own felony, then to inquire the manner, means or instrument, and of all other circumstances concerning such death.

History.—§11, ch. 52, 1845; RS 3016; GS 4092; RGS 6196; CGL 8526.

936.09 Proclamation for witnesses.— The jury, being charged, shall stand together, and proclamation shall be made for any person who can give evidence to draw near and they shall be heard.

History.—§12, ch. 52, 1845; RS 3017; GS 4093; RGS 6197; CGL 8527.

936.10 Witnesses; warrant, oath, etc.—Every coroner may send his warrant for witnesses to be served by a constable, commanding them to come before him to be examined and to declare their knowledge concerning the matter in question. The coroner shall administer an oath or affirmation to them in the following form: "You do solemnly swear that the evidence you shall give to the inquest concerning the death of A. B. here lying dead shall be the truth, the whole truth and nothing but the truth; so help you God."

The evidence of such witnesses shall be in writing, subscribed by them, and if it relate to the trial of any person concerned in the death, the coroner shall bind such witnesses by recognizances in a reasonable sum for their personal appearance at the next term of the proper court to be holden within the same county, there to give evidence accordingly, and commit to the common jail of said county any witnesses refusing to enter into such recognizances; and he shall return to the same court such inquisition, written evidence and recognizances by him taken.

History.—§§13, 14, ch. 52, 1845; RS 3018; GS 4094; RGS 6198; CGL 8528.

936.11 Medical testimony.—Whenever a jury of inquest shall deem it necessary to have a physician in attendance to assist them in their examination, the coroner shall summon such physician. The jurors shall not request the coroner to summon a physician to assist them in their examination until after they shall have been empaneled and sworn and made an examination of the body, and then, not until they shall have come to the conclusion that it is absolutely necessary to have a physician to assist them in their further examination. No coroner shall summon a physician until he shall be requested as aforesaid. If any physician shall otherwise attend such inquest, he shall not be paid by the county therefor, and the jury shall state the fact in their verdict whether or not they requested the attendance of a physician, or whether or not a physician accordingly attended, and the name of the physician. A duplicate of the verdict shall

be filed in the clerk's office of the circuit court of the county where the inquest was held.

History.—§1, ch. 639, 1855; §1, ch. 1109, 1861; RS 3019; GS 4095; RGS 6199; CGL 8529.

936.12 Verdict of coroner's jury.— The jury, having viewed the body, heard the evidence and made all the inquiry within their power, shall draw up and deliver to the coroner their verdict upon the death under consideration, in writing, under their hands and seals.

The coroner shall require the jury empaneled to examine and make a report, signed and sealed by the jurors and the coroner, which shall be returned with the verdict of said jury, giving a minute and particular description of the person deceased, together with the name of the deceased, if the same can be ascertained, and the amount of money, property or other valuables found with the body of deceased.

History.—§§15, 16, ch. 52, 1845; RS 3020; GS 4096; RGS 6200; CGL 8530.

936.13 Disposition of property found on deceased.—The amount of money or other property found with the body of deceased, if there be no person entitled to take charge of the same, shall be placed in the hands of the clerk of the circuit court of the county in which the body may be found, and by him paid over to the person authorized to receive same, if any such person shall call therefor. The clerk, if the money aforesaid should not be called for within two years from the time of receiving the same, shall loan it out at interest to be applied to the county schools of said county.

If any coroner shall refuse or fail to pay into the hands of the clerk of any county the money or other property which comes into his hands as aforesaid, the clerk shall sue for and collect the same, in his own name, before any court having competent jurisdiction in the county.

History.—§§16, 17, 19, ch. 52, 1845; RS 3021; GS 4097; RGS 6201; CGL 8531.

936.14 Coroner to publish description of deceased.—The coroner shall publish in some public newspaper printed in or nearest to such county the name and description of the deceased, if the same can be ascertained, and the amount of money, property or other valuables found in his possession, in cases in which no person entitled thereto shall claim the same.

History.—§18, ch. 52, 1845; RS 3022; GS 4098; RGS 6202; CGL 8532.

936.15 When the coroner's warrant to issue.—In all inquisitions, when it appears to the satisfaction of the jury of inquest that a felony has been committed, the coroner holding such inquest shall forthwith upon the rendition of the verdict issue his warrant to be directed to any lawful officer to execute and return same, and to apprehend the person suspected of such felony and bring him before some justice of the peace to be dealt with according to law.

History.—§2, ch. 364, 1851; RS 3023; GS 4099; RGS 6203; CGL 8533.

936.16 Coroner's fees on inquest, etc.—The compensation of judicial officers, when acting as coroners shall be as follows:

(1) For viewing a dead body, making preliminary inquiry and report to the judge or prosecuting attorney or his assistant as required in §936.03, and in issuing death certificate where no inquest is held and where the deceased was not attended by a physician in his last illness, three dollars;

(2) For summoning a jury, holding an inquest and making return thereof, the same compensation as provided by law for sheriffs and clerks of the circuit court for similar services; twenty-five cents per one hundred words for testimony actually taken and reported, said coroner to furnish three copies of said testimony actually taken and reported for said compensation, one copy to be retained by him, one to be filed with the clerk of the circuit court and the other with the judge or prosecuting attorney directing the inquest; and five dollars per day for each day or portion thereof in addition to one, required to hold the said inquest; and,

(3) Where the coroner is required to travel, five cents per mile going and returning to his office or residence, as the case may be, for mileage actually traveled by the nearest and most practical route. All compensation shall be paid from the general fund of the county in which the death occurred or the dead body was found.

History.—§1, ch. 10101, 1925; CGL 8536; am. §5, ch. 21965, 1943.

936.17 Physician's fees.—The compensation allowed the physician attending the coroner's inquest and making a post mortem examination, shall be ten dollars, to be paid by the county. The coroner and foreman of the inquest shall give their certificate stating the attendance of the physician, and upon its presentation, the county commissioners of the county shall order the same to be paid out of the fine and forfeiture fund.

History.—§1, ch. 639, 1855; RS 3025; GS 4101; RGS 6205; CGL 8537.

936.18 Compensation of jurors and witnesses.—Immediately after the holding of any coroner's inquest in this state, the coroner holding such inquest shall make out payrolls, in duplicate, of the jurors and witnesses serving at such inquest, according to blank forms prescribed and furnished by the comptroller of the state, which payrolls shall contain the name of each juror and witness serving at such inquest, together with the number of days served and the number of miles traveled by each, and shall be signed by each and witnessed.

The coroner or justice holding the inquest shall certify to the correctness of these payrolls and deposit them with the clerk of the circuit court of the county in which said inquest shall be held, and the clerk shall submit them to the board of county commissioners for their approval or disapproval. If approved by the county commissioners, one copy of the payroll shall be submitted to the comptroller for his approval, and the other copy placed on file in the clerk's office.

When the payroll shall be approved by the

comptroller and the clerk notified thereof, he shall issue a certificate under the seal of his office, according to blank forms to be furnished him by the comptroller, to each juror and witness for the amount due for such service at such inquest, which certificate shall be countersigned by the chairman of the board of county commissioners, and be received by the collector of taxes in payment of taxes the same as other juror and witness certificates, but pay shall not be allowed to more than any two witnesses to any single fact to be proven at the inquest where there is not a direct conflict of testimony. Jurors and witnesses at inquests shall be paid by the county, and shall receive the same per diem and mileage as jurors and witnesses in the justice of the peace courts.

History.—§1, ch. 3239, 1881; RS 3026; GS 4102; RGS 6206; CGL 8538.

cf.—§40.24, Compensation of jurors in justice of the peace courts. §90.14, Compensation of witnesses in justice of the peace courts.

936.19 Form of warrant for jury.—

State of Florida,

_____County,

In the name of the State of Florida.—To any constable of said county.

Whereas, I have been notified that the dead body of A. B. is lying at (describe the place where the body is found), in said county, and I have good reason to believe that his death was caused by the criminal act or negligence of another (here set out the grounds of such opinion; you are hereby required to forthwith summon a jury of good and lawful men of said county, not less than six in all, to appear before me immediately at the place where said body is lying in said county, to inquire, upon a view of said body, how and in what manner and by whom he came to his death.

Given under my hand and seal this _____ day of_____A. D. 19_____.

_____(Seal)

Coroner.

History.—§4103, GS 1906; RGS 6207; CGL 8539.

936.20 Form of charge to be given by the coroner to the jury.—You will, upon your oaths, declare upon the death of A. B.; whether he died of felony, or mischance, or accident; if of felony, who were principals and who were accessories, with what instrument he was struck or wounded, and so of all prevailing circumstances which may come by presumption; if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning or otherwise; also inquire of the persons, if any, who were present, the finder of the body, the deceased's relations or neighbors, if he was killed in the same place where the body was found, and if elsewhere, by whom and how the body was brought thence; if he died of his own act, inquire of the manner, means or instrument, and of all the circumstances attending it.

History.—§4103, GS 1906; RGS 6207; CGL 8539.

936.21 Form of inquisition for murder. —

State of Florida,

_____County.

An inquisition indented and taken for the State of Florida, in the county of _____ on the _____ day of _____A. D. 19_____, before me as coroner in and for said county, upon the view of the body of A. B., then and there lying dead, upon the oath of (here insert the names of the jurors), good and lawful men of the said county, who being sworn and charged to inquire how and in what manner and by whom the said A. B. came to his death, do say upon their oaths aforesaid that C. D. upon the _____ day of _____, 19_____, in the county aforesaid, in and upon the said A. B., in the peace of God then and there being, feloniously, willfully and of his malice aforethought did make an assault, and that the said C. D., with a certain knife, which he then and there had and held, in and upon the said A. B. a mortal wound did inflict, of which said mortal wound the said A. B. died, and that the said C. D. in manner aforesaid the said A. B. then and there did kill and murder, (if there are accessories as follows) and the said jurors do further say upon their oath aforesaid that G. H. and I. J. were feloniously present at the time of the felony and murder aforesaid in form aforesaid committed, that is to say on the said _____ day of _____, 19_____, in the county aforesaid then and there comforting, abetting and aiding the said C. D. to do and commit the murder aforesaid in the manner aforesaid.

In witness whereof, as well the said coroner as the jurors aforesaid have to this inquisition set their hands and seal the day and year aforesaid at the place aforesaid.

_____Coroner. (Seal).

_____Jurors. (Seal).

History.—§4103, GS 1906; RGS 6207; CGL 8539.

936.22 Form of warrant to be issued by the coroner.—

State of Florida,

_____County.

In the name of the State of Florida.—To any lawful officer of said county:

Whereas, it appears to me from an inquisition held before me as coroner in and for said county that from the evidence taken in writing before me, the said coroner (here recite the inquest precisely), these are, therefore, to command you to forthwith arrest the said C. D. (if there were accessories, include them in the warrant) and bring him before me (or the county judge, or some other justice of the peace) to be dealt with according to law.

Given under my hand and seal this _____ day of _____ A. D. 19._____

_____(Seal)

Justice of the Peace and ex-officio Coroner.

History.—§4103, GS 1906; RGS 6207; CGL 8539.

CHAPTER 937

PROCEEDINGS IN COURTS OF COUNTY JUDGES AND JUSTICES OF THE PEACE

937.01 Provisions for justice of peace to apply to county judge.—All the provisions of this chapter prescribing the duties of justices of the peace shall apply to and regulate the proceedings of the county judges in criminal cases.

History.—§29, ch. 2093, 1877; RS 2968; GS 4041; RGS 6145; CGL 8450.

cf.—§Ch. 37, Courts of justices of the peace.
§823.01, Abatement of nuisances by justice of the peace.

937.011 Prosecuting attorneys to sign affidavits.—The prosecuting attorneys of the county judges' courts or of the county courts, as the case may be, are authorized to sign affidavits before the judge of such court where such prosecuting officer has evidence to support such affidavit for a criminal charge over which such court has jurisdiction. The judge shall issue arrest warrants upon such affidavit as is done in all other cases. This procedure shall be cumulative to all other practice and procedure before such courts.

History.—Comp. §§1, 2, ch. 57-294.

937.02 Complaint and warrant.—Upon complaint made on affidavit to any justice of the peace by any person, that any offense which he has jurisdiction to try and determine has been committed within his district, he may issue a warrant in the usual form, making it returnable either before himself or before the county judge.

History.—§2, ch. 2093, 1877; RS 2950; GS 4024; RGS 6128; CGL 8433.

937.03 Time of trial.—Upon the return of the warrant with the accused, the justice of the peace shall proceed to hear, try and determine the case forthwith, or shall adjourn the same to some day of the next term of his court.

History.—§2951, RS 1892; GS 4025; RGS 6129; CGL 8434.

937.04 Bail; commitment.—From the time of the return of the warrant until the time of the trial, the accused may give bail with one or more sureties, to be approved by the county judge, justice or sheriff, for his appearance at the time of the trial, in such sum as shall be named by the county judge or justice not exceeding five hundred dollars; or in the event of failure to furnish security, he may be committed to the county jail for safekeeping, by warrant of said judge or justice, or left in custody of the sheriff or constable.

History.—§4, ch. 2093, 1877; RS 2952; §1, ch. 5138, 1903; GS 4026; RGS 6130; CGL 8435.

937.05 Arraignment and plea.—The charge made against the accused, as stated in the complaint or warrant, shall be distinctly read to the accused, who may plead thereto, and the plea shall be entered in his docket by the justice. If the accused refuses to plead, the justice shall enter the fact, with a plea of not guilty in behalf of the accused, in his docket.

If the accused shall plead guilty to such charge, the justice of the peace shall thereupon enter such plea upon his docket, give judgement upon same and enter such judgment upon his docket.

History.—§§5, 6, ch. 2093, 1877; RS 2953; GS 4027; RGS 6131; CGL 8436; am. §7, ch. 22858, 1945.

937.06 Trial by jury.—Issues of fact shall be tried by jury. If the cause be tried in term, it shall be tried as other jury causes are tried, but if it be tried out of term, the justice shall direct the sheriff or constable to summon and return forthwith six qualified persons to act as jurors. The officer shall summon them personally, and shall return a list of the persons summoned. If the number for any cause be deficient, the justice shall supply the deficiency by directing the officer to summon bystanders, or others who may be competent to act as jurors.

History.—§§7, 8, 9, ch. 2093, 1877; RS 2954; GS 4028; RGS 6132; CGL 8437.

937.07 New jury; summoning and selection.—If the officers to whom the venire shall have been delivered shall fail to return the same as required, or if the jury shall fail to agree and be discharged by the court, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had as prescribed in respect to the first jury.

History.—§10, ch. 2093, 1877; RS 2955; GS 4029; RGS 6133; CGL 8438.

937.08 Regulations as to jury.—After the jury shall have been sworn they shall sit together and hear the proofs and allegations in

the case, which shall be delivered in public and in the presence of the accused. After hearing such proofs and allegations the jury shall be kept together in some convenient place until they agree upon a verdict or are discharged by the court, and the sheriff or a constable shall be sworn to take charge of the jury in like manner as upon trials in justices' courts in civil proceedings.

History.—§12, ch. 2093, 1877; RS 2956; GS 4030; RGS 6134; CGL 8439.

937.09 Rendition of verdict. — When the jurors have agreed upon their verdict they shall deliver the same to the court publicly, who snall enter it in his docket.

History.—§13, ch. 2093, 1877; RS 2957; GS 4031; RGS 6135; CGL 8440.

937.10 Discharge of accused on acquittal. —Whenever the accused shall be acquitted he shall be immediately discharged.

History.—§15, ch. 2093, 1877; RS 2958; GS 4032; RGS 6136; CGL 8441.

937.11 Conviction and sentence.—When the accused shall be tried under the provisions of this chapter, and found guilty by a jury, or shall be convicted of the charge made against him upon a plea of guilty, the court shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the case may require; but such punishment shall in no case exceed the limit fixed by law for the offense charged.

When any fine or costs shall be imposed by any justice upon any person convicted of any offense, unless such fine and costs shall be paid within twenty-four hours, during which time the accused shall remain in custody of an officer, such person shall be committed to the jail of the county there to be imprisoned until such fine and costs shall be paid, or until duly discharged according to law.

History.—§14, ch. 2093, 1877; RS 2959; GS 4033; RGS 6137; CGL 8442.

937.12 Execution.—The judgment shall be executed by the sheriff, or any constable of the county where the conviction shall be had, by virtue of a warrant under the hand of a justice who held the court, to be directed to such officers, and specifying the particulars of such judgment.

History.—§18, ch. 2093, 1877; RS 2961; GS 4034; RGS 6138; CGL 8443.

937.13 Payment of fines.—All fines imposed by any such court, if paid before the accused is committed, shall be received by the justice of the peace who constituted the court before which the accused was convicted, and by such magistrate paid over to the county depository within ten days after the receipt thereof, to be disposed of according to law.

If the accused be committed, payment of any fine imposed upon him shall be made to the sheriff of the county, who shall, within ten days after the receipt thereof, pay over the same to the county depository for the purpose aforesaid.

History.—§§19, 20, 30, ch. 2093, 1877; RS 2962; GS 4035; RGS 6139; CGL 8444.

937.14 Failure of person receiving fine to pay it over.—If any person who shall receive any such fine or any part thereof shall neglect to pay over the same pursuant to the provisions of §937.13, the state attorney shall immediately commence a suit therefor and prosecute the same diligently to effect.

History.—§21, ch. 2093, 1877; RS 2963; GS 4036; RGS 6140; CGL 8445.

937.15 Persons convicted in justice of the peace or county judge's court allowed forty-eight hours to pay fine before being worked.—Any person convicted of crime in the justice of the peace court or the county judge's court, who shall have a pecuniary fine or sum of money assessed or adjudged against him as punishment, may on being taken into custody by the proper officer of the court, or prior to such arrest, at any time within forty-eight hours from the time he is sentenced, pay the said fine and cost or give the bail for the payment of such fine and cost of prosecution, as provided in §921.15; and such person convicted in the justice or county judge's court, shall not be transferred or turned over to persons working the county prisoners, until the expiration of forty-eight hours from the time such person was sentenced by the court.

History.—§1, ch. 5923, 1909; §1, ch. 7856, 1919; RGS 6127; CGL 8432.

937.16 Justice may summon witnesses and administer oaths.—Any justice of the peace may issue subpoenas to compel the attendance of witnesses before any court held by a justice of the peace, and may administer all necessary oaths in proceedings before such court.

History.—§22, ch. 2093, 1877; RS 2964; GS 4037; RGS 6141; CGL 8446.

937.17 Disobedience to summons; refusal to testify, etc.—In case any person summoned to appear before any court held by a justice of the peace, as a juror or witness, shall fail to appear, or if any witness appearing shall refuse to be sworn or testify, he shall be liable to the same penalties and may be proceeded against in the same manner as provided by law in respect to jurors and witnesses in justice's courts in civil proceedings.

History.—§23, ch. 2093, 1877; RS 2965; GS 4038; RGS 6142; CGL 8447.

937.18 Justice to keep docket.—Every justice of the peace shall enter in his docket the title of all criminal cases brought before him, the time when the first process was issued, the service and return thereof, all adjournments, the time and manner of the trial, or other disposition of the case, the judgment or sentence, including the costs allowed, the names of all witnesses and jurors sworn on the trial, the time of issuing warrants of commitment, the payment of all fines and costs which shall be paid into the hands of the justice, with the date thereof, and all other proceedings had by and before the justice of the peace relative to each case, and he shall sign his name thereto after rendering judgment.

History.—§27, ch. 2093, 1877; RS 2966; GS 4039; RGS 6143; CGL 8448.

937.19 Inspection and final deposit of docket.—Every such docket shall be kept subject to the inspection of the sheriff and his deputies, the clerk of the circuit court, county commissioners and state attorneys, and at the end of the term of office of the justice of the peace he shall turn over to his successor forthwith all dockets, books, papers and effects in his possession pertaining to his office in the manner set forth in §81.31.

History.—§28, ch. 2093, 1877; RS 2967; GS 4040; RGS 6144; CGL 8449.

cf.—§839.14, Penalty for withholding records from successor.

CHAPTER 939

COSTS

939.01 Judgment for costs on conviction.—In all cases of conviction for crime the costs of prosecution shall be included and entered up in the judgment rendered against the convicted person.

History.—§1, ch. 76, 1846; RS 2983; GS 4057; RGS 6161; CGL 8475.

cf.—§58.10, Refund of costs to counties in certain proceedings relating to state convicts.
§142.16, Change of venue, county payable.
§902.19, When prosecutor liable for costs.

939.02 Costs before committing magistrate.—All costs accruing before a committing magistrate shall be taxed against the defendant on conviction or estreat of recognizance.

History.—§3, ch. 1949, 1873; RS 2984; GS 4058; RGS 6162; CGL 8476.

939.03 Execution for costs in capital cases.—In all capital cases the costs in case of conviction shall be entered up against the prisoner, and the bill of costs, when taxed by the clerk and certified in the manner required by law to give a bill of costs the force of an execution, shall have the force of an execution, and may be levied upon any property of the prisoner found in the state. If the sheriff shall return said bill to the office of the clerk and make affidavit thereon that sufficient property cannot be found to pay the same, and shall state in the affidavit the amount left unpaid after exhausting all the property found, the bill, or the balance unpaid thereon, shall then be audited according to law and such amount shall be paid out of the county treasury.

History.—§7, ch. 159, 1848; RS 2985; GS 4059; RGS 6163; CGL 8477.

939.04 Execution for costs in other cases.—In all cases less than capital, wherein the defendant may be adjudged to pay costs, a capias may be issued, as is provided for the collection of fines and forfeitures.

History.—§5, ch. 217, 1849; RS 2986; GS 4060; RGS 6164; CGL 8478.

939.05 Insolvent defendant discharged without payment of costs.—In all cases less than capital, when it appears from due proof made in open court that the person convicted is wholly unable to pay costs, and that the judgment has in other respects been complied with, the court before which such person was convicted may discharge him without the payment of costs.

History.—§2, ch. 76, 1846; RS 2987; GS 4061; RGS 6165; CGL 8479.

cf.—§9, art. XVI, Florida constitution.

939.06 Acquitted defendant not liable for costs.—No defendant in a criminal prosecution who is acquitted or discharged shall be liable for any costs or fees of the court or any ministerial office, or for any charge of subsistence while detained in custody. If he shall have paid any taxable costs in the case, the clerk or justice shall give him a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to him by the county.

History.—§3, ch. 76, 1846; RS 2988; GS 4062; RGS 6166; CGL 8480.

cf.—§9, art. XVI, Florida constitution.

939.07 Pay of defendant's witnesses.—In all criminal cases prosecuted in the name of the state in the circuit courts or criminal courts of record in this state where the defendant is insolvent or discharged, the county shall pay the legal expenses and costs, as is prescribed for the payment of costs incurred by the county in the prosecution of such cases; provided, that there shall not be more than two witnesses summoned and paid to prove the same fact; and provided further, that before any witness is subpoenaed on behalf of a defendant in the circuit or criminal court an application shall be made to the judge, in writing, on behalf of the defendant, setting forth the substance of the facts sought to be proved by the witness or witnesses, making affidavit that the defendant is insolvent, and if upon such showing the judge is satisfied that the witness or witnesses are necessary for the proper defense of the defendant, he shall order that subpoena issue, and that the costs as herein provided shall be paid by the county, and not otherwise. The provisions of this section shall not apply to any courts other than the circuit courts and the criminal courts of record.

History.—§1, chs. 5131 and 5132, 1903; GS 4063; RGS 6167; CGL 8481.

cf.—§932.36, Compensation of witnesses for insolvent defendants, justice of the peace courts and county judges' courts.
§932.37, In other courts.

939.08 Costs to be certified by county commissioners before audit.—In all cases wherein any officer, juror, defendant, witness or other person claims the payment of any fee, costs, per diem or other compensation from the county in or on account of any case or matter in a court of a justice of the peace which is pay-

able by the county, and in all cases wherein is claimed the payment of bills of costs, fees or expenses, other than juror and witness fees, in the prosecution of any criminal case in other courts, which are payable by the county, an itemized bill or statement thereof shall be submitted to the county commissioners of the county in which such courts are held, and the same shall not be paid until the board of county commissioners shall have approved it and certified thereon that the same is just, correct and reasonable, and that no unnecessary or illegal item is contained therein.

History.—§§3, 5, ch. 3702, 1887; RS 2989; GS 4064; RGS 6168; CGL 8482.
cf.—§142.10, Officer to make out accounts as directed.

939.09 Sheriff's mileage.—Every sheriff, in presenting a bill for mileage against the state or county, shall certify that no constructive mileage is charged therein.

History.—§7, ch. 3702, 1887; RS 2990; GS 4065; RGS 6169; CGL 8483.
cf.—§902.19, Mileage when sheriff summoned to testify in county in which he holds office.

939.10 Duty of board of county commissioners.—The board of county commissioners, before approving any bill against the state or county, shall ascertain that no constructive mileage, or charge for anything but actual miles necessarily traveled by the nearest route, or actual and necessary services, or actual and necessary expenses which may be chargeable against the state or county, is contained therein.

History.—§7, ch. 3702, 1887; RS 2991; GS 4066; RGS 6170; CGL 8484.

939.11 Unnecessary charge for confining prisoner not to be allowed.—No charge for rent of any house for confining a prisoner, or for guarding a prisoner, any longer than may be necessary for transferring such prisoner to jail or place of safekeeping, or during the session of court at which such prisoner shall be arraigned, or to which he may be brought for trial, shall be allowed against the state or county.

History.—§6, ch. 159, 1848; RS 2992; GS 4067; RGS 6171; CGL 8485.

939.12 Cost against state in supreme court.—The clerk of the supreme court shall give, upon application, a certified copy of any judgment against the state upon appeal in criminal cases, and the county commissioners of the county from the court of which such appeal was taken shall pay the same to the appellant, or his agent or attorney, on demand.

History.—§1, ch. 3266, 1881; RS 2993; GS 4068; RGS 6172; CGL 8486.

939.13 Power of comptroller.—The comptroller may audit and approve or disapprove any claim or any item thereof against the state for costs, fees or expenses of criminal cases prosecuted in the name of the state, and for which the state is liable, if he is satisfied that the same is legal, just, necessary and correct or otherwise, and may prescribe forms and methods for the same. The comptroller shall not dispense with any of the requirements of law relative to the auditing and payment of such accounts, but he may prescribe additional requirements.

History.—§8, ch. 3702, 1887; RS 2995; GS 4069; RGS 6173; CGL 8487.

939.14 County not to pay costs in cases where information is not filed or indictment found.—When a committing magistrate holds to bail or commits any person to answer a criminal charge in a county court, a criminal court of record, or a circuit court, and an information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the county, except the costs for executing the warrant.

History.—§1, ch. 4123, 1893; GS 4070; RGS 6174; CGL 8488.
cf.—§142.09 Defendant not convicted, or dies.

939.15 Costs paid by county in cases of insolvency.—When the defendant in any criminal case pending in any circuit or criminal court or the supreme court of this state has been adjudged insolvent by the circuit judge or the judge of the criminal court, upon affidavit and proof as required by §924.17 in cases of appeal, or when the defendant is discharged or the judgment reversed, the costs allowed by law shall be paid by the county in which the crime was committed, upon presentation to the county commissioners of a certified copy of the judgment of the court against such county for such costs.

History.—Ch. 4401, 1895; GS 4071; RGS 6175; CGL 8489.
cf.—§58.10, Refunding costs paid by county in certain proceedings affecting state prisoners.

939.16 Prepayment may be required in courts of county judges, etc.—In all cases justices of the peace and county judges in this state shall require payment in advance or security for costs of process, service of the same, and of examination, unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury to person or property by him suffered, in which case process shall issue without payment of costs.

History.—§2, ch. 1949, 1873; §1, ch. 3128, 1879; RS 2843, 2844, 2996; GS 4072; §1, ch. 5651, 1907; RGS 6176; CGL 8490.

CHAPTER 940

EXECUTIVE CLEMENCY

940.01 Governor to have power of suspension and reprieve.—The governor may suspend the collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days, dating from the time of conviction, for all offenses, except in cases of impeachment.

Upon conviction for treason, he may suspend the execution of sentence until the case shall be reported to the legislature, at its next session, when the legislature shall either pardon, direct the execution of the sentence or grant a further reprieve; and if the legislature shall fail or refuse to make final disposition of such case the sentence shall be enforced at such time and place as the governor may by his order direct.

The governor shall communicate to the legislature, at the beginning of every session, every case of fine and forfeiture remitted or reprieved, pardon or commutation granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date and the date of its remission, commutation, pardon or reprieve.

History.—§2997, RS 1892; GS 4073; RGS 6177; CGL 8491.
cf.—§11, art. IV, Const. Reprieves, suspensions of fines, etc.

940.02 Notice to be given.—When any person intends to apply for the remission of any fine or forfeiture, or the commutation of any punishment, or for a pardon, he shall cause to be posted for the period of ten days, at the court house door and in two or more other places in the county where the offense for which the fine, forfeiture, punishment, penalty or sentence sought to be remitted, commuted or pardoned shall have been committed, or to be published for such period in a newspaper in said county, a notice that he will make application, one copy of which shall, except when published in a newspaper, be posted in the neighborhood or settlement where the same was committed. Such notice shall state the nature of the charge or offense of which he was convicted, and the time or term of the court when convicted.

History.—§1, ch. 3018, 1877; RS 2998; GS 4074; RGS 6178; CGL 8492.

940.03 Form of application.—All applications for remission, commutation or pardon shall be in writing and accompanied by a copy of the indictment or information upon which the conviction was had, a statement of the facts testified to at the trial, such other papers as the applicant may desire, a copy of the notice provided for in this chapter, and proof by affidavit that such notice was posted or published for the period aforesaid, stating the period during which and the points at which it was so posted or published.

History.—§2, ch. 3018, 1877; RS 2999; GS 4075; RGS 6179; CGL 8493.

940.04 Copy of information or indictment to be furnished without charge.—The clerk or justice of the peace shall furnish said copy of indictment or information to any applicant for the same, free of charge and without delay.

History.—§3, ch. 3018, 1877; RS 3000; GS 4076; RGS 6180; CGL 8494.

940.05 Pardon restores rights of citizenship.—All persons who have received or who may receive full pardon from the board of pardons shall be entitled to all the rights of citizenship enjoyed by them before their conviction, whether the pardon is granted before or after the expiration of the sentence or payment of the penalty.

History.—§1, ch. 3467, 1883; RS 3001; GS 4077; RGS 6181; CGL 8495.

CHAPTER 941

UNIFORM INTERSTATE EXTRADITION

941.01 Definition.—Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States.

History.—§1, ch. 20460, 1941.

941.02 Fugitives from justice; duty of governor.—Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

History.—§2, ch. 20460, 1941.
cf.—§88.061 Interstate rendition.

941.03 Form of demand. — No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under §941.06, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by an authenticated copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of a warrant supported by an affidavit made before a committing magistrate of the demanding state; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

History.—§3, ch. 20460, 1941.

941.04 Governor may investigate case. — When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

History.—§4, ch. 20460, 1941.

941.05 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.—When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in §941.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

History.—§5, ch. 20460, 1941.

941.06 Extradition of persons not present in demanding state at time of commission of crime.—The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in §941.03 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

History.—§6, ch. 20460, 1941.

941.07 Issue of governor's warrant of arrest; its recitals.—If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant shall be sufficient if it substantially recites facts to show that an extraditable crime has been committed under the laws of the demanding state.

History.—§7, ch. 20460, 1941.

941.08 Manner and place of execution.—Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History.—§8, ch. 20460, 1941.

941.09 Authority of arresting officer.—Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History.—§9, ch. 20460, 1941.

941.10 Rights of accused person; application for writ of habeas corpus.—No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the state attorney or county solicitor or both if they are both of the county in which the arrest is made, and in which the accused is in custody, and to the said agent of the demanding state.

History.—§10, ch. 20460, 1941; am. §7, ch. 22858, 1945.

941.11 Penalty for non-compliance with preceding section.—Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars or be imprisoned not more than six months, or both.

History.—§11, ch. 20460, 1941.

941.12 Confinement in jail when necessary.—The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the legal sufficiency of his arrest has been determined by the court and the officer or person having charge of him is ready to proceed on his route; such officer or person shall pay the jailer holding the prisoner, the costs of his jailing and keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of

keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History.—§12, ch. 20460, 1941; §24, ch. 57-1.

941.13 Arrest prior to requisition.—Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and except in cases arising under §941.06 with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under §941.06, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History.—§13, ch. 20460, 1941.

941.14 Arrest without a warrant.—The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

History.—§14, ch. 20460, 1941.

941.15 Commitment to await requisition; bail.—If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under §941.06 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

History.—§15, ch. 20460, 1941; am. §7, ch. 22858, 1945.

941.16 Bail; in what cases; conditions of bond.—Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or other judicial officer having power of commitment in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

History.—§16, ch. 20460, 1941.

941.17 Extension of time of commitment, adjournment.—If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in §941.16, but within a period not to exceed sixty days after the date of such new bond.

History.—§17, ch. 20460, 1941.

941.18 Forfeiture of bail.—If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

History.—§18, ch. 20460, 1941.

941.19 Persons under criminal prosecution in this state at time of requisition.—If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History.—§19, ch. 20460, 1941.

941.20 Guilt or innocence of accused when inquired into.—The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

History.—§20, ch. 20460, 1941.

941.21 Governor may recall warrant or issue alias.—The governor may recall his warrant or warrants of arrest or may issue another warrant whenever he deems proper.

History.—§21, ch. 20460, 1941.

941.22 Fugitives from this state; duty of governors.—Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History.—§22, ch. 20460, 1941.

941.23 Application for issuance of requisition; by whom made; contents.—

(1) When the return to this state of a person charged with crime in this state is required, the bailiff or state attorney or county solicitor or other prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of the state, to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History.—§23, ch. 20460, 1941; am. §7, ch. 22858, 1945.

941.24 Costs and expenses.—The costs and expenses of confinement of persons convicted in this state after extradition shall be paid as now or hereafter provided by law.

History.—§24, ch. 20460, 1941.

941.25 Immunity from service of process in certain civil actions.—A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History.—§25, ch. 20460, 1941.

941.26 Written waiver of extradition proceedings.—Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in §§941.07 and 941.08 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in §941.10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

History.—§25-A, ch. 20460, 1941.

941.27 Non-waiver by this state.—Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

History.—§25-B, ch. 20460, 1941.

941.28 No right of asylum; no immunity from other criminal prosecutions while in this state.—After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History.—§26, ch. 20460, 1941.

941.29 Interpretation. — The provisions of §§941.01-941.30 shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History.—§27, ch. 20460, 1941; am. §7, ch. 22858, 1945.

941.30 Short title.—§§941.01-941.29 may be cited as the uniform criminal extradition law.

History.—§30, ch. 20460, 1941.

941.31 Fresh pursuit; authority of officers of other states; etc.—Any duly authorized state, county or municipal arresting officer of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any authorized arresting officer, state, county or municipal, of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

History.—§1, ch. 20461, 1941.

941.32 Fresh pursuit; arrest; etc.—If an arrest is made in this state by an officer of another state in accordance with the provisions of §941.31 he shall without unnecessary delay take the person so arrested before a justice of the peace, county judge or other judicial officer having jurisdiction of commitment, of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate or other committing judicial officer determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state, or admit him to bail for such purpose. If the magistrate or other committing judicial officer determines that the arrest was unlawful he shall discharge the person arrested.

History.—§2, ch. 20461, 1941.

941.33 Fresh pursuit; validity of arrest.—§941.31 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

History.—§3, ch. 20461, 1941.

941.34 Definition of "state".—For the purpose of this law the word "state" shall include the District of Columbia.

History.—§4, ch. 20461, 1941.

941.35 Definition of "fresh pursuit".—The term "fresh pursuit" as used in this law shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

History.—§5, ch. 20461, 1941.

941.36 Duty of secretary of state.—Upon the passage and approval by the governor of this law it shall be the duty of the secretary of state (or other officer) to certify a copy of this law to the executive department of each of the states of the United States.

History.—§6, ch. 20461, 1941.

941.37 Short title.—§§941.31-941.36 may be cited as the uniform law on fresh pursuit.

History.—§8, ch. 20461, 1941.

941.38 Extradition of persons alleged to be of unsound mind.—A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of his flight, he was under detention by law in a hospital, asylum, or other institution for the insane as a person of unsound mind; or he had been heretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or he was subject to detention in such state, being then his legal domicile (personal service of process having been made) based on legal proceedings then pending to have him declared of unsound mind, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed thereto.

History.—Comp. §2, ch. 29686, 1955.

941.39 Same; definitions.—In this chapter, unless the context or subject matter otherwise requires:

"Flight" or "fled" means any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter

mentioned may have been instituted and are still pending, with the effect of avoiding, impounding, or delaying the action of the court in which said proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if he then was under detention by law as a person of unsound mind and subject to detention.

"State" means states, territories, districts and insular and other possessions of the United States.

"Justice of supreme court of district of Columbia" as applied to a request to return any person within the purview of this chapter to or from the district of Columbia shall be included and have the same meaning as the terms "executive authority," "governor" and "chief magistrate."

History.—Comp. §1, ch. 29686, 1955.

941.40 Same; procedure; limitation of detention; costs.—Whenever the executive authority of any state demands of the executive authority of this state any fugitive within the purview of the preceding section, and produces a copy of the commitment, decree of other judicial process and proceeding, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled, with an affidavit made before a proper officer showing the person to be such a fugitive, it shall be the duty of the executive authority of this state to cause him to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear.

Any agent so appointed who receives the fugitive into custody shall be empowered to transmit him to the state from which he has fled.

If no such agent appears within thirty days from the time of the apprehension, the fugitive may be discharged.

All costs and expenses incurred in the apprehending, securing, maintaining, and transmitting such fugitive to the state making such demand, shall be paid by such state.

History.—Comp. §§3-6, ch. 29686, 1955.

941.41 Same; governor to demand. — The governor is vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of this statute.

History.—Comp. §7, ch. 29686, 1955.

941.42 Same; purpose of law.—This law is remedial and shall be in addition and as a supplement to any and all existing methods of procedure, including reciprocal agreements between this state and any other state for the transfer of persons of unsound mind; and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—Comp. §§8, 9, ch. 29686, 1955.

CHAPTER 942

INTERSTATE EXTRADITION OF WITNESSES

942.01 Definitions.—"Witness"—as used in this chapter shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding held by the prosecution or the defense.

The word "state" shall include any territory of the United States and District of Columbia,

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

History.—§1, ch. 20458, 1941.

942.02 Summoning witness in this state to testify in another state.—

(1) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing. The witness shall at all times be entitled to counsel.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken in custody and delivered to an officer of the requesting state.

(4) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History.—§2, ch. 20458, 1941; (2) a. by §1, ch. 61-491.

942.03 Witness from another state summoned to testify in this state.—

(1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any

witness who disobeys a summons issued from a court of record in this state.

History.—§3, ch. 20458, 1941.

942.04 Exemption from arrest and service of process.—

(1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

History.—§4, ch. 20458, 1941.

942.05 Uniformity of interpretation.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it, and shall be only applicable to such state as shall enact reciprocal powers to this state relative to the matter of securing attendance of witnesses as herein provided.

History.—§5, ch. 20458, 1941.

942.06 Short title. — This chapter may be cited as "uniform law to secure the attendance of witnesses from within or without a state in criminal proceedings."

History.—§6, ch. 20458, 1941.

TITLE XLVI

CORRECTIONAL SYSTEM

CHAPTER 944

FLORIDA CORRECTIONS CODE

944.01 Short title.—This act may be cited as "the Florida corrections code of 1957."

History.—Comp. §45, ch. 57-121.

944.02 Definition of words and phrases.—The following words and phrases used in this chapter shall, unless the context clearly indicates otherwise, have the following meanings subscribed to them:

(1) "Board" means the board of commissioners of state institutions.

(2) "Correctional system" means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the division.

(3) "Division" means the division of corrections.

(4) "Director" means the director of the division of corrections employed by the board of commissioners of state institutions.

(5) "Prisoner" means any person convicted and sentenced by the courts and committed to the state prison, prison farm, or penitentiary, or to the custody of the division, as provided by law.

(6) "State correctional institution" means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked or maintained, under the custody and jurisdiction of the division.

History.—§1, ch. 57-121; (2)-(6) a. by §18, ch. 61-530.

944.03 Florida state prison; existence; location; purpose.—

(1) There is and shall continue to be a state prison to be known as the Florida state prison.

(2) The Florida state prison shall be located at Raiford, in Union and Bradford counties.

(3) The purpose of this institution shall be to provide custody, care, protection, industrial vocational and other training, and reformatory help for the prisoners confined therein. This institution shall be the primary institution for adult male offenders, of the Florida correctional system. This institution is and shall be composed of such units for the detention of such classes of prisoners as the board and the director shall provide.

History.—§2, ch. 57-121; (1), (2) a. by §1, ch. 61-192.

944.04 Glades correctional institution; existence; location; purpose.—

(1) There is and shall continue to be a state prison farm to be known as the Glades correctional institution.

(2) The Glades correctional institution shall be and is located at Belle Glade, Palm Beach county.

(3) The Glades correctional institution shall be a medium security type institution. Its purpose shall be to provide custody, care, industrial vocational and other training to the prisoners confined therein.

History.—§3, ch. 57-121; §2, ch. 61-192.

944.05 Apalachee correctional institution; existence; location; purpose.—

(1) There is and shall be a state prison to be known as the Apalachee correctional institution.

(2) This institution shall be and is located in Jackson and Gadsden counties, Florida; and Decatur county, Georgia.

(3) The primary purpose of this institution shall be for the imprisonment of youthful male offenders who, in the opinion of the director, seem capable of moral rehabilitation and restoration to good citizenship.

History.—§4, ch. 57-121; (2) a. by §3, ch. 61-192.

944.06 Florida correctional institution; existence; location; purpose.—

(1) There is and shall continue to be a state prison to be known as the Florida correctional institution.

(2) This institution shall be and is located at Lowell, Marion county.

(3) The Florida correctional institution shall be the primary institution for adult female prisoners of the Florida correctional system. It shall be composed of such units for the detention of such classes of male and female prisoners as the board and the director shall provide. All adult female prisoners sentenced and committed by the court to the custody of the division shall be conveyed in the manner provided by the law to this institution for initial classification and confinement.

(4) The purpose of this institution shall be to provide custody, care, protection, industrial, vocational and other training, and reformatory help for the prisoners confined therein. This institution shall act as the security unit for the Florida industrial school for girls.

History.—§5, ch. 57-121; (1), (3), (4) a. by §4, ch. 61-192; (3) a. by §18, ch. 61-530.

944.07 State prison; Sumter county branch established.—The board of commissioners of state institutions is hereby authorized and directed to establish a branch of the Florida state prison in Sumter county, on lands which shall be conveyed to the state without cost by fee simple deed by the board of county commissioners of Sumter county, and the said board of county commissioners of Sumter county is authorized and empowered to convey such lands as herein provided. The board of commissioners of state institutions shall determine the situs of lands to be deeded to the state within Sumter county, where said institution shall be located which shall not be less than five hundred acres.

History.—Comp. §1, ch. 57-92.

944.071 State prison; Dixie county branch established.—The board of commissioners of state institutions is hereby authorized to establish a branch of the Florida state prison in Dixie county, on lands which shall be conveyed to the state without cost by fee simple deed by the board of county commissioners of Dixie county, and the said board of county commissioners of Dixie county is authorized and empowered to convey such lands as herein pro-

vided. The board of commissioners of state institutions shall determine the situs of lands to be deeded to the state within Dixie county, where said institution shall be located which shall not be less than five hundred acres.

History.—§1, ch. 63-417.

944.08 Commitment to custody of division; venue of institutions.—

(1) The words "penitentiary" or "state prison" or "state prison farm," whenever the same are used in any of the laws of this state, as a place of confinement or punishment for a crime, shall be construed to mean and refer to the custody of the division within the state correctional system.

(2) For the purposes of all judicial proceedings, the institutions of the state correctional system and the precincts thereof, shall be deemed to be within and part of the county in which they are situated, and the courts of such counties or circuits shall have jurisdiction of all crimes and offenses committed therein.

History.—§6, ch. 57-121; (1) a. by §18, ch. 61-530.

944.09 Maintenance of state prisoners; authority of board.—All state prisoners shall be maintained and worked under the rules and regulations to be prescribed by the board and the division and shall be at all times under the supervision of the director and the board. The board shall prescribe such rules and regulations relating to classification, segregation, and separation of prisoners as to sex, temperament, and for other reasons as it shall deem advisable and proper.

History.—§7, ch. 57-121; §18, ch. 61-530.

944.10 Board to provide buildings; sale and purchase of land.—

(1) The board of commissioners of state institutions shall cause all necessary buildings, facilities and physical plants to be erected to accommodate all prisoners, and from time to time shall make such additional alterations as may be necessary to provide for any increase in the number of prisoners; it shall cause to be established proper accommodations for such officers of the division who are required to reside constantly within the precincts of the institutions.

(2) The board of commissioners of state institutions may sell, to the best possible advantage, any or all detached parcels of land belonging to the bodies of land purchased for the state correctional institutions. The commissioners are authorized to purchase any contiguous parcels of land within the boundary lines of the lands purchased for state correctional institutions.

History.—§8, ch. 57-121; (1) a. by §18, ch. 61-530.

944.11 Board to adopt rules as to admission of books.—The board, upon the recommendation of the director, shall adopt such regulations as it may deem proper, governing the admission of educational and other reading matter within the state institutions for the use of the prisoners, and for the proper observance of days of religious significance within the institutions and for the proper instruction of the prisoners in their basic moral and religious duties.

History.—Comp. §9, ch. 57-121.

944.12 Director to make detailed accounts to board.—The director of the division shall make, or cause to be made, such full and detailed accounts of all disbursements, expenses, receipts, and profits of the state correctional system, accompanied by sufficient vouchers, which accounts shall be forwarded to the board as it shall require, to be filed in that office as of the last day of each fiscal year; he shall make a consolidated report in like manner as above stated, proposing such alterations and additions to the rules and regulations for the administration of the state correctional system as he may deem advisable and proper.

History.—§10, ch. 57-121; §18, ch. 61-530.

944.13 Biennial report; director.—The director shall have a detailed account kept of all matters pertaining to the state correctional system and shall report fully, biennially, to the legislature, making such recommendations concerning the prisoners and the correctional system as may appear to be necessary and expedient.

History.—Comp. §11, ch. 57-121.

944.14 Supervision of correctional institutions; enforcement of orders and regulations.— Subject to the orders, policies and regulations established by the division, and the board, it shall be the duty of the wardens or superintendents to supervise the government, discipline, and policy of the state correctional institutions, and to enforce all orders, rules and regulations.

History.—§12, ch. 57-121; §18, ch. 61-530.

944.15 Register of institution violations.— The director shall cause to be kept at each institution a register of institution violations and what kind of punishments, if any, are administered to the prisoners; the offense committed; the rule or rules violated; the nature of the punishment administered; the authority ordering such punishment; the duration of time during which the offender was subjected to punishment; and the condition of the prisoners' health.

History.—Comp. §13, ch. 57-121.

944.16 Prisoners; how received.—All prisoners shall be delivered to the custody of the division at such reception and classification centers as shall be provided by the board for this purpose. No prisoner shall be received by the division, unless the sheriff, United States marshal, or other officer having such prisoner in charge, shall also deliver a commitment in due form issued by authority of the court committing such prisoners.

History.—§14, ch. 57-121; §18, ch. 61-530.

cf.—§945.09 Commitment of prisoners; classification center; transfer.

944.17 Uniform commitments to division.— The director of the division shall design and

supply to the several clerks of the courts a uniform commitment to be used by said clerks in the issuing of commitments to the division of all persons who may be convicted and sentenced in their respective courts. No prisoner shall be received into the custody of the division by other commitment forms.

History.—§15, ch. 57-121; §18, ch. 61-530.

944.18 Copies of indictments to be transmitted to director.—When any person has been convicted of any criminal offense in this state and is sentenced to serve any term under the custody of the division, the clerk of the court in which such person is convicted shall, with the commitment of such person, transmit to the division a certified copy of the indictment or information upon which such person shall have been convicted, and such copy of the indictment or information shall be kept on file in the office of the director, at Tallahassee.

History.—§16, ch. 57-121; §18, ch. 61-530.

944.19 Vocational, adult and academic education of prisoners under the jurisdiction of the division.—

(1) The board shall establish educational programs for the prisoners under the jurisdiction of the division utilizing personnel of the division, or by arranging for instruction to be given by public or private educational agencies of the state.

(2) The director shall cooperate with the county board of public instruction and the state department of education, who may establish and maintain classes for prisoners under the jurisdiction of the division, to provide instruction of a vocational, adult or academic nature designed to meet the needs of said prisoners. Such instruction is to be under the supervision and control of the county board of public instruction in which the institution is located. For the organization and operation of these classes, county boards of public instruction are authorized to expend funds available to them either from local sources or through the minimum foundation program as provided by law.

(3) This program shall be operated in the various institutions only with the approval of the state board of education.

History.—§17, ch. 57-121; (1), (2) a. by §18, ch. 61-530.

944.20 Inmate welfare fund; transfer of funds; money to be deposited; use; fund as trust.—

(1) All moneys now held for the benefit of prisoners in any inmate canteen fund or welfare fund in any state correctional institution under the jurisdiction of the division shall be deposited in the inmate welfare fund of the division, which fund is hereby created in the state treasury, or in a place which the board shall provide. The money in the fund shall be used for the benefit, education, and general welfare of inmates of the various institutions of the state correctional system under the jurisdiction of the division, including but not limited to the establishment, maintenance, employment of personnel for, and the purchase of items for sale to inmates at canteens maintained at the state correctional institutions and for the establishment, maintenance, employment of personnel and necessary expenses in connection with the operation of hobby shops, recreational or entertainment facilities, or other like facilities or programs at the institutions under the jurisdiction of the division.

(2) There shall be deposited in the inmate welfare fund all net proceeds from the operation of canteens, hobby shops, and other such facilities, and any moneys which may be assigned to the division by prisoners for deposit in said fund. The moneys of said fund shall constitute a trust held by the board and the division for the benefit and welfare of prisoners as herein provided and defined for all the prisoners of the institutions under the jurisdiction of the division.

(3) Any contraband found upon, or in the possession of, any prisoner in any correctional institution under the jurisdiction of the division shall be confiscated and liquidated and the proceeds thereof shall be deposited to this fund.

History.—§18, ch. 57-121; §18, ch. 61-530.

944.21 Investment of money in inmate welfare fund; deposition of interest earned and increment derived from investments.—The director may with the approval of the board invest any money in the inmate welfare fund that in his opinion is not necessary for immediate use, and the interest earned and other increment derived from such investments made pursuant to this section shall be deposited in the inmate welfare fund of the division.

History.—§19, ch. 57-121; §18, ch. 61-530.

944.22 Deposit or investment of funds of prisoners; deposition of interest or increment accruing on funds.—The director may deposit any funds of prisoners in his possession in any bank in the state, or, subject to the approval of the board, may invest or reinvest such funds in bonds or obligations of the United States or for the payment of which the full faith and credit of the United States is pledged and for the purposes of deposit only, may mingle the funds of any prisoner with the funds of other prisoners. The director shall deposit the interest or increment accruing on such funds in the inmate welfare fund.

History.—Comp. §20, ch. 57-121.

944.23 Persons authorized to visit state prisons.—The following persons shall be authorized to visit at pleasure all state correctional institutions: the governor, all cabinet members, members of the council, members of the legislature, judges of state and county courts, and state attorneys. No other person not otherwise authorized by law shall be permitted to enter a state correctional institution except under such regulations as the board and the director shall prescribe.

History.—Comp. §21, ch. 57-121.

944.24 Administration of correctional institutions for women.—

(1) All regularly employed assistants, officers and employees whose duties bring them into contact with the inmates of the institution shall be women as far as practicable.

(2) If any woman received by or committed to said institution shall give birth to a child while an inmate of said institution, such child may be retained in the said institution until it reaches the age of eighteen months, at which time the board may arrange for its care elsewhere; and provided further, that at its discretion, in exceptional cases, the board may retain such child for a longer period of time.

(3) Any woman inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purpose of childbirth, and the charge for hospital and medical care shall be charged against the funds allocated to the institution. The division shall provide for the care of any children so born and shall pay for their care until suitably placed.

History.—§22, ch. 57-121; (3) a. by §18, ch. 61-530.

944.25 Registry of prisoners; facts required to be entered.—There shall be entered the name of each prisoner; the crime of which he is convicted; the period of his sentence; from what county sentenced; his nativity; to what degree educated, at what institution and under what system; an accurate description of the person; and whether he has been previously confined in any state or federal prison and if so, when and how he was discharged; and such other facts as shall be found necessary to the director. A copy of this report will be transmitted to the office of the director.

History.—Comp. §23, ch. 57-121.

944.27 Gain time for good conduct; schedule of allowances; cumulative sentences to be treated as one sentence for purposes of allowing and forfeiting.—

(1) The director shall grant the following deductions for gain time from the sentences of every prisoner who has committed no infraction of the rules or regulations of the board or the division, or of the laws of the state, and who has performed in a faithful, diligent, industrious, orderly, and peaceful manner, the work, duties, and tasks assigned to him, to wit:

(a) Five days per month off the first and second years of his sentence;

(b) Ten days per month off the third and fourth years of his sentence; and

(c) Fifteen days per month off the fifth and all succeeding years of his sentence; and he shall be entitled to credit for a month as soon as he has served such time as, when added to the deduction allowable, would equal a month.

(2) When a prisoner is under two or more cumulative sentences, he shall be allowed gain time as if they were all one sentence and his gain time, including any extra gain time allowed him under §944.29, shall be subject to forfeiture as though such sentences were all one sentence.

History.—§25, ch. 57-121; §18, ch. 61-530; §1, ch. 63-243.

944.28 Forfeiture of gain time and right to earn gain time in the future.—

(1) When a prisoner escapes or a conditional pardon or parole granted to him by the board of pardons or parole commission is revoked, the director shall, without notice or hearing, declare a forfeiture of all gain time earned and extra gain time allowed such prisoner, if any, prior to such escape or his release under such conditional pardon or parole, as the case may be. No gain time forfeited under this subsection shall be restored to a prisoner.

(2) (a) All or any part of the gain time earned by a prisoner and extra gain time allowed him, if any, shall be subject to forfeiture if such prisoner shall unsuccessfully attempt to escape, or assault another person, or threaten or knowingly endanger the life or person of another person, or by action or word refuse to carry out any instruction duly given to him, or neglect to perform the work, duties, and tasks assigned to him in a faithful, diligent, industrious, orderly, and peaceful manner, or violate any law of the state or any rule or regulation of the board, division, or institution.

(b) The method of forfeiting gain time which is subject to forfeiture under paragraph (a) of this subsection shall be as follows:

A written charge shall be prepared, which shall specify the misconduct upon which it is based and the approximate date thereof. A copy of such charge shall be delivered to the prisoner and he shall be given notice of a hearing before the disciplinary committee created under the authorization of the rules and regulations heretofore or hereafter adopted by the board, for the institution in which he is confined. He shall be present at such hearing. If at such hearing the prisoner pleads guilty to the charge or such committee determines from the proof presented that he is guilty thereof, it shall find him guilty; and, if it considers that all or a part of the prisoner's gain time and extra gain time should be forfeited, it shall so recommend in its written report, which shall be presented to the superintendent of the institution. If such superintendent approves such recommendation in whole or in part, he shall so indicate over his signature on the report, and forward the report to the director. The director may thereupon, at his discretion, declare the forfeiture thus approved by the superintendent, or any part thereof. Upon the recommendation of the superintendent, the director may, in his discretion, restore all or any part of any gain time forfeited under this subsection.

(3) A prisoner's right to earn gain time during all or any part of the remainder of the sentence or sentences under which he is imprisoned may be declared forfeited because of the seriousness of a single instance of misconduct for which all of his earned gain time and extra gain time, if any, have been forfeited or because of the seriousness of an accumulation of instances

of misconduct, each of which has resulted in the forfeiture of all or a part of his earned gain time and extra gain time. The method of declaring such a forfeiture shall be as follows:

A written charge shall be prepared, which shall specify each instance of misconduct upon which it is based, the approximate date thereof, and the amount of gain time forfeited on account thereof. A copy of such charge shall be delivered to the prisoner and he shall be given notice of a hearing before the disciplinary committee created under the authorization of rules and regulations heretofore or hereafter adopted by the board, for the institution in which he is confined. Such notice shall specify that such hearing will be held for the purpose of determining whether such committee shall recommend a forfeiture of the prisoner's right to earn gain time during all or a part of the remainder of his sentence or sentences. If at such hearing the prisoner pleads guilty to the charge or such committee determines that he is guilty thereof upon the basis of proof presented at such hearing, it shall find him guilty; and, if it considers that the misconduct of which the prisoner is thus found guilty is serious enough, it may recommend in its written report the forfeiture of the prisoner's right to earn gain time during all or some specified part of the remainder of his sentence or sentences. Such report shall be presented to the superintendent of such institution, who may approve such recommendation in whole or in part by endorsing such approval on such report. In the event of such an approval, the superintendent shall forward such report to the director. Thereupon, the director may, in his discretion, recommend to the board that it declare the forfeiture thus approved by the superintendent or any specified part thereof, and the board may, in its discretion, declare the forfeiture thus recommended by the director, or any specified part thereof. Any right forfeited by the board under this subsection may be restored only by the board.

(4) In order to facilitate the speedy administration of the gain time program, the director may delegate to one of his deputies the functions, duties, and powers of the director under this section.

History.—§26, ch. 57-121; (1) §18, ch. 61-530; §2, ch. 63-243.

944.29 Extra good time allowances.—The board upon recommendation of the director may allow, in addition to time credits, an extra good time allowance for meritorious conduct or exceptional industry.

History.—Comp. §27, ch. 57-121.

944.30 Life prisoners; commutation to term for years.—Any prisoner who is sentenced to life imprisonment, who has actually served ten years and has sustained no charge of misconduct and has a good institutional record, shall be recommended by the division for a reasonable commutation of his sentence, and if the same be granted, commuting the life sentence to a term for years, then such prisoner shall have the benefit of the ordinary commutation, as if the original sentence was for a term for years, unless it shall be otherwise ordered by the board of pardons.

History.—§28, ch. 57-121; §18, ch. 61-530.

944.31 Prison inspectors' duties.—Prison inspectors shall be employed by the division of corrections and charged with the duty of inspecting the penal and correctional systems of the state. The prison inspectors shall inspect each jail, stockade or correctional institution or any place in which state or county prisoners are housed, worked, or kept within the state, with reference to the physical conditions, cleanliness, sanitation, safety, comfort, the quality and supply of all bedding, the quality, quantity, and diversity of food served and the manner in which it is served, the number and condition of the prisoners confined therein, and the general conditions of each institution. They shall see that all the rules and regulations issued by the division or the board are strictly observed and followed by all persons connected with the correctional systems of the state. The inspectors will be directly responsible to the director who shall coordinate and supervise their work throughout the state. Each prison inspector may enter any place where prisoners in this state are kept and shall be immediately admitted to such place as he desires; and, he may consult and confer with any prisoner privately and without molestation.

History.—§29, ch. 57-121; §6, ch. 61-192; §18, ch. 61-530.

944.32 Reports of prison inspectors; recordation; inspection.—Upon completing an inspection of any jail or a correctional institution the inspector shall make a full and complete report on such forms as shall be provided by the division. One copy of each report shall be filed with the division, one copy with the clerk of the circuit court of the county where the inspection is made and as many other copies as the division shall require; these reports shall at all times be open to inspection in the office of the clerk of the circuit court, and shall be matters of public record and subject to inspection by the public at any time.

History.—§30, ch. 57-121; §18, ch. 61-530.

944.33 Failure of inspector to make report; false report; penalty.—If any prison inspector shall fail to make a report of his findings, he shall be immediately discharged and shall not be again employed in such capacity. If any prison inspector shall knowingly make a false report of his findings, he shall be deemed guilty of a felony and on conviction shall be punished by imprisonment in the state correctional system for not more than 3 years or by fine of not more than $5,000, or by both.

History.—Comp. §31, ch. 57-121.

944.34 Order and punishment.—All necessary means shall be used by the superintendents, and such punishments as may be needful shall be adopted to maintain order, enforce obedience and discipline, suppress insurrection, prevent escapes, and compel performance of labor; but no cruel or inhuman punishment

shall be inflicted upon any prisoner, and no punishment injurious to the mind or the body of the prisoner shall be permitted, nor shall any prisoner be compelled to labor without sufficient food.

History.—Comp. §32, ch. 57-121.

944.35 Corporal punishment prohibited; penalty.—It is unlawful for any corporal punishment, any cruel or inhuman punishment or any punishment by which the flesh of the body is broken, bruised or lacerated to be inflicted upon any prisoner at any time. Any person who violates the provisions of this section shall be discharged immediately and shall not again be employed in any capacity in connection with the correctional system and shall be punished as provided by law for whatever offense he may have committed in perpetrating the act. No prisoner shall be punished because of any report or representation which he may have made to any inspector.

History.—Comp. §33, ch. 57-121.

944.36 Cruel treatment of prisoners; permitting prisoners to escape.—Any agent, employee, or officer of the division, or guard, having supervision over state prisoners being worked under the provisions of law, who shall be guilty of any cruel or inhuman treatment to any prisoner by neglect or otherwise, or shall willfully or negligently permit any prisoner to escape, shall be punished by imprisonment in the state correctional system for not exceeding 5 years, or by fine not exceeding $5,000, or by both.

History.—§34, ch. 57-121; §18, ch. 61-530.

944.37 Acceptance of unauthorized compensation; penalty.—No officer or employee of the division shall receive, directly or indirectly, from any prisoner or from anyone on behalf of such prisoner, any gift, reward, or any compensation whatsoever for his services or supplies other than that prescribed or authorized by law or the division. Whoever violates this section shall be punished by fine of not exceeding $5,000.

History.—§35, ch. 57-121; §18, ch. 61-530.

944.38 Acceptance of remuneration from contractor; dealing or barter with prisoners: interest in contract; penalty.—

(1) No officer or employee of the division shall receive any compensation whatsoever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any officer or employee or agent, or employee of a contractor; nor shall any officer or employee of the division or the state be interested, directly or indirectly, in any contract or purchase made, or authorized to be made, by anyone for or on behalf of the division.

(2) No officer or employee of the division or of the state, or any contractor, or employee of a contractor, shall, without permission of the board, or division, make any gift or present to a prisoner, or receive the same from any prisoner, or have any barter or dealings with any prisoner.

(3) For any violation of the provisions of this section the officer or employee of the state shall be discharged from his office or service; and every contractor, or employee, or agent of a contractor engaged therein, and a party thereto, shall be expelled from the institutional grounds, and not again permitted within the same as a contractor, agent, or employee.

History.—§36, ch. 57-121; (1), (2) a. by §18, ch. 61-530.

944.39 Interference with prisoners; penalty.—Any person who, without authority, interferes with or in any way interrupts the work of any prisoner under the custody of the division or who in any way interferes with the discipline or good conduct of any prisoner shall be guilty of a misdemeanor. No person shall, by disguise, misrepresentation of identity or other illicit means, attempt to gain admission to or enter upon the grounds of any state correctional institution for the purpose of visiting any prisoner in violation of the general visiting policy adopted by the board. A person, upon conviction of an offense as outlined in this section, shall be punished by imprisonment in the county jail for a term of not more than 6 months or by a fine of not more than $200.00 or by both fine and imprisonment. Any peace officer or any officer or guard of the division or any prison inspector or any employee of the division may arrest without warrant any person violating the provisions of this section.

History.—§37, ch. 57-121; §7, ch. 61-192; §18, ch. 61-530.

944.40 Escapes; penalty.—Any prisoner confined in any prison, jail, road camp, or other penal institution, state, county or municipal, or in working upon the public roads or being transported to or from a place of confinement, who escapes or attempts to escape from such confinement, if the charge or conviction under which said prisoner is incarcerated constitutes a felony under the laws of the jurisdiction which has caused his incarceration he shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment of not more than 10 years; or if the charge or conviction under which said prisoner is incarcerated constitutes a misdemeanor, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment of not more than 90 days. The punishment of imprisonment imposed under this section shall be in addition to any former sentence imposed upon any prisoner convicted hereunder.

History.—Comp. §38, ch. 57-121.

944.41 Assault by a life prisoner; penalty.—Every person undergoing a life sentence in a correctional institution who commits an assault upon the person of another with a deadly weapon or instrument, or by any means of force likely to produce great bodily injury, shall not be eligible for parole for a period of time beginning from the date of conviction of said offense as follows:

(1) Twenty years, if said offense occurs

when less than five years of said life sentence has been served;

(2) Fifteen years, if said offense occurs when less than ten years, but more than five years of said life sentence has been served; and

(3) Ten years, if said offense occurs when less than fifteen years, but more than ten years of said life sentence has been served.

History.—Comp. §1, ch. 57-313.

944.42 Assault by prisoner other than life; penalty.—Every person undergoing a sentence of less than life in a state correctional institution who, with malice aforethought, commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury but, which is not an assault with intent to commit a felony, as provided by law, shall be guilty of a felony and shall be imprisoned in a state correctional institution not more than 10 years.

History.—Comp. §2, ch. 57-313.

944.43 Possession of weapon; penalty.—Every prisoner committed to the custody of the division of corrections who, while in such custody, possesses or carries upon his person or has under his control any instrument or weapon of any kind or any explosive substance, contrary to any rule or regulation promulgated by the division, is guilty of a felony which shall be punishable by imprisonment in a state correctional institution for a term not more than 10 years.

History.—§3, ch. 57-313; §13, ch. 59-1; §18, ch. 61-530.

944.44 Holding persons as hostages; penalty.—Any prisoner who holds as hostage any person within any correctional institution or anywhere while under the jurisdiction of the division, or who by force, or threat of force holds any person or persons against their will in defiance of official orders, shall be guilty of a felony and shall be imprisoned in a state correctional institution for a term of not more than 10 years.

History.—§4, ch. 57-313; §18, ch. 61-530.

944.45 Mutiny, riot, strike; penalty.—Whoever instigates, contrives, wilfully attempts to cause, assists, or conspires to cause any mutiny, riot, or strike in defiance of official orders, in any state correctional institution, shall be guilty of a felony and shall be imprisoned for not more than 10 years.

History.—Comp. §5, ch. 57-313.

944.46 Harboring, concealing, aiding escaped prisoners; penalty.—Whoever, harbors, conceals, maintains, or assists, or gives any other aid to any prisoner after his escape from any state correctional institution knowing that he is an escaped prisoner, shall be guilty of a felony, and shall be imprisoned in a state correctional institution for not more than 7 years.

History.—Comp. §6, ch. 57-313.

944.47 Introduction or removal of certain articles unlawful; penalty.—

(1) It is unlawful to introduce into or upon the grounds of any correctional or penal institution under the supervision or control of the board of commissioners of state institutions or to take or attempt to take or send therefrom any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: any communication or any currency or coin given or transmitted or intended to be given or transmitted to any inmate of any correctional or penal institution under the supervision and direction of the board of commissioners of state institutions; any article of food or clothing; any intoxicating beverage or beverage which causes or may cause an intoxicating effect; any narcotic or hypnotic or excitive drug or any drug of whatever kind or nature including nasal inhalators of any variety, sleeping pills or barbiturates of any variety that create or may create a hypnotic effect if taken internally; and any firearm or any instrumentality customarily used as a dangerous weapon, except through regular channels as authorized by the officer in charge of each correctional or penal institution.

(2) Whoever violates any provision of this section shall upon conviction be sentenced to the custody of the division of corrections for a term not to exceed 5 years.

History.—§7, ch. 57-313; §8, ch. 61-192.

944.48 Service of sentence.—Whenever any prisoner is convicted under the provisions of §§944.41-944.47 the punishment of imprisonment imposed shall be served consecutively to any former sentence imposed upon any prisoner convicted hereunder.

History.—Comp. §8, ch. 57-313.

944.49 Requirement of labor; compensation; amount; crediting of amount of prisoner; forfeiture; civil rights; prisoner not employee or entitled to compensation insurance benefits.—

(1) The board shall require of every able-bodied prisoner imprisoned in any institution as many hours of faithful labor in each day and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the division and the board.

(2) Each prisoner who is engaged in productive work in any state correctional institution under the jurisdiction of the division, may receive for his work such compensation as the director with the approval of the board shall determine. Such compensation shall be in accordance with a schedule based on quality and quantity of work performed and skill required for performance and said compensation shall be credited to the account of the prisoner.

(3) Said compensation shall be paid from the division of corrections industrial trust fund. Whenever any price is fixed on any article, material, supply, or service, to be produced, manufactured, supplied, or performed in connection with the work program of the division, the compensation paid to the prisoners shall be included as an item of cost in the final price.

(4) When any prisoner escapes, the director, with the approval of the board, shall deter-

mine what portion of his earnings shall be forfeited and such forfeiture shall be deposited in the state treasury in the inmate welfare fund of the division.

(5) Nothing in this section is intended to restore, in whole or in part the civil rights of any prisoner. No prisoner compensated under this section shall be considered as an employee of the state or the division, nor shall such prisoner come within any other provision of the workmen's compensation act.

History.—§39, ch. 57-121; §18, ch. 61-530.

944.50 Forfeiture of earnings of prisoners; determination of amount to be forfeited; deposit in industrial trust fund.—When any prisoner shall wilfully violate the terms of his employment or the rules and regulations of the division or board, the board may in its discretion determine what portion of all moneys earned by the prisoner shall be forfeited by said prisoner and such forfeiture shall be redeposited to the industrial trust fund.

History.—§40, ch. 57-121; §18, ch. 61-530.

944.51 State road department prison camps; authority.—The state prison road force shall remain under the supervision and control of the state road department until such time as the board shall assume and succeed to such authority and control as provided by law.

History.—Comp. §41, ch. 57-121.

944.511 Five-day week; employees road prison operation.—

(1) The state road department and the division of corrections shall inaugurate a five-day work week for all employees presently assigned to the road prison operation; provided, that such employees may be required to perform additional periods of duty during emergencies.

(2) Funds for implementing a five-day work week shall be provided from the first gasoline tax funds.

History.—§§1, 2, ch. 63-450.

944.52 Legal advisor.—The attorney general shall be the legal advisor of the division.

History.—§42, ch. 57-121; §18, ch. 61-530.

944.53 Records; reproduction. — The state director of the division of corrections is authorized to photograph, microphotograph, or reproduce on film or prints, documents, records, data, and information of a permanent character, which, in his discretion, with the approval of the board of commissioners of state institutions, he may select, and the director is authorized to destroy any of the said documents after they have been photographed and after audit of his office has been completed for the period embracing the dates of said instruments. Photographs or microphotographs in the form of film or prints made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History. §1, ch. 57-122; §18, ch. 61-530.

944.54 Transportation furnished prisoners upon release.—

(1) The superintendents or wardens of the several state correctional institutions are authorized to furnish each prisoner, upon his release from a state correctional institution, transportation from such institution to such place as the classification committee may determine to be in the best interest of the prisoner. The transportation furnished shall be by the most economical means, utilizing a common carrier of the state, and such cost of transportation shall not exceed twenty-five dollars. The classification committee, may in its discretion, determine that the best interests of the state will be served by providing transportation for the prisoner to a place outside the state of Florida, in which instance transportation in excess of twenty-five dollars may be authorized with the excess being paid only from surplus transportation funds available to the institution. Provided, however, that the transportation furnished shall be the most economical available, utilizing a common carrier.

(2) Transportation as authorized herein shall be furnished by a nonnegotiable travel voucher payable to the common carrier being utilized and in no event shall there be any cash disbursement to the releasee or any person, firm or corporation. Such travel voucher shall not be valid sixty days after issuance thereof.

History.—§§1, 2, ch. 59-317.

CHAPTER 945

DIVISION OF CORRECTIONS

(See ch. 965, Divisions of board of commissioners of state institutions.)

945.01 Definitions.—As used herein, the following terms shall have the meanings ascribed to them unless the context shall clearly indicate otherwise:

(1) "Board."—The board of commissioners of state institutions.

(2) "Correctional system."—All prisons and other correctional institutions now existing or hereafter created under the jurisdiction of the division.

(3) "Council."—The advisory council on adult corrections and prison industries designated by the board of commissioners of state institutions as herein provided.

(4) "Division."—Wherever the word "division" or the phrase "division of corrections" is used in this chapter it shall mean the division of corrections under the board of commissioners of state institutions.

(5) "Director."—The director of the division of corrections employed by the board of commissioners of state institutions as herein provided.

(6) "Reception center."—A temporary custodial institution for offenders committed to the division for classification and assignment to an appropriate institution in the correctional system.

History.—§1, ch. 57-213; (2), (4)-(6) a. by §18, ch. 61-530.

945.02 Division of corrections.—There is hereby created a division of corrections under the control of the board of commissioners of state institutions.

History.—§2, ch. 57-213; §18, ch. 61-530.

945.03 Division; administration; divisions.—The division shall be administered by a director selected by the board as herein provided, and shall consist of a division of corrections and such other units as the director may establish with the approval of the board, for the maintenance of records, management of the division and the administration of essential programs and services.

History.—§3, ch. 57-213; §18, ch. 61-530.

945.04 Division; general function.—The division shall be responsible for the inmates and for the operation of, and shall have supervisory and protective care, custody, and control of all buildings, grounds, property of, and matters connected with, the correctional system.

History.—§4, ch. 57-213; §18, ch. 61-530.

945.05 Advisory council on adult corrections and prison industries.—

(1) There shall be an advisory council on adult corrections and prison industries composed of not more than nine members designated by the board to serve at the pleasure of the board. The members of the council shall be citizens and residents of the state and shall be at least thirty-five years of age.

(2) By virtue of background, experience, and interest, membership to the council shall be selected as follows:

(a) At least one member as a representative of management;

(b) At least one member as a representative of labor;

(c) At least one member as a representative of agriculture;

(d) At least one member as a representative of education;

(e) At least one member representing the medical profession;

(f) At least two members selected on the basis of interest in problems related to adult corrections.

(3) The members of the council shall receive no compensation but shall be reimbursed from the budget of the division for the expense of attending meetings of the council as provided in §112.061.

(4) The council shall consult with the board and the director on correctional programs and prison industries, and shall make recommendations concerning the style, design and quality of articles to be manufactured as well as for economies in manufacture and proper indus-

trial planning for the several institutions under the control of the division.

History.—§5, ch. 57-213; (3), (4) §18, ch. 61-530; (3) §19, ch. 63-400.

945.06 Prison industries.—

(1) The director, with the advice of the council and the approval of the board, shall adopt and put into effect an industrial program to provide training facilities for persons confined in the adult correctional institutions under the control and supervision of the board.

(2) The board is authorized to cause to be manufactured, processed or produced by the inmates of the adult correctional institutions under the control and supervision of the board such items as in the opinion of the council are practical and adaptable for prison industry and are needed and used in state institutions and agencies.

(3) In determining the articles and the style, design and quality of the articles to be manufactured, the director shall install no program contrary to the recommendations of the council.

History.—Comp. §6, ch. 57-213.

945.07 Prison camps.—Prison camps operated under the supervision of the state road department, including the personal property, appurtenances and interest in realty in such camps held in the name of the state road department, together with the inmates and matters connected therewith, shall be transferred to the division. Such camps and such other camps as the board, upon the recommendation of the director, may establish shall be under the control and supervision of the division and shall be operated as an integral part of the division. The camps shall be used for such public purposes as the board may by regulations prescribe. The transfer of camps from the state road department to the division of corrections shall be made upon the advice of the director to the board that the division is so organized and properly financed as to assume the responsibility for their operation. The board shall notify the state road department and each district engineer of such advice. Thereupon, all custodial personnel employed by the state road department shall become provisional employees of the division of corrections under such regulations relating to employees of the division as the board may provide.

History.—§7, ch. 57-213; §18, ch. 61-530.
cf.—§965.01(1) Division of corrections, board of commissioners of state institutions.
§337.10 Use of state convict road force.
§944.51 State road department prison camps; authority.
§965.01(1)(b) State convict road force.

945.08 Classification regulations. — The board shall adopt regulations for the classification of all offenders according to age, sex, race and such other factors as the board may deem advisable and shall provide for the separation of prisoners by sex and race except where such separation while prisoners are being worked shall be impracticable.

History.—Comp. §8, ch. 57-213.

945.09 Commitment of prisoners; classification; reception and classification center; transfer.—All prisoners sentenced to the state penitentiary shall be committed by the court to the custody of the division and shall be conveyed in the manner provided by law to such institution in the correctional system as the division shall direct. The division shall establish a reception and classification center for male prisoners at the state prison at Raiford. The division shall provide reception and classification facilities for female prisoners at the Florida correctional institution at Lowell. Classification facilities shall be provided in the discretion of the division at all institutions in the correctional system. Classification of prisoners shall be made by a board or boards designated by the board of commissioners of state institutions. Pursuant to such regulations as the board may provide, the division is authorized to transfer prisoners from one institution to another institution in the correctional system and to reclassify prisoners as circumstances may require.

History.—§9, ch. 57-213; §18, ch. 61-530.
cf.—§§921.17-921.23 Handling of persons receiving indeterminate sentences for noncapital felonies.
§944.16 Prisoners; how received.

945.10 Investigations by parole commission; confidential.—The parole commission shall furnish the director with a copy of its report of presentence investigation, if one has been made, and subsequent information as same may become available, on every person committed to the custody of the division. The information furnished by the parole commission shall be confidential and shall be available only to public officers and employees in the performance of a public duty. No inmate of any institution shall have access to any such information or excerpts therefrom. The division shall cooperate with the parole commission as may be required for the proper performance of the functions of the parole commission.

History.—§10, ch. 57-213; §18, ch. 61-530.
cf.—§§921.17-921.23 Handling of persons receiving indeterminate sentences for noncapital felonies.

945.11 Use of prisoners in public works.—

(1) The board is authorized to enter into agreements with such agencies and institutions of the state as might, under supervision of employees of the division, use the services of inmates of adult correctional institutions and camps when it is determined by the director and the board that such services will not be detrimental to the welfare of such inmates or the interests of the state in a program of rehabilitation.

(2) The budget of the division shall be reimbursed from the budget of any state agency or institution for the services of inmates and personnel of the division in such amounts as may be determined by agreement between the director and the head of such agency or institution and approved by the board on the basis of the costs of such services to the division or the value of such services to the

agency or institution, whichever shall be lower.

History.—§11, ch. 57-213; §18, ch. 61-530.
cf.—§337.10 Use of state convict road force.

945.12 Transfers for medical treatment.—(1) The director is authorized to transfer drug addicts committed to the hospital of the state prison under §398.18, to an appropriate institution for treatment. The director may transfer addicted, insane, tuberculous, or other prisoners requiring specialized medical treatment to an appropriate institution.

(2) The board is authorized to enter into agreements with the controlling authorities of such state institutions as shall have or be provided with appropriate facilities for the secure confinement and treatment of drug addicts, alcoholics, insane, and tuberculous persons. In any such agreement the board shall provide for custodial personnel to maintain proper security of persons transferred from the correctional system to any other state institution. Such custodial personnel shall be employed and paid by the division and subject to such rules as shall be agreed upon jointly by the board and the controlling authority entering into such agreement.

(3) The board is authorized to reimburse the institution furnishing treatment at a figure agreed upon by the board and the controlling authority of such institution.

(4) When in the opinion of the superintendent of an institution to which a prisoner has been transferred such prisoner has been cured, or will no longer benefit from treatment at that institution, other than an insane prisoner, the superintendent shall notify the division which shall, at the earliest practicable date thereafter, convey such prisoner to the appropriate classification center for reclassification.

History.—§12, ch. 57-213; (2), (4) a. by §18, ch. 61-530.

945.13 Maintenance of industrial plants.—The board of commissioners of state institutions may maintain such industrial plants at the various institutions under their supervision and control as the board may determine can be conducted and maintained in a manner profitable to the state and for the benefit of the inmates of such institutions.

The board shall cause the plants as far as practicable to be operated by the inmates of such institutions under such rules and regulations as may be prescribed by the board.

History.—§1, ch. 10271, 1925; CGL 8663; §6, ch. 57-314, transferred from §959.01, 1957.

945.14 Sale of goods made by prisoners prohibited.—

(1) No goods, wares, or merchandise manufactured or mined in whole or in part by prisoners (except prisoners on parole or probation) shall be sold or offered for sale in this state by any person, or by any federal authority, state, or political subdivision thereof; provided, however that nothing in §§945.14 and 945.15 shall be construed to forbid the sale, exchange, or disposition of such goods within the limitations set forth in §945.16(1).

(2) When in the planning of the rehabilitation program of the division of corrections, through its recreational facilities, plans are made for prisoners to engage in hobbies and hobbycrafts after their normal working hours and when they are not required by the superintendent or warden of a state prison or correctional institution to be on their assigned duties, they may make items of a hobby or hobbycraft nature which may be disposed of by the prisoner through the institutional canteen or commissary to persons visiting the institution.

History.—§§1, 2, ch. 19277, 1939; CGL 1940 Supp. 8135(61) §24, ch. 57-1; §1, ch. 61-180; (1), §1, ch. 63-176.
Note.—Formerly §959.02.
cf.—§1.01(3), "Person" defined.

945.15 Penalty for selling goods made by prisoners.—Every person violating the provisions of §945.14 shall be guilty of a misdemeanor and upon conviction thereof subject to a fine of not more than five hundred dollars or imprisonment in the county jail for not exceeding twelve months.

History.—§§1, 2, ch. 19277, 1939; CGL 1940 Supp. 8135(61). Transferred from §959.03, 1957.
cf.—§775.06, Alternative punishment.

945.16 Use of prison made products.—

(1) All items manufactured, processed, or produced by the division of corrections and not required for use therein at the present time or in the future shall be furnished to all state institutions under the board, the tuberculosis hospitals, and the alcoholic rehabilitation center. The following items or services may be furnished to all state agencies, boards, bureaus, or commissions: Automobile tags; clay brick and clay tile for buildings owned by the state; school, office, and warehouse furniture; uniforms for state personnel assigned to work directly with prisoners; metal products; tire repair and recapping; furniture repair and refinishing; and all prison industries now existing or to be established in the future for repair and maintenance of state property and equipment as a part of the rehabilitation program within the division. The division is further authorized to make available to political subdivisions items of school and office furniture. No other items are to be sold to political subdivisions without specific authority from the legislature.

(2) No similar article of comparable price and quality found necessary for use by any state agency or division under the control or supervision of the board or any member thereof, may be purchased from any other source when the board shall certify that the same is available and can be furnished by the division. The purchasing authority of any such state institution or agency shall have the power to make reasonable determinations of need, price and quality with reference to articles available for sale by such prison industries operated by the division. In the event a dispute between the director and any purchasing authority, based upon price or quality, the matter shall be referred to the board, whose decision shall be final.

History.—§13, ch. 57-213; (2) §18, ch. 61-530; (1) §2, ch. 63-176.

945.161 Sale of "Florida" tags to junior chamber of commerce.—The division of corrections is authorized to sell to the junior chamber of commerce, at a price to be determined by the board of commissioners of state institutions, "FLORIDA" tags manufactured by the tag plant at the state prison for the purpose of advertising the state.

History.—§1, ch. 59-332.

945.17 Creation of industrial trust fund.—There is hereby created a division of corrections industrial trust fund, available for the purpose of financing the operation of correctional industries authorized and established by the board of commissioners of state institutions and approved by the advisory council on adult corrections and prison industries, as provided by law. This account shall be a separate fund in the state treasury and shall be the depository of all funds used for this purpose by all institutions under the supervision and control of the division of corrections and the board of commissioners of state institutions.

History.—§1, ch. 57-314; §18, ch. 61-530.

945.18 Sources of fund.—The division of corrections industrial trust fund shall consist of the original general revenue appropriation which was made in the 1957 session of the legislature, together with all assets and liabilities as of June 30, 1957, as determined by the state auditor, of all industrial operations in existence at all correctional institutions as of that date; provided, however, that the assets and liabilities as of June 30, 1957, shall not include cash and accounts receivable which are in excess of the current encumbered obligations as of June 30, 1957, it being the intent of the legislature that after current obligations are liquidated the balance remaining in cash and receivables shall be deposited in the general revenue fund unallocated. Should any general service operation of an institution be transferred to the prison industries operation by the division, all assets and liabilities of such operation shall become a part of this fund. All income, receipts, earnings and profits from such industrial enterprises shall hereafter be credited to this revolving fund to be used for the purposes herein set forth; provided, however, that the earned surplus in the fund at the end of any biennium shall not exceed one million five hundred thousand dollars and such surplus as determined by the state auditor to be in excess of this amount shall be deposited in the general revenue fund unallocated.

History.—§2, ch. 57-314; §1, ch. 61-384; §18, ch. 61-530; §3, ch. 63-176.

945.19 Use of fund.—The funds shall be used for the purposes of financing the operation of the industries herein set forth, and all costs of operation of prison industries shall be paid from this fund, including all personnel whose time or proportion of time is devoted to such industrial operations. The board of commissioners of state institutions shall have the authority to construct buildings for the operation of said industries, provided that such construction shall not exceed ten thousand dollars for any single project.

History.—Comp. §3, ch. 57-314.

945.20 Disbursements from fund.—The funds shall be deposited in the state treasury and paid out only on warrants drawn by the state comptroller, duly approved by the division of corrections and the board of commissioners of state institutions. The division of corrections shall maintain all necessary records and accounts relative to such funds.

History.—§4, ch. 57-314; §18, ch. 61-530.

945.21 Regulations of the board.—

(1) The board is authorized to adopt and promulgate regulations governing the administration of the correctional system and the operation of the division. In addition to specific subjects otherwise provided for herein, regulations of the board may relate to:

(a) Conduct to be observed by prisoners;

(b) Punishment of prisoners;

(c) Gain time for good conduct of, release payments to, and release transportation of, inmates;

(d) Uniforms for inmates and custodial personnel;

(e) Rules of conduct of custodial and other personnel;

(f) Classification of personnel and duties assigned thereto;

(g) Credits for confinement prior to commitment to the division;

(h) Payments to prisoners for work performed. Such payments, if any, to be made from the profits of the industrial trust fund. Such regulations to include restrictions on the use of earnings, including payments for support of dependents and release reserves.

(i) Visiting hours and privileges;

(j) Mail to and from inmates;

(k) The operation of canteens and the participation in canteen funds;

(l) The feeding of prisoners, including diet and menus, and the furnishing of health and comfort items to indigent prisoners;

(m) Such other regulations as in the opinion of the board may be necessary for the efficient operation and management of the correctional system.

(2) Regulations of the board shall be adopted pursuant to resolution of the board and filed with the secretary of state as provided in chapter 120.

History.—§14, ch. 57-213; (1) a. by §18, ch. 61-530.

945.22 Employment of director, superintendents, and wardens.—

(1) The director shall be employed by the board. At the time of employment the director shall be not less than thirty-five years of age.

(2) The superintendents or wardens of all institutions of the correctional system shall be employed by the board upon the recommendation of the director.

History.—§15, ch. 57-213; (1) by §1, ch. 59-149.

945.23 Civil service.—

(1) The board may by regulation establish a system of employee selection to provide for the employment of personnel of the division, pursuant to examination, on the basis of minimum qualifications; such qualifications to be established by the board.

(2) The board may by regulation provide for provisional appointments of such employees for a reasonable period, upon the termination of which an employee shall be dismissed or given permanent status, subject to removal as the regulations may provide.

(3) The board may by regulation provide for the removal, suspension or demotion of employees for cause specified in the regulations.

(4) The board may by regulation provide for a classification plan and salary schedule for employees, including provisions for promotion and recognition of merit, leave and in-service training.

(5) The director may be discharged for good cause by the board at any time notwithstanding the terms or conditions of his employment, and, unless the director waive his right to a public hearing, such discharge shall be subject to the following procedure:

(a) Upon a finding of good cause by resolution of the board, the director shall be deemed suspended and immediately relieved of his authority.

(b) Within five days after such action by the board, a copy of the resolution shall be furnished the director, and, at his request, the board shall set a date for the hearing of such charges, the hearing to be held not more than twenty-five days from the date of such request.

(c) At such hearing, the board shall hear and receive testimony relating to the truth or falsity of the charges specified in the resolution, or relating to additional charges submitted at the hearing. At the conclusion of the hearing, the board shall, by resolution, make its findings in the matter. In the resolution, the board may find that any of the charges constituting good cause for removal have been sustained, in which event the director shall be removed. The board may find that the charges have not been sustained or may withdraw any or all of the charges, and in the event no charge constituting good cause for removal is sustained, the director shall be reinstated without loss of compensation or other rights for the period the suspension was in effect.

(6) In lieu of the above provisions of this section, the board may elect to place the director and all other employees of the division under the general state merit system as provided in chapter 110.

History.—§16, ch. 57-213; (1), (6) a. by §18, ch. 61-530.

CHAPTER 947

PAROLE

947.01 Creation of probation and parole commission; number and qualification of its members.—A probation and parole commission, hereafter called commission, is created to consist of three citizens who are residents of the state. Only persons who are citizens of Florida and who have resided within the state for a period of ten years or more and by their knowledge of penology and social welfare are qualified efficiently to discharge the duties and perform the work of the commission shall be eligible to appointment to said position.

History.—§1, ch. 20519, 1941; §1, ch. 63-83.

947.02 Commission; appointment.—

(1) The members of the commission shall be appointed in the following manner: The board of commissioners of state institutions shall appoint an examining board which shall consist of five persons having special knowledge of penal treatment and the administration of criminal justice, and shall designate one member thereof as chairman. The board of commissioners of state institutions shall provide for the receiving of applications for the position of member of the parole commission and shall devise a plan for the determination, by examination and investigation, of the qualification, of applicants. From such examinations and investigations said examining board shall compile a list of not more than ten persons eligible for said position of member of the commission, and said list shall expire at the end of two years. The examining board shall rank such eligibles on the list in the order of their relative fitness as determined by examination and investigation. The board of commissioners of state institutions shall make each appointment to the position of member of the parole commission from the three eligibles having the highest rank on said list. The members of the commission shall be certified to the senate by the board of commissioners of state institutions for confirmation.

(2) Whenever the term of office of a member of the commission expires, the board may, in its discretion, reappoint the member without requiring him to take an examination.

History.—§1, ch. 20519, 1941.

947.03 Commission; tenure and removal.—

(1) The first three members of the commission shall be appointed for the terms of two, four, and six years respectively; and said board shall designate in its appointments the term for which each of said three first members is appointed. At the expiration of said terms the successors to said first members shall be appointed for terms of six years and until their successors are appointed and qualified.

(2) Vacancies in the membership of the commission shall be filled by the board of commissioners of state institutions for the unexpired term in the manner hereinabove provided.

(3) Each member shall devote his whole time and capacity to the duties of his office, and shall be subject to removal by the board of commissioners of state institutions for the same reasons that a state officer may be removed as provided in §15, article IV of the constitution. All such removals shall be submitted to the senate for its consent as provided by said section of the constitution.

History.—§1, ch. 20519, 1941.

947.04 Organization of commission; officers; offices.—

(1) As soon as practicable after their appointment the members of the commission shall meet and select from their number a chairman who shall serve for a period of two years and until his successor is elected and qualified, and they shall likewise select from their number a secretary who shall serve for a period of two

years and until his successor is elected and qualified.

(2) The commission may establish and maintain offices in centrally and conveniently located places in Florida. Headquarters shall be located in Tallahassee, for the transaction of business. The commission shall keep its official records and papers at said office, which it shall furnish and equip.

History.—§2, ch. 20519, 1941.

947.05 Seal.—The commission shall adopt an official seal of which the courts shall take judicial notice.

History.—§3, ch. 20519, 1941.

947.06 Meeting; when commission may act.—The commission shall meet at the call of the chairman and from time to time as may otherwise be determined by the commission. A majority of the commission shall constitute a quorom for the transaction of all business. No prisoner shall be placed on parole except by vote of a majority of the commission.

History.—§4, ch. 20519, 1941. Am. §1, ch. 23757, 1947.

947.07 Rules and regulations.—The commission shall have power to make such rules and regulations as it deems best for its governance, including among other things rules of practice and procedure and rules prescribing qualifications to be possessed by its employees.

History.—§27, ch. 20519, 1941; am. §1, ch. 23757, 1947.

947.08 Clerical and other assistance; supplies, materials, other expenses.—The commission may appoint such supervisors, assistants and other employees and fix their compensation, and purchase such supplies and materials and incur such other expense as it may deem necessary for the proper and efficient performance of its duties, and in its discretion may discharge any such employee. Only citizens of Florida who have resided in and been bona fide residents of the state for two years or more next prior to the date thereof shall be eligible for employment by the commission, except only where after due diligence no person can be found in the state possessing the required qualifications necessary to the particular employment.

History.—§5, ch. 20519, 1941; am. §1, ch. 21775, 1943.

947.09 Competitive examinations for certain full-time employees.—

(1) The commission shall from time to time as may be necessary prepare and conduct or cause to be prepared and conducted, free competitive examinations for all full-time positions requiring special knowledge in penology, social welfare or correctional supervision, which the commission may have the power to fill. Such examinations may be written or oral. Written portions of such examinations shall be conducted so that the identity of the examinees shall not be known to the examiners. Only citizens of Florida who have resided in and have been bona fide residents of the state for two years or more next prior to the date thereof shall be eligible to take such examinations and for employment by the commission.

(2) From the examinations so conducted, the commission shall compile lists of eligibles from which it shall make its selections to the positions for which said examinations shall have been held. Such lists shall not remain in force for a longer period than two years, and at the expiration of said period, or upon the exhaustion of any list, a new list shall be compiled by the commission before another selection may be made to a position for which the expired or exhausted list was applicable, except that in an emergency the commission may provisionally employ a person for a position for which no eligible list is available. No such provisional employment shall be for a longer period than three months, and successive provisional employment shall not be made by the commission.

(3) Persons taking such examinations shall rank upon such eligible lists in the order of their relative fitness as determined by such examination. To fill any such full-time position, and any vacancy occurring therein, the commission shall employ one person from the three persons standing highest on the applicable eligible list.

History.—§6, ch. 20519, 1941; am. §2, ch. 21775, 1943.

947.10 Business and political activity upon part of members and full-time employees of commission.—No member of the commission and no full time employee thereof shall, during their service upon or under the commission engage in any other business or profession nor hold any other public office; nor shall they serve as the representative of any political party, or any executive committee or other governing body thereof, or as an executive officer or employee of any political committee, organization, or association, or be engaged on the behalf of any candidate for public office in the solicitation of votes, or otherwise.

History.—§7, ch. 20519, 1941.

947.11 Legal adviser.—The attorney general shall be the legal adviser of the commission.

History.—§8, ch. 20519, 1941.

947.12 Members, employees, expenses.—The members of the commission and its employees shall be reimbursed for traveling expenses as provided in §112.061. All bills for expenses shall be properly receipted, audited, and approved and forwarded to the comptroller, and shall be paid in a manner and form as the bills for the expenses of the several departments of the state government are paid. All expenses, including salaries and other compensation, shall be paid from the general revenue fund and within the appropriation as fixed therefor by the legislature. Such expenses shall be paid by the state treasurer upon proper warrants issued by the comptroller of the state, drawn upon vouchers and requisitions approved by the commission, signed by the comptroller and countersigned by the governor.

The members of the examining board created in §947.02 shall each be paid ten dollars per diem for each full day spent in performing

the duties of said board, and in addition thereto said members shall be paid by the state their necessary traveling expenses when traveling in the performance of their duties.

History.—§9, ch. 20519, 1941; §1, ch. 22864, 1945; §1, ch. 24033, 1947; §8, ch. 57-401; §19, ch. 63-400.

947.13 Certain powers and duties of commission relative to parole, conditional release, etc.—The commission shall have the powers and perform the duties of determining what persons shall be placed on parole, and of fixing the time and the conditions of such parole, as provided in this chapter. The commission shall also have the powers and perform the duties of supervising all persons placed on parole and of determining violations thereof and what action shall be taken with reference thereto; of making such investigations as may be necessary; of aiding parolees and probationers in securing employment; of reporting to the board of pardons the facts, circumstances, criminal records, social, physical, mental and psychiatric conditions and histories of persons under consideration by the board of pardons for pardon, commutation of sentence, or remission of fine, penalty, or forfeiture.

History.—§10, ch. 20519, 1941.

947.14 Records of commission.—

(1) It shall be the duty of the commission to obtain and place in its permanent records information as complete as may be practicably available on every person who may become subject to parole. Such information shall be obtained as soon as possible after imposition of sentence and shall, in the discretion of the commission, include among other things the following:

(a) A copy of the indictment or information, and a complete statement of the facts of the crime for which such person has been sentenced;

(b) The court in which the person was sentenced;

(c) The terms of the sentence;

(d) The name of the presiding judge, the prosecuting officers, the investigating officers, and the attorneys for the person convicted;

(e) A copy of all probation reports which may have been made;

(f) Any social, physical, mental, psychiatric or criminal record of such person.

(2) The commission, in its discretion, shall also obtain and place in its permanent records such information on every person who may be placed on probation, and on every person who may become subject to pardon and commutation of sentence.

(3) The commission shall immediately examine such records, and any other records which it obtains, and may make such other investigations as may be necessary.

(4) It shall be the duty of the court, and its prosecuting officials, to furnish to the commission upon its request such information and also to furnish such copies of such minutes and other records as may be in their possession or under their control.

(5) The welfare board of the state, and all other state, county and city agencies, sheriffs and their deputies, and all peace officers shall cooperate with the commission and shall aid and assist it in the performance of its duties.

(6) The commission may make such rules as to the privacy or privilege of such information and its use by others than the commission and its staff as may be deemed expedient in the performance of its duties.

History.—§11, ch. 20519, 1941.

947.15 Reports.—On or before the first day of January of each year the commission shall make a written report to the board of commissioners of state institutions, of its activities together with a full and detailed financial statement, copies of which shall be sent to the governor and to the attorney general and to such other officials and persons as the commission may deem advisable. One copy of said report shall become a part of the records of the commission.

History.—§28, ch. 20519, 1941.

947.16 Eligibility for parole; power of commission.—

(1) Every person who has been, or who may hereafter be convicted of a felony or one who has been convicted of one or more misdemeanors and whose sentence or cumulative sentences total twelve months or more and confined in a jail or prison in this state in execution of the judgment of the court thereof and who has served not less than six months of such term, and in cases where the term is eighteen months or less, has served not less than one-third of his term, and whose prison record is good, shall be eligible for consideration by the commission for parole.

(2) Persons who have become eligible for parole and who may in the discretion of the commission be granted parole shall be placed on parole in accordance with the provisions of this law.

History.—§12, ch. 20519, 1941; am. §3, ch. 21775, 1943.

947.17 Procedure in granting parole.—

(1) A person shall be placed on parole upon the initiative of the commission and with the consent of such person.

(2) At least thirty days prior to the time that a person shall first become eligible for parole, and at such other times thereafter as the commission shall determine, the commission shall cause to be brought before it all pertinent information on such person. Included therein shall be a report of the superintendent, warden, or jailer of the jail or prison in which such person has been confined upon the conduct and record of such person while in such jail or prison; the result of such physical, mental and psychiatric examination as have been made of such person; the extent to which such person appears to have responded to the efforts made to improve his social attitude; his industrial record while confined and the nature of his occupation while so confined, and a recommenda-

tion as to the kind of work he is best fitted to perform and at which he is most likely to succeed when and if he is released.

(3) The commission may make such investigation as it may deem necessary in order to be fully informed on such person.

(4) Before placing any person on parole the commission may have such person appear before it and may personally examine him.

(5) Thereafter, upon consideration, the commission shall make its findings and determine whether or not such person shall be granted a parole and the terms and conditions thereof, of which determination such person and the prison official having him in custody shall be notified.

(6) If such person is granted a parole, the prison official having such person in custody shall, upon notification thereof, inform him of the terms and conditions of such parole and shall in strict accordance therewith, release such person. If such person is indigent at the time he is placed on parole, which fact may be determined in advance by the commission, he shall be given his transportation by the nearest route to the destination noted in the parole. In addition thereto he shall be given a suit of clothes, one pair of shoes, a hat, a suit of underclothing, not to exceed in value, in the aggregate, the sum of fifteen dollars, and ten dollars in cash, the cost of which shall be payable by the state as other expenses of the administration of the state prison are paid.

History.—§13, ch. 20519, 1941.

947.18 Conditions of parole. — No person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison. No person shall be placed on parole until and unless the commission shall find that there is reasonable probability that, if he is placed on parole, he will live and conduct himself as a respectable and law abiding person, and that his release will be compatible with his own welfare and the welfare of society. No person shall be placed on parole unless and until the commission is satisfied that he will be suitably employed in self-sustaining employment, or that he will not become a public charge. The commission shall determine the terms upon which such persons shall be granted parole.

History.—§14, ch. 20519, 1941.

947.19 Terms of parole.—The commission, upon placing a person on parole, shall specify in writing the terms and conditions of his parole. A certified copy thereof shall be given to the parolee.

History.—§15, ch. 20519, 1941; am. §7, ch. 22858, 1945.

947.20 Rules of commission.—The commission shall adopt general rules on the terms and conditions of parole and what shall constitute the violation thereof, and may make such special rules to govern particular cases. Such rules, both general and special, may include, among other things, a requirement that the parolee shall not leave the state or any definite area in Florida without the consent of the commission; that he shall contribute to the support of his dependents to the best of his ability; that he shall make reparation or restitution for his crime; that he shall abandon evil associates and ways; that he shall carry out the instructions of his parole supervisor and, in general, so comport himself as such supervisor shall determine.

History.—§15, ch. 20519, 1941.

947.21 Violations of parole.—A violation of the terms of parole may render the parolee liable to arrest and a return to prison to serve out the term for which he was sentenced. No part of the time he may have been on parole shall in such event, in any manner diminish the time of such sentence.

History.—§15, ch. 20519, 1941.

947.22 Authority of certain officers to arrest parole violators with and without a warrant.—

(1) If any member of the commission shall have reasonable ground to believe that any parolee has lapsed into criminal ways, or has violated the terms and conditions of his parole in a material respect, such member may issue a warrant for the arrest of such parolee. Said warrant, if issued by a member of the commission, shall be returnable before him and shall command that the parolee be brought before him, when he may examine such parolee and admit him to bail conditioned for his appearance before the parole commission, or if he is not admitted to bail, commit him to jail pending a hearing before the commission as hereinafter provided. Any parole or probation supervisor, and all officers authorized to serve criminal process, and all peace officers of this state, shall be authorized to execute said warrant.

(2) Any parole or probation supervisor, when he has reasonable ground to believe that a parolee has violated the terms and conditions of his parole in a material respect, shall have the right to arrest without warrant said parolee and bring him forthwith before the commission, or some member thereof, and proceedings shall thereupon be had as provided herein when a warrant has been issued by a member of the commission.

History.—§16, ch. 20519, 1941.

947.23 Action of commission upon arrest of parolee.—

(1) As soon as practicable after the arrest of a person charged with violation of the terms and conditions of his parole, such parolee shall appear before the commission in person, and if he desires he may be represented by counsel, and a hearing shall be had at which the state and the parolee may introduce such evidence as they may deem necessary and pertinent to the charge of parole violation. Within a reasonable time thereafter the commission shall make findings upon such charge of parole violation and shall enter an order determining whether said charges of parole violation have been sustained. The commission shall in and by said order revoke said parole and return said person to prison to serve the sentence theretofore imposed

upon him, or reinstate the original order of parole, or shall enter such other order as it may deem proper.

(2) Whenever a parole is revoked by the parole commission and said parolee ordered by said commission to be returned to prison, the parolee, by reason of his misconduct, shall be deemed to forfeit all gain time or commutation of time for good conduct, as provided for by former §954.06, earned up to the date of his release on parole. Nothing herein shall deprive the prisoner of his right to gain time or commutation of time for good conduct, as provided by former §954.06, from the date he is returned to prison.

History.—§17, ch. 20519, 1941; am. §4, ch. 21775, 1943.

947.24 Discharge from parole.—When a person is placed on parole the commission shall determine the period of time the person shall be on parole, and such time shall not exceed the maximum term for which he has been sentenced. The commission after having retained jurisdiction of a person for a sufficient length of time to evidence satisfactory rehabilitation and cooperation may relieve a person on parole from making further reports, or may permit such person to leave the state or county, upon determination that such action is in the best interests of the person and of society.

History.—§18, ch. 20519, 1941; §1, ch. 63-83.

947.25 Recommendations to board of pardons.—When a parolee has, in the opinion of the commission, so conducted himself as to deserve a pardon or a commutation of sentence or the remission in whole or in part of any fine, forfeiture or penalty, the commission may recommend that such clemency be extended by the board of pardons to such parolee. In such case the commission shall fully advise said board of the facts upon which such recommendation is based.

History.—§18, ch. 20519, 1941.

947.26 Cooperation of custodian of prisoner; right of access.—The superintendent, warden, or jailer of any jail or prison in which persons convicted of crime may be confined, and all officers or employees thereof, shall at all times co-operate with the commission, and upon its request shall furnish it with such information as they may have respecting any person inquired about as will enable the commission properly to perform its duties. Such officials shall at all reasonable times, when the public safety permits, give the members of the commission, its authorized agents and employees, access to all prisoners in their charge.

History.—§19, ch. 20519, 1941.

CHAPTER 948
PROBATION

948.01 When courts may place defendant on probation.—

(1) Any court of the state having original jurisdiction of criminal actions, where the defendant in a criminal case has been found guilty by the verdict of a jury or has entered a plea of guilty or a plea of nolo contendere or has been found guilty by the court trying the case without a jury, except for an offense punishable by death, may at a time to be determined by the court, either with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of such defendant.

(2) Prior to such hearing the court may refer the case to the parole commission for investigation and recommendation. The court, upon such reference, shall direct the commission and it shall be the duty of the commission to make an investigation and report in writing at a specified time to the court upon the circumstances of the offense, the criminal record, the social history, and the present condition of defendant together with its recommendation.

(3) If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt and in either case stay and withhold the imposition of sentence upon such defendant, and shall place him upon probation under the supervision and control of the parole commission for the duration of such probation. And the said commission shall thereupon and thereafter, during the continuance of such probation, have the supervision and control of the defendant.

(4) In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation unless such defendant be placed under the custody of said parole commission except as provided in §949.03.

History.—§20, ch. 20519, 1941; am. §7, ch. 22858, 1945; (1) and (3) by §1, ch. 59-130; (1), (3) a. by §1, ch. 61-498.
cf.—§924.06, Appeal by probationer.
§949.01, Juvenile courts unaffected.

948.011 When court may impose fine and place on probation as to imprisonment.—When the law authorizes the placing of a defendant on probation, and when his offense is punishable by both fine and imprisonment, the trial court may, in its discretion, impose a fine upon him and place him on probation as to imprisonment.

History.—§1, ch. 59-175.

948.02 Duties of parole commission relating to probationers.—

(1) It shall be the duty of the parole commission to investigate all cases referred to it by the court and to make its findings and report thereon in writing to such court with its recommendation; to cause to be delivered to each person placed on probation under its supervision a certified copy of the terms of such probation, and any change or modification thereof, and to cause said person to be instructed regarding the same; to keep informed concerning the conduct, habits, associates, employment, recreations, and whereabouts of such probationer, by visits, requiring reports and in other ways; to make such reports in writing or otherwise as the court may reasonably require; to use all practicable and proper methods to aid and encourage persons on probation, and to bring about improvement in their conduct and condition; to keep records on each probationer referred to it.

(2) The commission shall cooperate with courts exercising criminal jurisdiction by supervising such probationers and prisoners upon whom the pronouncing of sentence has been deferred; and shall make such reports to said courts as directed thereby.

History.—§21, ch. 20519, 1941.
cf.—§§949.07, 949.08, Compacts with other states.

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation and may include among them the following: That the probationer shall (a) avoid injurious or vicious habits; (b) avoid persons or places of disreputable or harmful character; (c) report to the parole and probation supervisors as directed; (d) permit such supervisors to visit him at his home, or elsewhere; (e) work faithfully at suitable employment insofar as may be possible; (f) remain within a specified place; (g) make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court; (h) support his legal dependents to the best of his ability.

(2) The enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto such other or others as it considers proper. The court may rescind or modify at any time of the terms and conditions

theretofore imposed by the court upon the probationer.

History.—§23, ch. 20519, 1941.
cf.—§§949.07, 949.08, Compacts with other states.

948.04 Period of probation; duty of probationer.—The period of probation shall not extend more than two years beyond the maximum term for which the defendant might have been sentenced; provided, however, that if, during the period of probation of any case, it appears to the court that further supervision would be beneficial to the probationer or to society, the court may, by proper order, extend the supervision period, within the limits of time hereinabove specified. Upon the termination of the period of probation, the probationer shall be released from probation and shall not be liable to sentence for the crime for which probation was allowed. During the period of probation the probationer shall perform the terms and conditions of his probation.

History.—§24, ch. 20519, 1941; am. §5, ch. 21775, 1943.

948.05 Court to admonish or commend probationer.—The court may at any time cause the probationer to appear before it to be admonished, or commended, and when satisfied that its action will be for the best interests of justice and the welfare of society, may discharge the probationer from further supervision.

History.—§25, ch. 20519, 1941.
cf.—§949.04, Construction of law.

948.06 Violation of probation; revocation; modification; continuance.—

(1) Whenever within the period of probation there is reasonable ground to believe that a probationer has violated his probation in a material respect, any parole or probation supervisor may arrest such probationer without warrant wherever found, and forthwith shall return him to the court granting such probation. Any committing magistrate may issue a warrant upon the facts being made known to him by affidavit of one having knowledge of such facts for the arrest of the probationer, returnable forthwith before the court granting such probation. The court, upon the probationer being brought before it, shall advise him of such charge of violation and if such charge is admitted to be true may forthwith revoke, modify or continue probation and, if revoked, shall adjudge the probationer guilty of the offense charged and proven or admitted, unless he shall have previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation; if such violation of probation is not admitted by the probationer, the court may commit him or release him with or without bail to await further hearing, or it may dismiss the charge of probation violation. If such charge is not at said time admitted by the probationer and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer an opportunity to be fully heard on his behalf in person or by counsel. After such hearing, the court may revoke, modify or continue the probation. If such probation is revoked, the court shall adjudge the probationer guilty of the offense charged and proven or admitted, unless he shall have previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation.

(2) No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve.

History.—§26, ch. 20519, 1941; (1) by §2, ch. 59-130; (1) a. by §2, ch. 61-498.

CHAPTER 949

PAROLE AND PROBATION; GENERAL PROVISIONS

949.01 Juvenile courts unaffected.—Nothing in chapters 947-949 shall be construed to change or modify the law respecting parole and probation as administered by the juvenile courts of this state.

History.—§30, ch. 20519, 1941.
cf.—Ch. 39, Juvenile courts.

949.02* Florida industrial school for boys; Florida industrial school for girls.—Nothing in chapters 947-949 shall be construed to change or modify the law respecting paroles as administered at the Florida industrial school for boys and the Florida industrial school for girls.

History.—§31, ch. 20519, 1941.
*Name changed to Florida school for boys; Florida school for girls by §1, ch. 57-317.

949.03 Probation officers under previous acts.—

(1) Nothing in chapters 947-949 shall be construed as abridging, repealing, or altering the provisions of chapter 19245, acts of 1939, creating and establishing the office of probation and parole officer for the criminal court of record and court of crimes in certain counties, etc., and chapter 19248, acts of 1939, creating and establishing the office of probation and parole officer for the criminal court of record of all counties having a population of not less than eighty-five thousand and not more than one hundred sixty-five thousand, save and except that after the court has placed a defendant on probation and under the control and supervision of the parole commission such control and supervision shall be exclusive. Such probation officer shall, thereafter, as to such probationer of the court theretofore appointing him, act only under and pursuant to the instruction of the said commission.

(2) In all criminal courts of record or courts of crimes, created by special legislative acts not specifically covered by subsection (1) of this section, the parole commissioners shall appoint the parole supervisors and shall determine their compensation subject to the provisions of §947.09; provided, however, the expense and salary of the supervisor shall be paid by the court affected. All special courts of record of whatever nature shall be subject to the general provisions of this chapter, as to appointments of parole supervisors.

History.—§§32 and 32-A, ch. 20519, 1941; §32, ch. 29615, 1955.

949.04 Law to be liberally construed.—Chapters 947-949 shall be liberally construed that its objects may be achieved.

History.—§33, ch. 20519, 1941.

949.05 Constitutionality.—

(1) If any clause, sentence, paragraph, section, or part of chapters 947-949 shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional, invalid, or void, such judgment shall not affect, impair, or invalidate the remainder of the law, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(2) If the method of selecting the commission members as herein provided is found to be invalid by reason of the vesting of the appointing power in the board of commissioners of state institutions, the members of the parole commission herein provided for shall be appointed by the governor.

History.—§34, ch. 20519, 1941.

949.06 Short title.—Chapters 947, 948 and 949 (except §§949.07-949.09) shall be known as the parole and probation law.

History.—§36, ch. 20519, 1941.

949.07 Compacts with other states. — The governor is hereby authorized and directed to enter into a compact on behalf of the state with any state of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the congress, granted by an act entitled "An act granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there.

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the

meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary more effectively to carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified, it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) That this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

History.—§1, ch. 20455, 1941.

949.071 Definition of "state" as used in §949.07; further declaration relating to interstate compacts.—It is hereby declared that the term "state," as used in §949.07, relating to and authorizing and directing the governor to enter into an interstate compact in behalf of Florida with any state of the United States for out-of-state supervision of probationers and parolees, and prescribing the form to be substantially used for any such compact, means any one of the several states and Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.

It is hereby recognized and further declared that pursuant to the consent and authorization contained in §111(b) of title 4 of the United States code as added by public law 970-84th congress, chapter 941-2d session, this state shall be a party to said interstate compact for the supervision of parolees and probationers with any additional jurisdiction legally joining therein when such jurisdiction shall have enacted said compact in accordance with the terms thereof.

History.—§1, ch. 57-89.

949.08 Parole commission to enact rules and regulations relating to compacts.—The parole commission shall have power and shall be charged with the duty of promulgating such rules and regulations and the expenditures of funds as may be deemed necessary to carry out the terms, conditions and intents of a compact entered into by the state pursuant to §949.07.

History.—§2, ch. 20455, 1941.

949.09 Same; short title.— §§949.07-949.08 shall be known as the uniform law for out-of-state probation and parole supervision.

History.—§4, ch. 20455, 1941.

CHAPTER 950
JAILS AND JAILERS

950.01 Confinement in jail of another county.—When it appears to the court at the time of passing sentence upon any prisoner who is to be punished by imprisonment in the county jail that there is no jail in the county suitable for the confinement of such prisoner, the court may order the sentence to be executed in any county in this state in which there may be a jail suited to that purpose, and the expense of supporting such prisoner shall be borne by the county in which the offense was committed.

History.—§25, ch. 1637, sub-ch. 13, 1868; RS 3027; GS 4104; RGS 6208; CGL 8540; §1, ch. 61-488.
cf.—§839.21, Penalty for refusal to receive prisoner.

950.02 Removal to jail of another county.—(1) When in the opinion of the governor the interests of the state demand it, the circuit judge shall, upon the request of the governor, make an order directing that any person held under a criminal charge shall be confined in the jail of another county of the state than that in which the offense charged is alleged to have been committed.

(2) When it shall be made to appear to a circuit judge to be necessary to quickly remove a prisoner to the jail of another county for safe-keeping or to prevent injury to such prisoner, and the governor is not easily accessible, or it is deemed inadvisable, by reason of circumstances, to first communicate with the governor, the circuit judge shall make an order directing that any person held under a criminal charge shall be confined in the jail of another county of the state than that in which the offense is alleged to have been committed. Immediately after the removal the sheriff of the county from which the prisoner was removed shall make full report to the governor of the state of the reasons for such removal and attach a copy of the said judge's order.

(3) No order above referred to shall be made except by the judge of the circuit in which the county where the offense is alleged to have been committed is located. Such order shall be of full force and effect throughout the state, but the county to which the prisoner is sent, or any officer thereof, is not required to incur or pay any expense or charge of maintaining such prisoner.

History.—§§1, 2, ch. 3207, 1881; RS 3028; GS 4105; RGS 6209; CGL 8541; §§1-3, ch. 20414, 1941.
cf.—§923.20, Form of commitment to jail of another county.

950.03 County jailers to receive United States prisoners.—The keeper of the jail in each county within this state shall receive into his custody any prisoner who may be committed to his charge under the authority of the United States, and shall safely keep each prisoner according to the warrant or precept for such commitment, until he is discharged by due course of law of the United States.

History.—§1, ch. 85, 1847; RS 3029; GS 4106; RGS 6210; CGL 8542.

950.04 Penalty for neglect of duty in keeping prisoners of the United States.—The keeper of each jail shall be subject to the same penalties for any neglect or failure of duty in keeping prisoners who are committed to his charge under the authority of the United States, as he would be subject to under the laws of this state for the like neglect or failure in the case of prisoners committed under the authority of the said laws; provided, the United States pays or causes to be paid to the jailer such fees as he would be entitled to for like service rendered by virtue of the existing laws of this state during the time such prisoners shall be therein confined; and moreover, supports such of the prisoners as shall be committed for offenses.

History.—§2, ch. 85, 1847; RS 3030; GS 4107; RGS 6211; CGL 8543.

950.05 Jails to be constructed so white and colored male and female prisoners may be separated.—The county commissioners of the respective counties of this state shall so arrange the jails of their respective counties that it shall be unnecessary to confine in said jails in the same room, cell or apartment white and negro prisoners, or male and female prisoners.

History.—§1, ch. 5967, 1909; RGS 6213; CGL 8545.

950.06 Unlawful for white and colored prisoners, male and female prisoners, to be confined together.—It is unlawful for white and negro prisoners to be confined in the county jails of this state in the same cell, room or apartment, or be so confined as to be permitted to commingle.

It is unlawful for male and female prisoners in said jails to be confined in the same cell, room or apartment, or be so confined as to be permitted to commingle, and the sheriffs of this state shall confine and separate all prisoners in their custody or charge in accordance with this chapter.

History.—§2, ch. 5967, 1909; RGS 6214; CGL 8546.

950.07 Appropriation authorized to remodel jail so classes of prisoners may be separated.—The county commissioners of the several

counties of this state are authorized to appropriate from the general revenue fund of the said counties such moneys as are necessary to carry into effect the provisions of §§950.05-950.06.

History.—§8, ch. 5967, 1909; RGS 6215; CGL 8547.

950.08 Officers refusing to comply with law subject to removal.—Any board of county commissioners and any sheriff willfully refusing to carry out and comply with the provisions of §§950.05 and 950.06 in their respective spheres of duty shall be removed from office by the governor.

History.—§4, ch. 5967, 1909; RGS 6216; CGL 8548.

950.09 Malpractice by jailers.—If any jailer shall, by too great duress of imprisonment or otherwise, make or induce a prisoner to disclose and give evidence against some other person, or be guilty of willful inhumanity and oppression to any prisoner under his care and custody, he shall be punished by removal from office and imprisonment not exceeding six months, or by fine not exceeding three hundred dollars.

History.—§20, Feb. 10, 1832; RS 2574; GS 3490; RGS 5366; CGL 7500.
cf.—§955.16, Hiring out boys in Florida schools for boys.

CHAPTER 951

COUNTY AND MUNICIPAL PRISONERS

951.01 County prisoners may be put to labor.—The board of county commissioners of each county may employ all persons in the jail of their respective counties under sentence upon conviction for crime, at labor upon the roads, bridges, or other public works of the county where they are so imprisoned. County prisoners shall be kept and worked under such rules and regulations and supervisions as may be prescribed by the director of the division of corrections, with the advice and approval of the board of commissioners of state institutions, and the director of the division of corrections, with the approval of the board of commissioners of state institutions, may enforce all such rules and regulations. Upon the failure of any person in charge of said county prisoners to comply with such rules and regulations, the director of the division of corrections, with the approval of the board of commissioners of state institutions, may require the discharge of such person.

History.—§1, ch. 2090, 1877; RS 3032; GS 4109; §1, ch. 5705, 1907; §1, ch. 5963, 1909; RGS 6217; §1, ch. 7323, 1917; §1, ch. 9203, 1923; CGL 8549; §44, ch. 57-121; §1, ch. 61-488; §18, ch. 61-530.

cf.—§336.42 County convicts may be put to labor.
§922.05 Forms of sentence to state prison and county jail.
§951.12 Working prisoners on public roads and exchange of prisoners between counties.

951.02 Duty of prison inspectors for state prisoners.—Prison inspectors for state prisoners shall inspect and supervise all county prison camps, under the direction of the director of the division of corrections. The prison inspectors shall make written reports to the director of the division of corrections and shall send duplicate copies of said reports to the board of county commissioners of the county in which said prisoners so inspected were sentenced, which reports shall at all times be open to public inspection.

History.—§1, ch. 2090, 1877; RS 3032; GS 4109; §1, ch. 5705, 1907; §1, ch. 5963, 1909; RGS 6217; §1, ch. 7323, 1917; §1, ch. 9203, 1923; CGL 8549; §44, ch. 57-121; §§1, chs. 61-198, 61-488; §18, ch. 61-530.

951.03 County commissioners to provide food, etc.—Boards of county commissioners when working county prisoners on the public works of the counties, shall provide or cause to be provided, substantial food, clothes, shoes, medical attention, etc., for said prisoners as are required for state prisoners in the state.

History.—§1, ch. 2090, 1877; RS 3032; GS 4109; §1, ch. 5705, 1907; §1, ch. 5963, 1909; RGS 6217; §1, ch. 7323, 1917; §1, ch. 9203, 1923; CGL 8549; §1, ch. 61-488.

951.04 Duty of county commissioners upon discharge of prisoner.—When a prisoner is discharged by reasons of having served his sentence, or upon receiving a pardon or parole, he shall be furnished transportation, or its equivalent in money, back to the place from which he was sentenced, together with the sum of five dollars, where the sentence is for four months or more, and the sum of three dollars where the sentence is for a less period than four months, in addition to his transportation, all of which shall be paid out of the general fund of the county in which he was convicted, and for the purpose of carrying out the provisions of this chapter, the clerk of the board of county commissioners of each county shall, under the directions of said board, issue a check on said fund with which to pay these amounts to the prisoners being discharged at the time of their release.

History.—§1, ch. 2090, 1877; RS 3032; GS 4109; §1, ch. 5705, 1907; §1, ch. 5963, 1909; RGS 6217; §1, ch. 7323, 1917; §1, ch. 9203, 1923; CGL 8549; §1, ch. 61-488.

951.05 Working county prisoners on roads and bridges or other public works of the county; hiring out to another county.—The board of county commissioners of the several counties may require all county prisoners under sentence confined in the jail of their respective counties for any offense, to labor upon the public roads, bridges, farms or other public works owned and operated by the county, or in the event the county commissioners of any county deem it to the best interest of their county, they may hire out their prisoners to any other county in the state to be worked upon the public roads,

bridges, or other public works of that county, or they may, upon such terms as may be agreed upon between themselves and the state road department, lease or let said prisoners to the said department instead of keeping them in the county jail where they are sentenced. The money derived from the hire of such prisoners shall be paid to the county hiring out such prisoners and placed to the credit of the fine and forfeiture fund of the county.

History.—§13, ch. 6537, 1913; RGS 6218; §2, ch. 9203, 1923; CGL 8550; §1, ch. 61-488.

951.06 Employment of guards; duties; salary.—

(1) The county commissioners shall employ a captain or warden and such guards as they deem necessary, pursuant to standards for employment established by the board of commissioners of state institutions and administered by the director of the division of corrections.

(2) All captains or wardens of prisoners shall see that all rules and regulations prescribed by law or the director of the division of corrections and the board of commissioners of state institutions are fully observed and complied with; enforce discipline among the prisoners in and about the camps; and administer punishment to prisoners, when in their judgment the same is necessary in order to enforce proper discipline, conforming always to the law and rules and regulations.

(3) All boards of county commissioners shall immediately discharge any captain, warden or guard in their employ who shall be guilty of gross negligence or cruel and inhuman treatment of prisoners under their control and their action shall be final.

(4) The salaries of captains, wardens and guards provided for in this chapter shall be fixed by the board of county commissioners employing them, and the captain or warden shall be furnished means of transportation over the roads of the county when necessary, the upkeep and operation of which shall be furnished by the county; provided, however, the county shall not in any case be required to furnish a driver of such conveyance where such services are required to be paid for.

(5) All salaries contemplated by this chapter shall be paid from the general revenue fund of the county.

History.—§13, ch. 6537, 1913; RGS 6218; §2, ch. 9203, 1923; CGL 8550; §44, ch. 57-121; §2, ch. 61-198; (2) a. by §1, ch. 61-198 and §18, ch. 61-530.
cf.—§336.43 Employment of convict guards.

951.07 Punishment of prisoners; rules and regulations.—The flogging or whipping of prisoners in this state is prohibited, but the director of the division of corrections may make and enforce suitable and reasonable rules and regulations for the government of such prisoners while serving sentences in prison camps or jails, and enforce the same by solitary confinement, restriction of privileges or any other humane and reasonable method of punishment. Any prisoner in any jail or prison camp of this state who shall repeatedly, knowingly and willfully refuse to obey any such reasonable rule or regulation while being subject thereto, shall be deemed guilty of a substantive offense, and upon conviction thereof, shall be punished as for a misdemeanor under the general laws of this state, and such punishment shall upon his conviction be in addition to the sentence he is then serving.

History.—§13, ch. 6537, 1913; RGS 6218; §2, ch. 9203, 1923; CGL 8550, §44, ch. 57-121; §1, ch. 61-488; §18, ch. 61-530.
cf.—§775.07, Punishment for misdemeanor.
§§951.07, 951.08, Punishment for prisoners.

951.08 Working prisoner more than ten hours per day prohibited.—No prisoner shall be compelled to labor more than ten hours per day nor be subject to punishment for any refusal to labor beyond such limit; provided, that the ten hours shall be the time embraced from the leaving to the return of the prisoner to his place of detention.

History.—§13, ch. 6537, 1913; RGS 6218; §2, ch. 9203, 1923; CGL 8550; §1, ch. 61-488.

951.10 Leasing prisoners to work for private interests prohibited.—No county prisoners shall be leased to work for any private interests.

History.—§3, ch. 9203, 1923; CGL 8551; §1, ch. 61-488.

951.11 Turning prisoners over to board of bond trustees, etc.—The board of county commissioners in counties where a board of bond trustees, board of public works or other duly constituted board, has charge of the construction and maintenance of the public roads may turn the county prisoners over to the said trustees to be worked on the public roads of said county, subject to all the rules and regulations herein provided.

History.—§4, ch. 9203, 1923; CGL 8552; §1, ch. 61-488.

951.12 Working prisoners on public roads and exchange of prisoners between counties.—All persons confined in the county jail under sentence of a court may be worked on the roads of the county. In case the number of prisoners in any county at any time be less than five, the county commissioners of such county may arrange with the county commissioners of any other county for an exchange of prisoners. The county commissioners shall not be required to work the prisoners on the public roads when there is no contract between the counties as provided herein, nor when in their judgment the number of prisoners is insufficient to justify the employment of a guard to work them.

History.—§4, ch. 4769, 1899;GS 4110; RGS 6219; CGL 8553; §1, ch. 61-488.

951.13 Transferring from one county to another.—When the county commissioners of any county shall have made provision for the expenses of supporting and guarding, while at work on the public roads, a larger number of prisoners than can be supplied from that county, upon the application of the county commissioners of such county, the county commissioners of any other county which has not otherwise provided for the working of its prisoners or otherwise disposed of its prisoners, or

may hereafter dispose of its prisoners, shall deliver to said county or counties applying for same, in the order of their application, such prisoners as may be confined in the county jail or hereafter be sentenced to such county jail.

Provided, that the cost of guarding and maintaining such prisoners shall be paid by the county applying for and receiving the same and any and all such prisoners from such other counties may at any time be returned to the sheriff of such other counties at the expense of the county having received and used them; provided, further, that no prisoners shall be sent out of the county in which they have been convicted and sentenced to work to any other county, unless a contract for that purpose shall have been entered into by the boards of county commissioners of the respective counties, and arrangements made for their safekeeping, proper care and safe return by the employing counties to the county or counties from which such prisoners were sentenced.

History.—§5, ch. 4769, 1899; GS 4111; RGS 6220; CGL 8554; §1, ch. 61-488.

951.14 Failure of person to discharge his duty; penalty.—Any person appointed by virtue of the laws of the state relative to working county prisoners on the public road, or to whom duties are assigned in this chapter, who shall fail to make complete return within the time specified therein, or who shall otherwise fail to discharge the duties imposed upon him by this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than two hundred dollars or be imprisoned for not more than six months in the county jail.

History.—§8, ch. 4769, 1899; GS 4112; RGS 6221; CGL 8555; §7, ch. 29615, 1955; §1, ch. 61-488.
cf.—§775.06, Alternative punishment.

951.15 Credit on fines and costs.—Every working prisoner shall be entitled to receive, together with subsistence, a credit at the rate of thirty cents per diem, on account of fines and costs adjudged against him.

History.—§3033, RS 1892; §2, ch. 2090, 1897; GS 4113; RGS 6222; CGL 8556; §1, ch. 61-488.

951.16 Prisoners entitled to receive credit on fine based on imprisonment.—Every person who may be imprisoned in the county jail for failure to pay a fine and costs, or either, under sentence imposed, upon conviction for crime shall be entitled to receive, together with subsistence, a credit on such fine and costs, or either, as the case may be, in proportion to the time such person may be imprisoned.

History.—§1, ch. 6176, 1911; RGS 6223; CGL 8557.

951.17 Corporal punishment prohibited. — The board of commissioners of state institutions and the director of the division of corrections shall prohibit corporal punishment upon county prisoners.

History.—§1, ch. 9332, 1923; CGL 8558; §44, ch. 57-121; §1, ch. 61-488; §18, ch. 61-530.

951.18 Punishment other than corporal punishment.—The board of commissioners of state institutions and the director of the department of corrections shall devise such other adequate and proper punishment as to them shall seem wise to supply in place of corporal punishment.

History.—§3, ch. 9332, 1923; CGL 8559, §44, ch. 57-121.

951.19 Interference with county prisoners.— Whoever shall interfere with county prisoners while at work, at their meals, at rest, or while going to and from their quarters or with the guards in charge of them, either by assaulting them or by inciting them or attempting to incite the prisoners to disobedience or revolt, or escape, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not to exceed one hundred dollars.

History.—§2, ch. 4391, 1895; GS 3508; RGS 5394; CGL 7533.

951.20 Municipal prisoners not to be confined with ball and chain.—When any person is convicted in any municipal court in this state for the violation of any municipal ordinance, and shall be worked on any street or public work in such municipality such person shall not be confined with ball or chain at such work; provided, that if any person so convicted shall escape from custody, he may be confined with ball and chain when recaptured and while serving the remainder of his sentence.

History.—§1, ch. 4028, 1891; §1, ch. 4773, 1899; GS 4114; RGS 6224; CGL 8560.

951.21 Gain time for good conduct for county prisoners.—

(1) Commutation of time for good conduct of county prisoners shall be granted by the board of county commissioners, and the following deductions shall be made from the term of sentence when no charge of misconduct has been sustained against a county prisoner: five days per month off the first and second years of the sentence; ten days per month off the third and fourth years of the sentence; fifteen days per month off the fifth and all succeeding years of the sentence. Where no charge of misconduct is sustained against a county prisoner, the deduction shall be deemed earned and the prisoner shall be entitled to credit for a month as soon as the prisoner has served such time as, when added to the deduction allowable, will equal a month. A county prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence.

(2) For each sustained charge of escape or attempted escape, mutinous conduct or other serious misconduct, all the commutation which shall have accrued in favor of a county prisoner up to that day shall be forfeited, except that in case of escape if the prisoner voluntarily returns without expense to the state or county, then such forfeiture may be set aside by the board of county commissioners if in its judg-

ment his subsequent conduct entitles him thereto.

History.—§23, ch. 3883, 1889; RS 3059; GS 4140; §1, ch. 6177, 1911; §1, ch. 6917, 1915; RGS 6231; CGL 8567; §1, ch. 18065, 1937; §1, ch. 19199, 1939; §1, ch. 25210, 1949; am. §1, ch. 28300, 1953; tr. from §954.06, 1957; §1, ch. 61-347.

Note.—Although ch. 57-121 purports to repeal ch. 954, attorney general opinion 057-274 holds that §954.06 insofar as it provides gain time for county prisoners was not repealed by ch. 57-121 but remains in full force and effect.

951.22 County jails; contraband articles.—(1) It is unlawful except as duly authorized by the sheriff or officer in charge to introduce into or upon the grounds of any county jail or to give to or receive from any inmate of any county jail wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: Any intoxicating beverage; any narcotic or hypnotic or excitive drug; any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon; and any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county jail.

(2) Whoever violates subsection (1) shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment for a term not exceeding 2 years, or by a fine not exceeding $1,000.00 or by both such fine and imprisonment.

History.—§1, ch. 63-140.

CHAPTER 955

THE FLORIDA SCHOOLS FOR BOYS*

(See Ch. 965, Divisions of board of commissioners of state institutions.)

955.01 Management of Florida industrial school for boys.—The board of commissioners of state institutions shall have charge of the directing of the management and affairs of the Florida industrial school for boys, located near Marianna, and when not provided by statute, shall make and promulgate its own by-laws, and such regulations as will be necessary for the government of the school.

History.—§1, ch. 6529, 1913; §4, ch. 6916, 1915; §6, ch. 6840, 1915; RGS 6296, 6301; CGL 8622, 8627.

955.011 South Florida branch of industrial school for boys; appropriation.—

(1) The board of commissioners of state institutions of the state shall establish a south Florida branch of the Florida industrial school for boys, the same to be located near Okeechobee, in Okeechobee county, upon lands to be contributed therefor by the board of county commissioners of Okeechobee county.

(2) Said branch of said institution shall be subject to all of the provisions of chapter 955, which are not inconsistent with the provisions of this section. The superintendent of the south Florida branch of the Florida industrial school for boys shall be appointed by the governor on the recommendation of the board of commissioners of state institutions. All other teachers or employees shall be employed by the board. The same standards, requirements, curricular and other provisions made for the Florida industrial school for boys located near Marianna, as the same may be now provided by law, shall apply to said south Florida branch of the Florida industrial school for boys located near Okeechobee, in Okeechobee county.

History.—§§1-4, ch. 29690, 1955; (3) r. by §1, ch. 61-516.

955.02 Only boys received.—Only boys shall be sentenced to or received at the Florida industrial school for boys.

History.—§2, ch. 6529, 1913; RGS 6297; CGL 8623.

* Name changed by §1, ch. 57-317.

955.03 Object of industrial school.— The system of management and laws to be prepared as directed in this chapter shall contemplate such school as not simply a place of correction, but a reform school, where the young offender of the law, separated from vicious associates, may receive careful physical, intellectual and moral training, be reformed and restored to the community with purposes and character fitting for a good citizen, an honorable and honest man, with a trade or skilled occupation fitting such person for self-maintenance.

History.—§4, ch. 4565, 1897; GS 4166; RGS 6298; CGL 8624.

955.04 Officers of institution.—The officers of the Florida industrial school for boys at Marianna shall consist of a superintendent and such other officers, including a physician for the treatment of the inmates of the institution, as the commissioners of state institutions shall designate.

History.—§1, ch. 5721, 1907; RGS 6302; CGL 8628.

955.05 Term of office of officers, etc.—The terms of office and employment of all officers and employees of the Florida industrial school for boys shall be fixed by the board of commissioners of state institutions. The salaries of all other officers and employees of said institution shall be fixed by the board of commissioners.

History.—§1, ch. 5721, 1907; RGS 6303; CGL 8629; §1, ch. 15859, 1933; §10, ch. 57-401.

955.06 Appointment of superintendent; other employees.—The superintendent of the Florida industrial school for boys shall be appointed by the governor on the recommendation of the board of commissioners of state institutions. All other teachers or employees shall be employed by the board.

History.—§11, ch. 6840, 1915; RGS 6304; CGL 8630.

955.07 Qualifications of superintendent; literary and industrial training in school.—The

superintendent of the Florida industrial school for boys shall be a man; he shall live at the school and devote his entire time to the management of the same. He shall have had practical experience in the management of such institutions, or special training in constructive social work. There shall be maintained a system of practical, industrial and manual training at said school, and such educational, literary and musical facilities as the board of commissioners shall deem necessary and advisable.

History.—§§7, 8, ch. 6840, 1915; RGS 6305; CGL 8631.

955.08 Superintendent to make monthly reports.—The superintendent shall make monthly reports to the board of commissioners of state institutions, furnishing such information as shall be required.

History.—§7, ch. 6529, 1913; §9, ch. 6840, 1915; RGS 6306; CGL 8632.

955.09 Filing itemized receipted bills. — Itemized, detailed, receipted bills shall be filed with the state comptroller by the fifteenth of each month for the funds paid out on bills for the previous month.

History.—§10, ch. 6529, 1913; RGS 6307; CGL 8633.

955.10 Systematic records to be kept. — A thorough and systematic plan of bookkeeping shall be instituted and continued in the conduct of the school, whereby a complete record of the business transactions of the school and the amounts and purposes for which moneys are expended may, at any time, be easily and accurately determined.

History.—§10, ch. 6840, 1915; RGS 6308; CGL 8634.

955.11 Boys to be instructed in mechanical trades, and in agriculture.—The board of commissioners of state institutions shall establish and maintain a mechanical school, and cause the children under their charge to be instructed in mechanical trades, and in the branches of useful knowledge adapted to their age and capacity; also in agriculture and horticulture, according to their ages, strength, disposition and capacity; and otherwise as will best secure their reformation, amendment and future benefit.

History.—§7, ch. 5388, 1905; RGS 6309; CGL 8635.

955.12 White and negro inmates to be separated.—There shall be separate buildings, not nearer than one-fourth mile to each other, one for white boys and one for negro boys. White boys and negro boys shall not, in any manner, be associated together or worked together.

History.—§3, ch. 4565, 1897; GS 4169; RGS 6310; CGL 8636.

955.13 Deportment of inmates; board may parole.—The board of commissioners of state institutions shall institute a system of merits and demerits in the deportment of the inmates of the school, and when deemed advisable, shall parole boys, subject to conditions prescribed by the board.

History.—§5, ch. 6529, 1913; RGS 6311; CGL 8637.

955.14 Biennial reports to legislature.—The board of commissioners of state institutions at each succeeding session of the legislature, shall make such recommendations thereto as they deem fit to cover expenditures for the support, maintenance and government of the institution.

History.—§13, ch. 6840, 1915; RGS 6312; CGL 8638.

955.15 Board to specify punishment that may be inflicted on children of the school. — The board of commissioners of state institutions shall establish rules for the direction of the officers, agents and servants of the school, and for the government, instruction and discipline of the inmates; they shall specify the punishment that may be inflicted upon the children of the school, and any officer, agent or servant who inflicts punishment not so authorized, shall be discharged.

History.—§7, ch. 5388, 1905; RGS 6313; CGL 8639.

955.16 Hiring out of boys prohibited; penalty.—The officers of this institution shall not hire out any of the boys for any purpose. Any officer violating this section shall be fined not more than one hundred dollars or imprisoned not longer than sixty days.

History.—§8, ch. 4565, 1897; §9, ch. 6529, 1913; RGS 5370, 6314; CGL 7504, 8640.
cf.—§775.06, Alternative punishment.

955.17 Child committed to be kept, disciplined and instructed.—Every child convicted and sent to the Florida industrial school for boys shall there be kept, disciplined, instructed, employed and governed, under the direction of the board of commissioners of state institutions, during the time for which he is committed, unless he is sooner discharged as reformed, or remanded to prison under the sentence of the court as incorrigible upon information of the board as provided in this chapter.

History.—§3, ch. 5388, 1905; RGS 6315; CGL 8641.

955.18 Pardoning board may commute punishment to commitment to industrial school for boys of certain persons convicted of crime; board may revoke commutation.—When any child under the age of eighteen years shall be sentenced by any court of competent jurisdiction to imprisonment in any county jail, or to the state prison, the pardoning board, upon the application of such child, his parents or guardian, or other persons, may commute the punishment by substituting therefor the commitment of the child to the Florida industrial school for boys during such time as the pardoning board may deem proper, unless sooner discharged by the board of commissioners of state institutions.

If the child, after being sent to such institution, shall persist in a depraved course, or escape therefrom, the pardoning board may revoke said commutation and remand him to the state prison or jail whence he came to serve out his unexpired term.

History.—§2, ch. 5388, 1905; §1, ch. 5915, 1909; RGS 6316; CGL 8642.

955.19 Child over ten and under eighteen years may be committed to guardianship of institution.—The judge of any circuit court or any county judge, may commit a person over

ten years and under eighteen years of age, residing in his jurisdiction, to the guardianship of said institution when complaint in writing, setting out the acts of said person, has been filed. The complaint shall be sworn to and due proof shall be made in the presence of said person that he is a proper person for the guardianship of said institution, in consequence of incorrigible and vicious conduct.

History.—§9, ch. 5388, 1905; RGS 6317; CGL 8643.

955.21 Term of commitment. — When any boy shall be committed by the judge of any court in the state to the Florida industrial school for boys, the commitment shall be for such period as the committing judge shall deem proper, or until he shall reach his majority, or unless discharged earlier by the board of commissioners of state institutions as reformed.

History.—§5, ch. 5388, 1905; §3, ch. 5915. 1909; §5, ch. 6916, 1915; §1, ch. 7377, 1917; RGS 6319; CGL 8645.

955.22 Board may, for certain reasons, refuse to receive person committed; incorrigible inmates committed to jail or prison.—When a child is sentenced to said school, and the board of commissioners of state institutions deems it inexpedient to receive him or he is found incorrigible, or his continuance in the school is deemed injurious to its management and discipline, they shall certify the same upon the mittimus upon which he is held, and the mittimus and child shall be delivered to any proper officer who shall forthwith commit such child to the jail, or state prison, according to his alternative sentence. The board of commissioners of state institutions may discharge any child as reformed; and may authorize the superintendent, under such rules as they prescribe, to refuse to receive any person sentenced to said school, and his certificate thereof shall be as effectual as their own.

History.—§4, ch. 5388, 1905; RGS 6321; CGL 8647.
cf.—§39.11(1)(c) Commitment of children to industrial school.

955.23 Commitment of inmates on probation.—The board of commissioners of state institutions may commit any inmate on probation, and upon such terms as they deem expedient, to any suitable inhabitant of the state, for a term within the period of his sentence, such probation to be conditioned upon good behavior and obedience to the laws of the state. Such child shall, during the term for which he was originally sentenced to the Florida industrial school for boys, be also subject to the care and control of the board of commissioners of state institutions, and on their being satisfied at any time that the welfare of the child would be promoted by his return to the school, they may order his return and may enforce such order by application to the judge of any court having original criminal jurisdiction, or judge of the police or municipal court for a warrant for such purpose, which may be served by any officer authorized to serve criminal process. On his recommitment to the school such child shall be held and detained under the original mittimus.

History.—§6, ch. 5388, 1905; RGS 6322; CGL 8648.

955.24 Sheriff's expenses.—The actual expenses shall be allowed the sheriffs of the several counties of the state for service in taking offenders to said Florida industrial school for boys, and such fees shall be paid by the county in the same manner as now provided by law.

History.—§13, ch. 4565, 1897; GS 4174; RGS 6323; CGL 8649.
cf.—§30.23 Transportation of prisoners.

955.25 Security units of the Florida industrial school for boys.—

(1) That any or all of the institutions, training schools or camps heretofore or hereafter approved by the board of commissioners of state institutions for youthful male state prisoners may be designated by said board as security units of the Florida industrial school for boys at Marianna. That, when any inmate is sentenced to the Florida industrial school for boys at Marianna, and, after being received there, is found incorrigible or his continuance there is deemed injurious to its management and discipline, said board may, in its discretion, transfer such inmate to any one of such security units, there to be kept, disciplined, governed, employed and instructed under the direction of said board and under the superintendence of the superintendent of said school and in accordance with the statutes, rules and regulations which would apply in the absence of such transfer; provided, however, that said board may promulgate such special rules and regulations, not inconsistent with statute, as to it shall appear necessary or expedient for the keeping, discipline, governance, employment and instruction of inmates transferred to any such security unit. That said board shall have the discretionary authority to transfer any such inmate from one of such security units to another such security unit, and may at any time transfer him back to the said school at Marianna. That said board may confer upon said superintendent the discretionary authority to make the transfers herein provided for, under such rules as said board may prescribe, that in no event shall the girl or boy be confined or placed in any sweat box.

(2) That this section shall not be taken to impair the authority granted by law to subject any inmate committed to either of said schools to any alternative punishment designated in the sentence imposed upon such inmate, in case such inmate is found to be incorrigible or incapable of reformation.

History.—§§1, 3, ch. 23907, 1947.

CHAPTER 956

THE FLORIDA SCHOOLS FOR GIRLS*

(See Ch. 965, Divisions of board of commissioners of state institutions.)

956.01 Industrial school for girls created; construction of buildings.—A state industrial school for girls is created and located near Ocala.

The buildings for the industrial school shall be constructed on the cottage plan, approved by modern penologists. The plan of grounds and buildings shall be constructed with reference to harmonious growth, durability and permanence.

History.—§§2, 12, ch. 6840, 1915; RGS 6325, 6333; CGL 8651, 8659.

cf.—§843.13, Aiding escape of inmates of Florida school for boys or girls.

956.02 Girls between the ages of ten and twenty-one may be committed; procedure for commitment.—Any girl in the state between the ages of ten and twenty-one years may, under the form of practice and procedure and upon the grounds whereby boys are now sentenced to the Florida industrial school for boys, in like manner be committed to the Florida industrial school for girls by the courts of this state; provided, that any girl within this state, custody of whom may be taken under and by virtue of chapter 39, may, in pursuance of the procedure and practice of this chapter, be committed to the Florida industrial school for girls in like manner as boys are now committed to the Florida industrial school for boys.

History.—§4, ch. 6840, 1915; RGS 6326; CGL 8652.

956.03 Management of industrial school; by-laws and regulations.—The Florida industrial school for girls shall be under the management of the board of commissioners of state institutions. When not provided by statute the board shall make and promulgate by-laws and such regulations as will be necessary for the government of the industrial school.

History.—§§5, 6, ch. 6840, 1915; RGS 6327, 6328; CGL 8653, 8654.

956.04 Qualifications of superintendent; literary and industrial training to be maintained at school.—The superintendent of the Florida schools for girls shall be a person who shall live at the school and devote his or her entire time to the management of the same. The person shall have had practical experience in the management of such institutions, or special training in constructive social work. There shall be maintained at such school a system of practical, industrial, and manual training, and such educational, literary and musical facilities as the board of commissioners of state institutions shall deem advisable and necessary.

History.—§7, ch. 6840, 1915; RGS 6329; CGL 8655; §1, ch. 61-357.

956.05 Term of commitment; monthly reports of superintendent.—The term of commitment to the industrial school for girls shall be indeterminate, dependent upon good conduct and moral improvement and advancement. The board shall make just, but liberal provisions whereby continued excellent deportment shall entitle the inmates to conditional parole and final dismissal. The superintendent shall make monthly reports to the board, furnishing such information as shall be required.

History.—§9, ch. 6840, 1915; RGS 6330; CGL 8656.

956.06 Systematic plan of bookkeeping to be maintained.—A thorough and systematic plan of bookkeeping shall be instituted and continued in the conduct of the school, whereby a complete record of the business transactions of the school and the amounts and purposes for which moneys are expended may, at any time, be easily and accurately determined.

History.—§10, ch. 6840, 1915; RGS 6331; CGL 8657.

956.07 Appointment of superintendent, and other teachers and employees.—The superintendent of the Florida industrial school for girls shall be appointed by the governor on the recommendation of the board of commissioners of state institutions. All other teachers or employees shall be employed by the board.

History.—§11, ch. 6840, 1915; RGS 6332; CGL 8658; §1, ch. 15859, 1933; §11, ch. 57-401.

956.08 Biennial reports to legislature.—The board of commissioners of state institutions at each succeeding session of the legislature, shall make such recommendations thereto as they deem fit to cover expenditures for the support, maintenance and government of the Florida industrial school for girls.

History.—§13, ch. 6840, 1915; RGS 6334; CGL 8660.

956.09 Security units for the Florida industrial school for girls.—

(1) That any or all of the institutions, training schools or camps heretofore or hereafter established by the board of commissioners of state institutions for youthful female state prisoners may be designated by said board as

* Name changed by §1, ch. 57-317.

security units of the Florida industrial school for girls at Ocala. That, when any inmate is sentenced to the Florida industrial school for girls at Ocala, and, after being received there, is found incorrigible or her continuance there is deemed injurious to its management and discipline, said board may, in its discretion, transfer such inmate to any one of such security units, there to be kept, disciplined, governed, employed and instructed under the direction of said board and under the superintendence of the superintendent of said school and in accordance with the statutes, rules and regulations which would apply in the absence of such transfer; provided, however, that said board may promulgate such special rules and regulations, not inconsistent with statute, as to it shall appear necessary or expedient for the keeping, discipline, governance, employment and instruction of inmates transferred to any such security unit. That said board shall have the discretionary authority to transfer any such inmate from one of such security units to another such security unit, and may at any time transfer her back to the said school at Ocala. That said board may confer upon said superintendent the discretionary authority to make the transfers herein provided for, under such rules as said board may prescribe.

(2) That this section shall not be taken to impair the authority granted by law to subject any inmate committed to either of said schools to any alternative punishment designated in the sentence imposed upon such inmate, in case such inmate is found to be incorrigible, or incapable of reformation.

History.—§§2, 3, ch. 23907, 1947.

CHAPTER 958

COMMITMENTS TO FLORIDA SCHOOLS FOR BOYS AND GIRLS*

958.01 Form of commitments.—When any person is committed by any court in this state to either of the industrial schools of Florida, which is maintained for juvenile delinquents and offenders, the commitment to be used by such court shall be in substantially the following form and shall contain the information indicated in such form, to-wit:

State of Florida,

County of _____

BE IT REMEMBERED, that on the _____ day of _____, A. D. 19____, _____ a resident of said County, was on complaint of _____ brought before me, the undersigned Judge of the _____ Court, and upon due proof, I do find that said _____ is a suitable person to be committed to the Florida Industrial School for _____

Wherefore, it is hereby ordered that the said _____ be, and _____ is hereby committed to said Institution for the period of _____, or until _____ is legally discharged therefrom.

The said _____ was charged with _____ and the alternative sentence is that _____ shall be confined in the _____ for the period of _____.

The said _____ was first brought before the _____ Court, charged with _____ and was placed on probation with _____ at _____ is _____ years of age, was born at _____ on the _____ day of _____ A. D. 19____; _____ disposition is _____ is in the____ grade at school _____ has violated terms of probation _____ times.

The attitude of parents (or guardian) toward law enforcement is _____, the home conditions are _____.

Name of parent (or guardian) _____ and they reside at _____

The _____ has been convicted of the crime of _____.

Witness my hand this the _____ day of _____ A. D. 19____.

_____

Judge of the _____ Court.

ATTEST:

_____

Clerk _____ Court.

History.—§1, ch. 10160, 1925; CGL 8661.

958.02 Certified copy of charge to be attached to commitment. — The clerk of each court, or the judge thereof if it has no clerk, shall prepare and attach to each commitment a certified copy of the charge upon which the person is being committed to either of said institutions.

History.—§2, ch. 10160, 1925; CGL 8662.

* Names changed by §1, ch. 57-317.

TITLE XLVII

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS, GENERALLY

CHAPTER 965

DIVISIONS OF CORRECTIONS, CHILD TRAINING SCHOOLS, MENTAL HEALTH AND SUNLAND TRAINING CENTERS

965.01 Creation of divisions.—The board of commissioners of state institutions shall create and organize the following divisions, which shall have jurisdiction of the hereinafter named state institutions:

(1) (a) DIVISION OF CORRECTIONS.—The division of corrections shall have supervisory and protective care, custody and control of the inmates, buildings, grounds, property and all other matters pertaining to the following institutions for the imprisonment or correction of adult offenders:

1. Apalachee correctional institution.
2. Florida correctional institution.
3. Glades correctional institution.
4. Florida state prison.
5. State road prisons.

(2) DIVISION OF CHILD TRAINING SCHOOLS.—

The division of child training schools shall have supervisory and protective care, custody and control of all minor offenders and of the buildings, grounds and all other property of, and matters concerning, the following correctional and training institutions:

(a) Florida state industrial school for boys at Marianna, which shall hereafter be named and known as the Florida school for boys at Marianna,

(b) Florida state industrial school for boys at Okeechobee, which shall hereafter be named and known as the Florida school for boys at Okeechobee,

(c) Florida state industrial school for girls at Ocala, which shall hereafter be named and known as the Florida school for girls at Ocala,

(d) Florida state industrial school for girls at Forest Hill, which shall hereafter be named and known as the Florida school for girls at Forest Hill.

(3) (a) DIVISION OF MENTAL HEALTH.—The division of mental health shall have supervisory and protective care, custody and control of all patients, buildings, grounds, and all other property of and matters concerning the following institutions:

1. Florida state hospital at Chattahoochee,
2. The G. Pierce Wood memorial hospital at Arcadia,
3. Northeast Florida hospital in Macclenny,
4. South Florida hospital in Broward county.

(b) The director of mental health, as hereinafter provided for, shall make, or cause to be made, an examination and diagnosis of each person subject to commitment as mentally ill in a state hospital, either by court order or by voluntary action of such person, in order to determine which state hospital shall be selected for the care and treatment of each patient, taking into consideration the residence of each patient, the distance to be travelled, facilities for treatment of the individual form of illness, and the crowded conditions and capacities of the several institutions under his jurisdiction. No person shall be finally placed in a state mental hospital until after such examination and diagnosis and the issuance of a commitment order by the director of mental health. Nothing in this act shall be construed as a limitation on the power of courts to commit except that all laws pertaining to the commitment of mentally ill, insane or incompetent by whatever description, persons to particular state institutions are superseded to the extent that the locus of commitment of all persons to state mental hospitals shall be subject to the provisions of this act.

To the extent that his budget will permit,

the attorney general shall furnish the legal services to carry out the provisions of this section. Upon the request of the director, the various state and county attorneys shall assist in litigation within their respective jurisdictions. The director may retain private legal counsel to the extent of those necessary legal services which cannot be furnished by the attorney general and the various state and county attorneys.

(4) DIVISION OF SUNLAND TRAINING CENTERS.—The division of sunland training centers shall have supervisory and protective care, custody and control of all mentally retarded and feeble-minded children and of the buildings, grounds and all other property of and matters concerning the following sunland training centers:

(a) The sunland training center at Gainesville.

(b) The sunland training center at Fort Myers.

(c) The sunland hospital at Orlando.

History.—§1, ch. 57-317; (3)(c) r. §1. ch. 59-222; (1) a. §1, ch. 61-127; (2)(e), (f) r. §3, and (4) n. §1, ch. 61-425; (4)(b)(c), §1, ch. 63-233.

cf.—Chs. 944 and 945 Institutions comprising division of corrections.

cf.—Chs. 393, 955, 956 and 958 Institutions comprising division of child training, and sunland training centers.

cf.—Ch. 394 Institutions comprising division of mental health.

§337.10 Use of state convict road force.

§944.51 State road department prison camps; authority.

965.02 Assignments of institutions to divisions.—The board of commissioners of state institutions is authorized and empowered to assign to one of the divisions created in §965.01 all similar institutions hereafter created by the legislature and placed under the jurisdiction of the board of commissioners of state institutions.

History.—Comp. §2, ch. 57-317.

965.03 Appointment of directors; qualifications.—The board of commissioners of state institutions shall appoint a director to serve as the administrative, planning and coordinating head of each of the divisions herein created and shall employ such staff personnel as may be required for the proper performance of such duties. The salary of each such director and of the staff shall be fixed by the board. Each divisional director shall be responsible to the board of commissioners of state institutions for the proper administration of the institutions and programs under the jurisdiction and supervision of his division. The director of mental health shall be qualified through education, training and experience in the field of mental health and the director of child training schools shall be similarly qualified in the field of child training. The director of sunland training centers shall be qualified through education, training and experience in the field of the mentally retarded, feebleminded and exceptional children. No division director shall be concurrently head of more than one division nor shall any division director serve as superintendent of any institution under the board of commissioners of state institutions.

History.—§3, ch. 57-317; §2, ch. 61-425; §1. ch. 63-25.

965.04 Division advisory councils.—

(1) The governor may appoint an advisory council for each division of such size and so constituted as may, in his discretion, be advisable for the purpose of advising the board of commissioners of state institutions concerning the activities of the institutions under the jurisdiction of each division.

(2) Members of each advisory council so appointed shall receive no compensation, but shall be reimbursed from the budget of each division respectively, for the expense of attending meetings of the council as provided in §112.061.

(3) The council shall consult with the board of commissioners of state institutions and with the division director and shall make recommendations to the board in connection with the administration of programs of the several institutions under each division.

History.—§4, ch. 57-317; (2) §19, ch. 63-400.

965.05 Rules and regulations.—The board of commissioners of state institutions may adopt and promulgate such regulations as it deems necessary for the proper conduct and administration of the institutions under its jurisdiction.

History.—Comp. §5, ch. 57-317.

965.06 Transfer to board of commissioners of powers, duties, and title to certain property.—All powers, duties and authority heretofore vested in any other board or agency for the supervision of any institution hereunder shall be and are hereby transferred and assigned to the board of commissioners of state institutions, and the title to all property and equipment held by any such other board or agency is likewise transferred to the board of commissioners of state institutions in order that it may completely assume and carry out its responsibilities as provided herein.

History.—Comp. §6, ch. 57-317.

965.07 Location of training centers, schools, etc., for mentally retarded.—Any training center, school or other establishment constructed by the state as an institution for the mentally retarded shall be located in the area of greatest need determined by an impartial survey conducted by the board of commissioners of state institutions. This section shall in no way be construed to conflict with §393.011.

History.—Comp. §§1, 2, ch. 57-733.

965.08 Claims for care and maintenance; trust property.—The board of commissioners of state institutions shall protect the financial interest of the state with respect to claims which the state may have for the care and maintenance of patients or inmates of state institutions under their supervision and control and shall administer money and other property received for the personal benefit of such patients or inmates. In order to carry out the provisions of this section the board of commissioners of state institutions may delegate any of its herein enumerated powers and duties to the

director of the division under whose supervision such patient or inmate comes, and any such director to whom such powers and duties are so delegated is empowered, either personally or subject to his personal responsibility, through designated employees of his personal staff or of the institutions under his supervision to exercise such powers or perform such duties. The board of commissioners of state institutions is empowered to perform the following acts:

(1) CLAIMS FOR CARE AND MAINTENANCE.—

(a) Receive and supervise the collection of sums due the state;

(b) Bring any appropriate court action necessary to protect the interests of the state in order to collect any claim the state may have against any patient or inmate, former patient or inmate, or the guardian or administrator of any such patient or inmate, or any person against whom any such patient or inmate may have a claim;

(c) Obtain a copy of any inventory or appraisal filed with any county judge;

(d) Obtain from the welfare board a financial status report on any patient or inmate or former patient or inmate, or information relative to welfare payments due such patients or inmates or the ability of relatives or others responsible for such patients or inmates to pay all or part of the cost of their care and maintenance;

(e) Petition the court for appointment of a guardian or administrator for an otherwise unrepresented patient or inmate should the financial status report or other information indicate the need for such action, the cost of such action to be awarded against the estate of the patient or inmate;

(f) Represent the interest of the state in any litigation in which a patient or an inmate is a party in interest;

(g) File claims with any person, firm or corporation or with any federal, state, county, district or municipal agency on behalf of an unrepresented patient or inmate;

(h) Represent the state in the settlement of the estate of deceased patients or inmates or in the settlement of estates in which a patient or an inmate or a former patient or inmate against whom the state may have a claim has a financial interest.

(2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR BENEFIT OF ANY PATIENT OR INMATE.—

(a) Accept and administer as a trust any money or other property received for personal use or benefit of any patient or inmate;

(b) Deposit money so received in banks qualified as state depositories;

(c) Withdraw any such money and use the same to meet the current needs of the patient or inmate as they may exist from time to time;

(d) As such trustee to establish savings accounts, demand deposits, or time deposits, or invest in the manner authorized by law for fiduciaries such moneys not required to be used for current needs of the patient or inmate;

(e) To commingle such moneys for the purpose of deposit or investment.

(3) DEPOSIT IN STATE TREASURY.—Money received by the board of commissioners of state institutions or by any director in payment of claims of the state for the care and maintenance of any patient or inmate and as income earned from deposits and investments hereunder shall be transmitted to the state treasurer for deposit into the general revenue fund of the state.

(4) DISPOSITION OF UNCLAIMED TRUST FUNDS.—Upon the death of any patient or inmate of an institution affected by the provisions of this section, any unclaimed money held in trust by the board of commissioners of state institutions or by a division director or by the state treasurer for him shall be applied first to the payment of any unpaid claim of the state against the patient or the inmate, and any balance remaining unclaimed for a period of one year shall escheat to the state as unclaimed funds held by fiduciaries.

(5) BOND OF DIVISION DIRECTORS.—The director of any division affected by this section shall give a faithful performance bond payable to the governor or his successors in office in an amount to be fixed by the board of commissioners of state institutions.

(6) LEGAL REPRESENTATION.—To the extent that his budget will permit, the attorney general shall furnish the legal services to carry out the provisions of this section. Upon the request of the board of commissioners of state institutions or of the director of a division affected, the various state and county attorneys shall assist in litigation within their jurisdiction. The board of commissioners of state institutions or any director may retain legal counsel to the extent of necessary legal services which cannot be furnished by the attorney general and the various state and county attorneys.

History.—§2, ch. 59-222.

965.09 Child psychiatric center, university of Florida health center.—

(1) The board of commissioners of state institutions is hereby authorized and directed to establish a child psychiatric inpatient unit to be located on lands owned by the state at the J. Hillis Miller health center, university of Florida, in Alachua county. Said child psychiatric inpatient unit shall develop and carry out a research and training pilot program in the field of child psychiatry. For the purpose of planning and establishing such unit and supervising its activities, there is hereby created an advisory board consisting of the director of the division of mental health, the head, department of psychiatry, university of Florida medical school, the dean, university of Florida medical school, and one person designated by the state board of commissioners of state institutions

who is currently engaged in private practice of child psychiatry in the state. The physical design of the unit and the program to be conducted therein shall be developed upon the recommendation of this advisory board subject always to the approval and over-all supervision and control of the board of commissioners of state institutions.

(2) The child psychiatric inpatient unit may apply for and accept any funds, grants, gifts or services made available to it by any agency or department of the federal government or any other agency or private individual in aid of any present or future child psychiatric treatment or research program undertaken, maintained or proposed. All moneys received under the provision of this section shall be deposited in the state treasury and shall be disbursed in the manner as prescribed by law.

History.—§§1, 2, ch. 63-214.

965.10 Division of child training schools; after-care program.—In order that children might be more quickly returned from the Florida schools for boys and the Florida schools for girls and the benefits of their training more carefully preserved, the director of the division of child training schools, hereinafter referred to as the director, shall establish a program to provide for advance planning for the return of children committed to the Florida schools for boys and the Florida schools for girls, and for their supervision after their return. This program shall hereinafter be referred to as the after-care program.

History.—§1, ch. 63-368.

965.11 Administration of after-care program.—To administer the after-care program the director shall employ an administrative assistant who shall hold at least a master's degree from an accredited institution of higher learning in corrections or the social sciences, or such experience as will in the opinion of the director and the advisory board offset a portion of these academic standards.

History.—§2, ch. 63-368.

965.12 Employment of counselors; duties.—The director may employ as many after-care counselors as in the opinion of the director are required to render counseling services to children discharged or about to be discharged from the aforesaid institutions; provided, however, the program of the division shall supplement and not replace any juvenile counseling otherwise provided, and the director shall make full use of existing services to the extent available on a cooperative basis. The after-care counselor shall hold at least a bachelor's degree from an accredited institution of higher learning in corrections or in the social sciences, or such experience as will in the opinion of the director offset a portion of these academic standards. The duties of the after-care counselor shall be:

(1) To supervise any child furloughed from a Florida school for boys or a Florida school for girls until such time as the child is discharged from such supervision by the school or by the juvenile court of the county wherein the child is found, provided that the supervision of the child in no case be extended beyond the twenty-first birthday of the child.

(2) To make such social studies and reports to the director as he shall require regarding the homes and families of children who have been committed to the schools.

(3) Upon the request of the judge having juvenile court jurisdiction in the county where he is assigned, to make studies and prepare social histories of children where commitment to the schools for boys or the schools for girls is being considered by the judge.

(4) With the help of the local juvenile court to provide counseling and such other services as may be necessary for the families of children committed to the Florida schools for boys and the Florida schools for girls to prepare such homes for the return of the child in order that the value of the training given the child at the school might not be lost.

History.—§3, ch. 63-368.

965.13 Advisory committee to director of child training.—An advisory committee to the director is hereby created to consist of three county judges having juvenile court jurisdiction, three judges of separate juvenile courts or juvenile divisions of courts of general jurisdiction, and three laymen. All members of the advisory committee shall be appointed by the governor. They shall be appointed in the following manner: Two for one year, two for two years, two for three years, and three for four year terms. Upon the expiration of each member's term a replacement will be appointed for a four year term. The committee shall meet at least four times a year and at such additional times as a meeting shall be called by the director or by a majority of the committee. The members of the committee shall serve without pay, but shall be paid for travel expense and per diem expenses incurred in attending committee meetings as provided in §112.061.

The committee shall advise the director on administrative policies, including the qualification of employees, their duties, their compensation, and all other matters incidental to the operation of the after-care program.

History.—§4, ch. 63-368.

965.14 Return to school of furloughed child; discharge from school; hearings.—If the conduct of the boy or girl on furlough is such as to make it appear that further training at the school would be wise, the furlough may be terminated by the director upon a written report by the after-care counselor. All such actions shall be reviewed by the advisory committee. Upon a request of the boy or girl whose furlough is terminated, his parent or guardian, a hearing will be given him within thirty days of the date of the termination in the county to which he has been furloughed, by the director or his administrative assistant, one judicial member of the advisory committee designated by the director, and the judge of the juvenile court of the county to which he has been fur-

loughed. This committee is empowered to refuse the action terminating the furlough by a majority vote. If a child is on furlough for one year he may, as a matter of right, apply to the director for discharge from the school. If his application is refused, he will be entitled to a hearing on the application within thirty days of the date it is mailed to the director, in the county to which he has been furloughed, before a committee consisting of the director or his administrative assistant, one judicial member of the advisory committee designated by the director, and the juvenile court judge of the county to which he has been furloughed. This committee is empowered to grant the application for discharge by a majority vote and to discharge the child from the school.

History.—§5, ch. 63-368.

965.15 Financing of after-care program.—The activities authorized herein shall be financed from moneys appropriated to the division of child training schools for this purpose.

History.—§6, ch. 63-368.

965.16 National community mental health centers act.—Any federal funds accruing to the state for the purposes of carrying out the national community mental health centers act of 1963 shall be paid to the division of mental health of the board of commissioners of state institutions and expended by it as directed by said board.

History.—§1, ch. 63-305.

EDITOR'S COMMENT

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